

CONFORMED COPY

LOAN NUMBER 3788 CHA

Financial Intermediaries
Project Agreement

(Shenyang Industrial Reform Project)

between

INTERNATIONAL BANK FOR RECONSTRUCTION
AND DEVELOPMENT

and

BANK OF COMMUNICATIONS LIMITED

and

INDUSTRIAL AND COMMERCIAL BANK OF CHINA

Dated January 11, 1995

LOAN NUMBER 3788 CHA

FINANCIAL INTERMEDIARIES PROJECT AGREEMENT

AGREEMENT, dated January 11, 1995, between INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (the Bank) and BANK OF COMMUNICATIONS LIMITED and INDUSTRIAL AND COMMERCIAL BANK OF CHINA (the Financial Intermediaries).

WHEREAS (A) by the Loan Agreement of even date herewith between People's Republic of China (the Borrower) and the Bank, the Bank has agreed to make available to the Borrower an amount in various currencies equivalent to one hundred seventy five million dollars (\$175,000,000), on the terms and conditions set forth in the Loan Agreement, but only on condition that the Financial Intermediaries agree to undertake such obligations toward the Bank as are set forth in this Agreement, that Shenyang agree to undertake such obligations toward the Bank as are set forth in the Shenyang Project Agreement and that SMTCL agree to undertake such obligations toward the Bank as are set forth in the SMTCL Project Agreement;

(B) by subsidiary loan agreements to be entered into between Shenyang and BOCOM and ICBC, respectively, a portion of the proceeds of the Loan provided for under the Loan Agreement will be relented to the Financial Intermediaries on the terms and conditions set forth in the BOCOM Subsidiary Loan Agreement and the ICBC Subsidiary

Loan Agreement; and

WHEREAS the Financial Intermediaries, in consideration of the Bank's entering into the Loan Agreement with the Borrower, have agreed to undertake the obligations set forth in this Agreement;

NOW THEREFORE the parties hereto hereby agree as follows:

ARTICLE I

Definitions

Section 1.01. Unless the context otherwise requires, the several terms defined in the Loan Agreement and the General Conditions (as so defined) have the respective meanings therein set forth.

ARTICLE II

Execution of the Project; Management and Operations of the Financial Intermediaries

Section 2.01. Each Financial Intermediary declares its commitment to the objectives of the Project as set forth in Schedule 2 to the Loan Agreement, and, to this end, shall carry out its respective part of Part B.2 of the Project, through its Shenyang branch, and conduct its operations and affairs in accordance with sound financial standards and practices, with qualified management and personnel, and in accordance with: (i) for BOCOM, the BOCOM Charter and the BOCOM Policy Guidelines; and (ii) for ICBC, the ICBC Charter and the ICBC Policy Statement.

Section 2.02. (a) Each Financial Intermediary undertakes that, unless the Bank shall otherwise agree, Sub-loans shall be made in accordance with the procedures and on the terms and conditions set forth or referred to in Schedule 1 to this Agreement.

(b) Each Financial Intermediary shall exercise its rights in relation to each Investment Project in such manner as to: (i) protect the interests of the Bank and of such Financial Intermediary; (ii) comply with its obligations under this Agreement and its respective Subsidiary Loan Agreement; and (iii) achieve the purposes of the Project.

Section 2.03. Each Financial Intermediary shall carry out the obligations set forth in Sections 9.04, 9.05, 9.06, 9.07, 9.08 and 9.09 of the General Conditions (relating to insurance, use of goods and services, plans and schedules, records and reports, maintenance and land acquisition, respectively) in respect of the Financial Intermediaries Project Agreement and its respective part of Part B.2 of the Project.

Section 2.04. Each Financial Intermediary shall duly perform all its obligations under its respective Subsidiary Loan Agreement. Except as the Bank shall otherwise agree, no Financial Intermediary shall take or concur in any action which would have the effect of amending, abrogating, assigning or waiving such Subsidiary Loan Agreement or any provision thereof.

Section 2.05. (a) Each Financial Intermediary shall, at the request of the Bank, exchange views with the Bank with regard to the progress of Part B.2 of the Project, the performance of its obligations under this Agreement and under its respective Subsidiary Loan Agreement, and other matters relating to the purposes of the Loan.

(b) Each Financial Intermediary shall promptly inform the Bank of any condition which interferes or threatens to interfere with the progress of Part B.2 of the Project, the accomplishment of the purposes of the Loan, or the performance by such Financial Intermediary of its obligations under this Agreement and under its respective Subsidiary Loan Agreement.

Section 2.06. If any Financial Intermediary has, establishes or acquires any Subsidiary, such Financial Intermediary shall cause any such Subsidiary to which the obligations of such Financial Intermediary under this Agreement relate to observe and

perform such obligations as though such obligations were binding upon such Subsidiary.

