

No. 8493

**DENMARK
and
MALAWI**

**Agreement on a Danish Government loan to Malawi (with
exchange of letters). Signed at Copenhagen, on 1 August
1966**

Official text : English.

Registered by Denmark on 28 December 1966.

**DANEMARK
et
MALAWI**

**Accord relatif à un prêt du Gouvernement danois au Malawi
(avec échange de lettres). Signé à Copenhague, le 1^{er} août
1966**

Texte officiel anglais.

Enregistré par le Danemark le 28 décembre 1966.

No. 8493. AGREEMENT¹ BETWEEN THE GOVERNMENT OF DENMARK AND THE GOVERNMENT OF MALAWI ON A DANISH GOVERNMENT LOAN TO MALAWI. SIGNED AT COPENHAGEN, ON 1 AUGUST 1966

The Government of Denmark and the Government of Malawi desiring to strengthen the traditional co-operation and cordial relations between their countries, have agreed that, as a contribution to Malawi's Development Plans, a Danish Government Loan will be extended to Malawi in accordance with the following provisions :

Article I

THE LOAN

The Government of Denmark (hereinafter called the Lender) agrees to make available to the Government of Malawi (hereinafter called the Borrower) a development Loan in an amount of 15 (fifteen) million Danish Kroner for the realization of the purposes described in Article VI of this Agreement.

Article II

LOAN ACCOUNT

Section 1. An account designated "Government of Malawi Loan Account" (hereinafter called "Loan Account") will be opened with Danmarks Nationalbank (acting as agent for the Lender) in favour of the Reserve Bank of Malawi (acting as agent for the Borrower). The Lender will ensure that sufficient funds are always available in the Loan Account to enable the Borrower to effect punctual payment for goods and services procured under this Loan, provided that the amounts successively made available to the Borrower shall not, in the aggregate, exceed the Loan amount specified in Article I.

Section 2. The Borrower (or the Reserve Bank of Malawi acting as agent for the Borrower) shall be entitled, subject to the provisions of this Agreement, to withdraw from the Loan Account amounts needed for payment of equipment or services procured under the Loan.

Article III

RATE OF INTEREST

The Loan will be free of interest.

¹ Came into force on 1 August 1966, upon signature, in accordance with article XIV (1).

Article IV

REPAYMENT

Section 1. The Borrower will repay to the Lender the principal of the Loan withdrawn from the Loan Account in 30 (thirty) semi-annual instalments of 500,000 (five hundred thousand) Danish Kroner each, commencing on October 1, 1971 and ending on April 1, 1986.

Section 2. The Borrower has the right to repay in advance of maturity all or any part of the principal amount of one or more maturities of the Loan specified by the Borrower with such variations in the amount of instalments as may thereby be rendered necessary.

Article V

PLACE OF PAYMENT

The principal of the Loan will be repaid by the Borrower in convertible Danish Kroner to Danmarks Nationalbank to the credit of the current account of the Ministry of Finance with Danmarks Nationalbank.

Article VI

USE OF THE LOAN BY THE GOVERNMENT OF MALAWI

Section 1. The Borrower will use the proceeds of the Loan to finance imports (including transport charges from Denmark to Malawi) of such Danish capital equipment as will be agreed upon between the Lender and the Borrower.

Section 2. The proceeds of the Loan may also be used to pay for Danish services required for the implementation of Malawi's Development Plans, including, in particular, pre-investment studies, preparation of projects and the provision of consultants during the implementation of the projects, or during the assembly or construction of plant or buildings, and technical and administrative assistance during the initial period of the undertakings established by means of the Loan.

Section 3. A proportion of the Loan not exceeding 25 per cent may be drawn for the purpose of financing non-Danish capital investment costs related to the projects for which Danish capital equipment is procured under this Agreement, provided that (a) contracts for supplies of the Danish capital equipment have been approved by the Lender, and (b) the amount thus utilized does not exceed $33\frac{1}{3}$ per cent of the value of the Danish capital equipment procured for all projects.

Section 4. The Borrower will cause the proceeds of the Loan to be applied exclusively to the provision of goods and services needed to implement contracts approved

by both Parties. The particulars of the methods and procedures for the payment of such goods and services, beyond those already set forth in Article II, shall be determined by agreement between Borrower and Lender.

Section 5. The concurrence of the Lender as to the eligibility of a contract under the Loan shall not be interpreted in such a manner as to imply that the Lender takes upon him any responsibility for the proper implementation or subsequent operation of such contracts.

