

No. 7571

**UNITED STATES OF AMERICA
and
KENYA**

**Exchange of notes constituting an agreement relating to
investment guaranties. Nairobi, 19 March and 20 April
1964**

Official text: English.

Registered by the United States of America on 3 February 1965.

**ÉTATS-UNIS D'AMÉRIQUE
et
KENYA**

**Échange de notes constituant un accord relatif à la garantie
des investissements. Nairobi, 19 mars et 20 avril 1964**

Texte officiel anglais.

Enregistré par les États-Unis d'Amérique le 3 février 1965.

No. 7571. EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT¹ BETWEEN THE UNITED STATES OF AMERICA AND KENYA RELATING TO INVESTMENT GUARANTIES. NAIROBI, 19 MARCH AND 20 APRIL 1964

I

The American Ambassador to the Prime Minister of Kenya

EMBASSY OF THE UNITED STATES OF AMERICA

No. 05

Nairobi, March 19, 1964

Excellency :

I have the honor to refer to conversations which have recently taken place between representatives of our two governments relating to investments in Kenya which further the development of the economic resources and productive capacities of Kenya and to guaranties of such investments by the Government of the United States of America. I also have the honor to confirm the following understandings reached as a result of those conversations :

1. The Government of the United States of America and the Government of Kenya shall, upon the request of either Government, consult concerning investments in Kenya which the Government of the United States of America may guaranty.

2. The Government of the United States of America shall not guaranty an investment in Kenya unless the Government of Kenya approves the activity to which the investment relates and recognizes that the Government of the United States of America may guaranty such investment.

3. If an investor transfers to the Government of the United States of America pursuant to an investment guaranty, (a) lawful currency, including credits thereof, of Kenya, (b) any claims or rights which the investor has or may have arising from the business activities of the investor in Kenya or from the events entitling the investor to payment under the investment guaranty, or (c) all or part of the interest of the investor in any property (real or personal, tangible or intangible) within Kenya, the Government of Kenya shall recognize such transfer as valid and effective.

4. Lawful currency of Kenya, including credits thereof, which is acquired by the Government of the United States of America pursuant to a transfer of currency or from the sale of property transferred under an investment guaranty shall be accorded treatment by the Government of Kenya with respect to exchange, repatriation or use

¹ Came into force on 20 April 1964 by the exchange of the said notes.

thereof, not less favorable than that accorded to funds of nationals of the United States of America derived from activities similar to those in which the investor had been engaged, and such currency may in any event be used by the Government of the United States of America for any of its expenditures in Kenya

5. Any dispute regarding the interpretation or application of the provisions of this Agreement or any claim against the Government of Kenya to which the Government of the United States of America may succeed as transferee or which may arise from the events causing payment under an investment guaranty shall, upon the request of either Government, be the subject of negotiations between the two Governments and shall be settled, insofar as possible, in such negotiations. If, within a period of three months after a request for negotiation, the two Governments are unable to settle any such dispute or claim by agreement, the dispute or claim shall be referred upon the initiative of either Government, to a sole arbitrator, selected by mutual agreement, for final and binding determination in light of the applicable principles of international law. If the two Governments are unable to select an arbitrator within a period of three months after indication by either Government of its desire to arbitrate, the President of the International Court of Justice shall, at the request of either Government, designate the arbitrator.

Upon receipt of a note from Your Excellency indicating that the foregoing provisions are acceptable to the Government of Kenya, the Government of the United States of America will consider that this note and your reply thereto constitute an Agreement between our 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 highest consideration.

William ATTWOOD

His Excellency Jomo Kenyatta
Prime Minister of Kenya
Nairobi

II

The Prime Minister of Kenya to the American Ambassador

PRIME MINISTER'S OFFICE
NAIROBI, KENYA

Ext. 171/28/002A/61

20th April, 1964

Excellency

I have the honour to refer to your letter No. 05 dated 19th March, 1964 relating to investments in Kenya designed to further her development of the

economic resources and productive capacities and to the guarantees of such investments by the Government of the United States of America.

On behalf of the Government of Kenya, I confirm that the following understandings have been reached between representatives of our two Governments on the aforementioned subject :

[*See note I*]

I have the honour to confirm that the foregoing provisions are acceptable to the Government of Kenya. Accordingly, this present affirmative reply to your letter under reference shall be deemed to constitute an agreement between our two Governments on this subject.

Accept, Excellency, the assurance of my highest consideration.

Jomo KENYATTA

His Excellency M. Attwood
Ambassador of United States of America
Nairobi