

UNITED STATES
OF AMERICA



Treaty Series No. 70 (1984)

Exchange of Letters

between the Government of the
United Kingdom of Great Britain and Northern Ireland
and the Government of the United States of
America concerning the Cayman Islands and
Matters connected with, arising from, related to, or
resulting from any Narcotics Activity referred to in
the Single Convention on Narcotic Drugs, 1961, as
amended by the Protocol amending the Single
Convention on Narcotic Drugs, 1961

London, 26 July 1984

[The Agreement entered into force on 29 August 1984]

*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
October 1984*

LONDON

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**EXCHANGE OF LETTERS
BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF
GREAT BRITAIN AND NORTHERN IRELAND AND THE
GOVERNMENT OF THE UNITED STATES OF AMERICA
CONCERNING THE CAYMAN ISLANDS AND MATTERS
CONNECTED WITH, ARISING FROM, RELATED TO, OR
RESULTING FROM ANY NARCOTICS ACTIVITY REFERRED TO
IN THE SINGLE CONVENTION ON NARCOTIC DRUGS, 1961, AS
AMENDED BY THE PROTOCOL AMENDING THE SINGLE
CONVENTION ON NARCOTIC DRUGS, 1961**

No. 1

*The Minister of State for Foreign and Commonwealth Affairs to the
United States Ambassador at London*

*Foreign and Commonwealth Office
London*

26 July 1984

Your Excellency,

I have the honour to refer to the recent discussions between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States of America regarding the deep concern of our Governments and that of the Cayman Islands to provide that the Cayman laws protecting confidential relationships should not protect narcotics traffickers and to propose, consistent with the Single Convention on Narcotic Drugs, 1961 as amended by the Protocol amending the said Convention⁽¹⁾ (hereinafter collectively called "the Convention"), in particular Articles 35 and 36 thereof, the following agreement:

1. Definitions.

For the purpose of this Agreement:

1.1 "Assistor" means the person from whom documentary information is sought under the Certificate;

1.2 "Cayman" means "the Cayman Islands".

"United Kingdom" means "the United Kingdom of Great Britain and Northern Ireland".

"United States" means "the United States of America";

1.3 "Certificate" means the document used by the United States Attorney General to request documentary information, the particulars of and form for which are provided in the Annex to this Agreement;

1.4 "documentary information" includes, but is not limited to, any document, memorandum, report, record, or data compilation in any form,

(¹) Treaty Series No. 23 (1979), Cmnd. 7466.

and any plan, graph, drawing, or photograph, and any disc, tape, or other device for audio reproduction or computer use, and any film, negative, tape or other device for visual image reproduction;

1.5 "foundation testimony" means witness testimony solely for the purpose of securing the acceptance as admissible evidence in proceedings in the United States of documentary information as specified in paragraph 3.1; and

1.6 "official records" means—

- (i) publicly available records of the Cayman Government, its Departments and agencies; and
- (ii) any record or information in the possession of the Cayman Government, its Departments and agencies not publicly available but which the Cayman Government may make available subject to such terms and conditions as it may specify.

2. Matters Falling Within the Scope of the Agreement.

2.1 This Agreement applies to all offences or ancillary civil or administrative proceedings taken by the United States Government or its agencies connected with, arising from, related to, or resulting from any narcotics activity referred to in Article 36 of the Convention and falling within the jurisdiction of the United States.

3. Procedure to Secure Documentary Information.

3.1 When the Attorney General of the United States has reason to believe that—

- (i) identified persons are involved in a matter falling within the scope of this Agreement; and
- (ii) documentary information relevant to the resolution of that matter is located within Cayman,

he may issue a Certificate to the Attorney-General of Cayman requesting that information.

3.2.a. Upon receipt of a Certificate the Cayman Attorney-General will issue to the Assistor a notice requiring the Assistor to produce to the Cayman Attorney-General the documentary information requested pursuant to paragraph 3.1 above in the Assistor's possession, custody or control within 14 days of the date of the said notice unless that period is extended for good cause with the concurrence of the United States Attorney General or is shortened with the concurrence of the Cayman Attorney-General.

