

KENYA



Treaty Series No. 40 (2001)

## 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. 2 (2001))

Nairobi, 23 and 24 May 2001

[The Agreement entered into force on 24 May 2001]

*Presented to Parliament  
by the Secretary of State for Foreign and Commonwealth Affairs  
by Command of Her Majesty  
August 2001*

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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. 2 (2001))**

**No. 1**

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

*Nairobi*

*23 May 2001*

I have the honour to refer to the Agreed Minute on the Consolidation of the Debt of the Republic of Kenya which was signed in Paris on 15 November 2000, and to inform you that the Government of the United Kingdom of Great Britain and Northern Ireland is 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. 2 (2001)" and which shall enter into force on the date of your reply.

I avail myself of this opportunity to renew to you the assurances of my highest consideration.

**JEFFREY JAMES**

**ANNEX**

**SECTION 1**

**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 in Paris on 15 November 2000;
  - (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) "the Consolidation Period" means the period from 1 July 2000 to 30 June 2001 inclusive;
  - (e) "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;
  - (f) "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;
  - (g) "Debt" means any debt to which, by virtue of the provisions of section 2(1), the provisions of this Annex apply;

- (h) "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 as guarantor);
- (i) "the Department" means the Export Credits Guarantee Department or any other Department of the Government of the United Kingdom which that Government may subsequently nominate for the purpose hereof;
- (j) "Kenya" means the Republic of Kenya;
- (k) "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 30 June 2000 or the date specified in the Previous Agreement if that date is later;
- (l) "the Ministry" means the Ministry of Finance and Planning of Kenya or any other institution which the Government of Kenya may nominate for this purpose;
- (m) "the Previous Agreement" means the Agreement between the Government of the United Kingdom and the Government of Kenya on certain Commercial Debts signed on 15 July 1994;<sup>1</sup>
- (n) "Reference Rate" means the rate (rounded upwards where necessary to the nearest multiple of 1/16 (one sixteenth) of one per cent) quoted by the Reuters Monitor Money Rate Services (International Swap Dealers Association Interbank Rate from London) (page reference "ISDA") as the rate at which six-month sterling deposits are offered in the London Interbank Market at 11 am (London time) two Business Days before the commencement of the relevant interest period. If the Reuters Monitor Money Rate Services are unavailable at that time on that day, the rate to be used will be the rate (rounded upwards where necessary to the nearest multiple of 1/16 (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;
- (o) "United Kingdom" means the United Kingdom of Great Britain and Northern Ireland.

2. All interest payable pursuant to this Annex shall be 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.

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<sup>1</sup>Treaty Series No. 11(1995) Cm 2751.

## 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 3 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) fell due on or before 30 June 2000 and has not been paid or which has fallen due or will fall due during the period 1 July 2000 to 30 June 2001 inclusive and is not paid; and
- (b) any amount, whether of principal or of interest (excluding late interest) payable in accordance with the Previous Agreement which fell due on or before 30 June 2000 and has not been paid;
- (c) any amount, whether of principal or of interest (excluding late interest), payable in accordance with the Previous Agreement which has fallen due or will fall due during the period 1 July 2000 to 30 June 2001 inclusive and is not paid;
- (d) any amount of late interest payable up to 30 June 2000 in accordance with the Previous Agreement which has not been paid.

2. The Department and the Ministry shall, as soon as possible, agree and draw up a list of Debts ("the Debt List") to which Section 2 paragraph (1)(a) of this Annex applies. 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.

## SECTION 3

### Payments under the Previous Agreement

The provisions of the Previous Agreement insofar as they relate to the payment of any Debt as defined herein shall cease to apply upon the entry into force of this Agreement.

