

No. 10799

**UNITED STATES OF AMERICA
and
BURUNDI**

**Exchange of notes constituting an agreement relating to
investment guaranties. Bujumbura, 6 May 1969**

Authentic texts: English and French.

Registered by the United States of America on 23 October 1970.

**ÉTATS-UNIS D'AMÉRIQUE
et
BURUNDI**

**Échange de notes constituant un accord relatif à la garantie
des investissements. Bujumbura, 6 mai 1969**

Textes authentiques: anglais et français.

Enregistré par les États-Unis d'Amérique le 23 octobre 1970.

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

ÉCHANGE DE NOTES CONSTITUANT UN ACCORD¹ ENTRE LES ÉTATS-UNIS D'AMÉRIQUE ET LE BURUNDI RELATIF À LA GARANTIE DES INVESTISSEMENTS

I

The American Ambassador to the Minister of Foreign Affairs and of Cooperation of Burundi

L'Ambassadeur des États-Unis d'Amérique au Ministre des affaires étrangères et de la coopération du Burundi

EMBASSY OF THE UNITED STATES OF AMERICA

Bujumbura, May 6, 1969

No. 38

Excellency:

I have the honor to refer to conversations which have taken place over the last few months between representatives of our two governments relating to investments in Burundi which further the development of the economic resources and productive capacities of Burundi 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. When nationals of the Government of the United States of America, hereinafter referred to as 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 Republic of Burundi, hereinafter referred to as 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 Burundi.

¹ Came into force on 6 May 1969, the date of the note by which the Host Government (Burundi) communicated to the Guaranteeing Government (United States of America) that the Agreement had been approved in conformity with the Host Government's constitutional procedures, in accordance with the provisions of the said notes.

¹ Entré en vigueur le 6 mai 1969, date de la note par laquelle le Gouvernement hôte (Burundi) a fait savoir au Gouvernement garant (États-Unis d'Amérique) que l'Accord avait été approuvé conformément aux procédures constitutionnelles du Gouvernement hôte, conformément aux dispositions desdites notes.

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.

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 favorable 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 Guaranteeing 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 Republic of Burundi, 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.

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

GEORGE W. RENCHARD

His Excellency Lazare Ntawurishira
Minister of Foreign Affairs and of Cooperation
Bujumbura

[TRANSLATION ¹ — TRADUCTION ²]

REPUBLIC OF BURUNDI
MINISTRY OF FOREIGN AFFAIRS AND OF COOPERATION

Bujumbura, May 6, 1969

No. C.T.C./0175/A.E.

Excellency:

I have the honor to acknowledge receipt of your note No. 38, dated May 6, 1969, which reads as follows:

[*See note I*]

I have the honor to confirm to you that my Government agrees to the provisions contemplated above.

Accept, Excellency, the assurances of my highest consideration.

[*Signed*]

LAZARE NTAWURISHIRA

Minister of Foreign Affairs and of Cooperation

His Excellency George Renchard
Ambassador of the United States of America
Bujumbura

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

² Traduction fournie par le Gouvernement des États-Unis d'Amérique,