3.2.b. To ensure production of the documentary information Cayman will provide that, if the Assistor refuses to produce the documentary information, the Assistor will be liable to a substantial fine and imprisonment, and that Cayman will seize the documentary information.

3.3. The Cayman Attorney-General will not notify the Assistor of the issue of the Certificate prior to the issue of the notice referred to in paragraph 3.2.a unless the United States Attorney General or his designee requests or agrees in writing to such notification.

3.4 The Assistor will not be permitted to notify other third persons of the Certificate, the said notice, the documentary information or any communications in connection with the enquiry for a period of 90 days from the date of the Certificate or for a further period of 90 days on request of the United States Attorney General or his designee to the Cayman Attorney-General or for such a further period or periods thereafter as may be mutually agreed between the said Attorneys General and communicated to the Assistor.

3.5 The relevant United States Government prosecutor may if necessary liaise with the Assistor to assist in the identification of documentary information subject to the prior written consent of the Cayman Attorney-General. The prosecutor may also liaise with the Cayman Commissioner of Police if necessary.

3.6 Promptly upon receipt of any documentary information from the Assistor, the Cayman Attorney-General will send the same to the United States Attorney General.

4. Authentication of Documentary Information and Foundation Testimony.

A. Authentication and Attestation of Official Records.

4.A.1. Official records produced in response to the Certificate will be authenticated in Cayman by the attestation of an authorised person in the manner indicated in Form A attached hereto. The attestation will be signed by, and state the official position of, the attesting person, and the seal of the authority executing the request will be affixed thereto. Authentication of official records will be carried out in Cayman under the provisions of the Convention Abolishing the Requirement of Legislation for Foreign Public Documents dated 5 October 1961.

B. Authentication and Attestation of Documentary Information other than Official Records.

4.B.1. Documentary information other than official records produced by the Assistor in response to the Certificate will be authenticated in Cayman by the attestation of a person competent to do so in the manner indicated in Form B attached hereto.

C. Foundation Testimony.

4.C.1. Foundation testimony, with respect to documents provided under this Agreement, will be by way of affidavit, deposition taken in Cayman, voluntary appearance by a witness at proceedings specified in paragraph 2 above in the United States, or such other procedure as may be mutually agreed upon.

4.C.2. Upon the request of the United States Attorney General or his designee, the Assistor will swear an affidavit in Cayman containing such recitals as are necessary for foundation testimony.

4.C.3. The United States Attorney General or his designee may request, and the Assistor will provide, foundation testimony at a deposition in Cayman under rule 15 of the United States Federal Rules of Criminal Procedure.

4.C.4. An Assistor providing foundation testimony under the provisions of paragraph 4.C.2 or 4.C.3, will enjoy the protection of Cayman law as regards immunity, self-incrimination, privilege and incapacity. Cayman will provide by way of legislation the procedure to be followed when such protection is invoked.

4.C.5. Should it become necessary for the successful conduct of the proceedings in the United States that foundation testimony be obtained the United States Attorney General or his designee may request the Assistor to attend the relevant Court in the United States to provide such testimony.

4.C.6. An Assistor, who provides foundation testimony under any of paragraphs 4.C.2, 4.C.3 or 4.C.5 will enjoy, in accordance with and to the full extent allowed under United States law, the protection of United States law as regards immunity, self-incrimination, privilege and incapacity. This provision is in addition to and not in derogation of the provisions of paragraph 4.C.4.

4.C.7. The United States Attorney General or his designee will advise the Cayman Attorney-General in writing prior to any request being made pursuant to paragraphs 4.C.2, 4.C.3 and 4.C.5.

5. Consultation.

5.1 The United States Attorney General or his designee and the Cayman Attorney-General will consult, as mutually determined by them, to enable the most effective use to be made of this Agreement. Such consultations will include the status and disposition of proceedings utilising documentary information secured pursuant to this agreement as may be lawfully disclosed.