Section 6. The terms of payment stipulated in contracts or documentation to the effect that an order has been placed with a Danish exporter or contractor for supplies or services of the nature described above shall be considered as normal and proper whenever such contracts contain no clauses involving special credit facilities from Danish exporters or contractors.

Section 7. The proceeds of the Loan may be used only for payment of supplies and services contracted for after the entry into force of the Agreement.

Section 8. The Borrower may draw on the account with Danmarks Nationalbank referred to in Article II for up to three years after the entry into force of the Agreement or such other date as shall be agreed by the Lender and the Borrower.

Section 9. If the proceeds of the Loan have not been fully utilized within the time limit stipulated in Section 8 above, the semi-annual repayments shall be reduced by a proportion equal to the ratio between the unutilized amount of the Loan and the principal of the Loan.

Article VII

NON-DISCRIMINATION

Section 1. In regard to the repayment of the Loan, the Borrower undertakes to give the Lender no less favourable treatment than that accorded to other foreign creditors.

Section 2. All shipments of equipment covered by this Agreement shall be in keeping with the principle of free circulation of ships in international trade in free and fair competition.

Article VIII

MISCELLANEOUS PROVISIONS

Section 1. Prior to the first drawing against the Account referred to in Article II the Borrower will satisfy the Lender that all constitutional requirements and other

requirements laid down by statute in the Borrower's home country have been met so that this Loan Agreement will constitute a valid obligation binding on the Borrower in the terms of the Loan Agreement.

Section 2. The Borrower will furnish to the Lender evidence of the authority of the person or persons who will, on behalf of the Borrower, take any action or execute any documents under this Agreement, and authenticated specimen signatures of all such persons.

Section 3. Any notice or request under this Agreement and any agreement between the parties contemplated by this Agreement shall be in writing. Such notice or request shall be deemed to have been duly given or made when it has been delivered by hand or by mail, telegram, cable or radiogram to the party at such party's address specified in Article XV, or at such address as such party shall have indicated by notice to the party giving such notice or making such request.

Article IX

PARTICULAR COVENANTS

The principal of the Loan shall be repaid without deduction for, and free from, any taxes and charges, and free from all restrictions imposed under the laws of the Borrower. This Agreement shall be free from any present and future taxes imposed under the laws of the Borrower, or laws in effect in its territories or in connection with the execution, issue, delivery or registration thereof.

Article X

CANCELLATION AND SUSPENSION

Section 1. The Borrower may, by notice to the Lender, cancel any amount of the Loan which the Borrower shall not have withdrawn.

If any of the following events shall have happened and be continuing, the Lender may, by notice to the Borrower, suspend in whole or in part the right of the Borrower to make withdrawals from the Loan Account :

- (a) a default shall have occurred in the payment of principal under the Agreement or under any other financial commitment entered into by the Borrower in relation to the Lender ; or
- (b) a default shall have occurred in the performance of any other covenant or agreement on the part of the Borrower under the Agreement.

Section 2. The right of the Borrower to make withdrawals from the Loan Account shall continue to be suspended in whole or in part, as the case may be, until

the event or events which gave rise to such suspension shall have notified the Borrower that the right to make withdrawals has been restored, whichever is earlier, provided however, that in the case of any such notice of restoration the right to make withdrawals shall be restored only to the extent and subject to the conditions specified in such notice, and no such notice shall effect or impair any right, power or remedy of the Lender in respect of any other or subsequent event described in this Article.

If the right of the Borrower to make withdrawals from the Loan Account shall have been suspended with respect to any amount of the balance of the Loan or any part thereof for a continuous period of sixty days, the Lender may, by notice to the Borrower, terminate the right of the Borrower to make withdrawals with respect to such amount. Upon the giving of such notice such amount of the Loan shall be cancelled.

Section 3. Notwithstanding any cancellation or suspension all the provisions of the Agreement shall continue in full force and effect except as is specifically provided in this Article.

Article XI

REMEDIES OF THE LENDER

If any event specified in subparagraphs (a) and (b) of Section 1 of Article X shall occur and shall continue for a period of sixty days after notice thereof has been given by the Lender to the Borrower, then at any subsequent time the Lender, at his option, may declare the principal of the Loan then outstanding to be due and payable immediately, and upon any such declaration such principal shall become due and payable immediately, anything in the Agreement to the contrary notwithstanding.

Article XII

APPLICABLE LAW

Unless otherwise provided for in the Agreement, the Agreement and all the rights and obligations deriving from it shall be governed by Danish law.

