

GUARANTY OF PRIVATE INVESTMENTS

Agreement between the
UNITED STATES OF AMERICA
and THAILAND

- Effected by Exchange of Notes
Signed at Washington August 27 and
September 1, 1954
- Entered into force September 1, 1954



The Secretary of State to the Thai Chargé d'Affaires ad interim

DEPARTMENT OF STATE

WASHINGTON

August 27 1954

SIR:

I 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] I also confirm the understandings reached as a result of these conversations as follows:

The Governments of Thailand and of the United States of America will, upon the request of either of them, consult respecting projects in Thailand proposed by nationals of the United States of America with regard to which guaranties under the aforesaid Section 413 (b) (4), have been made or are under consideration. With respect to such guaranties extending to projects which are approved by the Government of Thailand in accordance with the provisions of the aforesaid section, the Government of Thailand 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 Thailand will recognize the transfer to the United States of America of any right, title or interest of such person in assets, currency, credits, or other property on account of which such payment was made and the subrogation of the United States of America to any claim or cause of action of such person arising in connection therewith. The Government of Thailand shall also recognize any transfer to the Government of the United States of America pursuant to such guaranty of any compensation for loss covered by such guaranties received from any source other than the Government of the United States of America;
- b. That Baht 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

¹ 68 Stat. 847; 22 U.S.C. § 1933 (b).

comparable to the transactions covered by such guaranties, and that such Baht 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 Thailand to which the Government of the United States of America may be subrogated as the 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 you indicating that the foregoing provisions are acceptable to the Government of Thailand, 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, Sir, the renewed assurances of my high consideration.

For the Secretary of State:

WALTER S. ROBERTSON

The Honorable

M. R. THUATHIEP DEVAKUL,
Chargé d'Affaires ad interim
of Thailand.

The Thai Chargé d'Affaires ad interim to the Secretary of State

THE ROYAL THAI EMBASSY

WASHINGTON 8, D. C.

September 1, 1954

No. 2576/2497

EXCELLENCY,

I have the honour to refer to Your Excellency's note dated August 27, 1954, which reads as follows:

"I 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. I also confirm the understandings reached as a result of these conversations as follows:

The Governments of Thailand and of the United States of America will, upon the request of either of them, consult respecting projects in Thailand proposed by nationals of the United States of America with regard to which guaranties under the aforesaid Section 413 (b) (4), have been made or are under consideration. With respect to such guaranties extending to projects which are approved by the Government of Thailand in accordance with the provisions of the aforesaid Section, the Government of Thailand 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 Thailand will recognize the transfer to the United States of America of any right, title or interest of such person in assets, currency, credits, or other property on account of which such payment was made and the subrogation of the United States of America to any claim or cause of action of such person arising in connection therewith. The Government of Thailand shall also recognize any transfer to the Government of the United States of America pursuant to such guaranty of any compensation for loss covered by such guaranties received from any source other than the Government of the United States of America;
- b. That Baht 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 Baht 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 Thailand to which the Government of the United States of America may be subrogated as the 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 you indicating that the foregoing provisions are acceptable to the Government of Thailand, the Govern-

ment 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."

I have the honour to state, on behalf of the Government of Thailand, that the understandings between Your Excellency's Government and mine as stated in the note above referred to are correct and hereby confirmed.

Accept, Excellency, the assurances of my highest consideration.

T. DEVAKUL

(M. R. Thuaithep Devakul)
Charge d'Affaires ad interim

His Excellency
JOHN FOSTER DULLES,
Secretary of State,
Washington, D. C.

INVESTMENT GUARANTIES

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

**Amending the Agreement of August 27 and
September 1, 1954, and terminating the
Amending Agreement of August 27, 1957**

**Effected by Exchange of Notes
Signed at Bangkok December 22, 1965**

with

Memorandum of Understanding



THAILAND

Investment Guaranties

Agreement amending the agreement of August 27 and September 1, 1954, and terminating the amending agreement of August 27, 1957.

*Effected by exchange of notes
Signed at Bangkok December 22, 1965;
Entered into force December 22, 1965.
With Memorandum of Understanding.*

The American Ambassador to the Thai Minister for Foreign Affairs

No. 521

BANGKOK, December 22, 1965

EXCELLENCY,

I have the honour to refer to the Agreement, effected by the exchange of notes of August 27 and September 1, 1954,^[1] as amended by the Agreement effected by the exchange of notes of August 27, 1957,^[2] between our two Governments relating to investment guaranties which may be issued by the Government of the United States of America for investments in activities in Thailand. After the conclusion of these Agreements, legislation has been enacted by the United States as well as by Thailand enlarging the scope of international investments and facilitating foreign investment in industrial activities. In the United States the Foreign Assistance Act of 1961, as amended in 1962, 1963, and 1964, Part I, Title III,^[3] modifies and augments the coverage to be provided investors by investment guaranties that may be issued by the Government of the United States of America. In Thailand, the Promotion of Industrial Investment Act B.E. 2505 (1962), gives yet further advantages to foreign investors in a wide variety of industries, which are geared towards progressive economic development of the country.

