



Treaty Series No. 11 (1995)

Exchange of Notes

between the Government of the
United Kingdom of Great Britain and Northern Ireland
and the Government of the Republic of Kenya

concerning Certain Commercial Debts
(The United Kingdom/Kenya
Debt Agreement No. 1 (1994))

Nairobi, 16 June 1994 and 15 July 1994

[The Agreement entered into force on 15 July 1994]

*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
February 1995*

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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 REPUBLIC OF KENYA
CONCERNING CERTAIN COMMERCIAL DEBTS
(THE UNITED KINGDOM/KENYA DEBT AGREEMENT No. 1 (1994))**

No. 1

*The United Kingdom High Commissioner at Nairobi
to the Minister for Finance of the Republic of Kenya*

*British High Commission
Nairobi*

16 June 1994

Dear Minister,

I have the honour to refer to the Agreed Minute on the Consolidation of the Debt of the Republic of Kenya which was signed at the Conference held in Paris on 19 January 1994, and to inform you that the Government of the United Kingdom of Great Britain and Northern Ireland are prepared to provide debt relief to the Government of the Republic of Kenya on the terms and conditions set out in the attached Annex.

If these terms and conditions are acceptable to the Government of the Republic of Kenya, I have the honour to propose that this Note together with its Annex, and your reply to that effect, shall constitute an Agreement between our two Governments in this matter which shall be known as "The United Kingdom/Kenya Debt Agreement No. 1 (1994)" and which shall enter into force on the date of your reply.

I have the honour to convey to you the assurance of my highest consideration.

KIERAN PRENDERGAST

ANNEX

SECTION I

Definitions and Interpretation

- (1) In this Annex, unless the contrary intention appears:
- (a) "the Agreed Minute" means the Agreed Minute on the Consolidation of the Debt of the Republic of Kenya which was signed at the Conference held in Paris on 19 January 1994;
 - (b) "Appropriate Market Rate" means the Reference Rate plus 0.5 per cent;
 - (c) "Business Day" means a day on which dealings are carried on in the London interbank market and (if payment is required to be made on such day) on which banks are open for domestic and foreign exchange business in London;
 - (d) "Contract" means a contract, including any agreement supplemental thereto, entered into before 31 December 1991, the parties to which include a Debtor and a Creditor and which either was for the sale of goods and/or services from outside Kenya to a buyer in Kenya, or was for the financing of such a sale, and which in either case granted or allowed credit to the Debtor for a period exceeding one year;
 - (e) "Creditor" means a person or body of persons or corporation resident or carrying on business in the United Kingdom, the Channel Islands or the Isle of Man, or any successor in title thereto;
 - (f) "Debt" means any debt to which, by virtue of the provisions of Section 2(1), the provisions of this Annex apply;
 - (g) "Debtor" means the Government of the Republic of Kenya or any successor Government (whether as primary debtor or as guarantor), or any of its public sector agencies, organisations or institutions (whether as primary debtor or guarantor);
 - (h) "the Department" means the Secretary of State acting by the Export Credits Guarantee Department or any other Department of the Government of the United Kingdom which the Secretary of State may subsequently nominate for the purpose hereof;
 - (i) "Kenya" means the Republic of Kenya;
 - (j) "Maturity" in relation to a Debt:
 - (i) specified in Section 2(1)(a) means the due date for the payment or repayment thereof under the relevant Contract or on a promissory note or bill of exchange drawn up pursuant thereto,
 - (ii) specified in Section 2(1)(b) means 31 December 1993;
 - (k) "the Ministry" means the Ministry of Finance or any other institution which the Government of the Republic of Kenya may nominate for the purposes of this Annex;
 - (l) "Reference Rate" means the rate (rounded upwards where necessary to the nearest multiple of 1/16th (one sixteenth) of one per cent) quoted to the Department by a bank to be agreed upon by the Department and the Ministry as the rate at which that bank is offering six-month sterling deposits in the London Interbank Market at 11 am (London time) two Business Days before the commencement of the relevant interest period;
 - (m) "United Kingdom" means the United Kingdom of Great Britain and Northern Ireland.
- (2) All references to interest, excluding contractual interest, shall be to interest accruing from day to day and calculated on the basis of actual days elapsed and a year of 365 days.
- (3) Where the context of this Annex so allows, words importing the singular include the plural and vice versa.

(4) Unless otherwise indicated, reference to a specified Section shall be construed as a reference to that Section of this Annex.

(5) The headings to the Sections are for ease of reference only.

SECTION 2

The Debt

(1) The provisions of this Annex shall, subject to the provisions of paragraph (2) of this Section and Article IV paragraph 1 of the Agreed Minute, apply to:

- (a) any amount, whether of principal or of contractual interest accruing up to Maturity, which is owed by a Debtor to a Creditor and which:
- (i) arises under or in relation to a Contract;
 - (ii) is guaranteed by the Department as to payment according to the terms of the Contract;
 - (iii) is not expressed by the terms of the Contract to be payable in Kenyan Shillings;
 - (iv) does not arise from an amount payable upon or as a condition of the cancellation or termination of the Contract; and
 - (v) has fallen due for payment on or before 31 December 1993 and remains unpaid; and
- (b) any amount of interest which is charged under Section 4(1) of this Annex and has accrued on or before 31 December 1993.