ARTICLE III

Financial Covenants

Section 3.01. (a) Each Financial Intermediary shall maintain procedures and records adequate to monitor and record the progress of Part B.2 of the Project and of each Investment Project (including its cost and the benefits to be derived from it) and to reflect in accordance with consistently maintained sound accounting practices the operations and financial condition of such Financial Intermediary.

(b) Each Financial Intermediary shall:

(i) have its records, accounts and financial statements (balance sheets, statements of income and expenses and related statements) for each fiscal year audited, in accordance with appropriate auditing principles consistently applied, by independent auditors acceptable to the Bank;

(ii) furnish to the Bank as soon as available, but in any case not later than six months after the end of each such year, (A) certified copies of its financial statements for such year as so audited and (B) the report of such audit by said auditors of such scope and in such detail as the Bank shall have reasonably requested; and

(iii) furnish to the Bank such other information concerning said records, accounts and financial statements, as well as the audit thereof, as the Bank shall from time to time reasonably request.

Section 3.02. Each Financial Intermediary shall take such steps satisfactory to the Bank as shall be necessary to protect itself against risk of loss resulting from changes in the rates of exchange between the various currencies (including the currency of the Borrower) used in its operations.

ARTICLE IV

Effective Date; Termination; Cancellation and Suspension

Section 4.01. This Agreement shall come into force and effect on the date upon which the Loan Agreement becomes effective.

Section 4.02. This Agreement and all obligations of the Bank and of the Financial Intermediaries thereunder shall terminate on the date on which the Loan Agreement shall terminate in accordance with its terms, and the Bank shall promptly notify each Financial Intermediary thereof.

Section 4.03. All the provisions of this Agreement shall continue in full force and effect notwithstanding any cancellation or suspension under the General Conditions.

ARTICLE V

Miscellaneous Provisions

Section 5.01. Any notice or request required or permitted to be given or made under this Agreement and any agreement between the parties contemplated by this Agreement shall be in writing. Such notice or request shall be deemed to have been duly given or made when it shall be delivered by hand or by mail, telegram, cable, telex or radiogram to the party to which it is required or permitted to be given or made at such party's address hereinafter specified or at such other address as such party shall have designated by notice to the party giving such notice or making such request. The addresses so specified are:

For the Bank:

International Bank for
Reconstruction and Development
1818 H Street, N.W.
Washington, D.C. 20433
United States of America

Cable address:

INTBAFRAD
Washington, D.C.

Telex:

248423 (RCA),
82987 (FTCC),
64145 (WUI) or
197688 (TRT)

For BOCOM:

Bank of Communications Limited
Shenyang Branch
No. 100, Eleventh Road, Shenhe District
Shenyang 110014
People's Republic of China

Telex:

80336 BCS CN

For ICBC:

Industrial and Commercial Bank of China
Shenyang Branch
No. 141, Daxi Street, Shenhe District
Shenyang 110014
People's Republic of China

Telex:

80324 ICBSY CN

Section 5.02. Any action required or permitted to be taken, and any document required or permitted to be executed, under this Agreement on behalf of a Financial Intermediary may be taken or executed by the President of its Shenyang branch, or such other person or persons as such President shall designate in writing, and each Financial Intermediary shall furnish to the Bank sufficient evidence of the authority and the authenticated specimen signature of each such person.

Section 5.03. This Agreement may be executed in several counterparts, each of which shall be an original, and all collectively but one instrument.

IN WITNESS WHEREOF, the parties hereto, acting through their duly authorized representatives, have caused this Agreement to be signed in their respective names in the District of Columbia, United States of America, as of the day and year first above written.

INTERNATIONAL BANK FOR
RECONSTRUCTION AND DEVELOPMENT

By /s/ Russell J. Cheetham

Regional Vice President
East Asia and Pacific

BANK OF COMMUNICATIONS LIMITED
INDUSTRIAL AND COMMERCIAL BANK OF CHINA

By /s/ Li Daoyu

Authorized Representative

SCHEDULE 1

Procedures for and Terms and Conditions
of Sub-loans

1. Principal Terms and Conditions of Sub-loans:

(a) Each Sub-loan shall be denominated and payable in dollars and shall bear interest on the principal amount withdrawn and outstanding from time to time, at a rate not less than the sum of (i) the rate applicable from time to time to the Loan pursuant to Section 2.05 of the Loan Agreement, plus (ii) at least one and two-tenths percent (1.2%).

(b) Each Sub-loan shall be made for a period not exceeding twelve years, including up to three years of grace.

