

AGREEMENT DEALING WITH GUARANTY OF AMERICAN INVESTMENT OF PRIVATE CAPITAL IN TAIWAN

Article I. Note from Mr. Howard P. Jones, American Chargé D'affaires, a.i., to Dr, George K. C. Yeh, Chinese Minister of Foreign Affairs

Taipei, June 25, 1952

No. 211

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 III (b) (3) of the Economic Cooperation Act of 1948, as amended. I also have the honor to confirm the understandings reached as a result of these conversations as follows:

The Governments of the Republic of China and of the United States of America will, upon the request of either of them, consult respecting projects in Taiwan proposed by nationals of the United States of America with regard to which guaranties under Section III (b) (3) of the Economic Cooperation Act of 1948, as heretofore amended, have been made or are under consideration. With respect to such guaranties extending to projects which are approved by the Government of the Republic of China in accordance with the provisions of the aforesaid Section, the Government of the Republic of China 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 Republic of China will recognize the transfer to the Government of 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 Government of the United States of America to any claim or cause of action of such person arising in connection therewith, The Government of the Republic of China will 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 by such person from the Government of the Republic of China;

b. That New Taiwan 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, at the time of such acquisition, to private funds arising from transactions of United States nationals which are comparable to the transactions covered by such guaranties, and that such New Taiwan 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 Republic of China 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 negotiation 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 Republic of China, 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 highest consideration,

(Signed) Howard P. Jones

His Excellency Dr. George K. C. Yeh, Minister of Foreign Affairs, Republic of China, Taipei.

Article II. Note from Dr. George K. C. Yeh, Chinese Minister of Foreign Affairs, to Mr. Howard P. Jones, American Chargé D'affaires, a.i

(Translation)

Taipei, June 25th, 1952

Monsieur le Chargé d'Affaires:

I have the honor to acknowledge the receipt of your Note No. 211 of today's date, which reads as follows:

"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 III (b) (3) of the Economic Cooperation Act of 1948, as amended. I also have the honor to confirm the understandings reached as a result of these conversations as follows:

The Governments of the Republic of China and of the United States of America will, upon the request of either of them, consult respecting projects in Taiwan proposed by nationals of the United States of America with regard to which guaranties under Section III (b) (3) of the Economic Cooperation Act of 1948, as heretofore amended, have been made or are under consideration, With respect to such guaranties extending to projects which are approved by the Government of the Republic of China in accordance with the provisions of the aforesaid Section, the Government of the Republic of China 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 Republic of China will recognize the transfer to the Government of the United States of America of any right, title or interest of such person in assets, currency, credits, or other property on act count of which such payment was made and the subrogation of the Government of the United States of America to any claim or cause of action of such person arising in connection therewith. The Government of the Republic of China will 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 by such person from the Government of the Republic of China;

b. That New Taiwan 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, at the time of such acquisition, to private funds arising from transactions of United States nationals which are comparable to the transactions covered by such guaranties, and that such New Taiwan 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 Republic of China 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 negotiation 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 Republic of China, 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."

In reply, I have the honor to accept on behalf of the Government of the Republic of China the arrangements set forth in your Note under reference and to state that it is also the understanding of the Chinese Government that your Note and this reply shall be regarded as constituting an agreement between our two Governments and that such agreement shall enter into force as from today's date.

Please accept, Monsieur le Chargé d'Affaires, the renewed assurance of my high consideration.

(Signed) George K. C. Yeh

Mr. Howard P. Jones, Chargé d'Affaires, ai, American Embassy,

Taipei, Taiwan.

Exchange of notes for the revision of the agreement for guaranty of american investment of private capital in taiwan

I. Note from the American Ambassador to the Chinese Foreign Minister

No. 68 May 3, 1957 Excellency:

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

- a. All references to "the Economic Cooperation Act of 1948, as amended" in the exchange of notes of June 25, 1952, between our two Governments shall be changed to "the Mutual Security Act of 1954, as amended."
- b. Subparagraph (c) of the unnumbered third paragraph of the aforementioned exchange of notes shall not be applicable to the type of guaranties provided for in the following subparagraph (c).
- c. If the Government of the United States of America issues guaranties to cover losses by reason of war with respect to investments in Taiwan, the Government of the Republic of China agrees that nationals of the United States of America to whom such guaranties have been issued, will be accorded by the Government of the Republic of China treatment no less favorable than that accorded, in like circumstances, to its nationals or nationals of third countries, with reference to any reimbursement, compensation, indemnification, or any other payment, including the distribution of reparations received from enemy countries, that the Government of the Republic of China may make or pay for losses incurred by reason of war; if the Government of the United States of America makes payment in U.S. dollars to any national of the United States of America under a guaranty for losses by reason of war, the Government of the Republic of China will recognize the transfer to the United States of America of any right, privilege, or interest, or any part thereof, that such nationals may be granted or become entitled to as a result of the aforementioned treatment by the Government of the Republic of China.

