

UNITED STATES OF  
AMERICA



Treaty Series No. 45 (1988)

## 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

London, 9 November 1987

[The Agreement entered into force on 9 November 1987]

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

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**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 representatives of the Government of the United 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 economic resources and 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 Overseas Private Investment Corporation ("OPIC"), an independent government corporation organized under laws of the United States of 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 Kingdom of Great Britain and Northern Ireland, on behalf 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 issued in accordance with this Agreement by OPIC, by any successor agency of the United States of America or by any other entity or group of entities, pursuant to arrangements with OPIC or any successor agency, all of whom are hereinafter deemed included in the terms "Issuer" to the extent of their interest as insurer, reinsurer, or guarantor in any Coverage, whether as a party or 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 registered with or otherwise approved by the Government of Anguilla or to projects with respect to which the party under Coverage seeks to enter or has entered into a contract with the Government of Anguilla, or any 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 provisions of Paragraph 4 hereof, recognize the transfer to the Issuer of any currency, credits, assets, or investment on account of which payment under such 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.  
(b) The Issuer shall assert no greater rights than those of the transferring party under Coverage with respect to any interests transferred or succeeded to under Paragraph 3. Nothing in this Agreement shall limit the right of the Government of the United States of America to assert a claim under international law in its sovereign capacity, as distinct from any rights it may have as Issuer.

- (c) The issuance of Coverage outside of Anguilla with respect to a project or activity in Anguilla shall not subject the Issuer to regulation under the laws of Anguilla applicable to insurance or financial organizations.
- (d) Funds introduced or acquired in Anguilla or withdrawn from Anguilla by the 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 from a party under Coverage of any interest in any property within the territory of Anguilla by the Issuer, the Government of Anguilla shall permit such party and the Issuer to make appropriate arrangements pursuant to which such interests are 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 by virtue of such Coverage shall be accorded treatment by the Government of Anguilla no less favorable as to use and conversion than the treatment to which such funds would be entitled in the hands of the party under Coverage. Such amounts and credits may be transferred by the Issuer to any person or entity and upon such transfer 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 Kingdom, including Anguilla, regarding the interpretation of this Agreement or which, in the opinion of one of the Governments, 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, through negotiations between the Governments. If at the end of three months following the request for negotiations the Governments have not resolved the dispute by agreement, the dispute, including the question of whether such dispute presents a question of public international law, shall be submitted, at the initiative of either Government, to an arbitral tribunal for resolution in accordance with Paragraph 6(b).

(b) The arbitral tribunal for resolution of disputes pursuant to Paragraph 6(a) 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'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 Secretary General of the International Center for the Settlement of Investment Disputes 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;
- (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. The Agreement on Investment Guaranties effected by the Exchange of Notes signed at Basseterre, St. Christopher, on November 21, 1968<sup>1</sup> shall be superseded with respect to Anguilla by the entry into force of the present Agreement.

<sup>1</sup> UNTS Vol. 702 p. 311—Registered No. 10088.

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 to Anguilla is acceptable to the Government of the United Kingdom of Great Britain and Northern Ireland who therefore agree that Your Excellency's Note and this reply shall constitute an Agreement between the two Governments which shall come into force in 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