

CONFORMED COPY

LOAN NUMBER B-106-0
B-106-1

Indemnity Agreement
(Dollar/Deutschmark Loan and Guarantee Agreement)
(Ertan II Hydroelectric Project)

between

PEOPLE'S REPUBLIC OF CHINA

and

INTERNATIONAL BANK FOR RECONSTRUCTION
AND DEVELOPMENT

Dated September 28, 1995

LOAN NUMBER B-106-0
B-106-1

INDEMNITY AGREEMENT

AGREEMENT, dated September 28, 1995 between PEOPLE'S REPUBLIC OF CHINA (China) and INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (IBRD).

WHEREAS (A) IBRD has agreed to make available to China a loan under a loan agreement to be entered into between China and IBRD (IBRD Loan Agreement), in the aggregate principal amount in various currencies equivalent to four hundred million dollars (US\$400,000,000) to assist in the financing of the project (the Project) described in Schedule 2 of the IBRD Loan Agreement;

(B) Pursuant to a Loan and Guarantee Agreement (the Loan Agreement) being entered into herewith between China, as borrower, IBRD as partial guarantor, Sanwa International Finance Limited as Agent, and The Financial Institutions named in the First Schedule thereto (the Lenders) as lenders, the Lenders have agreed to make available to China a loan (the Loan) in the aggregate principal amount of up to one hundred million Dollars (US\$100,000,000) and up to seventy million Deutschmarks (DM70,000,000) to assist in the financing of certain aspects of the Project;

(C) At the request and with the agreement of China, IBRD has agreed to guarantee the repayment of a portion of the principal amount of the Loan (the IBRD Guarantee) on the terms and conditions set forth in the Loan Agreement;

(D) IBRD has agreed to provide the IBRD Guarantee only on condition that China agree to undertake to make to IBRD prompt payment of all amounts paid by IBRD directly or indirectly in relation to or arising from the IBRD Guarantee and to undertake such other obligations as hereinafter provided; and

(E) In consideration of IBRD's entering into the Loan Agreement and providing the IBRD Guarantee, China has agreed to undertake certain obligations towards IBRD as hereinafter provided.

NOW THEREFORE the parties hereto hereby agree as follows:

ARTICLE I

Definitions

Section 1.01. IBRD's General Conditions Applicable to Loan and Guarantee Agreements, dated January 1, 1985 (the General Conditions), are hereby incorporated in and constitute an integral part of this Agreement, subject, however, to the following modifications thereto:

(a) the terms "Borrower" or "Guarantor", wherever used in the General Conditions, mean China;

(b) the term "Loan", wherever used in the General Conditions, means the Loan (as defined herein), except that in Sections 2.01 (12), 8.01 and 9.03, the term "Loan" shall mean the IBRD Guarantee and include any other amount payable under this Agreement.

(c) the terms "Loan Agreement" and "Guarantee Agreement", wherever used in the General Conditions, mean this Agreement, except that in Section 9.01 (a) and (b) and Section 9.07 (a) and (c), the terms "Loan Agreement" and "Guarantee Agreement" shall mean this Agreement and the Loan Agreement (as defined herein);

(d) the term "Project", wherever used in the General Conditions, means the Ertan II Hydroelectric Project as described in Schedule 2 of the IBRD Loan Agreement; and

(e) Sections 2.01 (3), (4), (5), (6), (7), (10), (11), (15), and (20), Article III, Article IV, Article V, Article VI, Article VII, the phrase: "but in any event not later than six months after the Closing Date or such later date as may be agreed for this purpose between IBRD and the Borrower," in the first sentence of Section 9.07 (c), the opening phrase: "Except as provided in Section 6.07," in Section 10.02, and Article XII of the General Conditions are hereby deleted.