All other provisions of the exchange of notes of June 25, 1952, between our two Governments shall remain in full force and effect.

Upon receipt of a note from Your Excellency indicating that the foregoing provisions are acceptable to the Government of the Republic of China, 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 highest consideration.

(Signed) Karl L. Rankin

His Excellency Dr. George K. C. Yeh, Minister of Foreign Affairs of the Republic of China, Taipei.

II. Note from the Chinese Foreign Minister to the American Ambassador to China

(Translation)

Taipei, May 3, 1957 Excellency:

I have the honor to acknowledge the receipt of Your Excellency's Note No. 68 of today's date, which reads as follows:

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

"a. All references to 'the Economic Cooperation Act of 1948, as amended' in the exchange of notes of June 25, 1952, between our two Governments shall be changed to 'the Mutual Security Act of 1954, as amended.'

"b. Subparagraph (c) of the unnumbered third paragraph of the aforementioned exchange of notes shall not be applicable to the type of guaranties provided for in the following subparagraph (c).

"c. If the Government of the United States of America issues guaranties to cover losses by reason of war with respect to investments in Taiwan, the Government of the Republic of China agrees that nationals of the United States of America to whom such guaranties have been issued, will be accorded by the Government of the Republic of China treatment no less favorable than that accorded, in like circumstances, to its nationals or nationals of third countries, with reference to any reimbursement, compensation, indemnification, or any other payment, including the distribution of reparations received from enemy countries, that the Government of the Republic of China may make or pay for losses incurred by reason of war; if the Government of the United States of America makes payment in U.S. dollars to any national of the United States of America under a guaranty for losses by reason of war, the Government of the Republic of China will recognize the transfer

to the United States of America of any sight, privilege, or interest, or any part thereof, that such nationals may be granted or become entitled to as a result of the aforementioned treatment by the Government of the Republic of China.

"All other provisions of the exchange of notes of June 25, 1952, between our two Governments shall remain in full force and effect.

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

In reply, I have the honor to accept on behalf of the Government of the Republic of China the understandings set forth in Your Excellency's note under reference and to state that Your Excellency's note and this note shall be regarded as constituting an agreement between the two Governments which shall become effective. from today's date.

Please accept, Excellency, the renewed assurances of my highest consideration.

(Signed) George K. C. Yeh

His Excellency Karl L. Rankin,

Ambassador of the United States of America, Taipei.

Exchange of notes between the government of the republic of china and the government of the united states of america amending the agreement relating to investment guaranties

I. Note from Mr. Jerauld Wright, American Ambassador, to Mr. Shen Chang-huan, Chinese Minister of Foreign Affairs

Taipei December 30, 1963 No. 42

Excellency:

I have the honor to refer to the Agreement effected by the exchange of notes of June 25, 1952 as amended by the agreement effected by the exchange of notes of May 3, 1957, between our two Governments relating to investment guaranties which may be issued by the Government of the United States of America for American investments in activities in Taiwan. After the conclusion of these Agreements, 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,

In the interest of facilitating and increasing the participation of private enterprise in furthering economic development in Taiwan, 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 approve by your Government provided that your Government agrees that the undertakings between ow' respective Governments contained in the Agreement effected by the exchange of notes on June 25, 1952 will be applicable to such guaranties including, but not limited to, those issued under the Mutual Security Act of 1954, as amended, and the Act for International Development of 1961, as amended.

I have the honor to propose further that the abovementioned Agreement effected by exchange of notes of May 3, 1957 will terminate upon the entry into force of the present Agreement.

Upon receipt of a note from Your Excellency indicating that the foregoing is acceptable to the Government of the Republic of China 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 Ageement to enter into force on the date of your note in reply,

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

(Signed) Jerauld Wright His Excellency Shen Chang-huan

Minister of Foreign Affairs Taipei

II. Note from Mr, Shen Chang-huan, Chinese Minister of Foreign Affairs, to Mr, Jerauld

Wright American Ambassador

(Translation)

Taipei December 30, 1963

Excellency:

I have the honor to acknowledge the receipt of Your Excellency's Note No, 42 of today's date, which reads as follows:

"I have the honor to refer to the Agreement effected by the exchange of notes of June 25, 1952 as amended by the agreement effected by the exchange of notes of May 3, 1957, between our two Governments relating to investment guaranties which may be issued by the Government of the United States of America for American investments in activities in Taiwan. After the conclusion of these Agreements, 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.

