

**INTERNATIONAL BANK FOR
RECONSTRUCTION AND DEVELOPMENT
and
REPUBLIC OF CHINA**

Guarantee Agreement—*Third Power Project* (with annexed General Conditions Applicable to Loan and Guarantee Agreements, Loan Agreement between the Bank and the Taiwan Power Company and Letter Agreement between the Bank and the Republic of China). Signed at Washington on 11 June 1971

Authentic text : English.

Filed and recorded at the request of the International Bank for Reconstruction and Development on 16 December 1971.

**BANQUE INTERNATIONALE POUR
LA RECONSTRUCTION ET LE DÉVELOPPEMENT
et
RÉPUBLIQUE DE CHINE**

Contrat de garantie — *Troisième projet relatif à l'énergie électrique* (avec, en annexe, les Conditions générales applicables aux contrats d'emprunt et de garantie, le Contrat d'emprunt entre la Banque et la Taiwan Power Company et Lettre d'accord entre la Banque et la République de Chine). Signé à Washington le 11 juin 1971

Texte authentique : anglais.

Classé et inscrit au répertoire à la demande de la Banque internationale pour la reconstruction et le développement le 16 décembre 1971.

GUARANTEE AGREEMENT¹

AGREEMENT, dated June 11, 1971, between REPUBLIC OF CHINA (hereinafter called the Guarantor) and INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (hereinafter called the Bank).

WHEREAS by the Loan Agreement of even date² herewith between the Bank and the Taiwan Power Company (hereinafter called the Borrower) the Bank has agreed to make to the Borrower a loan in various currencies equivalent to fifty-five million dollars (\$55,000,000), on the terms and conditions set forth in the Loan Agreement, but only on condition that the Guarantor agree to guarantee the obligations of the Borrower in respect of such loan as hereinafter provided; and

WHEREAS the Guarantor, in consideration of the Bank's entering into the Loan Agreement with the Borrower, has agreed so to guarantee such obligations of the Borrower;

NOW THEREFORE the parties hereto hereby agree as follows :

Article I

GENERAL CONDITIONS; DEFINITIONS

Section 1.01. The parties to this Agreement accept all the provisions of the General Conditions Applicable to Loan and Guarantee Agreements of the Bank dated January 31, 1969,³ with the same force and effect as if they were fully set forth herein, subject, however, to the modifications thereof set forth in Section 1.01 of the Loan Agreement (said General Conditions Applicable to Loan and Guarantee Agreements, as so modified, being hereinafter called the General Conditions).

Section 1.02. Wherever used in this Agreement, unless the context otherwise requires, the several terms defined in the General Conditions and in Section 1.02 of the Loan Agreement have the respective meanings therein set forth.

¹ Came into force on 9 September 1971, upon notification by the Bank to the Government of the Republic of China.

² See p. 294 of this volume.

³ See p. 292 of this volume.

Article II

GUARANTEE; BONDS; PROVISION OF FUNDS

Section 2.01. Without limitation or restriction upon any of its other obligations under the Guarantee Agreement, the Guarantor hereby unconditionally guarantees, as primary obligor and not as surety merely, the due and punctual payment of the principal of, and interest and other charges on, the Loan and the Bonds, the premium, if any, on the prepayment of the Loan or the redemption of the Bonds prior to their maturity and the punctual performance of all the other obligations of the Borrower, all as set forth in the Loan Agreement and in the Bonds.

Section 2.02. The Guarantor shall endorse, in accordance with the provisions of the General Conditions, its guarantee on the Bonds to be executed and delivered by the Borrower. The Minister of Finance of the Guarantor and such other person or persons as he shall appoint in writing are designated as authorized representatives of the Guarantor for the purposes of Section 8.10 of the General Conditions.

Section 2.03. Without limitation or restriction upon the provisions of Section 2.01 of this Agreement, the Guarantor specifically undertakes, whenever there is reasonable cause to believe that the funds available to the Borrower will be inadequate to meet the estimated expenditures required for the carrying out of the Project, to make arrangements, satisfactory to the Bank, promptly to provide the Borrower or cause the Borrower to be provided with such funds as are needed to meet such expenditures.

Article III

OTHER COVENANTS

Section 3.01. (a) It is the mutual intention of the Guarantor and the Bank that no other external debt shall enjoy any priority over the Loan or the Bonds by way of a lien on governmental assets.