Section 1.02. Wherever used in this Agreement, unless otherwise defined or unless the context otherwise requires, the several terms defined in the Preamble to this Agreement and in the General Conditions (subject to the modifications noted above) have the respective meanings herein and therein set forth and the following additional terms have the following meanings:

(a) "Agent", "Bank", "Guarantee Release Date", "Interest Payment Date", "Interest Period", "Release Option", and "Releasing Bank" have the same meanings as in the Loan Agreement.

(b) "Dollars" and "Deutschmarks" means respectively the lawful currencies of the United States of America and the Federal Republic of Germany.

(c) "Eligible Expenditures" means expenditures in respect of the reasonable cost of goods and services required for the Project and to be financed out of the proceeds of the Loan in a manner acceptable to IBRD.

(d) "Guarantee Fee Payment Date" means each semi-annual date which corresponds to the first day of each Interest Period specified in the Loan Agreement.

(e) "Guarantee Fee Period" means any period which corresponds to the Interest Period specified in Clause 7 of the Loan Agreement.

(f) "Project Agreement" means the agreement entered or to be entered into between IBRD and EHDC for carrying out the Project.

(g) "Project Beneficiary" or "EHDC" means the Ertan Hydropower Development Company, Limited, a state owned enterprise, organized and existing under the laws of the People's Republic of China.

(h) "Special Deposit Account" means either of the accounts referred to in Section 3.02 (a) of this Agreement.

ARTICLE II

Indemnity by China to IBRD; Guarantee Fee

Section 2.01. In consideration of IBRD providing the IBRD Guarantee, China hereby: (a) agrees to reimburse IBRD forthwith on demand or as IBRD may otherwise direct for any amount paid by IBRD under the IBRD Guarantee in the currency so paid, or if payment shall have been made in any currency which IBRD shall have purchased with another currency for the purposes of such payment, in such other currency, together with interest thereon at the rate per annum specified by IBRD in respect of such currency, which rate shall be based on IBRD's prevailing borrowing cost in such currency plus the applicable margin over such cost from the date such payment is made by IBRD until such amount is paid; (b) agrees to indemnify IBRD on demand in respect of all actions, proceedings, liabilities, claims, losses, damages, costs and expenses suffered or incurred by IBRD directly or indirectly in relation to or arising out of the IBRD Guarantee; (c) irrevocably authorizes IBRD to comply with any demands and make any payments which may be due from or claimed or made upon IBRD under the IBRD Guarantee (IBRD shall notify China of any such demand, but failure to give any such notice shall in no way affect IBRD's obligation to make payment under the IBRD Guarantee or China's obligation to reimburse or indemnify IBRD pursuant to this Agreement) and agrees that it shall not be incumbent on IBRD to inquire whether or not any such demands are in fact correct or payments are in fact due or whether or not any dispute exists between China and the Agent or the Lenders; and (d) agrees that, in the absence of any manifest and material error, any such demand or payment shall, as between China and IBRD, be conclusive evidence that the demand is properly made and/or payment properly due.

Section 2.02. (a) IBRD may at any time, without thereby discharging, impairing or otherwise affecting any rights, powers and remedies hereby created or conferred upon it by this Agreement, the Loan Agreement, any related agreement or by law: (i) offer or agree to or enter into any agreement for the extension or variation of the IBRD Guarantee; or (ii) offer or give or agree to give any time or other indulgence to any other person from whom it may seek reimbursement in respect of sums paid out by IBRD under the IBRD Guarantee.

(b) Any rights conferred on IBRD by this Agreement shall be in addition to, and not in substitution for or derogation of, any other right which IBRD may at any time have to seek, from China or any other person, reimbursement of or indemnification against payments made or liabilities incurred under the IBRD Guarantee.

(c) IBRD shall not be obliged before taking steps to enforce any rights conferred on it by this Agreement or exercising any of the rights, powers and remedies conferred upon IBRD by this Agreement, the Loan Agreement, any related agreement or by law: (i) to take action or obtain judgement in any court or tribunal of competent jurisdiction against any other person (including persons from whom it may seek reimbursement in respect of sums paid out under the IBRD Guarantee); or (ii) to enforce or seek to enforce any other rights it may have against China or its rights against any other person.

