

INVESTMENT GUARANTIES

**Agreement Between the
UNITED STATES OF AMERICA
and PAPUA NEW GUINEA**

**Effected by Exchange of Notes
Signed at Port Moresby and Waigani
November 28, 1977 and April 4, 1978**



NOTE BY THE DEPARTMENT OF STATE

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PAPUA NEW GUINEA

Investment Guaranties

*Agreement effected by exchange of notes
Signed at Port Moresby and Waigani November 28, 1977 and
April 4, 1978;
Entered into force April 13, 1978.*

*The American Chargé d'Affaires ad interim to the Papua New Guinean
Minister for Foreign Affairs and Trade*

No. 61

PORT MORESBY, November 28, 1977.

EXCELLENCY:

I have the honor to refer to conversations which have recently taken place between representatives of our two governments relating to investments in Papua New Guinea which promote the development of economic resources and productive capacities of Papua New Guinea and to insurance and guarantees of such investments issued as an incentive by the Government of the United States of America. I also have the honor to confirm the following understandings reached as a result of those conversations:

1. When an investor proposes to invest in a project or activity within Papua New Guinea, with the assistance of insurance or guarantees (the "coverage") issued pursuant to this Agreement by the Government of the United States of America, the Government of the United States of America (the "Issuing Government") and the Government of Papua New Guinea (the "Host Government") shall, upon the request of either, consult respecting the nature of the project or activity.
2. The procedures set forth in this Agreement shall apply only with respect to coverage of investments in projects or activities approved by the Host Government as qualifying for coverage.
3. If the Issuing Government makes payment to any investor under coverage issued pursuant to this Agreement, the Host Government shall, subject to the provisions of Paragraph 4, recognize the transfer to the Issuing Government of any currency, credits, assets or investment on account of which payment under such coverage is made as well as the succession of the Issuing Government to any right, title,

claim, privilege or cause of action existing, or which may arise, in connection therewith. Nothing in this Agreement shall be deemed to prevent submission to any forum of a dispute relating to covered investment in accordance with an agreement between the Host Government and the transferring investor, including an agreement to refer disputes to the International Centre for the Settlement of Investment Disputes. The Issuing Government shall assert no greater rights than those of the transferring investor under the laws of the Host Government with respect of any interests transferred or succeeded to under this paragraph. The Issuing Government does, however, reserve its rights to assert a claim in its sovereign capacity in the eventuality of denial of justice or other question of state responsibility as defined in international law.

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

5. Amounts in the lawful currency of the Host Government and credits thereof acquired by the Issuing Government under coverage issued pursuant to this Agreement shall be accorded treatment no less favorable than that accorded to funds of nationals 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 Issuing Government for its use in the national territory of the Host Government.

6. (a) Differences between the two Governments concerning the interpretation of the provisions of this Agreement shall be resolved, 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 for such negotiations, it shall be submitted, at the request of either Government, to an arbitral tribunal for resolution in accordance with Paragraph 6(c).
- (b) Any claim, against either of the two Governments, arising from the events which may result in liability of the Issuing Government under coverage issued in accordance with the Agreement 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 to 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, at the request of either Government,

to an arbitral tribunal for resolution in accordance with Paragraph 6(c).

(c) The arbitral tribunal for resolution of disputes pursuant to Paragraphs 6(a) and 6(b) 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.

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.

8. This Agreement shall enter into force on the date of the Note by which the Host Government communicates to the Issuing Government that the Agreement has been approved in conformity with the Host Government's constitutional procedures.^[1]

¹ Apr. 13, 1978

Upon receipt of a Note from Your Excellency indicating that the foregoing provisions are acceptable to the Government of Papua New Guinea, 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.

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

RUSSELL OLSON

Chargé d'Affaires ad interim

His Excellency
EBIA OLEWALE,
*Minister for Foreign Affairs and Trade,
Port Moresby.*

*The Papua New Guinean Minister for Foreign Affairs and Trade to
the American Ambassador*



MINISTER FOR FOREIGN AFFAIRS AND TRADE,
PAPUA NEW GUINEA

Central Government Offices,
WAIGANI

4 April, 1978.

Excellency,

I acknowledge receipt of your letter of 28 November, 1977.

The text of that letter reads as follows:

"I have the honour to refer to conversations which have recently taken place between representatives of our two governments relating to investments in Papua New Guinea which promote the development of economic resources and productive capacities of Papua New Guinea and to insurance and guarantees of such investments issued as an incentive by the Government of the United States of America. I also have the honour to confirm the following understandings reached as a result of those conversations:

1. When an investor proposes to invest in a project or activity within Papua New Guinea, with the assistance of insurance or guarantees (the "coverage") issued pursuant to this Agreement by the Government of the United States of America, the Government of the United States of America (the "Issuing Government") and the Government of Papua New Guinea (the "Host Government") shall, upon the request of either, consult respecting the nature of the project or activity.

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2. The procedures set forth in this Agreement shall apply only with respect to coverage of investments in projects or activities approved by the Host Government as qualifying for coverage.

3. If the Issuing Government makes payment to any investor under coverage issued pursuant to this Agreement, the Host Government shall, subject to the provisions of Paragraph 4, recognize the transfer to the Issuing Government of any currency, credits, assets or investment on account of which payment under such coverage is made as well as the succession of the Issuing Government to any right, title, claim, privilege or cause of action existing, or which may arise, in connection therewith. Nothing in this Agreement shall be deemed to prevent submission to any forum of a dispute relating to covered investment in accordance with an agreement between the Host Government and the transferring investor, including an agreement to refer the disputes to the International Centre for the Settlement of Investment Disputes. The Issuing Government shall assert no greater rights than those of the transferring investor under the laws of the Host Government with respect of any interests transferred or succeeded to under this paragraph. The Issuing Government does, however, reserve its rights to assert a claim in its sovereign capacity in the eventuality of denial of justice or other question of state responsibility as defined in international law.

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

5. Amounts in the lawful currency of the Host Government and credits thereof acquired by the Issuing Government under coverage issued pursuant to this Agreement shall be accorded treatment no less favourable than that accorded to funds of nationals 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 Issuing Government for its use in the national territory of the Host Government.

6. (a) Differences between the two Governments concerning the interpretation of the provisions of this Agreement shall be resolved, 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 for such negotiations, it shall be submitted, at the request of either Government, to an arbitral tribunal for resolution in accordance with Paragraph 6(c).
- (b) Any claim, against either of the two Governments, arising from the events which may result in liability of the Issuing Government under coverage issued in accordance with the Agreement 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 to 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, at the request of either Government, to an arbitral tribunal for resolution in accordance with Paragraph 6(c).

(c) The arbitral tribunal for resolution of disputes pursuant to Paragraphs 6(a) and 6(b) 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.

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.

8. This Agreement shall enter into force on the date of the Note by which the Host Government communicates to the Issuing Government that the Agreement has been approved in conformity with the Host Government's constitutional procedures.

Upon receipt of a Note from Your Excellency indicating that the foregoing provisions are acceptable to the Government of Papua New Guinea, 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."

I wish to confirm that the foregoing Agreement is acceptable to the Government of Papua New Guinea and that your letter together with this reply will constitute an Agreement between our two Governments in this matter.

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

Niwia Ebia Olewale
NIWIA EBIA OLEWALE

Her Excellency,
Miss Mary Olmsted,
Ambassador,
Embassy of the United States
of America,
P.O. Box 3492,
PORT MORESBY.

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