

INVESTMENT GUARANTIES

**Agreement Between the
UNITED STATES OF AMERICA
and MALAYSIA**

**Amending the Agreement of
April 21, 1959**

**Effected by Exchange of Notes
Signed at Kuala Lumpur
June 24, 1965**



MALAYSIA

Investment Guaranties

*Agreement amending the agreement of April 21, 1959.
Effected by exchange of notes
Signed at Kuala Lumpur June 24, 1965;
Entered into force June 24, 1965.*

*The American Ambassador to the Malaysia Acting Prime Minister
and Acting Minister of External Affairs*

No. 437

KUALA LUMPUR, June 24, 1965.

EXCELLENCY:

I have the honor to refer to the Agreement effected by the exchange of notes of April 21, 1959 [1] between the Government of the United States of America and the Government of the Federation of Malaya relating to investment guaranties which may be issued by the Government of the United States of America for investments in activities in the Federation of Malaya. Since the conclusion of this Agreement, legislation has been enacted in the United States of America modifying and augmenting the coverage to be provided investors by investment guaranties that may be issued by the Government of the United States of America.

It is the understanding of my Government that the above-mentioned Agreement is applicable to the whole of Malaysia and that amendments thereto will be considered to have the same application.

In the interest of facilitating and increasing the participation of private enterprise in furthering the development of Malaysia, the Government of the United States of America is prepared to issue investment guaranties providing such coverage as may be authorized by the applicable United States legislation for appropriate investments in activities approved by your Government provided that your Government agrees that the undertakings between our respective Governments contained in the above-mentioned Agreement will be applicable to such guaranties.

Accordingly, we propose that the above-mentioned Agreement be amended as follows:

¹ TIAS 4214; 10 UST 776.

- (a) Substitute "Section 221 (b) of the Foreign Assistance Act of 1961, [1] as amended," for "Section 413 (b) (4) of the Mutual Security Act of 1954, [2] as amended," wherever the latter appears, and substitute "Section 221 (b)" for "Section 413 (b) (4)" wherever the latter appears.
- (b) Substitute "Malaysia" for "the Federation of Malaya" wherever the latter appears; in Subparagraph (a) of Paragraph (3) and in the final paragraph of the Government of Malaya's Note of reply where the terms "the Federation" and "Federation" appear, respectively, change to "Malaysia"; in Subparagraph (b) of Paragraph (3) change "Malayan dollar" to "local currency" in the two places where it appears.

Upon receipt of a note from your Excellency indicating that the foregoing understandings and amendment are acceptable to the Government of Malaysia and that such undertaking shall apply, 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 on the date of your Note in reply.

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

JAMES DUNBAR BELL

His Excellency

TUN HAJI ABDUL RAZAK BIN DATO HUSSAIN,
*Acting Prime Minister and
 Acting Minister of External Affairs,
 Kuala Lumpur.*

*The Malaysian Acting Prime Minister and Acting Minister of
 External Affairs to the American Ambassador*

PRIME MINISTER MALAYSIA

Telegraphic Address—PERMENT
 Telephone Nos. 84432 & 88228

KUALA LUMPUR

24th June, 1965.

YOUR EXCELLENCY,

I have the honour to acknowledge receipt of your letter of 24th June, 1965, the contents of which I produce hereunder:—

"I have the honor to refer to the Agreement effected by the exchange of notes of April 21, 1959 between the Government of

¹ 75 Stat. 429; 22 U.S.C. § 2181 (b).

² 68 Stat. 847; 22 U.S.C. § 1933 (b) (4).

the United States of America and the Government of the Federation of Malaya relating to investment guaranties which may be issued by the Government of the United States of America for investments in activities in the Federation of Malaya. Since the conclusion of this Agreement, legislation has been enacted in the United States of America modifying and augmenting the coverage to be provided investors by investment guaranties that may be issued by the Government of the United States of America.

It is the understanding of my Government that the above-mentioned Agreement is applicable to the whole of Malaysia and that amendments thereto will be considered to have the same application.