Article XIII

SETTLEMENT OF DISPUTES

Section 1. Any dispute between the Contracting Parties arising out of the interpretation or administration of the present Agreement, which has not been settled within six months through diplomatic channels, shall, at the request of either Party be submitted to a tribunal of arbitration, consisting of three members. The chairman of the tribunal shall be a citizen of a third country and shall be appointed by common

consent of the Contracting Parties. Should the Parties fail to agree on the appointment of the chairman of the tribunal, either Party may request the President of the International Court of Justice to make the appointment. Each Party appoints its own arbitrator ; if a Party abstains from appointing an arbitrator, the latter may be appointed by the chairman of the tribunal.

Section 2. Each Contracting Party will observe and carry out awards given by the tribunal.

Article XIV

DURATION OF THE AGREEMENT

Section 1. This Agreement shall come into force on the date of signature.

Section 2. When the entire principal amount of the Loan has been repaid, the Agreement shall terminate forthwith.

Article XV

SPECIFICATION OF ADDRESSES

The following addresses are specified for the purposes of this Agreement :

For the Borrower :

Secretary to the Treasury
Ministry of Finance
P.O. Box 53
Zomba

Alternative address for cablegrams and radiograms :

Finsec
Zomba Malawi

For the Lender with respect to disbursements :

Ministry of Foreign Affairs
Secretariat for Technical Co-operation with Developing Countries
Copenhagen

Alternative address for cablegrams and radiograms :

Dacomta
Copenhagen

For the Lender with respect to servicing of the Loan :

Ministry of Finance
Copenhagen

Alternative address for cablegrams and radiograms :

Finans
Copenhagen

IN WITNESS WHEREOF, the Parties hereto acting through their representatives duly authorized for this purpose, have caused this Agreement to be signed in two copies in the English language in Copenhagen this first day of August, 1966.

For the Government of Denmark :
Per HÆKKERUP

For the Government of Malawi :
J. Z. U. TEMBO

EXCHANGE OF LETTERS

I

Copenhagen, August 1st, 1966

Excellency,

With reference to the Development Loan Agreement of to-day's date between the Government of Denmark and the Government of Malawi (hereinafter called the Agreement) I have the honour to propose the following methods and procedures for the payment of goods and services in accordance with Article VI.

Before payment can be made from the Loan Account :

(1) The Danish exporter or consultant and the Malawi importer or prospective investor shall negotiate a contract, subject to the final approval of the Malawi and Danish authorities. No contract for any one delivery of Danish goods below 100,000 Danish Kroner, except for utilization of any final balance below that amount, shall be eligible for financing under the Loan Agreement.

(2) The Government of Malawi will make available to the Danish Ministry of Foreign Affairs copies of the contracts to be concluded under this Agreement. The latter will ascertain, *inter alia*, that

- (a) the commodities or services contracted fall within the framework of the Loan Agreement ;
- (b) the capital equipment involved has been manufactured in Denmark, or the services to be rendered will be performed by persons carrying on business in Denmark,

and inform the Government of Malawi of its findings.

When the contracts have been approved, the Government of Malawi may draw on the Account with Danmarks Nationalbank

(1) to effect payment of the consignment referred to in the contract. Payments out of this account to Danish exporters shall be subject to presentation of the necessary documents when Danmarks Nationalbank has ascertained that the conditions for effecting such payments have otherwise been complied with, and

(2) to effect payment of the amounts used to finance fixed capital investment costs referred to in Article VI, Section 3, of the Agreement.

If the foregoing provisions are acceptable to the Government of Malawi, I have the honour to suggest that this letter and Your Excellency's reply to that effect constitute an agreement between our two Governments on this matter.

Please accept, Excellency, the assurance of my highest consideration.

For the Government of Denmark :

Per HÆKKERUP

His Excellency Mr. J. Z. U. Tembo, M.P.
Minister for Finance of Malawi

II

Copenhagen, August 1st, 1966

Excellency,

I have the honour to acknowledge receipt of your letter of to-day which reads as follows :

[*See letter I*]

I have the honour to inform you that my Government is in agreement with the foregoing.

Please accept, Excellency, the assurance of my highest consideration.

For the Government of Malawi :

J. Z. U. TEMBO

His Excellency Mr. Per Hækkerup
Minister for Foreign Affairs
Copenhagen

III

Copenhagen, August 1st, 1966

Excellency,

I have the honour to refer to the Development Loan Agreement of to-day's date between the Government of Denmark and the Government of Malawi and have the

honour to propose that the following provisions should govern private Danish investments in Malawi guaranteed by the Danish Government in projects financed under the Loan :

(1) The Government of Denmark shall consult the Government of Malawi regarding private Danish investments, properties, rights or other pecuniary interests (hereinafter called investments), which the Government of Denmark would be prepared to guarantee.