Section 2.03. Any payment required to be made by China pursuant to the terms of this Agreement shall be:

(a) paid at such places as IBRD shall reasonably request;

(b) made in such manner, and in currencies acquired in such manner, as shall be permitted under the laws applicable to the making of such payment and effecting the deposit of such currencies to the account of IBRD with a depository designated by IBRD for this purpose;

(c) paid without any restrictions of any kind imposed by, or in the territory of, China; and

(d) applied first, to pay all interest and other charges due to IBRD and second, after such interest and other charges are paid, to pay all principal then due.

Section 2.04. In consideration of IBRD providing the IBRD Guarantee, China shall pay directly to IBRD a guarantee fee on each Guarantee Fee Payment Date for the Guarantee Fee Period then commencing in accordance with the payment schedule set forth in the Schedule to this Agreement; provided, that in the event (i) (a) any portion of the Loan has not been disbursed during the availability period under the Loan Agreement, or (b) any portion of the Loan has been prepaid, the portion of the guarantee fee applicable to such undisbursed or prepaid Loan amount shall be proportionately reduced for the relevant Guarantee Fee Period, or (ii) any Bank exercises the Guarantee Release Option under Clause 26 of the Loan Agreement, the guarantee fee payable by China shall be reduced proportionately for the relevant Guarantee Fee Period. Such reduction of the guarantee fee shall apply to all the subsequent guarantee fee payments thereafter until maturity of the Loan.

ARTICLE III

Other Covenants

Section 3.01. China declares its commitment to the objectives of the Project as set forth in Schedule 2 to the IBRD Loan Agreement, and, to this end, without any limitation or restriction upon any of its other obligations under this Agreement or the IBRD Loan Agreement, shall cause EHDC to perform in accordance with the provisions of the Project Agreement all the obligations of EHDC therein set forth, shall take or cause to be taken all actions, including the provision of funds, facilities, services and other resources, necessary or appropriate to enable EHDC to perform such obligations, and shall not take or permit to be taken any action which would prevent or interfere with such performance.

Section 3.02. The purpose of the Loan is to partly finance Eligible Expenditures under the Project. For that purpose China shall: (a) upon receipt of the proceeds of the Loan, deposit the same into two special deposit accounts (in Dollars and Deutschmarks) to be operated by China exclusively for the purposes of the Project; and (b) make available the proceeds of the Loan to EHDC for the purposes of the Project under onlending arrangements satisfactory to IBRD. The Dollar and Deutschmark Special Deposit Accounts shall be opened with a bank and on terms and

conditions satisfactory to IBRD, including appropriate protection against set-off, seizure or attachment.

Section 3.03. (a) China shall disburse the proceeds of the Loan deposited in the Special Deposit Accounts only to the Project Beneficiary to meet Eligible Expenditures, as they are actually incurred (and which have not been financed out of the funds provided by IBRD under the IBRD Loan Agreement) in the manner agreed with IBRD.

(b) For each payment made by China out of the Special Deposit Accounts, China shall, at such times as IBRD shall reasonably request, furnish to IBRD such documents and other evidence showing that such payment out of the proceeds of the Loan was made exclusively for Eligible Expenditures.

(c) If IBRD shall have determined at any time that any payment out of the Special Deposit Account was not made on account of Eligible Expenditures or was not justified by the evidence furnished to IBRD, China shall, promptly upon notice from IBRD, deposit into such account out of which the payment was made (or, if China cannot or fails to do so, prepay to the Agent for the account of the Lenders in accordance with the terms of the Loan Agreement) an amount equal to the amount of such payment or the portion thereof not so eligible or justified. Any such deposits made hereunder shall be utilized for the purpose indicated in Section 3.02 above.