In the interest of facilitating and increasing the participation of private enterprise in furthering the development of Malaysia, the Government of the United States of America is prepared to issue investment guaranties providing such coverage as may be authorized by the applicable United States legislation for appropriate investments in activities approved by your Government provided that your Government agrees that the undertakings between our respective Governments contained in the above-mentioned Agreement will be applicable to such guaranties. Accordingly, we propose that the above-mentioned Agreement be amended as follows:-

- (a) Substitute "Section 221(b) of the Foreign Assistance Act of 1961, as amended," for "Section 413(b)(4) of the Mutual Security Act of 1954, as amended," wherever the latter appears, and substitute "Section 221(b)" for "Section 413(b)(4)" wherever the latter appears.
- (b) Substitute "Malaysia" for the "Federation of Malaya" wherever the latter appears; in Subparagraph (a) of Paragraph (3) and in the final paragraph of the Government of Malaya's Note of reply where the terms "the Federation" and "Federation" appear, respectively, change to "Malaysia"; in Subparagraph (b) of Paragraph (3) change "Malayan dollar" to "local currency" in the two places where it appears.


Upon receipt of a note from Your Excellency indicating that the foregoing understandings and amendment are acceptable to the Government of Malaysia and that such undertakings shall apply, 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 on the date of your Note in reply.

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

In reply I have the honour to inform you that the Malaysian Government confirms the understandings as set out in your letter and will regard that letter and this reply as constituting an Agreement between the Governments of Malaysia and of the United States of America, the Agreement to enter into force on the date of this reply.

I avail myself of this opportunity to renew to you, Your Excellency, the assurances of my highest consideration.

Yours sincerely,


 (TUN HAJI ABDUL RAZAK BIN DATO HUSSEIN)
 Acting Prime Minister and
 Acting Minister of External Affairs,
 Malaysia.

His Excellency
 Mr. JAMES DUNBAR BELL,
*Ambassador Extraordinary and
 Plenipotentiary of the United States of America,
 Kuala Lumpur.*

GUARANTY OF PRIVATE INVESTMENTS

**Agreement Between the
UNITED STATES OF AMERICA
and MALAYA**

**Effectuated by Exchange of Notes
Signed at Kuala Lumpur April 21, 1959**



MALAYA

Guaranty of Private Investments

*Agreement effected by exchange of notes
Signed at Kuala Lumpur April 21, 1959;
Entered into force April 21, 1959.*

*The American Ambassador to the Malayan Minister of External
Affairs*

No. 243

KUALA LUMPUR, April 21, 1959

EXCELLENCY:

I have the honor to refer to conversations which have recently taken place between representatives of our two Governments, relating to guaranties authorized by Section 413 (b) (4) of the Mutual Security Act of 1954, [1] as amended. I also have the honor to confirm the following understandings reached as a result of these conversations:

1. The Governments of the Federation of Malaya and of the United States of America will, upon the request of either of them, consult respecting projects in the Federation of Malaya proposed by nationals of the United States of America with regard to which guaranties under Section 413 (b) (4) of the Mutual Security Act of 1954, as amended, have been made or are under consideration.
2. The Government of the United States of America agrees that it will issue no guaranty with regard to any project unless it is approved by the Government of the Federation of Malaya.
3. With respect to such guaranties extending to projects which are approved by the Government of the Federation of Malaya in accordance with the provisions of the aforesaid Section 413 (b) (4), the Government of the Federation of Malaya agrees:
 - a. That if the Government of the United States of America makes payment in United States dollars to any person under any such guaranty, the Government of the Federation of Malaya will recognize the transfer by such person to the United States of America of any right, title or interest of such person in assets expropriated or assets rendered useless to such person by reason

¹ 68 Stat. 847; 22 U.S.C. § 1933(b) (4).

of the expropriation of any other assets forming part of the business or project of such person in the Federation, or any currency or credit in any currency, with respect to which such payment under a guaranty was made, and the subrogation of the United States of America to any claim or cause of action, or right of such person arising in connection therewith.

- b. That Malayan dollar amounts acquired by the Government of the United States of America pursuant to such guaranties shall be accorded treatment not less favorable than that accorded to private funds arising from transactions of United States nationals which are comparable to the transactions covered by such guaranties, and that such Malayan dollar amounts will be freely available to the Government of the United States of America for administrative expenditures.
- c. That any claim against the Government of the Federation of Malaya to which the Government of the United States of America may be subrogated as a result of any payment under such a guaranty, shall be the subject of direct negotiations between the two Governments. If within a reasonable period, they are unable to settle the claim by agreement, it shall be referred for final and binding determination to a sole arbitrator selected by mutual agreement. If the Governments are unable, within a period of three months, to agree upon such selection, the arbitrator shall be one who may be designated by the President of the International Court of Justice at the request of either Government.

