

No. 10055

**UNITED STATES OF AMERICA
and
GAMBIA**

**Exchange of notes constituting an agreement relating to investment
guaranties. Bathurst, 24 July and 4 November 1967**

Authentic text: English.

Registered by the United States of America on 1 December 1969.

**ÉTATS-UNIS D'AMÉRIQUE
et
GAMBIE**

**Échange de notes constituant un accord relatif à la garantie des
investissements. Bathurst, 24 juillet et 4 novembre 1967**

Texte authentique: anglais.

Enregistré par les États-Unis d'Amérique le 1^{er} décembre 1969.

EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT ¹
BETWEEN THE UNITED STATES OF AMERICA AND
THE GAMBIA RELATING TO INVESTMENT GARANTIES

I

No. 33

The Embassy of the United States of America presents its compliments to the Ministry of External Affairs and has the honour to refer to conversations which have recently taken place between representatives of our two governments relating to investments in The Gambia which further the development of the economic resources and productive capacities of The Gambia and to guaranties of such investments by the Government of the United States of America. I also have the honour to confirm the following understandings reached as a result of those conversations:

1. When nationals of the Government of the United States of America (the Guaranteeing Government) propose to invest with the assistance of guaranties issued pursuant to this Agreement in a project or activity within the territorial jurisdiction of the Government of The Gambia (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 The Gambia.

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 guaranty issued pursuant to the present Agreement, the Host Government shall, subject to the provisions of the following paragraph, recognize the transfer to the Guaranteeing Government of any currency, credits, assets, or investment on account of which payment under such guaranty 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.

¹ Came into force on 4 November 1967, the date of the note by which the Host Government communicated to the Guaranteeing Government that the Agreement had been approved in conformity with the Host Government's constitutional procedures, in accordance with paragraph 8.

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 arrangements 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 guaranties 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. The arbitral tribunal shall base its decision exclusively on the applicable principles and rules of public international law. Only the respective Governments may request the arbitral procedure and participate in it.

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 guaranties issued while the Agreement was in force shall remain in force for the duration of those guaranties, in no case longer than twenty years, after the denunciation of the agreement.

8. This Agreement shall enter into force on the date of the note by which the Host Government communicates to the Guaranting Government that the Agreement has been approved in conformity with the Host Government's constitutional procedures.

Upon receipt of a note from Your Excellency indicating that the foregoing provisions are acceptable to the Government of The Gambia, 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 in accordance with paragraph 8 above.

The Embassy of the United States of America avails itself of this opportunity to renew to the Ministry of External Affairs the assurances of its highest consideration.

The Ministry of External Affairs
Bathurst, July 24, 1967

II

MINISTRY OF EXTERNAL AFFAIRS
BATHURST, THE GAMBIA

PM/6654/(31)

The Ministry of External Affairs of the Government of The Gambia presents its compliments to the Embassy of the United States of America in The Gambia and, with reference to the Embassy's Note No. 33 of 24th July, 1967, on the subject of an Investments Guarantee Agreement between the Government of the United States of America and that of The Gambia, has the honour to state that the Gambia Government accepts the proposal to conclude an Agreement on the lines of the understandings reached in conversation and set out in the Embassy's Note above mentioned, as follows:

[See note I]

8. The foregoing provisions are acceptable to the Government of the Gambia which considers this Note, together with that from the Embassy of the United States of America dated 24th July, 1967, to which it is the reply, as constituting an Agreement between the Government of The Gambia and the Government of the United States of America on this subject, the Agreement to come into force on the date of the present Note.

2. The Ministry of External Affairs of the Government of The Gambia avails itself of this opportunity to renew to the Embassy of the United States of America the assurances of its highest consideration.

[SEAL]

Bathurst, The Gambia, 4th November, 1967
