

**No. 4916**

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**UNITED STATES OF AMERICA  
and  
FEDERATION OF MALAYA**

**Exchange of notes constituting an agreement relating to  
the guaranty of private investments. Kuala Lumpur,  
21 April 1959**

*Official text: English*

*Registered by the United States of America on 9 October 1959.*

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**ÉTATS-UNIS D'AMÉRIQUE  
et  
FÉDÉRATION DE MALAISIE**

**Échange de notes constituant un accord relatif à la garantie  
des investissements privés. Kuala Lumpur, 21 avril  
1959**

*Texte officiel anglais.*

*Enregistré par les États-Unis d'Amérique le 9 octobre 1959.*

No. 4916. EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT<sup>1</sup> BETWEEN THE UNITED STATES OF AMERICA AND THE FEDERATION OF MALAYA RELATING TO THE GUARANTY OF PRIVATE INVESTMENTS. KUALA LUMPUR, 21 APRIL 1959

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I

*The American Ambassador to the Malayan Minister of External Affairs*

No. 243

Kuala Lumpur, April 21, 1959

Excellency :

I have the honor to refer to conversations which have recently taken place between representatives of our two Governments, relating to guaranties authorized by Section 413 (b) (4) of the Mutual Security Act of 1954, as amended. I also have the honor to confirm the following understandings reached as a result of these conversations :

1. The Governments of the Federation of Malaya and of the United States of America will, upon the request of either of them, consult respecting projects in the Federation of Malaya proposed by nationals of the United States of America with regard to which guaranties under Section 413 (b) (4) of the Mutual Security Act of 1954, as amended, have been made or are under consideration.

2. The Government of the United States of America agrees that it will issue no guaranty with regard to any project unless it is approved by the Government of the Federation of Malaya.

3. With respect to such guaranties extending to projects which are approved by the Government of the Federation of Malaya in accordance with the provisions of the aforesaid Section 413 (b) (4), the Government of the Federation of Malaya agrees :

- a. That if the Government of the United States of America makes payment in United States dollars to any person under any such guaranty, the Government of the Federation of Malaya will recognize the transfer by such person to the United States of America of any right, title or interest of such person in assets expropriated or assets rendered useless to such person by reason of the expropriation of any other assets forming part of the business or project of such person in the Federation, or any currency or credit in any currency, with respect to which such payment under

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<sup>1</sup> Came into force on 21 April 1959 by the exchange of the said notes.

a guaranty was made, and the subrogation of the United States of America to any claim or cause of action, or right of such person arising in connection therewith.

- b. That Malayan dollar amounts acquired by the Government of the United States of America pursuant to such guaranties shall be accorded treatment not less favorable than that accorded to private funds arising from transactions of United States nationals which are comparable to the transactions covered by such guaranties, and that such Malayan dollar amounts will be freely available to the Government of the United States of America for administrative expenditures.
- c. That any claim against the Government of the Federation of Malaya to which the Government of the United States of America may be subrogated as a result of any payment under such a guaranty, shall be the subject of direct negotiations between the two Governments. If within a reasonable period, they are unable to settle the claim by agreement, it shall be referred for final and binding determination to a sole arbitrator selected by mutual agreement. If the Governments are unable, within a period of three months, to agree upon such selection, the arbitrator shall be one who may be designated by the President of the International Court of Justice at the request of either Government.

Upon receipt of a note from Your Excellency indicating that the foregoing provisions are acceptable to the Government of the Federation of Malaya, the Government of the United States of America will consider that this note and your reply thereto constitute an agreement between the two Governments on this subject, the agreement to enter into force on the date of your note in reply.

Accept, Excellency, the renewed assurances of my distinguished consideration.

Homer M. BYINGTON, Jr.

His Excellency Doctor Ismail bin Dato Abdul Rahman  
Minister of External Affairs  
Kuala Lumpur

## II

*The Malayan Minister of External Affairs to the American Ambassador*

MINISTER OF EXTERNAL AFFAIRS  
FEDERATION OF MALAYA  
KUALA LUMPUR

Ref. No. SR (480) 251/14

21st April, 1959

Your Excellency,

I have the honour to acknowledge receipt of your letter dated 21st April, 1959, which reads as follows :

[See note I]

In reply I have the honour to inform you that the Federation Government confirm the understandings as set out in your letter and will regard that letter and this reply as constituting an Agreement between the Governments of the Federation of Malaya and of the United States of America, the Agreement to enter into force on the date of this reply.

I have the honour to be, Your Excellency, with the highest consideration,

Your obedient servant,

Ismail RAHMAN  
Minister of External Affairs  
Federation of Malaya

His Excellency Mr. Homer Morrison Byington, Jr.  
Ambassador Extraordinary and Plenipotentiary  
of the United States of America  
Kuala Lumpur