The above-mentioned United States legislation has broadened the specific risk investment guaranty authority to provide for investment guaranties against loss due to revolution or insurrection, as well as loss due to war already covered by the above-mentioned Agreement of August 27, 1957. Also authorized is an extended risk guaranty which would supplement the specific risk guaranty authority providing United States Government investment guaranties against loss of

¹ TIAS 3086; 5 UST (pt. 3) 2258.

² TIAS 3902; 8 UST 1453.

³ 75 Stat. 429; 76 Stat. 256; 77 Stat. 381; 22 U.S.C. § 2181.

an investment from any risk including normal business risks other than fraud or misconduct for which the investor is responsible and other than normal insurable risks such as fire and theft.

However, the Government of the United States of America shall assert no claim against the host country resulting from a payment by the former for an extended risk guaranty invoked by reason of normal business loss except to the extent the private investor had unsatisfied claims against the Government of Thailand for goods delivered or services rendered to or for the account of the Government of Thailand. Neither the issuance of investment guaranties against loss due to war, revolution or insurrection nor the payment of compensation thereunder would give rise to a claim by the Government of the United States of America against the Government of Thailand.

In the interest of facilitating and increasing further participation of United States private investors in the economic development of Thailand, the Government of the United States of America is prepared to issue such investment guaranties for appropriate investments in activities approved by your Government.

In this connection, I have the honour to propose :

(a) that the undertakings between our respective Governments contained in the above-mentioned Agreement of August 27 and September 1, 1954, shall also apply to the present Agreement ;

(b) that the present Agreement, upon entering into force, shall terminate the Agreement effected by the exchange of notes of August 27, 1957 ; and

(c) that subparagraph (c) of the unnumbered third paragraph of the exchange of notes of August 27 and September 1, 1954, shall not be applicable to claims resulting from payments under guaranties other than payments for loss from inconvertibility, expropriation or confiscation.

Nothing in the subrogation and transfer contemplated in the Agreement effected by the exchange of notes of August 27 and September 1, 1954, as amended by this note and Your Excellency's reply agreeing thereto, shall give the Government of the United States of America greater rights against the assets of an enterprise in which a guaranteed investment has been made or greater claims in connection with such an investment than the rights and claims of the subrogating investor.

The enclosed copy of Title III, Part I of the Foreign Assistance Act of 1961, as amended,^[1] shall be substituted for the copy of Section 413(b)(4) of the Mutual Security Act of 1954,^[2] as amended, heretofore enclosed with the exchange of notes of August 27, 1957. The Promotion of Industrial Investment Act B.E. 2505 (1962) together with its annexure is also enclosed.^[1]

¹ Not printed.

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

Upon receipt of a note from Your Excellency indicating that the foregoing is acceptable to the Government of Thailand 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.

GRAHAM MARTIN

His Excellency
 THANAT KHOMAN,
*Minister for Foreign Affairs,
 Bangkok.*

The Thai Minister for Foreign Affairs to the American Ambassador

MINISTRY OF FOREIGN AFFAIRS

SARANROM PALACE

22nd December, B.E. 2508.

[1965]

No. 0603/45847

EXCELLENCY,

I have the honour to acknowledge the receipt of Your Excellency's Note No. 521 of to-day's date, which reads as follows:

"I have the honour to refer to the Agreement, effected by the exchange of notes of August 27 and September 1, 1954, as amended by the Agreement effected by the exchange of notes of August 27, 1957, between our two Governments relating to investment guaranties which may be issued by the Government of the United States of America for investments in activities in Thailand. After the conclusion of these Agreements, legislation has been enacted by the United States as well as by Thailand enlarging the scope of international investments and facilitating foreign investment in industrial activities. In the United States the Foreign Assistance Act of 1961, as amended in 1962, 1963 and 1964, Part I, Title III, modifies and augments the coverage to be provided investors by investment guaranties that may be issued by the Government of the United States of America. In Thailand, the Promotion of Industrial Investment Act B.E. 2505 (1962), gives yet further advantages to foreign investors in a wide variety of industries, which are geared towards progressive economic development of the country.

