

No. 14503

**UNITED STATES OF AMERICA
and
NIGERIA**

**Investment Guarantee Agreement (with agreed minute).
Signed at Lagos on 3 August 1974**

Authentic text: English.

Registered by the United States of America on 31 December 1975.

**ÉTATS-UNIS D'AMÉRIQUE
et
NIGÉRIA**

**Accord relatif à la garantie des investissements (avec
procès-verbal approuvé). Signé à Lagos le 3 août 1974**

Texte authentique : anglais.

Enregistré par les États-Unis d'Amérique le 31 décembre 1975.

INVESTMENT GUARANTEE AGREEMENT¹ BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE FEDERAL MILITARY GOVERNMENT OF THE FEDERAL REPUBLIC OF NIGERIA

The Government of the United States of America and the Federal Military Government of the Federal Republic of Nigeria (hereinafter referred to as “the Government of the Federal Republic of Nigeria”),

Conscious of the need for attracting investors of the United States of America into Nigeria as a means of promoting industrial growth and transferring desired technological skills,

Have agreed as follows:

Article 1. The Government of the United States of America and the Government of the Federal Republic of Nigeria shall, upon the request of either of them, consult in respect of projects in Nigeria which are proposed by citizens of the United States of America with respect to which investment guarantees have been made or are under consideration.

Article 2. The Government of the United States of America agrees that it will issue no guarantee with respect to any project unless it is approved by the Government of the Federal Republic of Nigeria.

Article 3. 1. If the Government of the United States of America makes payment in United States dollars to any person under such guarantee, the Government of the Federal Republic of Nigeria shall recognise the transfer by such person to the Government of the United States of America of any right, title or interest in assets expropriated or assets rendered useless by reason of expropriation, or any currency or credits in any currency with respect to which such payment under a guarantee was made, and the Government of the Federal Republic of Nigeria shall recognise the subrogation of the Government of the United States of America to any right, title, claim or cause of action existing in connection therewith.

2. Before the Government of the United States of America makes any payment to any person under this Guarantee Agreement, it shall notify and consult the Government of the Federal Republic of Nigeria.

3. If the Government of the United States of America becomes subrogated to any right, title, or interest in assets expropriated or assets rendered useless by reason of expropriation or any claim or cause of action existing in connection therewith, it shall give to the Government of the Federal Republic of Nigeria the first option to purchase such assets to which the Government of the United States of America shall have assumed title at a price to be negotiated by the two Governments.

Article 4. Lawful currency of the Federal Republic of Nigeria, including credits thereof acquired by the Government of the United States of America pursuant to such guarantees, shall be accorded treatment not less favourable than that accorded to private funds arising from transactions of United States nationals

¹ Came into force on 10 February 1975, the date of the exchange of notes by which the Contracting Parties confirmed that their respective constitutional procedures had been fulfilled, in accordance with article 9.

which are comparable to the transactions covered by such guarantees, and such currency or credits thereof shall be available to the Government of the United States of America for administrative expenses. However, the two Governments shall consult with a view to assessing the utilization of those funds in such manner as to avoid any prejudice to the interests of either country.

Article 5. The Government of the Federal Republic of Nigeria may, in accordance with its Exchange Control Laws and Regulations, impose restrictions on currency transfers to the extent required to assure the availability of foreign exchange for payments essential to the health and welfare of its people or to the extent permissible under the aforementioned Exchange Control Laws and Regulations.

Article 6. Where the loss of assets owned by a company which is covered under the terms of this Agreement is due to non-compliance with the Nigerian Enterprises Promotion Decree, 1972, and any rules and regulations made thereunder, the provisions of the Nigerian Enterprises Promotion Decree, 1972, shall apply.

Article 7. 1. If any dispute arises between the two Governments relating to the interpretation or application of the present Agreement, the two Governments shall in the first place endeavour to settle it by direct negotiations between themselves.

2. If the two Governments fail to reach a settlement by negotiations, they shall refer the dispute to an Arbitral Tribunal which shall consist of three persons appointed as follows: one arbitrator to be named by each Government, and the third arbitrator, who shall also act as Chairman of the Tribunal, to be agreed upon by the two Governments provided that such third arbitrator shall not be a national of either country. Each of the Governments shall designate an arbitrator within three months of the date of delivery by either Government to the other Government of a diplomatic request for arbitration of the dispute; and the third arbitrator shall be agreed upon within three months after such period of three months. If either of the Governments fails to designate its own arbitrator within three months or if the third arbitrator is not agreed upon within the time limit indicated, the President of the International Court of Justice shall, at the request of either Government, make the necessary appointment or appointments by choosing the arbitrator or arbitrators. In case any arbitrator appointed in accordance with this clause shall resign, die or become unable to act, a successor shall be appointed in the same manner as herein prescribed for the appointment of the original arbitrator and his successor shall have all the powers and duties of the original arbitrator.

3. The two Governments shall comply with any decision given under paragraph (2) of this Article.

4. Each Government shall be responsible for the cost of its designated arbitrator and subsidiary staff provided and both Governments shall share equally all such further expenses involved in the activities of the Arbitral Tribunal including those of the Chairman.

Article 8. The Agreement on Investment Guarantee effected by the Exchange of Notes signed at Lagos on the 28th August, 1962, and the 24th December, 1962,¹ respectively is hereby terminated and replaced by this Agreement.

¹ United Nations, *Treaty Series*, vol. 462, p. 179.

Article 9. This Agreement shall come into force on the date of exchange of Notes confirming that it has been approved in accordance with the constitutional procedures of the Contracting Parties and shall be subject to five-year periodic reviews. The termination of the Agreement shall take effect six months after the receipt by one of the parties of a notice in writing through normal diplomatic channels showing the intention of the other party to terminate the Agreement.

Provided, however, that where this Agreement is terminated in the manner prescribed above, its provisions shall continue to be applied to any existing and unexpired transaction which was commenced under its terms.

DONE at Lagos this 3rd day of August 1974 in two originals in the English language, both being equally authentic.

For the Government
of the United States of America:

For the Federal Military Government
of the Federal Republic of Nigeria:

[Signed—Signé]¹

[Signed—Signé]²

AGREED MINUTE

Reference is made to the Investment Guarantee Agreement made between the Government of the United States of America and the Federal Military Government of the Federal Republic of Nigeria signed on this date, and particularly to Articles 6 and 7 thereof. The parties wish to emphasize their understanding that no provision of this Agreement shall be construed to limit Nigeria's sovereign rights with respect to the nationalization or other disposition of any business enterprise situated in Nigeria whether under the Nigerian Enterprises Promotion Decree, 1972, or any other provision of law. Any claim arising out of any investment for which coverage has been issued in accordance with this Agreement which is not resolved by negotiation shall be referred to arbitration pursuant to the provisions of Article 7 of the Agreement. The arbitral tribunal shall decide the case on the basis of the laws of the Federal Republic of Nigeria and applicable principles of international law.

For the Government
of the United States of America:
[Signed—Signé]¹

For the Federal Military Government
of the Federal Republic of Nigeria:
[Signed—Signé]²

¹ Signed by John E. Reinhardt—Signé par John E. Reinhardt.

² Signed by J. E. Adetoro—Signé par J. E. Adetoro.