(c) A commitment charge shall be paid on the undisbursed balance of each Sub-loan at a rate equal to the commitment charge applicable from time to time to the Loan pursuant to Section 2.04 of the Loan Agreement.

(d) Each Investment Enterprise shall bear the foreign exchange risk on its Sub-loan between the dollar and the Renminbi.

(e) Each Sub-loan shall be made only to an Investment Enterprise which shall have established to the satisfaction of the Financial Intermediary making said Sub-loan, on the basis of an appraisal carried out in accordance with guidelines satisfactory to the Bank, that:

(i) in the case of an Investment Enterprise carrying out an Investment Project under Part B.2 (a) of the Project, the Investment Enterprise has been established as a limited liability company or a limited share company under the Company Law of the Borrower;

(ii) in the case of an Investment Enterprise carrying out an Investment Project under Part B.2 (b) of the Project, at least 51% of the total capital of said Investment Enterprise is owned by private individuals or entities which are at least 51% owned by private individuals;

(iii) the Investment Enterprise is creditworthy and has a sound financial position and prospects and will be in a position to service its debt under the Sub-loan;

(iv) the proposed Investment Project is technically, commercially and financially viable, has been designed in accordance with appropriate health, safety and environmental standards, and will have a financial rate of return of not less than 12 percent and an economic rate of return of not less than 12 percent; and

(v) the Investment Enterprise will be able to finance at least 20 percent of the proposed Investment Project's total investment costs from its own resources.

(f) The amount of any one Sub-loan and the aggregate amount of all Sub-loans (i) to a single Investment Enterprise shall not exceed the equivalent of \$4,000,000 and (ii) for single Investment Projects shall not exceed the total estimated cost of said Investment Project (excluding the cost of land).

2. No expenditures for goods or services required for an Investment Project shall be eligible for financing out of the proceeds of the Loan unless:

(a) the Sub-loan for such Investment Project shall have been approved by the Bank and such expenditures shall have been made not earlier than ninety days prior to the date on which the Bank shall have received the application and information required under paragraph 3(a) of this Schedule in respect of such Sub-loan; or

(b) the Sub-loan for such Investment Project shall have been a free-limit Sub-loan for which the Bank has authorized withdrawals from the Loan Account and such expenditures shall have been made not earlier than ninety days prior to the date on which the Bank shall have received the request and information required under paragraph 3(b) of this Schedule in respect of such free-limit Sub-loan. For the purposes of the Loan Agreement and this Agreement, a free-limit Sub-loan shall be a Sub-loan (other than the first two Sub-loans made by each Financial Intermediary) for an Investment Project in an amount to be financed out of the proceeds of the Loan which shall not exceed the sum of (i) \$2,000,000 equivalent in respect of a Sub-loan made under Part B.2 (a) of the Project and \$1,000,000 equivalent in respect of a Sub-loan made under Part B.2 (b) of the Project, when added to any other outstanding amounts financed or proposed to be financed out of the proceeds of the Loan or of any other loan, provided for in any outstanding loan agreement between the Bank and the Borrower entered into before the date of this Agreement, the proceeds of which have been or are being used for financing goods and services directly and materially related to such Investment Project, the foregoing amounts being subject to change from time to time as determined by the Bank.

3. (a) When presenting a Sub-loan (other than a free-limit Sub-loan) to the Bank for approval, a Financial Intermediary shall furnish to the Bank an application, in form satisfactory to the Bank, together with: (i) a description of the Investment Enterprise and an appraisal of the Investment Project, including a description of the expenditures proposed to be financed out of the proceeds of the Loan; (ii) the proposed terms and conditions of the Sub-loan, including the schedule of amortization of the Sub-loan; and (iii) such other information as the Bank shall reasonably request.

(b) Each request by a Financial Intermediary for authorization to make withdrawals from the Loan Account in respect of a free-limit Sub-loan shall contain: (i) a summary description of the Investment Enterprise and the Investment Project, including a description of the expenditures proposed to be financed out of the proceeds of the Loan; and (ii) the terms and conditions of the Sub-loan, including the schedule of amortization therefor.

(c) Applications and requests made pursuant to the provisions of sub-paragraphs (a) and (b) of this paragraph shall be presented to the Bank on or before December 31, 1997.

