

between the Government of the between the Government of une United Kingdom of Great Britain and Northern Ireland and the Government of the United States of America

constituting an Investment Incentive Agreement on behalf of the Government of Anguilla

Presented to Parliament by the Secretary of State for Foreign and Commonwealth Affairs by Command of Her Majesty by Command of Her Majesty July 1988

Cm 427

## UNITED STATES OF AMERICA

# Exchange of Notes

London, 9 November 1987 [The Agreement entered into force on 9 November 1987]

LONDON HER MAJESTY'S STATIONERY OFFICE

### **EXCHANGE OF NOTES** BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA CONSTITUTING AN INVESTMENT INCENTIVE AGREEMENT ON BEHALF OF THE **GOVERNMENT OF ANGUILLA**

No. 1

The Chargé d'Affaires a.i. of the American Embassy at London to the Parliamentary Under-Secretary of State for Foreign and Commonwealth Affairs

> Embassy of the United States of America London 9 November 1987

No. 103

## Excellency:

I have the honor to refer to discussions which have recently taken place between of the United Kingdom of the Onited States of America and the Government of the United Kingdom of Great Britain and Northern Ireland, on behalf of the Government of Anguilla, relating to economic activities in Anguilla which promote the development of the approximation of the approxima development of the economic resources and productive capacities of Anguilla and to investment insurance (including to economic activities in Anguilla which productive productive capacities of Anguilla and to investment insurance (including reinsurance) and guaranties 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 Original of the United States of America and are administered either directly by the Overseas Private Investment Corporation ("OPIC"), an independent coverseas Original Investment Corporation ("OPIC"), of independent government corporation organized under laws of the United States of America, or pursuant to arrange America, or pursuant to arrangements between OPIC and commercial insurance, reinsurance and other companies.

I also have the honor to confirm that the Government of the United States of America is prepared to conclude an agreement with the Government of the United States of Amore Great Britain and Northern Iroland and to be the United Kingdom of Great Britain and Northern Ireland, on behalf of the Government of Anguilla, in accordance with the following terms of the Government of Anguilla, in accordance with the following terms and conditions:

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

2. The procedures set forth in this Agreement shall apply only with respect to Coverage relating to projects or activities and the shall apply only with respect to the source by the Coverage relating to projects or activities registered with or otherwise approved by the Government of Anguilla or to projects with Government of Anguilla or to projects with respect to which the party under Coverage seeks to enter or has entered into a contract to which the party under Coverage seeks to enter or has entered into a contract with respect to which the party under Coveragency or political subdivision thereof into a contract with the Government of Anguilla, or any cervices. agency or political subdivision thereof, involving the provision of goods or services.

3. (a) If the Issuer makes payment to any party under Coverage, the Government of Anguilla shall, subject to the anomaly under Coverage, the Government of Anguilla shall, subject to the provisions of Paragraph 4 hereof, recognize the transfer to the Issuer of any any anguard of Paragraph 4 hereof, recognize the transfer to the Issuer of any currency, credits, assets, or investment the transfer to the law ment under the transfer to the law ment under the transfer to the law ment under the transfer to the payment under the payment the transfer to the payment the transfer to the payment the transfer to the payment th account of which payment under such Coverage is made as well as the succession of the Issuer to any right with 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.

The Issuer shall assert no greater rights than those of the transferring party under Coverage with respect to any the transferring party (b) under Coverage with respect to any interests transferred or succeeded to under Paragraph 3. Nothing in this under Paragraph 3. Nothing in this Agreement shall limit the right of the Government of the United States Agreement shall limit the right of under Government of the United States of America to assert a claim under house the sovereign and the sovereign and the states of the s international law in its sovereign capacity, as distinct from any rights it may

- activity in Anguilla shall not subject the Issuer to regulation under the laws of Anguilla applicable to insurance or financial organizations.
- Issuer shall be exempt from all taxes upon income, real property or sales, from customs duties, and from any other similar taxes or levies in Anguilla.

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

5. Amounts in the lawful currency of Anguilla, including credits thereof, acquired by the Issuer burning the Government the Issuer by virtue of such Coverage shall be accorded treatment by the Government of Anguilla no loss function that the treatment to which such of Anguilla no less favorable as to use and conversion than the treatment to which such funds would be appreciated. funds would be entitled in the hands of the party under Coverage. Such amounts and credits may be true. credits may be transferred by the Issuer to any person or entity and upon such transfer shall be freely available. shall be freely available for use by such person or entity in the territory of Anguilla.

