

No. 16455

**UNITED STATES OF AMERICA
and
FIJI**

**Exchange of notes constituting an agreement relating to
investment guaranties. Suva, 30 December 1975 and
9 January 1976**

Authentic text: English.

Registered by the United States of America on 13 February 1978.

**ÉTATS-UNIS D'AMÉRIQUE
et
FIDJI**

**Échange de notes constituant un accord relatif à la garantie
des investissements. Suva, 30 décembre 1975 et 9 jan-
vier 1976**

Texte authentique : anglais.

Enregistré par les États-Unis d'Amérique le 13 février 1978.

EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT¹ BETWEEN THE UNITED STATES OF AMERICA AND FIJI RELATING TO INVESTMENT GUARANTEES

I

The American Chargé d'affaires ad interim to the Fijian Prime Minister

Suva, December 30, 1975

No. 11

Excellency:

I have the honor to refer to Letters 1173/13/2, dated August 22, 1975, and December 22, 1975, respectively from the Secretary for Foreign Affairs, regarding the conclusion by the Governments of Fiji and the United States of America of an investment guaranty agreement. I would propose the following points for inclusion in this agreement:

1. When nationals of the Government of the United States of America 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 Fiji, 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 Fiji.

2. The procedures set forth in this Agreement shall apply only with respect to coverage of investments and contracts relating to projects or activities approved by the Government of Fiji, such approval being assumed in the case of any project participated in by the Government of Fiji or any agency or political sub-division thereof.

3. If the Government of the United States of America makes payment to any investor under a guaranty issued pursuant to the present Agreement, the Government of Fiji shall, subject to the provisions of the following paragraph, recognize the transfer to the Government of the United States of America of any currency, credits, assets, or investment on account of which payment under such guaranty is made as well as the succession of the Government of the United States of America 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 Government of Fiji partially or wholly invalidate the acquisition of any interest in any property within its national territory by the Government of the United States of America, the Government of Fiji shall permit such investor and the Government of the United States of America to make appropriate arrangements pursuant to which such interests are transferred to an entity permitted to own such interests under the laws of the Government of Fiji. The Government of the United States of America shall assert no greater rights than those of the transferring investor under the laws of the Government of Fiji with respect to any interests transferred or succeeded to as contemplated in paragraph 3. The Government of the United States of America does, however, reserve its right to assert a claim in its sovereign capacity in the

¹ Came into force on 9 January 1976, the date on which the Government of Fiji informed the Government of the United States of America of the completion of its constitutional procedures, in accordance with paragraph 8.

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 Government of Fiji and credits thereof acquired by the Government of the United States of America under such guaranties shall be accorded treatment neither less nor more favorable than that accorded to funds of nationals of the Government of the United States of America deriving from investment activities like those in which the investor has been engaged, and such amounts and credits shall be freely available to the Government of the United States of America to meet its expenditures in the national territory of the Government of Fiji.

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 of 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 the 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 for 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 Government of Fiji communicates to the Government of the United States of America that the Agreement has been approved in conformity with the Government of Fiji's constitutional procedures.

Upon receipt of a note from Your Excellency indicating that the foregoing provisions are acceptable to the Government of Fiji, 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.

[Signed — Signé]¹

Chargé d'affaires *ad interim*

His Excellency,
the Right Honorable Ratu Sir Kamisese K. T. Mara, KBE, PC
Prime Minister of Fiji
Suva, Fiji

II

PRIME MINISTER
SUVA, FIJI

9 January, 1976

1173/13/2

Dear Sir,

I have the honour to acknowledge receipt of your Note No. 11 of 30 December 1975 which reads as follows:

[See note I]

I have the honour to confirm that the proposal set forth in your above-quoted note is acceptable to the Government of Fiji and agree that your above-quoted note and this reply thereto shall constitute an Agreement between our two Governments in accordance with paragraph 8 above.

Accept, Sir, the assurances of my highest consideration.

[Signed]

(K. K. T. MARA)

Prime Minister
and Minister for Foreign Affairs

Mr. Walter Vance Hall
Chargé d'affaires a.i.
U.S. Embassy

¹ Signed by Walter V. Hall — Signé par Walter V. Hall.