"In the interest of facilitating and increasing the participation of private enterprise in furthering economic development in Taiwan, 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 Agreement effected by the exchange of notes on June 25, 1952 will be applicable to such guaranties including, but not limited to, those issued under the Mutual Security Act of 1964, as amended, and the Act for International Development of 1961, as amended.

"I have the honor to propose further that the abovementioned Agreement effected by exchange of notes of May 3, 1957 will terminate upon the entry into force of the present Agreement.

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

In reply, I have the honor to accept on behalf of the Government of the Republic of China the understandings set forth in Your Excellency's note under reference and to state that Your Excellency's note and this note shall be regarded as constituting an agreement between the two Governments which shall become effective from today's date.

Please accept, Your Excellency, the renewed assurances of my highest consideration.

(Signed) Shen Chang-huan

His Excellency

Jerauld Wright

Ambassador of the United States of America Taipei

Aide-memoire

Reference is made to the Embassy's letter of January 14, 1963 which proposed to the Government of the Republic of China an amendment to the investment guaranty agreement between our two Governments effected by the exchange of notes of June 25, 1952 and May 3, 1957 which provides for guaranties of United States investments in Taiwan against inconvertibility, expropriation, and loss due to war.

In view of the liberalized guaranty authority authorized by Title II of the Act for International Development of 1961, as amended, the Government of the United States of America is now enabled to offer additional types of investment guaranties and wishes to conclude an amendment to the investment guaranty agreement between our two Governments to make available to the Republic of China the benefits of this new legislation which includes guaranties against loss due to revolution or insurrection and extended risk guaranties.

I. United States Government Investment Guaranties

A brief description of the existing and new types of investment guaranties available under the reference AID legislation is

given in the following paragraphs A and B:

A. Specific Risk Guaranties (Section 221(b)(1))

Convertibility Guaranties. If, in the course of 20 years, a host country government is obliged to institute currency exchange controls and to restrict the exchange of local currency into United States dollars of a United States investor's Capital investment and/or annual receipts, a guaranteed United States investor, under an invoked convertibility guaranty, may transfer his restricted local currencies to the account of the Government of the United States of America in the host country and be compensated in United States dollars in the United States of America. The local currencies transferred from the guaranteed United States investor to the Government of the United States of America would be used in the host country for local States private investors in the host country could again convert local currency into United States dollars.

Expropriation Guaranties. In the case of an invoked expropriation guaranty, the Government of the United States of America would reimburse a United States investor for loss of his investment due to expropriation or confiscation by the host country government.

The Government of the United States of America would have an interest as successor in the investor's claim to compensation and, depending on the extent of relief provided under the guaranty, might become transferee of the investor's unexpropriated property.

War, Revolution or Insurrection. A guaranty against loss due to war, revolution or insurrection assures a United States investor that the Government of the United States of America will reimburse him for losses in United States dollars if the physical property comprising a guaranteed investment suffers major damage from war, revolution or insurrection (not civil strife).

There would be no cause of action-against the host country government if the Government of the United States of America paid off on such insurance unless the loss was attributable to acts by the host country Government which were wrongs under public international law.

B. Extended Risk Guaranties ("all-risk") (Section 221(b)(2))

Extended risk guaranties would insure a United States investor against loss of an investment from any risk (including normal business risks) other than fraud or misconduct for which the investor is responsible, and normally insurable risks such as fire or theft. An extended risk guaranty covers only an agreed share of the investment. These guaranties are issued in exceptional and specific cases which occupy high-priority positions in the host country's development.

There would be no claim against the host country resulting from a payment by the Government of the United States of America for an extended risk guaranty involved solely by reason of normal business loss.

II. Obligations of the Host Country Government

The agreement of the host country government to the issuance by the Government of the United States of America of the new guaranty coverage would extend the obligations undertaken in the existing agreement to the new types of guaranties but otherwise would not increase the contingent liability of the host country Government to the Government of the United States of America. It would there by provide for the transfer to the Government of the United States of America of the former investor's rights and interests such as commercial claims in connection with a guaranteed investment project for which the Government of the United States of America has made payment under an invoked guaranty. With respect to the new types of investment guaranty coverage, the contingent liabilities of the host country government would continue to be no different than they would be under public international law without a bilateral agreement. The effect of the amendment would be to make the presently existing procedures for resolving differences through negotiation or arbitration applicable to any international law claim arising out of an investment covered by the new guaranties.