(d) If IBRD shall have determined at any time that any amount outstanding in the Special Deposit Accounts will not be required to cover further payments for Eligible Expenditures, the Borrower shall, upon notice from IBRD, prepay to the Agent for the account of the Lenders such outstanding amount in accordance with the terms of the Loan Agreement.

Section 3.04. China shall ensure that: (a) the goods and consultants' services required for the Project and to be financed out of the proceeds of the Loan shall be purchased at a reasonable price, account being taken also of other relevant factors such as time of delivery and efficiency and reliability of the goods and availability of maintenance facilities and spare parts therefor, and, in the case of services, of their quality and competence of the parties rendering them; and (b) such goods and services shall be used exclusively in the carrying out of the Project.

Section 3.05. China shall: (a) have the Special Deposit Accounts for each fiscal year of China audited, in accordance with appropriate auditing principles consistently applied, by independent auditors acceptable to IBRD; (b) furnish to IBRD as soon as available, but in any case not later than six months after the end of each such year: (i) certified copies of the said accounts for such year as so audited, and (ii) the report of such audit by said auditors of such scope and in such detail as IBRD shall have reasonably requested; and (c) furnish to IBRD such other information concerning the said account, as well as the audit thereof, as IBRD shall from time to time reasonably request.

Section 3.06. IBRD and China hereby agree that 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 Project shall be carried out by EHDC pursuant to Section 2.03 of the Project Agreement.

ARTICLE IV

Remedies of IBRD

Section 4.01. If China fails to make any payments due to IBRD under this Agreement or to perform any of its obligations under this Agreement, and such failure is continuing, IBRD may, by notice to China,

suspend or cancel in whole or in part the right of China to make withdrawals under: (a) the IBRD Loan Agreement; and (b) any other loan or credit agreement between China and IBRD.

ARTICLE V

Effective Date

Section 5.01. This Agreement shall come into force and effect upon signature.

ARTICLE VI

Miscellaneous Provisions

Section 6.01. The Minister of Finance of China is hereby designated as representative of China for the purposes of Section 11.07 of the General Conditions.

Section 6.02. The following addresses are specified for the purposes of Section 6.01 above:

For China:

Ministry of Finance
Sanlihe
Beijing 100820
People's Republic of China

Cable address:

FINANMIN

Telex:

22486 MFPRC CN
Beijing

For IBRD:

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:

197688 (TRT),
248423 (MCI),
64145 (MCI) or
82987 (TRT)

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

PEOPLE'S REPUBLIC OF CHINA

By /s/ Liu Jibin
Authorized Representative

INTERNATIONAL BANK FOR
RECONSTRUCTION AND DEVELOPMENT

By /s/ Ram K. Chopra

Director
Cofinancing and Financial
Advisory Services

SCHEDULE

Guarantee Fee Period	US \$ Guarantee Fee Amount (in US \$)	DM Guarantee Fee Amount (in DM)
1st	17,111.22	12,048.79
2nd	17,744.33	12,491.58
3rd	18,400.87	12,950.65
4th	19,081.70	13,426.58
5th	19,787.73	13,920.01
6th	20,519.87	14,431.57
7th	21,279.11	14,961.93
8th	22,066.44	15,511.78
9th	22,882.89	16,081.84
10th	23,729.56	16,672.85
11th	24,607.55	17,285.58
12th	25,518.03	17,920.82
13th	26,462.20	18,579.41
14th	27,441.30	19,262.20
15th	28,456.63	19,970.09
16th	29,509.53	20,703.99
17th	30,601.38	21,464.86
18th	31,733.63	22,253.70
19th	32,907.77	23,071.52
20th	34,125.36	23,919.40
21st	35,388.00	24,798.44
22nd	36,697.36	25,709.78
23rd	38,055.16	26,654.61
24th	39,463.20	27,634.17
25th	34,440.01	24,113.82
26th	28,700.00	20,094.85
27th	22,960.00	16,075.88
28th	17,220.00	12,056.91
29th	11,480.00	8,037.94
30th	5,740.00	4,018.97