(2) The Government of Denmark shall not guarantee such investments unless the Government of Malawi approves the activity to which the investment relates and recognizes that the Government of Denmark may guarantee such investments.

(3) Such investments belonging to Danish Nationals, Companies or other Danish Investors (hereinafter called Danish Investors) shall be subject to just and equitable treatment.

(4) Such investments of Danish Investors in Malawi shall not be accorded a treatment less favourable than the Government of Malawi accords to any other similar investments in its territory belonging to its own Nationals or Companies or to Nationals or Companies of third countries.

(5) The Government of Malawi shall not subject the activities of Danish Investors in connection with their investments guaranteed by the Danish Government to conditions less favourable than it imposes on activities in connection with any other similar investments in its territory.

(6) Such investments by Danish Investors should be accorded no less degree of protection than the Government of Malawi accords to any other similar investments in its territory belonging to its own Nationals or Companies or to Nationals or Companies of third countries.

(7) The Government of Malawi shall take no measures of expropriation, nationalization or any other dispossession either direct or indirect against such investments in the territory of Malawi and belonging to Danish Investors except for public benefit and against compensation.

(8) If the Government of Malawi expropriates or nationalizes such investments of Danish Investors or if it takes any other measures with a view to direct or indirect dispossession of Danish Investors, it shall provide for the payment of effective and adequate compensation.

(9) Such compensation shall represent the equivalent of such investments effected at the time of expropriation, nationalization or any other form of dispossession ; it shall be realisable and freely transferable and shall be made without delay. Provision shall be made in an appropriate manner at or prior to the time of dispossession for the determination and payment of such compensation.

(10) Danish Investors whose investments may suffer losses in the territory of Malawi owing to war or other armed conflict, revolution, a state of national emergency, or revolt, shall be accorded treatment not less favourable than the Government of Malawi accords to its own Nationals and Companies or to Nationals and Companies of third countries, as regards restitution, indemnification, compensation or other similar valuable consideration. Such payments shall be freely transferable.

(11) If the Government of Denmark makes payment to any Danish Investor under a guarantee it has assumed in respect of an investment in Malawi, the Government of Malawi shall recognize

- (a) the assignment, whether under Danish law or pursuant to a legal transaction in Denmark of any right or claim from such Investor to the Government of Denmark, as well as
- (b) the subrogation of the Government of Denmark to any such right or claim which the Government of Denmark shall be entitled to assert to the same extent as its predecessor in title.

Payments to be made by virtue of such assignment or subrogation shall be freely transferable.

(12) In conformity with provisions of present legislation, legal and administrative practice or of any future more favourable legislation, legal and administrative practice the Government of Malawi shall authorize the transfer of

- (a) the net return yielded by an investment guaranteed by the Danish Government such as interest, dividends, royalties, payments for licenses and other claims of Danish Nationals or companies, formed or registered in the territory of Malawi,
- (b) amortization, or the proceeds of the total or partial liquidation of guaranteed Danish investments in Malawi,
- (c) an adequate portion of the wages, salaries and other remuneration of Danish Nationals authorized to exercise activities in Malawi.

(13) Any dispute between the Government of Denmark and the Government of Malawi arising out of the interpretation or administration of the present exchange of letters should be settled in accordance with the provisions of Article XIII of the Loan Agreement of to-day's date between the Government of Denmark and the Government of Malawi.

If the foregoing provisions are acceptable to the Government of Malawi I have the honour to suggest that this letter and Your Excellency's reply to that effect should constitute an Agreement between our two Governments on this matter.

Please accept, Excellency, the assurance of my highest consideration.

For the Government of Denmark :

Per HÆKKERUP

His Excellency Mr. J. Z. U. Tembo, M.P.
Minister for Finance of Malawi

IV

Copenhagen, August 1st, 1966

Excellency,

I have the honour to acknowledge receipt of your letter of to-day which reads as follows :

[*See letter III*]

I have the honour to inform you that my Government is in agreement with the foregoing.

Please accept, Excellency, the assurance of my highest consideration.

For the Government of Malawi :

J. Z. U. TEMBO

His Excellency Mr. Per Hækkerup
Minister for Foreign Affairs
Copenhagen