5.2 In any case of difficulty either the Cayman Government or the United States Government may request the assistance of the United Kingdom Government to resolve the difficulty by way of consultation.

6. Exclusivity.

6.1 No Federal subpoena (including a Grand Jury subpoena) related to documentary information located in Cayman in any matter falling within paragraph 2.1 of this Agreement will be enforced in the United States without the prior agreement of either the United Kingdom Government or the Cayman Government.

7. Negotiation of a Law Enforcement Treaty.

7.1 The Governments of the United States and United Kingdom, including Cayman, agree to enter into negotiations concerning a Law Enforcement Treaty between the United States and Cayman concerning criminal matters.

7.2 If the Governments of the United States and United Kingdom, including Cayman, are satisfied that this Agreement is working satisfactorily, representatives of the said Governments will meet nine months after the date this Agreement comes into operation to negotiate the said Treaty.

7.3. The Governments of the United States and United Kingdom, including Cayman, will use their best endeavours to conclude a Law Enforcement Treaty within fifteen months of the date this Agreement comes into operation with the intention to bring such a Treaty into force as soon thereafter as their constitutional procedures will allow.

8. Coming into Operation of the Agreement.

8.1 This Agreement will come into operation on the date the United Kingdom Government notifies the United States Government in writing that the Cayman legislation implementing this Agreement has come into effect⁽²⁾.

9. Termination of the Agreement.

9.1 The Government of either the United States or the United Kingdom, including Cayman, may terminate this Agreement by giving one calendar month's notice in writing to the other Governments at any time after the expiration of two calendar months from the date of its coming into operation. Prior to issuing such notice of termination, the Government doing so will consult with the other Governments.

10. Expiration of the Agreement.

10.1 This Agreement will expire fifteen calendar months from the date of its coming into operation unless it is extended by the mutual agreement of the Governments of the United States and the United Kingdom, including Cayman.

I shall be grateful for your confirmation that the Government of the United States is in agreement with the foregoing and that this letter and your reply to that effect will constitute an agreement between our two Governments.

I have the honour to convey to Your Excellency the assurances of my highest consideration,

MALCOLM RIFKIND

⁽²⁾ The Agreement entered into force on 29 August 1984.

ANNEX

THE CERTIFICATE

1. The Certificate will—

- (i) be signed by the United States Attorney General;
- (ii) in respect of Grand Jury proceedings identify those proceedings by Grand Jury number and in respect of an indictment identify such indictment by caption and docket number;
- (iii) certify that the United States Attorney General has reason to believe that a matter falling within the scope of this agreement has arisen;
- (iv) request that the Cayman Attorney-General secure the documents identified by the United States Attorney General;
- (v) declare that the information is relevant to the successful resolution of the matter; and
- (vi) undertake that, save with the consent of the Cayman Government, the information will not be used for any purposes other than the resolution of matters encompassed by this agreement.

2. Only one Certificate will be required to enable the production of the documentary information relating to the matter which is the subject of the Certificate.

3. The Certificate will be drawn in the following manner:

CERTIFICATE

Grand Jury Number:/ Indictment Caption and Docket Number:

Having regard to the provisions of the agreement between the Governments of the United States of America and the United Kingdom of Great Britain and Northern Ireland dated I,, the Attorney General of the United States of America, hereby certify as follows:

(1) I have reason to believe that individuals and entities, identified by United States law enforcement officers, are involved in a matter falling within Article 36 of the Single Convention on Narcotic Drugs, 1961, as more fully described in the agreement.

(2) I request that you, the Attorney-General of the Cayman Islands, secure to me, the Attorney General of the United States, that documentary *information believed by me to be held by the following [Person] which is* described in the schedule and believed by me to be relevant to the resolution of the matter in hand, as well as other documentary information subsequently identified by the United States Attorney General or his designee as being relevant to the resolution of the matter in hand.

