

No. 9997

---

**UNITED STATES OF AMERICA  
and  
BOTSWANA**

**Investment Guarantee Agreement. Signed at Gaborones on 12 January 1968**

*Authentic text: English.*

*Registered by the United States of America on 1 November 1969.*

---

**ÉTATS-UNIS D'AMÉRIQUE  
et  
BOTSWANA**

**Accord relatif à la garantie des investissements. Signé à Gaborones le 12 janvier 1968**

*Texte authentique: anglais.*

*Enregistré par les États-Unis d'Amérique le 1<sup>er</sup> novembre 1969.*

## INVESTMENT GUARANTEE AGREEMENT <sup>1</sup>

---

The Government of the United States of America (the “Guaranteeing Government”) and the Government of the Republic of Botswana (the “Host Government”);

Seeking to encourage private investments in projects which will contribute to the development of Botswana’s economic resources and productive capacities through investment guarantees issued by the Guaranteeing Government;

Have agreed as follows:

1. When nationals of the Guaranteeing Government propose to invest with the assistance of guarantees issued pursuant to this Agreement in a project or activity within the territorial jurisdiction of the Host Government, the two Governments shall, upon the request of either, consult respecting the nature of the project or activity and its contribution to economic and social development in Botswana.

2. The procedures set forth in this Agreement shall apply only with respect to guaranteed investments in projects or activities approved by the Host Government.

3. If the Guaranteeing Government makes payment to any investor under a guarantee issued pursuant to the present Agreement, the Host Government shall, subject to the provisions of the following paragraph, recognise the transfer to the Guaranteeing Government of any currency, credits, assets, or investment on account of which payment under such guarantee is made as well as the succession of the Guaranteeing Government to any right, title, claim, privilege, or cause of action existing, or which may arise, in connection therewith.

4. To the extent that the laws of the Host Government partially or wholly invalidate the acquisition of any interests in any property within its national territory by the Guaranteeing Government, the Host Government shall permit such investor and the Guaranteeing Government to make appropriate arrange-

---

<sup>1</sup> Came into force on 12 January 1968 by signature, in accordance with paragraph 8.

ments pursuant to which such interests are transferred to an entity permitted to own such interests under the laws of the Host Government. The Guaranteeing Government shall assert no greater rights than those of the transferring investor under the laws of the Host Government with respect to any interests transferred or succeeded to as contemplated in paragraph 3. The Guaranteeing Government does, however, reserve its rights to assert a claim in its sovereign capacity in the eventuality of a denial of justice or other question of state responsibility as defined in international law.

5. Amounts in the lawful currency of the Host Government and credits thereof acquired by the Guaranteeing Government under such guarantees shall be accorded treatment neither less nor more favourable than that accorded to funds of nationals of the Guaranteeing Government deriving from investment activities like those in which the investor has been engaged, and such amounts and credits shall be freely available to the Guaranteeing Government to meet its expenditures in the national territory of the Host Government.

6. (a) Differences between the two Governments concerning the interpretation of the provisions of this Agreement shall be settled, insofar as possible, through negotiations between the two Governments. If such a difference cannot be resolved within a period of three months following the request for such negotiations, it shall be submitted, at the request of either Government to an ad hoc arbitral tribunal for settlement in accordance with the applicable principles and rules of public international law. The arbitral tribunal shall be established as follows: Each Government shall appoint one arbitrator; these two arbitrators shall designate a President by common agreement who shall be a citizen of a third State and be appointed by the two Governments. The arbitrators shall be appointed within two months and the President within three months of the date of receipt of either Government's request for arbitration. If the foregoing time limits are not met, either Government may, in the absence of any other agreement, request the President of the International Court of Justice to make the necessary appointment or appointments, and both Governments agree to accept such appointment or appointments. The arbitral tribunal shall decide by majority vote. Its decision shall be binding. Each of the Governments shall pay the expense of its member and its representation in the proceedings before the arbitral tribunal; the expenses of the President and the other costs shall be paid in equal parts by the two Governments. The arbitral tribunal may adopt other regulations

concerning the costs. In all other matters, the arbitral tribunal shall regulate its own procedures.

(b) Any claim arising out of investments guaranteed in accordance with this Agreement, against either of the two Governments, which, in the opinion of the other, presents a question of public international law shall, at the request of the Government presenting the claim, be submitted to negotiations. If at the end of three months following the request for negotiations the two Governments have not resolved the claim by mutual agreement, the claim, including the question of whether it presents a question of public international law, shall be submitted for settlement to an arbitral tribunal selected in accordance with paragraph (a) above. Only the respective Governments may request the arbitral procedure and participate in it. The arbitral tribunal shall base its decision exclusively on the applicable principles and rules of public international law.

7. This Agreement shall continue in force until six months from the date of receipt of a note by which one Government informs the other of an intent no longer to be a party to the Agreement. In such event, the provisions of the Agreement with respect to guarantees issued while the Agreement was in force shall remain in force for the duration of those guarantees, in no case longer than twenty years, after the denunciation of the Agreement.

8. This Agreement shall enter into force immediately.

DONE at Gaborones, in duplicate, this twelfth day of January, nineteen hundred and sixty-eight.

For the Government of the Republic of Botswana:

Seretse KHAMA

For the Government of the United States of America:

Charles H. PLETCHER

---