

No. 9210

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**DENMARK  
and  
KENYA**

**Agreement on a Danish Government Loan to Kenya (with  
annexes and exchange of notes). Signed at Nairobi,  
on 26 June 1968**

*Official text : English.*

*Registered by Denmark on 29 August 1968.*

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**DANEMARK  
et  
KENYA**

**Accord relatif à un prêt du Gouvernement danois au  
Kenya (avec annexes et échange de notes). Signé à  
Nairobi, le 26 juin 1968**

*Texte officiel anglais.*

*Enregistré par le Danemark le 29 août 1968.*

No. 9210. AGREEMENT<sup>1</sup> BETWEEN THE GOVERNMENT OF DENMARK AND THE GOVERNMENT OF KENYA ON A DANISH GOVERNMENT LOAN TO KENYA. SIGNED AT NAIROBI, ON 26 JUNE 1968

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The Government of Denmark and the Government of Kenya, desiring to strengthen the traditional co-operation and cordial relations between their countries, have agreed that, as a contribution to Kenya's Development Plans, a Danish Government Loan will be extended to Kenya in accordance with the following provisions of this Agreement and the Annexes attached, which are considered an integral part of the Agreement :

*Article I*

THE LOAN

The Government of Denmark (hereinafter called the Lender) agrees to make available to the Government of Kenya (hereinafter called the Borrower) a development Loan in an amount of 20 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 Kenya Loan Account" (hereinafter called "Loan Account") will be opened with Danmarks Nationalbank (acting as agent for the Lender) in favour of the Central Bank of Kenya (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 Central Bank of Kenya 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.

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<sup>1</sup> Came into force on 26 June 1968 by signature, in accordance with article XI.

*Article III*

## RATE OF INTEREST

The Loan will be free of interest.

*Article IV*

## REPAYMENTS

*Section 1.* The Borrower will repay to the Lender the principal of the Loan withdrawn from the Loan Account in thirty-five semi-annual instalments of 550,000 Danish Kroner each, commencing on October 1st, 1975, and ending on October 1st, 1992, and one final instalment of 750,000 Danish Kroner on April 1st, 1993.

*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 KENYA

*Section 1.* The Borrower will use the proceeds of the Loan to finance imports (including transport charges) from Denmark to Kenya of such Danish capital equipment for the implementation of Kenya's development projects as included in the annexed list (Annex II).

*Section 2.* The proceeds of the Loan may also be used to pay for Danish services required for the implementation of Kenya's Development Plans, including, in particular, pre-investment studies, preparation of projects and the provision of consultants during the implementation of the projects, assembly or construction of plants or buildings, 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

(including transport charges) related to the projects for which Danish capital equipment or services are procured under this Agreement, provided that (a) contracts for supplies of the Danish capital equipment or services 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 or services procured for all projects under this Agreement at the date of such utilization.

*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 rates 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 XII, 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*

#### 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 XI*

## 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 XII*

## SPECIFICATION OF ADDRESSES

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

For the Borrower :

The Permanent Secretary to the Treasury  
Ministry of Finance  
P.O. Box 30007  
Nairobi

Alternative address for cablegrams and radiograms :  
Finance Nairobi

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 :  
Étrangères 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 Nairobi on this twenty-sixth day of June, 1968.

For the Government of Denmark :

K. Helveg PETERSEN

For the Government of Kenya :

S. M. BALALA

## ANNEX I

The following provisions shall govern the rights and obligations under the Agreement between the Government of Denmark and the Government of Kenya on a Danish Government Loan to Kenya (hereinafter called the Agreement), of which they are considered an integral part with the same force and effect as if they were fully set forth therein.

*Article I*

## 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 ceased to exist or until the Lender 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 II*

## REMEDIES OF THE LENDER

If any event specified in subparagraphs (a) and (b) of Section 1 of Article I 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 III*

#### 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.

### ANNEX II

This Agreement is applicable to Danish supplies to Kenya of machinery and equipment for :

- 1) Sugar diffuser plants,
- 2) Slaughter-houses,
- 3) Grain drying plants,
- 4) Spray drying plants,
- 5) Such other projects as may be agreed upon between the two Governments.

### EXCHANGE OF NOTES

#### I

Narobi, June 26th, 1968

Excellency,

With reference to the Development Loan Agreement of to-day's date between the Government of Denmark and the Government of Kenya (hereinafter called the Agreement) I have the honour to propose that the following provisions shall govern the implementation of Article VI of the Agreement.



Payment out of the Loan Account shall be effected in the following manner :

(1) The Danish exporter or consultant and the Kenyan importer or prospective investor shall negotiate a contract subject to the final approval of the Kenyan and the Danish authorities. No contract 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 Kenya 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 Kenya of its findings.

(3) When the contracts have been approved, the Government of Kenya may draw on the Account with Danmarks Nationalbank to effect payment of the consignment referred to in the contract. Payments out of this account to Danish exporters or consultants 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.

If the foregoing provisions are acceptable to the Government of Kenya, 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 :

K. Helveg PETERSEN

H. E. Mr. S. M. Balala  
Assistant Minister for Finance  
Nairobi

## II

Nairobi, June 26th, 1968

Excellency,

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

[See note 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 Kenya :

S. M. BALALA

H. E. Mr. K. Helveg Petersen  
Minister for Technical Co-operation with Developing Countries  
Royal Danish Embassy  
Nairobi

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