Upon receipt of a note from Your Excellency indicating that the foregoing provisions are acceptable to the Government of the Federation of Malaya, the Government of the United States of America will consider that this note and your reply thereto constitute an agreement between the two Governments on this subject, the agreement to enter into force on the date of your note in reply.

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

HOMER M. BYINGTON, Jr.

His Excellency
 Doctor ISMAIL bin Dato ABDUL RAHMAN,
Minister of External Affairs,
Kuala Lumpur.

*The Malayan Minister of External Affairs to the American
Ambassador*

MINISTER OF EXTERNAL AFFAIRS
FEDERATION OF MALAYA
KUALA LUMPUR

Tel. 85666.

Ref. No. SR(480)251/14

21st April, 1959.

YOUR EXCELLENCY,

I have the honour to acknowledge receipt of your letter dated 21st April, 1959, which reads as follows:

"I have the honour to refer to conversations which have recently taken place between representatives of our two Governments, relating to guaranties authorized by Section 413 (b) (4) of the Mutual Security Act of 1954, as amended. I also have the honour to confirm the following understandings reached as a result of these conversations:

1. The Governments of the Federation of Malaya and of the United States of America will, upon the request of either of them, consult respecting projects in the Federation of Malaya proposed by nationals of the United States of America with regard to which guaranties under Section 413 (b) (4) of the Mutual Security Act of 1954, as amended, have been made or are under consideration.
2. The Government of the United States of America agrees that it will issue no guaranty with regard to any project unless it is approved by the Government of the Federation of Malaya.
3. With respect to such guaranties extending to projects which are approved by the Government of the Federation of Malaya in accordance with the provisions of the aforesaid Section 413 (b) (4), the Government of the Federation of Malaya agrees:
 - a. That if the Government of the United States of America makes payment in United States dollars to any person under any such guaranty, the Government of the Federation of Malaya will recognize the transfer by such person to the United States of America of any right, title or interest of such person in assets expropriated or assets rendered useless to such person by reason of the expropriation of any other assets forming part of the business or project of such person in the Federation, or any currency or credit in any currency, with respect to which such payment under a guaranty was made, and the subrogation of the United States of America to any claim or cause of action, or right of such person arising in connection therewith.
 - b. That Malayan dollar amounts acquired by the Government of the United States of America pursuant to such guaranties

shall be accorded treatment not less favourable than that accorded to private funds arising from transactions of United States nationals which are comparable to the transactions covered by such guaranties, and that such Malayan dollar amounts will be freely available to the Government of the United States of America for administrative expenditures.

- c. That any claim against the Government of the Federation of Malaya to which the Government of the United States of America may be subrogated as a result of any payment under such a guaranty, shall be the subject of direct negotiations between the two Governments. If within a reasonable period, they are unable to settle the claim by agreement, it shall be referred for final and binding determination to a sole arbitrator selected by mutual agreement. If the Governments are unable, within a period of three months, to agree upon such selection, the arbitrator shall be one who may be designated by the President of the International Court of Justice at the request of either Government.

Upon receipt of a note from Your Excellency indicating that the foregoing provisions are acceptable to the Government of the Federation of Malaya, the Government of the United States of America will consider that this note and your reply thereto constitute an agreement between the two Governments on this subject, the agreement to enter into force on the date of your note in reply.

Accept, Excellency, the renewed assurances of my distinguished consideration."

In reply I have the honour to inform you that the Federation Government confirm the understandings as set out in your letter and will regard that letter and this reply as constituting an Agreement between the Governments of the Federation of Malaya and of the United States of America, the Agreement to enter into force on the date of this reply.

I have the honour to be, Your Excellency,
with the highest consideration,
Your obedient servant,

ISMAIL RAHMAN

Dr. Ismail bin Dato Abdul Rahman,
Minister of External Affairs,
Federation of Malaya.

His Excellency,
Mr. HOMER MORRISON BYINGTON, Jr.,
Ambassador Extraordinary and Plenipotentiary
of the United States of America,
Kuala Lumpur.