

UNITED STATES
OF AMERICA



Treaty Series No. 41 (1999)

Agreement

between the Government of the
United Kingdom of Great Britain and Northern Ireland
on behalf of the Turks and Caicos Islands and the
Government of the United States of America relating to

Investment Incentives

Washington, 20 April 1999

[The Agreement entered into force on 20 April 1999]

*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
July 1999*

**AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF
GREAT BRITAIN AND NORTHERN IRELAND ON BEHALF OF THE
TURKS AND CAICOS ISLANDS AND THE GOVERNMENT OF
THE UNITED STATES OF AMERICA RELATING TO
INVESTMENT INCENTIVES**

THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, on behalf of the Government of the Turks and Caicos Islands and THE GOVERNMENT OF THE UNITED STATES OF AMERICA;

AFFIRMING their common desire to encourage economic activities in the Turks and Caicos Islands that promote the development of the economic resources and productive capacities of the Turks and Caicos Islands; and

RECOGNIZING that this objective can be promoted through investment support provided by the Overseas Private Investment Corporation ("OPIC"), a development institution and an agency of the United States of America, in the form of investment insurance and reinsurance, debt and equity investments and investment guaranties;

HAVE AGREED as follows:

ARTICLE 1

As used in this Agreement, the following terms have the meanings herein provided. The term "Investment Support" refers to any debt or equity investment, any investment guaranty and any investment insurance or reinsurance which is provided by the Issuer in connection with a project in the territory of the Turks and Caicos Islands. The term "Issuer" refers to OPIC and any successor agency of the United States of America, and any agent of either. The term "Taxes" means all present and future taxes, levies, imposts, stamps, duties and charges, whether direct or indirect, imposed in the Turks and Caicos Islands and all liabilities with respect thereto.

ARTICLE 2

The Governments of the United Kingdom of Great Britain and Northern Ireland, including the Turks and Caicos Islands, and the United States of America, confirm their understanding that the Issuer's activities are governmental in nature and therefore:

- (a) The Issuer shall not be subject to regulation under the laws of the Turks and Caicos Islands applicable to insurance or financial organizations, but, in the provision of Investment Support, shall be afforded all rights and have access to all remedies of any such entity, whether domestic, foreign or multilateral.
- (b) All operations and activities undertaken by the Issuer in connection with any Investment Support, and all payments, whether of interest, principal, fees, dividends, premiums or the proceeds from the liquidation of assets or of any other nature, that are made, received or guaranteed by the Issuer in connection with any Investment Support shall be exempt from Taxes, whether imposed directly on the Issuer or payable in the first instance by others in respect of such payments. Neither projects receiving Investment Support nor investors in such projects shall be exempt from Taxes by operation of this Article, provided, however, that any project receiving Investment Support shall be accorded tax treatment no less favourable than that accorded to a project receiving investment support by any other national or multilateral development institution which operates in the Turks and Caicos Islands. The Issuer shall not be subject to Taxes in connection with any transfer, succession or other acquisition which occurs pursuant to paragraph (c) of this Article or Article 3(a) hereof, but obligations for Taxes previously accrued and unpaid with respect to interests received by the Issuer shall not be extinguished as a result of such transfer, succession or other acquisition.

- (c) If the Issuer makes a payment to any person or entity, or exercises its rights as a creditor or subrogee, in connection with any Investment Support, the Government of the Turks and Caicos Islands shall recognize the transfer to, or acquisition by, the Issuer of any cash, accounts, credits, instruments or other assets in connection with such payment or the exercise of such rights, 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; provided that, to the extent that the laws of the Turks and Caicos Islands partially or wholly invalidate or prohibit the transfer or acquisition of any such interest in any property within the territory of the Turks and Caicos Islands to the Issuer, the Government of the Turks and Caicos Islands shall permit the Issuer to make appropriate arrangements pursuant to which such interests are transferred to a person or entity permitted to own such interests under the laws of the Turks and Caicos Islands.
- (d) With respect to any interests transferred to the Issuer or any interests to which the Issuer succeeds under this Article, the Issuer shall assert no greater rights than those of the person or entity from whom such interests were received, provided that 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 the Issuer pursuant to paragraph (c) of this Article.

ARTICLE 3

- (a) Funds in the currency of the Turks and Caicos Islands, including cash, accounts, credits, instruments or otherwise, acquired by the Issuer upon making a payment, or upon the exercise of its rights as a creditor, in connection with any Investment Support provided by the Issuer for a project in the Turks and Caicos Islands, shall be accorded treatment in the territory of the Turks and Caicos Islands no less favourable as to use than the treatment to which such funds would have been entitled in the hands of the person or entity from which the Issuer acquired such amounts.
- (b) Such currency 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 the Turks and Caicos Islands in accordance with its laws.

ARTICLE 4

- (a) Any dispute between the Government of the United Kingdom of Great Britain and Northern Ireland, including the Turks and Caicos Islands and the Government of the United States of America, regarding the interpretation of this Agreement or which, in the opinion of one of the Governments, presents a question of international law arising out of any project or activity for which Investment Support has been provided shall be resolved, insofar as possible, through negotiations between the two Governments. If, six months following a request for negotiations hereunder, the two Governments have not resolved the dispute, the dispute, including the question of whether such dispute presents a question of international law, shall be submitted, at the initiative of either Government, to an arbitral tribunal for resolution in accordance with paragraph (b) of this Article.
- (b) The arbitral tribunal referred to in paragraph (a) of this Article shall be established and shall function as follows:
 - (i) Each Government shall appoint one arbitrator. These two arbitrators shall by agreement designate a president of the tribunal who shall be a citizen of a third state and whose appointment shall be subject to acceptance by the two Governments. The arbitrators shall be appointed within three months, and the president within six 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 Secretary-General of the International Centre for the Settlement of Investment Disputes to make the necessary appointment or appointments. Both Governments hereby agree to accept such appointment or appointments.

- (ii) Decisions of the arbitral tribunal shall be made by majority vote and shall be based on the applicable principles and rules of international law. Its decision shall be final and binding.
- (iii) During the proceedings, each Government shall bear the expense of its arbitrator and of its representation in the proceedings before the tribunal, whereas the expenses of the president and other costs of the arbitration shall be paid in equal parts by the two Governments. In its award, the arbitral tribunal may reallocate expenses and costs between the two Governments.
- (iv) In all other matters, the arbitral tribunal shall regulate its own procedures.

ARTICLE 5

- (a) This Agreement shall enter into force on the date of signature.
- (b) This Agreement shall continue in force until six months from the date of a receipt of a note by which one Government informs the other of an intent to terminate this Agreement. In such event, the provisions of this Agreement shall, with respect to Investment Support provided while this Agreement was in force, remain in force so long as such Investment Support remains outstanding, but in no case longer than twenty years after the termination of this Agreement.

IN WITNESS WHEREOF, the undersigned, duly authorized by their respective Governments, have signed this Agreement.

DONE in duplicate at Washington this 20 day of April, 1999.

FOR THE GOVERNMENT OF THE
UNITED KINGDOM OF GREAT
BRITAIN AND NORTHERN
IRELAND:

FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA:

S J L WRIGHT

GEORGE MUNOZ



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