

No. 16604

**UNITED STATES OF AMERICA
and
SYRIAN ARAB REPUBLIC**

**Exchange of notes constituting an agreement regarding
investment guaranties (with related letter). Damascus,
9 August 1976**

Authentic texts: English and Arabic.

Registered by the United States of America on 27 April 1978.

**ÉTATS-UNIS D'AMÉRIQUE
et
RÉPUBLIQUE ARABE SYRIENNE**

**Échange de notes constituant un accord relatif à la garantie
des investissements (avec lettre connexe). Damas, 9 août
1976**

Textes authentiques : anglais et arabe.

Enregistré par les États-Unis d'Amérique le 27 avril 1978.

EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT¹ BETWEEN THE UNITED STATES OF AMERICA AND THE SYRIAN ARAB REPUBLIC REGARDING INVESTMENT GUARANTIES

I

EMBASSY OF THE UNITED STATES OF AMERICA

Damascus, August 9, 1976

Dear Mr. Minister:

I have the honor to refer to conversations which have recently taken place between representatives of our two governments relating to investments in Syria which promote the development of the economic resources and productive capacities of Syria and to insurance (including reinsurance) and guaranties of such investments which are backed in whole or in part by the credit or public monies of the United States of America and are administered either directly by the Overseas Private Investment Corporation ("OPIC"), an independent government corporation organized under the laws of the United States of America, or pursuant to arrangements between OPIC and commercial insurance, reinsurance and other companies. I also have the honor to confirm the following understanding reached as a result of those conversations.

Article 1. As used herein, the term "Coverage" shall refer to any investment insurance or guaranty which is issued in accordance with this agreement by OPIC, by any successor agency of the United States of America or pursuant to arrangements with OPIC or any successor agency, by any other entity or group of entities, all of whom are hereinafter deemed included in the term "issuer" to the extent of their interest as insurer or reinsurer in any coverage, whether as a party or successor to a contract providing coverage or as an agent for the administration of coverage.

Article 2. The procedure set forth in the agreement shall apply only with respect to coverage of investments relating to projects or activities approved by the Government of Syria. In the case of construction or service contracts entered into with the Government of Syria or any agency or political subdivision thereof, the project or activity shall be deemed to have been approved by the Government of Syria for purposes of the agreement.

Article 3. (A) If the issuer makes payment to any investor under coverage, the Government of Syria shall, subject to the provisions of Article 4 hereof, recognize the transfer to the issuer of any currency, credits, assets, or investment on account of which payment under such coverage is made as well as the succession of the issuer to any right, title, claim, privilege, or cause of action existing, or which may arise in connection therewith.

(B) The issuer shall assert no greater rights than those of the transferring investor with respect to any interests transferred or succeeded to under this paragraph. Nothing in this agreement shall limit the right of the Government of the United States of America to assert a claim under international law in its sovereign capacity, as distinct from any rights it may have as issuer.

¹ Came into force on 13 August 1977, the date on which the Government of Syria communicated its approval pursuant to its constitutional procedures, in accordance with article 7.

(C) The issuance of coverage outside of Syria with respect to investment in a project in Syria shall not subject the issuer to regulation under the laws of Syria applicable to insurance or financial organizations.

Article 4. To the extent that the laws of Syria partially or wholly invalidate or prohibit the acquisition from a covered investor of any interest in any property within the territory of Syria by the issuer, the Government of Syria shall permit such investor and the issuer to make appropriate arrangements pursuant to which such interests are transferred to an entity permitted to own such interests under the laws of Syria.

Article 5. Amounts in the lawful currency of Syria, including credits thereof, acquired by the issuer by virtue of such coverage shall be accorded treatment by the Government of Syria no less favorable as to use and conversion than the treatment to which such funds would be entitled in the hands of the covered investor. Such amounts and credits may be transferred by the issuer to any person or entity and upon such transfer shall be freely available for use by such person or entity in the territory of Syria.

Article 6. (A) Any dispute between the Government of the United States of America and the Government of Syria regarding the interpretation of this agreement or which, in the opinion of one of the governments, involves a question of public international law arising out of any project or investment for which coverage has been issued shall be resolved, insofar as possible, through negotiations between the two governments. If at the end of three months following the request for negotiations the two governments have not resolved the dispute by agreement, the dispute, including the question of whether such dispute presents a question of public international law, shall be submitted, at the initiative of either government, to an arbitral tribunal for resolution in accordance with paragraph 6(B).

(B) The arbitral tribunal for resolution of disputes pursuant to paragraph 6(A) shall be established and function as follows:

(I) 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 appointments are not made within the foregoing time limits, 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.

(II) The arbitral tribunal shall base its decision on the applicable principles and rules of public international law. The arbitral tribunal shall decide by majority vote. Its decision shall be final and binding. Only the two governments may request the arbitral procedure and participate in it.

(III) Each of the governments shall pay the expense of its arbitrator and of 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 regulations concerning the costs, consistent with the foregoing.

(IV) In all other matters, the arbitral tribunal shall regulate its own procedures.

