

No. 10043

**UNITED STATES OF AMERICA
and
NICARAGUA**

**Exchange of notes constituting an agreement relating to
investment guaranties. Managua, 9 May 1966**

Authentic texts: English and Spanish.

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

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

**Échange de notes constituant un accord relatif aux garanties
d'investissement. Managua, 9 mai 1966**

Textes authentiques: anglais et espagnol.

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

EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT¹ BETWEEN THE UNITED STATES OF AMERICA AND NICARAGUA RELATING TO INVESTMENT GUARANTIES

I

The American Ambassador to the Minister of Foreign Relations of Nicaragua

No. 121

Managua, May 9, 1966

Excellency:

I have the honor to refer to the investment guaranties which the Government of the United States of America offers to facilitate and increase private investment in activities approved by the Government of Nicaragua.

2. The Foreign Assistance Act of 1961 which was promulgated in the United States of America authorized guaranties against loss from revolution or insurrection to supplement the existing type of guaranty against loss from war. The Foreign Assistance Act of 1961 also authorized extended risk guaranties covering loss from any risk other than fraud, misconduct, or risks such as fire or theft which are normally covered by commercial insurance.

3. As a result of our recent discussions on this subject, my Government understands that the Government of the Republic of Nicaragua agrees that the new types of investment guaranties authorized by the Foreign Assistance Act of 1961 may be issued covering investments in projects which have been approved by the Government of the Republic of Nicaragua, after governmental consultations if those are requested by either government, and with respect to which guaranties of the types contemplated in section 413 (b) (4) of the Mutual Security Act of 1954, as amended, have been issued or are then being considered.

4. It is understood that the Government of the United States of America will not issue any guaranty in connection with any project unless the project has been approved by the Government of the Republic of Nicaragua.

5. When the Government of the United States of America pays compensation to an investor in Nicaragua in accordance with any of the types of investment guaranties contemplated in the Foreign Assistance Act of 1961, the following will apply:

a) The Government of the Republic of Nicaragua will recognize the transfer to the Government of the United States of America of any right, title or interest

¹ Came into force on 21 September 1968, the date of the note from the Government of Nicaragua stating that it had been approved as provided for by its constitutional procedures, in accordance with paragraph 10.

of the guaranteed investor in the goods, money, credits or other property on account of which the compensation was paid and the subrogation of the Government of the United States of America to any claim or cause of action or right of said investor arising from the foregoing.

- b) Amounts in cordobas acquired by the Government of the United States of America in accordance with said guaranties will receive treatment no less favorable than that granted to private funds arising from transactions of nationals of the United States which are comparable to the transactions covered by such guarantees, and such cordoba amounts shall be freely available to the Government of the United States of America for administrative expenses.

6. It is understood that the Government of the United States of America will have no greater rights with respect to property or claims transferred in accordance with paragraphs (a) and (b) above than those previously held by the guaranteed investor; and it is further understood if the laws of the Republic of Nicaragua prevent the acquisition, in whole or in part, of any interest in any property within Nicaragua by a foreign government, the Government of the Republic of Nicaragua will permit the guaranteed investor and the Government of the United States of America to make appropriate arrangements so that such an interest may be transferred to an entity permitted to own it under the laws of Nicaragua.

7. It is understood that the procedures for intergovernmental negotiation and arbitration provided in the Agreement of April 14, 1959¹ are not available for claims arising from the new types of guaranties, such as, against loss from revolution, insurrection or any other risks, including normal business risks, which are authorized by the Foreign Assistance Act of 1961.

8. Every claim against the Government of the Republic of Nicaragua to which the Government of the United States of America may become subrogated as provided in paragraph 5 (b) or because of expropriation from which a question of public international law has arisen shall be the subject of direct negotiations between the two Governments. If within a reasonable period the claim cannot be settled by mutual agreement, it shall be referred for final and binding settlement to a single arbitrator selected by mutual consent. If the Governments are unable within a period of three months to reach agreement on this selection, the arbitrator shall be one designated by the president of the Inter-American Development Bank upon request of either of the two Governments, except when the latter is a national of Nicaragua or of the United States of America, the selection will be made by the president of the International Court of Justice. The two Governments can, only in case of mutual agreement, refer to arbitration other questions of public international law arising from guaranteed investments.