4. Sub-loans shall be made on terms whereby the Financial Intermediary shall obtain, by written contract with the Investment Enterprise or by other appropriate legal means, rights adequate to protect the interests of the Bank and such Financial Intermediary, including the right to:

(a) require the Investment Enterprise to carry out and operate the Investment Project with due diligence and efficiency and in accordance with sound technical, financial and managerial standards and to maintain adequate records;

(b) require that: (i) the goods and services to be financed out of the proceeds of the Loan shall be procured in accordance with the provisions of Schedule 2 to this Agreement and (ii) such goods and services shall be used exclusively in the carrying out of the Investment Project;

(c) inspect, by itself or jointly with representatives of the Bank if the Bank shall so request, such goods and the sites, works, plants and construction included in the Investment Project, the operation thereof, and any relevant records and documents;

(d) require that: (i) the Investment Enterprise shall take out and maintain with responsible insurers such insurance, against such risks and in such amounts, as shall be consistent with sound business practice; and (ii) without any limitation upon the foregoing, such insurance shall cover hazards incident to the acquisition, transportation and delivery of goods financed out of the proceeds of the Loan to the place of use or installation, any indemnity thereunder to be made payable in a currency freely usable by the Investment Enterprise to replace or repair such goods;

(e) obtain all such information as the Bank or such Financial Intermediary shall reasonably request relating to the foregoing and to the administration, operations and financial condition of the Investment Enterprise and to the benefits to be derived from the Investment Project; and

(f) suspend or terminate the right of the Investment Enterprise to the use of the proceeds of the Loan upon failure by such Investment Enterprise to perform its obligations under its contract with such Financial Intermediary.

SCHEDULE 2

Procurement

Part A: International Competitive Bidding

Except as provided in Part C hereof, goods shall be procured under contracts awarded in accordance with procedures consistent with those set forth in Sections I and II of the "Guidelines for Procurement under IBRD Loans and IDA Credits" published by the Bank in May 1992 (the Guidelines).

1. For fixed-price contracts, the invitation to bid referred to in paragraph 2.13 of the Guidelines shall provide that, when contract award is delayed beyond the original bid validity period, the successful bidder's bid price will be increased for each week of delay by two predisclosed correction factors acceptable to the Bank, one to be applied to all foreign currency components and the other to the local currency component of the bid price. Such an increase shall not be taken into account in the bid evaluation.

2. In the procurement of goods in accordance with this Part A, each Financial Intermediary shall use the relevant standard bidding documents issued by the Bank, with such modifications thereto as the Bank shall have agreed to be necessary for the purposes of the Project. Where no relevant standard bidding documents have been issued by the Bank, each Financial Intermediary shall use bidding documents based on other internationally recognized standard forms agreed with the Bank.

Part B: Preference for Domestic Manufacturers

In the procurement of goods in accordance with the procedures described in Part A.1 hereof, goods manufactured in China may be granted a margin of preference in accordance with, and subject to, the provisions of paragraphs 2.55 and 2.56 of the Guidelines and paragraphs 1 through 4 of Appendix 2 thereto.

Part C: Other Procurement Procedures

International Shopping

1. Goods estimated to cost the equivalent of \$2,000,000 or less and more than \$200,000 per contract, may be procured under contracts awarded on the basis of comparison of price quotations solicited from at least three suppliers from at least two different countries eligible under the Guidelines, in accordance with procedures acceptable to the Bank.

Local Shopping

2. Goods estimated to cost \$200,000 equivalent or less per contract, may be procured under contracts awarded on the basis of comparison of price quotations

obtained from at least three suppliers eligible under the Guidelines, in accordance with procedures acceptable to the Bank.

Direct Contracting

3. Goods which the Bank agrees are of a proprietary nature may be procured under contracts awarded after direct negotiations with suppliers, in accordance with procedures acceptable to the Bank.

Part D: Review by the Bank of Procurement Decisions

1. Review of invitations to bid and of proposed awards and final contracts:

(a) With respect to each contract to be awarded in accordance with the provisions of Part A hereof estimated to cost the equivalent of \$1,000,000 or more, the procedures set forth in paragraphs 2 and 4 of Appendix 1 to the Guidelines shall apply. Where payments for such contract are to be made out of the Special Account, such procedures shall be modified to ensure that the two conformed copies of the contract required to be furnished to the Bank pursuant to said paragraph 2 (d) shall be furnished to the Bank prior to the making of the first payment out of the Special Account in respect of such contract.

(b) With respect to each contract not governed by the preceding paragraph, the procedures set forth in paragraphs 3 and 4 of Appendix 1 to the Guidelines shall apply. Where payments for such contract are to be made out of the Special Account, such procedures shall be modified to ensure that the two conformed copies of the contract together with the other information required to be furnished to the Bank pursuant to said paragraph 3 shall be furnished to the Bank as part of the evidence to be furnished pursuant to paragraph 4 of Schedule 4 to the Loan Agreement.

(c) The provisions of the preceding subparagraph (b) shall not apply to contracts on account of which withdrawals from the Loan Account are to be made on the basis of statements of expenditure.

2. The figure of 15% is hereby specified for purposes of paragraph 4 of Appendix 1 to the Guidelines.