Article 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 coverage issued while the agreement was in force shall remain in force for the duration of such coverage, but in no case longer than twenty years after the denunciation of the agreement.

Upon receipt of a note from you indicating that the foregoing provisions are acceptable to the Government of Syria, 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, to enter into force on the date of the note by which the Government of Syria communicates to the Government of the United States of America that this exchange of notes has been approved pursuant to its constitutional procedures.

Accept, Mr. Minister, the renewed assurances of my highest consideration.

[Signed]

RICHARD W. MURPHY
Ambassador of the United States
of America in Damascus

His Excellency Dr. Mohamad al-Imadi
Minister of Economy and Foreign Trade
Ministry of Economy and Foreign Trade
Damascus, S.A.R.

The Syrian Minister of Economy and Foreign Trade to the American Ambassador

Damascus, August 9, 1976

Mr. Ambassador:

I have the honor to acknowledge the receipt of your note dated August 9, 1976, which reads:

[See note I]

I have the honor to confirm that the above correctly sets out the understanding reached between us.

Please accept, Mr. Ambassador, the assurance of my highest consideration.

[Signed]

Dr. MOHAMAD AL-IMADI
Minister of Economy
and Foreign Trade

[The] Honorable Richard W. Murphy
Ambassador of the United States of America
Damascus, S.A.R.

RELATED LETTER

Damascus, S.A.R., August 9, 1976

Dear Mr. Minister:

I have the honor to refer to the agreement effected by exchange of notes of this date relating to investment insurance (including reinsurance) and guaranties, which are backed in whole or part by the credit or public monies of the United States of America, covering private investments by United States investors in Syria, which program of investment insurance and guaranties presently is administered by the Overseas Private Investment Corporation ("OPIC"). In this respect, I also have the honor of describing the types of insurance and guaranties covering investments in Syria that presently may be issued either directly by OPIC or by OPIC and other entities or groups of entities operating in conjunction with OPIC.

Under the applicable laws of the United States of America, United States investors, including foreign entities that are wholly-owned by United States citizens, are eligible for either investment insurance or guaranties issued in whole or part by OPIC. OPIC also is authorized to make arrangements with foreign governments or with multilateral organizations and institutions for the sharing of liabilities assumed under investment insurance, and OPIC may, in connection with such risk sharing arrangements, issue insurance to investors not otherwise eligible for investment insurance issued by OPIC.

OPIC's statutory authority to issue investment insurance and reinsurance is set forth in broad terms to assure flexibility in developing types of insurance coverage and in OPIC's operations. OPIC's basic coverages are classified as "inconvertibility", "expropriation", and "war revolution and insurrection". In addition, because of the diverse forms of foreign investments, and the special needs of certain industries operating overseas, OPIC has developed special coverages, such as that offered for

construction and service contractors with foreign government entities, in which the basic coverages have been tailored to the needs of the industry.

As presently being issued by OPIC, inconvertibility coverage applies with respect to an approved investment when the investor is unable to convert into United States dollars the local currency received as earnings on the original investment or capital eligible for repatriation. Inconvertibility coverage does not protect against the effects of exchange fluctuations, or exchange regulations or restrictions that are applicable at the time the insurance is issued. Expropriation coverage provides compensation with respect to an approved investment when subsequent action of the host country government results in nationalization, expropriation or confiscation of the investment or earnings on the investment. Before an investor has the right to compensation with respect to any given act, he must pursue all reasonable and available remedies he may have with respect to the alleged expropriatory act. Expropriation coverage does not compensate for losses resulting from the impact of valid business regulations that are not intended for the purpose of nationalization or applied in an arbitrary manner. War, revolution and insurrection coverage provides compensation for losses resulting from war, revolution and insurrection. Losses resulting from lesser civil disturbances are not covered.

Under its present statutory authorities, OPIC may issue investment guaranties of loans and other investments assuring against loss due to any risk. In most cases, the investment guaranty is an all-risk, "commercial" guaranty covering a loan from an institutional lender in the United States to the approved project in the host country. Under its present policies, OPIC also may guarantee equity investments in approved projects against realized losses such as commercial failure of the operation.

In the case both of investment insurance and investment guaranties, the terms of insurance or guaranty agreements under which the insurance or guaranties would be issued to the investor would not create obligations for the Government of Syria. Thus war, revolution and insurrection coverage would not obligate the Government of Syria to reimburse the insured investor for losses resulting from war. Likewise, the measure of compensation under expropriation coverage would not be determinative of the amount of compensation to be paid by the Government of Syria for a nationalized investment.

I hope the foregoing is consistent with your understanding of the investment insurance and guaranty programs of the United States of America that would be available with respect to investments in Syria under the terms of the agreement between our governments pertaining to these programs.

Accept again, Mr. Minister, the renewed assurances of my highest consideration.

Sincerely,

[Signed]

RICHARD W. MURPHY
Ambassador

His Excellency Dr. Mohammad al-Imadi
Minister of Economy and Foreign Trade
Ministry of Economy and Foreign Trade
Damascus, S.A.R.