(3) The said documentary information will not be used or disclosed by the United States Government or its agencies for any purposes other than the resolution of matters encompassed by the said agreement without the written consent of the Cayman Government through the Cayman Attorney-General.

SCHEDULE

[Signed]

*Attorney General of the
United States of America*

FORM A

ATTESTATION OF AUTHENTICITY OF OFFICIAL RECORDS

I, _____, attest that my position with the Government of the Cayman Islands is _____ and that in that position I am
Official Title

authorized by the law of the Cayman Islands/United Kingdom to attest that the documents attached hereto and described below:

(1) Are true copies of original official records which are authorized by the law of the Cayman Islands/United Kingdom to be recorded or filed in

Name of Public Office or Agency
which is a public office or agency.

(2) Set forth matters which are required by the law of the Cayman Islands/United Kingdom to be recorded or filed and reported.

Description of Documents:

Signature

Date

FORM B

AFFIDAVIT WITH RESPECT TO DOCUMENTS OF A REGULARLY
CONDUCTED BUSINESS ACTIVITY

[Note: Affidavit must be executed by Custodian of Records or such other person who can explain the Record Keeping Procedure.]

I *(swear) *(affirm) *(on penalty of perjury) *(on my oath) as follows:

(1) I am employed by.....

.....
(Name of business, activity, or person from whom documents are sought.)

(2)
(Name of business, activity, or person from whom documents are sought.)

engages in the regular business of
(Describe business or activity.)

(3) My official title is

(4) My duties and responsibilities include.....

.....
(Describe relationship to books and records *i.e.* Custodian of books and records, or supervision over books and records, etc.)

(5) As a result of my duties and responsibilities I have knowledge of the manner in which the books and records are kept.

(6) The attached documents are original (or true copies of original) documents which I obtained from the custody and control of.....

.....
(Name of business, activity, or person from whom documents are sought.)

(7) The attached documents are.....

.....
(Description of documents: *e.g.* "Ledger of the checking account of John Doe for the month of July, 1983".)

(8) It is a regular practice of this business to make and keep.....

..... in the
(Description of documents.)

following manner

.....
(Describe manner in which documents or categories of documents are made and kept.)

(9) It is the regular practice of the business to base its records upon information transmitted by a person with knowledge of the matters recorded, who was acting in the course of the regularly conducted business activity.

(10) It is the regular practice of the business to check the correctness of documents of the kind attached hereto.

(11) It is the regular practice of the business to rely on records of the kind attached hereto.

(12) The entries on the documents attached hereto were made by persons with knowledge of the matters recorded, or from information transmitted by persons with such knowledge.

(13) The persons making the entries on the documents or transmitting the information for purposes of recording it were acting in the course of the regularly conducted business or activity.

(14) The entries on these documents were made at or near the time of the matters recorded, pursuant to a systematic and routine procedure for the conduct of the business.

(15) The documents attached hereto were kept in the course of the regular activity of this business.

.....
(Date)

.....
(Signature)

No. 2

*The United States Ambassador at London to the Minister of State for
Foreign and Commonwealth Affairs*

*Embassy of the United States of America
London*

July 26 1984

Sir,

I have the honor to refer to your letter of July 26, 1984, summarizing the recent discussions between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States of America regarding the deep concern of our Governments and that of the Cayman Islands to provide that the Cayman laws protecting confidential relationships should not protect narcotics traffickers and to your proposal, consistent with the Single Convention on Narcotic Drugs, 1961 as amended by the Protocol amending the said Convention (hereinafter collectively called "the Convention"), in particular Articles 35 and 36 thereof, for an Agreement that reads as follows:

[As in No. 1]

I am pleased to confirm that the Government of the United States is in agreement with the foregoing and that your letter and this reply constitute an agreement between our two Governments.

Very truly yours,

CHARLES H. PRICE, II

[Annex and Forms as in No. 1]

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