(2) The Department and the Ministry shall, as soon as possible, agree and draw up a list of Debts ("the Debt List") to which this Annex shall apply. The Debt List may be reviewed from time to time at the request of the Department or of the Ministry, but may not be added to or amended without the agreement of both the Department and the Ministry. Delay in the completion of the Debt List shall neither prevent nor delay the implementation of the other provisions of this Annex.

(3) For the purpose of this Annex, all Debts shall be deemed to be denominated in sterling. Where the currency of the Debt specified in the relevant Contract is other than sterling, each such Debt shall be converted into sterling at the middle spot rate of exchange of that currency for sterling prevailing on 31 December 1993.

SECTION 3

Payment of Debt

The Government of the Republic of Kenya shall pay to the Department, in accordance with the provisions of Section 5(1), each Debt on the Debt list as follows:-

<i>Repayment Date</i>	<i>Percentage to be repaid</i>
31 March 1995	2.50
30 September 1995	2.50
31 March 1996	2.50
30 September 1996	2.50
31 March 1997	5.00
30 September 1997	5.00
31 March 1998	7.50
30 September 1998	7.50
31 March 1999	10.00
30 September 1999	10.00
31 March 2000	10.00
30 September 2000	10.00
31 March 2001	12.50
30 September 2001	12.50

SECTION 4

Interest

- (1) Interest on the balance of each Debt shall be deemed to have accrued and shall accrue during, and shall be payable in respect of, the period from Maturity until the settlement of that Debt by payment to the Department.
- (2) The Government of the Republic of Kenya shall be liable for and shall pay to the Department in accordance with the provisions of Section 5(1) and of this Section interest on each Debt to the extent that it has not been settled by payment to the Department in the United Kingdom. Such interest shall be paid to the Department on 31 March and 30 September (the "Due Dates") each year commencing on 30 September 1994.
- (3) If any amount of interest payable in accordance with the provisions of paragraph (2) of this Section is not paid on the Due Date for payment thereof, the Government of the Republic of Kenya shall be liable for and shall pay to the Department interest on such amount of overdue interest. Such additional interest shall accrue at the Appropriate Market Rate from day to day from the Due Date for payment thereof in accordance with the provisions of paragraph (2) of this Section to the date of receipt of the payment by the Department, and shall be due without further notice or demand.
- (4) All interest and compensation payable in accordance with the provisions of paragraph 2 of this Section shall be paid at the Appropriate Market Rate applicable to each half-yearly interest period commencing with the half-yearly interest period within which the Maturity of the Debt concerned occurs except that interest accruing up to 31 December 1993 will be charged at the Reference Rate.

SECTION 5

Payments to the Department

- (1) When payment becomes due under the terms of Section 3 or 4, the Ministry shall arrange for the necessary amounts, without deduction of taxes, fees, other public charges or any other costs accruing inside or outside Kenya, to be paid in sterling to an account notified by the Department to the Ministry.
- (2) If the day on which such a payment falls due is not a Business Day payment shall be made on the nearest Business Day.
- (3) The Ministry shall give the Department full particulars of the Debts and/or interest and compensation to which the payments relate.

SECTION 6

Exchange of Information

The Department and the Ministry shall exchange all information required for the implementation of this Annex.

SECTION 7

Other Debt Settlements

- (1) The Government of the Republic of Kenya undertakes to fulfil its commitments under Article III of the Agreed Minute and agrees to accord to the United Kingdom terms no less favourable than those agreed with any other creditor, notwithstanding any provision of this Annex to the contrary.
- (2) The provisions of paragraph (1) of this Section shall not apply to matters relating to the payment of interest determined by Section 4.

SECTION 8

Preservation of Rights and Obligations

This Annex and its implementation shall not affect the rights or obligations of any Creditor or Debtor under a Contract other than those rights and obligations in respect of which the Government of the United Kingdom and the Government of the Republic of Kenya are authorised to act respectively on behalf of and to bind such Creditor and Debtor.

SECTION 9

Debt Conversion Option

The Department agrees to give prior notification to the Government of the Republic of Kenya if it is willing to exercise the option provided for in Article II paragraph 2.B of the Agreed Minute. The Department recognises that this option can only be implemented with the consent of the Government of the Republic of Kenya.

No. 2

*The Minister for Finance of the Republic of Kenya
to the United Kingdom High Commissioner at Nairobi*

*Nairobi
15 July 1994*

Your Excellency,

I have the honour to acknowledge receipt of Your Excellency's Note of which reads as follows:

[As in No. 1]

I have the honour to confirm that the terms and conditions set out in the Annex to your Note are acceptable to the Government of the Republic of Kenya, and that your Note together with its Annex, and this reply, shall constitute an Agreement between our two Governments in this matter which shall be known as "The United Kingdom/Kenya Debt Agreement No. 1 (1994)" and which shall enter into force today.

I have the honour to convey to Your Excellency the assurance of my highest consideration.

MUSALIA MUDAVADI

[Annex as in No. 1]