It is unlikely that any intergovernmental claims would arise against the host country government in connection with a guaranty against war, revolution or insurrection, or against extended risks.

III. Guaranty Approvals

The Government of the United States of America continues to agree not to issue investment guaranties for any United States investment project unless that project has been approved by the host country Government.

It is hoped that the Government of the Republic of China will agree that the Government of the United States of America may issue the new investment guaranties described above and that the agreed obligations between our two Governments

contained in the exchange of notes of June 25, 1952 will be applicable to such guaranties. It is believed that a further exchange of notes could accomplish this purpose and with this in mind, a revised proposed draft note amendment text is enclosed.

Enclosures:

1, Text of Title III of the Act for International Development of 1961, as amended in 1962.

2, Text of proposed draft note investment guaranty amendment.

Embassy of the United States of America Taipei, December 30, 1963

Exchange of notes between the government of the republic of china and the government of the united states of america relating to special approval procedure of the constrution contracts under the agreement relating to investment guaraties

I. Note from Mr. Walter P. McConaughy, American Ambassador to Mr. Chow Shu-kai, Chinese Minister of Foreign Affairs

No, 4 Taipei, March 30, 1972

Excellency:

I have the honor to refer to the Agreement between our two Governments on the subject of United States Government investment insurance and guaranties and to the paragraph of that Agreement which provides that the United States Government will issue no insurance or guaranty with regard to any project unless it is approved by the Government of the Republic of China.

When the Government of the Republic of China or an agency thereof has entered into a construction contract with a private United States construction firm the United States Government is willing to consider the award of such a construction contract as an indication of approval of the project by your Government under the aforementioned paragraph of the subject Agreement. No further approval shall be required to enable the United States Government to issue investment insurance or guaranties for said construction project. The United States Government trusts that this also represents the view of the Government of the Republic of China

This special approval procedure shall only pertain to construction contracts between your Government or an agency thereof and private United States construction firms for such projects and shall be in lieu of the regular approval procedures established between our two Governments for the approval of investment projects to be subject of United States Government insurance or guaranties,

I would appreciate receiving your Excellency's confirmation that this procedure is acceptable to the Government of the Republic of China.

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

(Signed)

Walter P. McConaughy

His Excellency Chow Shu-kai,

Minister of Foreign Affairs,

Taipei.

II. Note from Mr, Chow Shu-kai, Chinese Minister of Foreign Affairs to Mr. Walter P. McConaughy, American Ambassador

TRANSLATION

Taipei, May 26, 1972

Excellency,

I have the honor to acknowledge receipt of Your Excellency's note dated. March 39, 1972 which reads as follows:

"I have the honor to refer to the Agreement between our two Governments on the subject of United States Governments investment insurance and guaranties and to the paragraph of that Agreement which provides that the United States Government will issue no insurance or guaranty with regard to any project unless it is approved by the Government of the Republic of China.

"When the Government of the Republic of China or an agency thereof has entered into a construction contract with a private United States construction firm the United States Government is willing to consider the award of such a construction contract as an indication of approval of the project by your Government under the aforementioned paragraph of the subject Agreement, No further approval shall be required to enable the United States Government to issue investment insurance or guaranties for said construction project. The United States Government trusts that this also represents the view of the Government of the Republic of China.

"This special approval procedure shall only j pertain to construction contracts between your Government or an agency thereof and private United States construction firms for such projects and shall be in lieu of the regular approval procedures established between our two Governments for the approval of investment projects to be subject of United States Government insurance or guaranties.

"I would appreciate receiving your Excellency's confirmation that this procedure is acceptable to the Government of the Republic of China."

In reply, I have the honor to accept, on behalf of my Government, the special approval procedure proposed by, the Government of the United States as set forth in Your Excellency's Note quoted above and to confirm that Your Excellency's Note and this Note in répy shall constitute an Agreement between our two Governments to enter into force as from today's date.

Accept, Excellency, the assurances. of my highest consideration

(Signed) Chow Shu-kai

His Excellency

Walter P. McConaughy

Ambassador Extraordinary and Plenipotentiary of the United States of America

Taipei.