

No. 9461

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**DENMARK**  
and  
**MALAWI**

**Agreement on a Second Danish Government loan to Malawi  
(with annex and exchanges of letters). Signed at Zomba  
on 16 December 1968**

*Authentic text: English.*

*Registered by Denmark on 6 March 1969.*

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**DANEMARK**  
et  
**MALAWI**

**Accord relatif à un deuxième prêt du Gouvernement danois  
au Malawi (avec annexe et échanges de lettres). Signé  
à Zomba le 16 décembre 1968**

*Texte authentique: anglais.*

*Enregistré par le Danemark le 6 mars 1969.*

AGREEMENT<sup>1</sup> BETWEEN THE GOVERNMENT OF DEN-  
MARK AND THE GOVERNMENT OF MALAWI ON A  
SECOND DANISH GOVERNMENT LOAN TO MALAWI

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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 Second Danish Government Loan<sup>2</sup> 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 Second 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 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.

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<sup>1</sup> Came into force on 16 December 1968 by signature, in accordance with article XIII (1).

<sup>2</sup> For the Agreement relating to the First Loan, see United Nations *Treaty Series*, vol. 586, p. 3.  
No. 9461

*Article IV*

## REPAYMENT

*Section 1.* The Borrower will repay to the Lender the principal of the loan withdrawn from the Loan Account in 35 (thirty-five) semi-annual instalments of 420,000 (four hundred and twenty thousand) Danish Kroner each, commencing on April 1st, 1976, and ending on April 1st, 1993, and the final instalment of 300,000 (three hundred thousand) Danish Kroner on October 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 MALAWI

*Section 1.* The Borrower will use the proceeds of the Loan to finance imports (including if necessary transport charges from Denmark to Malawi) of Danish capital equipment required for the implementation of Malawi's development projects as included in the annexed list, which may be changed or extended by mutual consent.

*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 to implement contracts which have been approved by the two Parties within a period of three years from the date of 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 made 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 XIV, 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 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 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*

## 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 XIII*

## 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 XIV*

## SPECIFICATION OF ADDRESSES

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

For the Borrower :

Secretary of 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 :

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 Zomba this 16th day of December, 1968.

For the Government of Denmark :

Birger ABRAHAMSON

For the Government of Malawi :

J. Z. U. TEMBO

#### ANNEX

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

- (1) a health centre;
- (2) street lighting project;
- (3) telecommunication;
- (4) a furniture factory;
- (5) railway projects;
- (6) such other machinery equipment and services for the implementation of Malawi's development projects as may be agreed upon between the Parties.



## EXCHANGE OF LETTERS

Ia

Zomba, 16th December, 1968

Excellency,

With reference to the Development Loan Agreement No. 2 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) the 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 assurances of my highest consideration.

For the Government of Denmark :

Birger ABRAHAMSON

His Excellency Mr. J. Z. U. Tembo  
Minister of Finance  
Malawi

*Ia*

Zomba, 16th December, 1968

Excellency,

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

[*See letter Ia*]

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

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

For the Government of Malawi :

J. Z. U. TEMBO

His Excellency Mr. Birger Abrahamson  
Ambassador of Denmark  
Nairobi

*Ib*

Zomba, 16th December, 1968

Excellency,

I have the honour to refer to the Development Loan Agreement No. 2 of to-day's date between the Government of Denmark and the Government of Malawi and have the honour to propose that similar provisions, as those contained in the correspondence of August 1st, 1966, in connexion with the Agreement on the first Danish Development Loan to Malawi of the same date as changed by notes of April 22, 1968, should govern private Danish investments

in Malawi guaranteed by the Danish Government in projects financed under the to-day's date entered 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 should constitute an Agreement between our two Governments in this matter.

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

For the Government of Denmark :

Birger ABRAHAMSON

His Excellency Mr. J. Z. U. Tembo  
Minister of Finance  
Malawi

IIb

Zomba, 16th December, 1968

Excellency,

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

[*See letter Ib*]

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

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

For the Government of Malawi :

J. Z. U. TEMBO

His Excellency Mr. Birger Abrahamson  
Ambassador of Denmark  
Nairobi