¹ United Nations, *Treaty Series*, vol. 343, p. 119.

9. This agreement can be terminated by either of the parties when they so desire. Termination shall take effect one hundred eighty (180) days after notice of termination. The provisions of the agreement with respect to guaranties issued while the agreement was in force shall be valid for the duration of those guaranties, but in no case shall their duration be greater than twenty (20) years after notice of termination.

10. Upon receipt of a note from Your Excellency indicating that the foregoing is acceptable to the Government of the Republic of Nicaragua, the Government of the United States of America will consider that this note and Your reply constitute an Agreement between our two Governments which will enter into force on the date of a further note from Your Excellency stating that this Agreement has been approved in accordance with the constitutional procedures of the Republic of Nicaragua.

Accept, Excellency, the renewed assurances of my highest and most distinguished consideration.

Aaron S. BROWN

His Excellency Señor Doctor Don Alfonso Ortega Urbina
Minister of Foreign Relations
Managua

[SPANISH TEXT — TEXTE ESPAGNOL]

II

REPÚBLICA DE NICARAGUA
AMÉRICA CENTRAL
MINISTERIO DE RELACIONES EXTERIORES

Secretaría General
Sección Diplomática

MS. No. 039

Managua, D.N., 9 de mayo de 1966

Señor Embajador:

Tengo el honor de avisar a Vuestra Excelencia recibo de su atenta Nota No. 121 fechada el día de hoy, por medio de la cual propone la celebración de un Acuerdo sobre garantías de inversión confirmando los términos a que se llegó como resultado de nuestras negociaciones, así :

« Tengo el honor de referirme a las garantías de inversión que el Gobierno de los Estados Unidos de América ofrece para facilitar e incrementar la inversión de capital privado en actividades aprobadas por el Gobierno de Nicaragua.

En respuesta me es grato comunicar a Vuestra Excelencia que mi Gobierno acepta el Acuerdo en los términos propuestos en vuestra comunicación que se deja trascrita, constituyendo la nota de Vuestra Excelencia y la presente nota un Acuerdo entre nuestros respectivos Gobiernos, el cual entrará en vigor en la fecha en que comunique a Vuestra Excelencia que este Acuerdo ha sido aprobado de conformidad con los procedimientos constitucionales de la República de Nicaragua.

Aprovecho la oportunidad para reiterar a Vuestra Excelencia las seguridades de mi más alta consideración,

Alfonso ORTEGA

Excelentísimo Señor Aaron S. Brown
Embajador Extraordinario y Plenipotenciario
de los Estados Unidos de América
Managua, D.N.

[TRANSLATION¹ — TRADUCTION²]

The Minister of Foreign Relations of Nicaragua to the American Ambassador

REPUBLIC OF NICARAGUA
CENTRAL AMERICA
MINISTRY OF FOREIGN RELATIONS

Secretariat General
Diplomatic Section

MS No. 039

Managua, D.N., May 9, 1966

Mr. Ambassador:

I have the honor to acknowledge the receipt of Your Excellency's note No. 121, dated today, in which you propose the conclusion of an agreement on investment guaranties and confirm the terms arrived at as a result of our negotiations, as follows:

[*See note I*]

In reply, I am happy to inform Your Excellency that my Government accepts the agreement in the terms proposed in your communication quoted above. Accordingly, Your Excellency's note and the present note constitute an agreement between our respective Governments, which will enter into force on the

¹ Translation by the Government of the United States of America.

² Traduction du Gouvernement des États-Unis d'Amérique.

date when Your Excellency is informed that this Agreement has been approved in conformity with the constitutional procedures of the Republic of Nicaragua.

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

Alfonso ORTEGA

His Excellency Aaron S. Brown
Ambassador Extraordinary and Plenipotentiary
of the United States of America
Managua, D.N.