(b) To that end the Guarantor (i) represents that at the date of this Agreement no lien exists on any governmental assets as security for any external debt, and (ii) undertakes that if any such lien shall be created it will *ipso facto* equally and ratably secure the payment of the principal of, and interest and other charges on, the Loan and the Bonds and in the creation of any such lien express provision will be made to that effect. The Guarantor shall promptly inform the Bank of the creation of any such lien.

(c) The foregoing representation and undertaking shall not apply to : (i) any lien created on property, at the time of purchase thereof, solely as security for payment of the purchase price of such property; and (ii) any lien arising in

the ordinary course of banking transactions and securing a debt maturing not more than one year after its date.

As used in this Section, the term "governmental assets" means assets of the Guarantor, of any of its political subdivisions, of any agency of the Guarantor or of any such political subdivision, and assets of the Central Bank of China or any institution performing the functions of a central bank for the Guarantor.

Section 3.02. (a) Except as the Bank shall otherwise agree, prior to the termination of the Loan Agreement in accordance with its terms, the Guarantor shall cause the Bank of Communications not to :

- (i) exercise the right to effect any lien given by the Borrower to the Bank of Communications under the CIECD loan agreements;
- (ii) transfer or assign the loans and any right, including the lien, provided for under such CIECD loan agreements; and
- (iii) amend any provision relating to the lien provided for under such CIECD loan agreements.

(b) If the circumstances would justify the Bank of Communications to effect the lien referred to in subsection (a) hereof and if the Bank so agrees, the Guarantor shall cause the Bank of Communications to :

- (i) share such lien *pari passu* by the Bank and the Bank of Communications to secure the payment of the principal of, and interest and other charges on, the Loans and the Bonds, and the outstanding principal of, and interest on, the loans provided for under the CIECD loan agreements; and
- (ii) make express provision to that effect in the registration or in any other legal documents required to effect the lien.

Section 3.03. The Guarantor shall take all such action as will be necessary to enable the Borrower to obtain, and shall not take any action which would prevent the Borrower from obtaining, from time to time, such adjustment in the Borrower's tariffs as provided in Section 5.06 of the Loan Agreement.

Section 3.04. Unless the Bank shall otherwise agree, the Guarantor shall reinvest in the Borrower, under terms and conditions acceptable to the Bank, any sums which it shall earn from time to time, until December 31, 1982, as dividends on its shareholdings in the Borrower.

Section 3.05. Unless the Bank shall otherwise agree, the Guarantor shall not take any action which would result in the amendment of the Borrower's Charter.

Article IV

CONSULTATION AND INFORMATION

Section 4.01. The Guarantor and the Bank shall cooperate fully to assure that the purposes of the Loan will be accomplished. To that end the Guarantor

and the Bank shall from time to time, at the request of either party : (i) exchange views through their representatives with regard to the performance of their respective obligations under the Guarantee Agreement and other matters relating to the purposes of the Loan; and (ii) furnish to the other all such information as it shall reasonably request with regard to the general status of the Loan. On the part of the Guarantor, such information shall include information with respect to financial and economic conditions in the territories of the Guarantor, including its balance of payments, and the external debt of the Guarantor, of any of its political subdivisions and of any agency of the Guarantor or of any such political subdivision.

Section 4.02. (a) The Guarantor shall promptly inform the Bank of any condition which interferes with, or threatens to interfere with, the accomplishment of the purposes of the Loan or the maintenance of the service thereof.

(b) The Guarantor shall afford all reasonable opportunity for accredited representatives of the Bank to visit any part of the territories of the Guarantor for purposes related to the Loan.

Article V

TAXES AND RESTRICTIONS

Section 5.01. The principal of, and interest and other charges on, the Loan and the Bonds shall be paid without deduction for, and free from, any taxes imposed under the laws of the Guarantor or laws in effect in its territories; provided, however, that the foregoing shall not apply to taxation of payments under any Bond to a holder thereof other than the Bank when such Bond is beneficially owned by an individual or corporate resident of the Guarantor.

Section 5.02. The Guarantee Agreement, the Loan Agreement, any instrument made pursuant to Section 3.01 of this Agreement and the Bonds shall be free from any taxes that shall be imposed under the laws of the Guarantor or laws in effect in its territories on or in connection with the execution, issue, delivery or registration thereof and the Guarantor shall, in respect of any instrument made pursuant to such Section 3.01, pay all such taxes, if any, imposed under the laws of any other country or countries.

Section 5.03. The payment of the principal of, and interest and other charges on, the Loan and the Bonds shall be free from all restrictions, regulations, controls or moratoria of any nature imposed under the laws of the Guarantor or laws in effect in its territories.