

No. 12090

**INTERNATIONAL BANK FOR
RECONSTRUCTION AND DEVELOPMENT
and
BRAZIL**

**Guarantee Agreement—*São Simão Hydroelectric Project*
(with General Conditions Applicable to Loan and Guar-
antee Agreements). Signed at Washington on 14 June
1972**

Authentic text: English.

*Registered by the International Bank for Reconstruction and Development on
17 October 1972.*

**BANQUE INTERNATIONALE POUR
LA RECONSTRUCTION ET LE DÉVELOPPEMENT
et
BRÉSIL**

**Contrat de garantie — *Projet hydroélectrique de São Simão*
(avec Conditions générales applicables aux contrats
d'emprunt et de garantie). Signé à Washington le 14 juin
1972**

Texte authentique : anglais.

*Enregistré par la Banque internationale pour la reconstruction et le développe-
ment le 17 octobre 1972.*

GUARANTEE AGREEMENT¹

AGREEMENT, dated June 14, 1972, between FEDERATIVE REPUBLIC OF BRAZIL (hereinafter called the Guarantor) and INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (hereinafter called the Bank).

WHEREAS by the Loan Agreement of even date herewith² between the Bank and Centrais Elétricas de Minas Gerais, S.A. (hereinafter called the Borrower) the Bank has agreed to make to the Borrower a loan in various currencies equivalent to sixty million dollars (\$60,000,000), 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;

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; and

WHEREAS the Guarantor is preparing a revision of its development plan for generation facilities in its South Central Region (such revised plan being hereinafter called the South Central Region Generation Development Plan) which will (i) be based on least cost solutions, the integration of facilities and other economic and technical considerations, and (ii) will be revised from time to time as appropriate; and the Guarantor intends to consult with the Bank about the South Central Region Generation Development Plan sufficiently in advance of its adoption for the Bank to have adequate opportunity to comment thereon;

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.

Article II. GUARANTEE; BONDS

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

¹ Came into force on 20 September 1972, upon notification by the Bank to the Government of Brazil.

² The said Agreement entered into force on 20 September 1972. As it does not constitute an international agreement or a part of the present Agreement, it is not reproduced herein. However, it was published by the Bank as document LN 829 BR, a certified true copy of which was transmitted to the Secretariat together with the documentation submitted for registration of the present Guarantee Agreement.

³ See p. 137 of this volume.

the prepayment of the Loan or the redemption of the Bonds prior to their maturity, 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 (including funds provided to the Borrower under Section 4 (c) of the Project Agreement)¹ 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, considering, however, the limitations disclosed in writing by the Guarantor to the Bank on January 19, 1972; and (ii) undertakes that, except as the Bank shall otherwise agree, if any such lien shall be created, it will *ipso facto* equally and ratably, and at no cost to the Bank or the holders of the Bonds, 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; (ii) any lien arising in the ordinary course of banking transactions and securing a debt maturing not more than one year after its date; and (iii) any lien on commercial goods to secure a debt maturing not more than one year after the date on which it is originally incurred and to be paid out of the proceeds of sale of such commercial goods.

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 Banco Central do Brasil or any institution performing the functions of a central bank for the Guarantor.

Section 3.02. (a) The Guarantor covenants that it will not take, or cause or permit any of its political subdivisions or any of its agencies or any agency of any such political subdivisions to take, any action which would prevent or interfere with the performance by the Borrower of its obligations contained in the Loan Agreement and will take or cause to be taken all reasonable action necessary or appropriate to enable the Borrower to perform such obligations.

¹ See footnote 2, p. 134 of this volume.

(b) The Guarantor shall cause the agency or agencies of the Guarantor responsible for the setting and adjustment of the rates of the Borrower for the sale of electricity to act in respect of any application of any of the entities of the Borrower for the setting and adjustment of such rates within a period of not more than 30 days after receipt of such application.

Section 3.03. The Guarantor shall adopt the South Central Region Generation Development Plan as revised from time to time as the basis for granting concessions for, and authorizing investments in, generation facilities in the South Central Region.

Section 3.04. The Guarantor shall take all such measures as shall be necessary in order to facilitate the procurement by the Borrower of goods and services to be financed out of the proceeds of the Loan in accordance with the provisions of the Loan Agreement.

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, the Project 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.

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.

Article VI. REPRESENTATIVE OF THE GUARANTOR; ADDRESSES

Section 6.01. The Minister of Finance of the Guarantor is designated as representative of the Guarantor for the purposes of Section 10.03 of the General Conditions.

Section 6.02. The following addresses are specified for the purposes of Section 10.01 of the General Conditions:

For the Guarantor:

Ministerio da Fazenda
Av. Presidente Antonio Carlos 375
Rio de Janeiro, Brasil

Cable address:

Minifaz
Rio de Janeiro

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.

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

Federative Republic of Brazil:

By MOACYR LISBOA LOPES
Authorized Representative

International Bank for Reconstruction and Development:

By J. BURKE KNAPP
Vice President

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

GENERAL CONDITIONS, DATED 31 JANUARY 1969

GENERAL CONDITIONS APPLICABLE TO LOAN AND GUARANTEE AGREEMENTS

[Not published herein. See *United Nations, Treaty Series, vol. 691, p. 300.*]