## SECTION 4

### Payment of Debt

The Government of the Republic of Kenya shall pay to the Department, in accordance with the provisions of section 6(1):

- 1. All Debts specified in section 2(1)(b) and (d) on or before 30 June 2001; and
- 2. Each Debt specified in section 2(1)(a) and (c) in 30 consecutive half-yearly rising instalments as follows:

<i>Repayment Date</i>	<i>Percentage to be repaid</i>
30 June 2004	0.44
31 December 2004	0.58
30 June 2005	0.74
31 December 2005	0.90

<i>Repayment Date</i>	<i>Percentage to be repaid</i>
30 June 2006	1.07
31 December 2006	1.25
30 June 2007	1.43
31 December 2007	1.62
30 June 2008	1.82
31 December 2008	2.02
30 June 2009	2.22
31 December 2009	2.43
30 June 2010	2.64
31 December 2010	2.86
30 June 2011	3.08
31 December 2011	3.30
30 June 2012	3.53
31 December 2012	3.76
30 June 2013	4.00
31 December 2013	4.23
30 June 2014	4.48
31 December 2014	4.72
30 June 2015	4.97
31 December 2015	5.22
30 June 2016	5.47
31 December 2016	5.72
30 June 2017	5.98
31 December 2017	6.24
30 June 2018	6.51
31 December 2018	6.77

## SECTION 5

### 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 pay to the Department interest on each Debt in accordance with the provisions of Section 6(1) to the extent that such Debt has not been settled by payment to the Department. Such interest shall be paid to the Department first on 31 October 2001 and then on a half-yearly basis on 30 June and 31 December (the "Due Dates") each year commencing on 31 December 2001.
3. Interest payable in accordance with the provisions 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.
4. If any amount of interest payable in accordance with the provisions of paragraph (2) of this Section is not paid on the Due Date, the Government of the Republic of Kenya shall pay to the Department interest on such amount of overdue interest. Such additional interest shall accrue at the Appropriate Market rate plus 0.6 per cent and be payable on the outstanding amount of overdue interest from day to day from the Due Date 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.
5. If any amount of Debt payable in accordance with the provisions of Section 4 is not paid on the Due Date, the Government of the Republic of Kenya shall pay to the Department interest on such amount which shall accrue at the Appropriate Market Rate plus 0.6 per cent and be payable from day to day from the Due Date thereof to the date of receipt thereof, and shall be due and payable without further notice or demand.

## SECTION 6

### **Payments to the Department**

1. When payment becomes due under the terms of Section 4 or 5, the Government of the Republic of Kenya shall arrange for the necessary amounts, without deduction of taxes, fees, other public charges, or any other costs incurred 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 next succeeding Business Day, but any interest payable shall be the amount accrued on the day on which such payment fell due.
3. The Ministry shall give the Department full particulars of the Debts and/or interest and additional interest to which the payments relate.

## SECTION 7

### **Exchange of Information**

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

## SECTION 8

### **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 Government of 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 5.

## SECTION 9

### **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 10

### **Debt Swaps Option**

1. The Department shall give prior notification to the Government of the Republic of Kenya if it wishes to exercise the option given in Article II paragraph 2C of the Agreed Minute to sell or exchange Debt. This option may only be implemented with the consent of the Government of The Republic of Kenya and will only be exercised on condition that the Debt sold or exchanged is discharged in Kenya.

2. The Republic of Kenya may in specific cases request the Department to exercise the option given in Article II paragraph 2C of the Agreed Minute to sell or exchange Debt. The Department shall give due consideration to, and shall not unreasonably refuse, such request where such request will ensure further debt relief to the Republic of Kenya.

## SECTION 11

### Conditionality

Unless the Department otherwise agrees, the conditions of Article III paragraph 6 and Article IV paragraph 3 of the Agreed Minute shall apply to this Annex for the duration of the Consolidation Period. If this Annex ceases to apply during this period because any of these conditions has not been fulfilled, all outstanding payments shall be due according to the original Contracts or according to the payment schedules in the Previous Agreement as the case may be, as if this Annex had never existed.

### No. 2

*The Minister for Finance of the Republic of Kenya to the British High Commissioner at Nairobi.*

*Nairobi*

*24 May 2001*

I have the honour to acknowledge receipt of Your Excellency's Note of with<sup>1</sup> 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. 2 (2001) and which shall enter into force today.

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

**CHRYSANTHUS B. OKEMO**

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<sup>1</sup>Sic.