6. (a) Any dispute between the Government of the United States of America and the Government of the United States of America and the Government of the United Kingdom, including Anguilla, regarding the interpretation of the United Kingdom, including Anguilla, regarding the Government of the United Kingdom, including Anguilla, regarding the interpretation of this Agreement or which, in the opinion of one of the Governments including agreement of any lie international law arising out of Governments, involves a question of public international law arising out of any project or notivity for which Courses has been issued shall be resolved,

- Overnments, involves a question of public international law arising out of any project or activity for which Coverage has been issued shall be resolved, insofar as possible at insofar as possible, through negotiations between the Governments. If at the end of three months follows the for negotiations the Governments are the follows the formed the follows the follow ansolar as possible, through negotiations between the Governments. If at me end of three months following the request for negotiations the Government have not resolved the dispute by organized the dispute, including have not resolved the dispute by agreement, the dispute, including the question of whether we have a question of public international uave not resolved the dispute by agreement, the dispute, including une question of whether such dispute presents a question of public international law, shall be submitted of the initiative of either Government, to an arbitral law, shall be submitted, at the initiative of either Government, to an arbitral tribunal for resolution international for resolution in the submitted of either Baragraph 6(b). (b) The arbitral tribunal for resolution of disputes pursuant to Paragraph 6(a) shall be established and function of follows: tribunal for resolution in accordance with Paragraph 6(b).
  - - shall be appointed within two months and the president within the foregoing time months of the date of receipt of either Government's request for arbitration. If the appointments are not made within the foregoing months of the date of receipt of either Government's request ine arbitration. If the appointments are not made within the foregoing ement, limits, either Government may in the absence of any other agreement. arbitration. If the appointments are not made within the foregoing time limits, either Government may, in the absence of any other agreement request the Secretary General of the International Center for the Settlement of Investment Disputes to make the necessary appointment request the Secretary General of the International Center for ine Settlement of Investment Disputes to make the necessary appointment appointments, and both Governments agree to accept such appointment Settlement of Investment Disputes to make the necessary appointment of appointments, and both Governments agree to accept such appointments.

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 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; majority vote. Its decision shall be final and binding; (iii) each of the Governments shall pay the expense of its arbitral tribunal; and parts representation in the proceedings before the arbitral in equal parts each of the Governments shall pay the expense of its arbitrator and of its representation in the proceedings before the arbitral tribunal in equal pairs expenses of the president and the other costs shall be paid in equal pairs by the two Governments. The arbitral tribunal may adopt regulation 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; concerning the costs, consistent with the foregoing; regulate its own (iv) in all other matters, the arbitral tribunal shall regulate arbitral procedures. 7. The Agreement on Investment Guaranties effected 968<sup>1</sup> shall be superseded with respect to Anguilla by the entry into force of the present Agreement. Agreement on Investment Guaranties encourages is shall be s respect to Anguilla by the entry into force of the present Agreement.

(c) The issuance of Coverage outside of Anguilla with respect to a project or

(d) Funds introduced or acquired in Anguilla or withdrawn from Anguilla by the

 (i) each Government shall appoint one arbitrator; these two arbitrators arbitrators designate a president by common agreement who shall be a citizen of a designate a president by common agreement who shall be a citizen of a designate a president by common agreement who shall be a citizen of a designate a president by common agreement who shall be a citizen of a designate a president by common agreement who shall be a citizen of a designate a president by common agreement who shall be a citizen of a designate a president by common agreement who shall be a citizen of a designate a president by common agreement who shall be a citizen of a designate a president by common agreement who shall be a citizen of a designate a president by common agreement who shall be a citizen of a designate a president by common agreement who shall be a citizen of a designate a president by common agreement who shall be a citizen of a designate a president by common agreement who shall be a citizen of a designate a president by common agreement who shall be a citizen of a designate a president by common agreement who shall be a citizen of a designate a president by common agreement who shall be a citizen of a designate a d cach Government shall appoint one arbitrator; these two arbitrators snan designate a president by common agreement who shall be a citizen of a third state and be appointed by the two Governments. The arbitrators third state and be appointed by the two Governments. uesignate a president by common agreement who shall be a citizen of a arbitrators third state and be appointed by the two Governments. The arbitration shall be appointed within two months and the president within the formation of the president within the state of the president within the president w unrd state and be appointed by the two Governments. The arbitrations shall be appointed within two months and the president within three months of the date of receipt of either Government's request ime

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8. 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 Your Excellency indicating that the foregoing provisions are acceptable to the Government of the United Kingdom on behalf of the Government of Anguilla, the Government of the United States of America shall consider that this Note and Your Excellency's reply thereto shall constitute an Agreement between our Governments on this subject. This Agreement shall enter into force on the date of signature.

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

R. G. H. SEITZ

## No. 2

The Parliamentary Under-Secretary of State for Foreign and Commonwealth Affairs to the Chargé d'Affaires a.i. of the American Embassy at London

Foreign and Commonwealth Office London 9 November 1987

Sir,

I have the honour to acknowledge receipt of your Note No. 103 which reads as follows:

## [As in No.1]

I have the honour to inform Your Excellency that the foregoing proposal with respect Anguilla is acceptable to the Government of the foregoing proposal with respect to Anguilla is acceptable to the Government of the United Kingdom of Great Britain and Northern Ireland who therefore agree that W Northern Ireland who therefore agree that Your Excellency's Note and this reply shall constitute an Agreement between the tween tween tween the tween tween the tween tween tween the tween twee constitute an Agreement between the two Governments which shall come into force in accordance with the final paragraph of W accordance with the final paragraph of Your Excellency's Note.

I have the honour to convey to you Sir, the assurance of my high consideration.

TIM EGGAR

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