"The above-mentioned United States legislation has broadened the specific risk investment guaranty authority to provide for investment guaranties against loss due to revolution or insurrection, as well as loss due to war already covered by the above-mentioned Agreement of August 27, 1957. Also authorized is an extended

TIAS 5940

risk guaranty which would supplement the specific risk guaranty authority providing United States Government investment guaranties against loss of an investment from any risk including normal business risks other than fraud or misconduct for which the investor is responsible and other than normal insurable risks such as fire and theft.

"However, the Government of the United States of America shall assert no claim against the host country resulting from a payment by the former for an extended risk guaranty invoked by reason of normal business loss except to the extent the private investor had unsatisfied claims against the Government of Thailand for goods delivered or services rendered to or for the account of the Government of Thailand. Neither the issuance of investment guaranties against loss due to war, revolution or insurrection nor the payment of compensation thereunder would give rise to a claim by the Government of the United States of America against the Government of Thailand.

"In the interest of facilitating and increasing further participation of United States private investors in the economic development of Thailand, the Government of the United States of America is prepared to issue such investment guaranties for appropriate investments in activities approved by your Government.

"In this connection, I have the honour to propose:

(a) that the undertakings between our respective Governments contained in the above-mentioned Agreement of August 27 and September 1, 1954, shall also apply to the present Agreement:

(b) that the present Agreement, upon entering into force, shall terminate the Agreement effected by the exchange of notes of August 27, 1957; and

(c) that subparagraph (c) of the unnumbered third paragraph of the exchange of notes of August 27 and September 1, 1954, shall not be applicable to claims resulting from payments under guaranties other than payments for loss from inconvertibility, expropriation or confiscation.

"Nothing in the subrogation and transfer contemplated in the Agreement effected by the exchange of notes of August 27 and September 1, 1954, as amended by this note and Your Excellency's reply agreeing thereto, shall give the Government of the United States of America greater rights against the assets of an enterprise in which a guaranteed investment has been made or greater claims in connection with such an investment than the rights and claims of the subrogating investor.

"The enclosed copy of Title III, Part I of the Foreign Assistance Act of 1961, as amended, shall be substituted for the copy of Section 413(b) (4) of the Mutual Security Act of 1954, as amended, heretofore enclosed with the exchange of notes of August 27, 1957. The

Promotion of Industrial Investment Act B.E. 2505 (1962) together with its annexure is also enclosed.

"Upon receipt of a note from Your Excellency indicating that the foregoing is acceptable to the Government of Thailand 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."

I have the honour to state in reply that the proposals contained in the Note referred to above are acceptable to His Majesty's Government who therefore agree that the present Note and Your Excellency's Note under reply constitute an agreement between our two Governments on this subject.

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

TH. KHOMAN
Minister of Foreign Affairs.

His Excellency
Monsieur GRAHAM MARTIN,
*Ambassador Extraordinary and
Plenipotentiary of the
United States of America,
Bangkok.*

MEMORANDUM OF UNDERSTANDING

With reference to the exchange of notes of December 22, 1965, concluded by the Government of the United States of America and the Government of Thailand relating to investment guaranties which may be issued by the Government of the United States of America for investments in activities in Thailand, the Parties confirm their understanding as follows:

1. The Government of the United States of America will promptly notify the Government of Thailand of payment of any claims by the Government of the United States of America as a result of the guaranties given by the United States of America, and of the transfer or assignment to the United States Government of any assets or rights of a United States citizen as a result thereof. In addition, it is understood that the Government of Thailand will not be required to make any payments to the United States Government in the event and to the extent that the Government of Thailand has made payment to any United States investor as a result of loss under a guaranteed risk

prior to notification from the United States Government of the transfer or assignment to it or its becoming subrogee of any such claims of such United States investor.

2. Subparagraph (c) of the unnumbered fifth paragraph of the exchange of notes of December 22, 1965, shall not be considered to be an extension of the application of subparagraph (c) of the unnumbered third paragraph of the exchange of notes of August 27 and September 1, 1954, beyond that covered by that Agreement.

3. The expression "confiscation" used in subparagraph (c) of the unnumbered fifth paragraph of the exchange of notes of December 22, 1965, does not refer to confiscation carried out in accordance with international standards as a penalty imposed upon an offender for violation of internal or international law.

Done in duplicate at Bangkok on the 22nd December, 1965.

For the Government of the
United States of America :

GRAHAM MARTIN

(Graham Martin)
Ambassador

For the Government of
Thailand :

TH. KHOMAN

(Thanat Khoman)
Minister of Foreign Affairs