

**No. 11294**

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**DENMARK  
and  
MALAWI**

**Agreement on a Danish Government Loan to Malawi (with annexes  
and exchanges of letters). Signed at Blantyre on 2 March 1971**

*Authentic text: English.*

*Registered by Denmark on 14 August 1971.*

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**DANEMARK  
et  
MALAWI**

**Accord relatif à un prêt du Gouvernement danois au Malawi (avec  
annexes et échanges de lettres). Signé à Blantyre le 2 mars 1971**

*Texte authentique: anglais.*

*Enregistré par le Danemark le 14 août 1971.*

AGREEMENT<sup>1</sup> BETWEEN THE GOVERNMENT OF DEN-  
MARK AND THE GOVERNMENT OF MALAWI ON A  
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 the economic development of Malawi, a Danish Government Loan will be extended to Malawi in accordance with the following provisions of this Agreement and the attached Annexes, which are considered an integral part of the Agreement:

*Article I*

THE LOAN

The Government of Denmark (hereinafter called the Lender) will make available to the Government of Malawi (hereinafter called the Borrower) a Loan in an amount of 20 (twenty) million Danish Kroner for the purposes described in Article VI of this Agreement.

*Article II*

LOAN ACCOUNT

*Section 1.* An account designated "Government of Malawi Loan Account No. 3" (hereinafter called "Loan Account") will, at the Borrower's request, 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 capital goods and services procured within the amount of the Loan.

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

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<sup>1</sup> Came into force on 2 March 1971 by signature, in accordance with article X, section 1.

*Article III*

## RATE OF INTEREST

The Loan will be free of interest.

*Article IV*

## REPAYMENTS

*Section 1.* The Borrower will repay the Loan in thirty-five semi-annual instalments of 550,000 (five hundred and fifty thousand) Danish Kroner each, commencing on October 1, 1977, and ending on October 1, 1994, and one final instalment of 750,000 (seven hundred and fifty thousand) Danish Kroner on April 1, 1995.

*Section 2.* If the Loan is not fully utilized in accordance with the provisions of Article VI, section 9, a revised schedule of repayment shall be established by mutual consent.

*Article V*

## PLACE OF PAYMENT

The Loan shall 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

*Section 1.* The Borrower will use the Loan to finance imports from Denmark (including costs of transport from Denmark to Malawi) of such Danish capital goods as are to be used for identifiable projects and are needed for the economic development of Malawi. An indicative list of such goods is contained in Annex II.

*Section 2.* The Loan may also be used to pay for Danish services required for the implementation of development projects in Malawi including, in particular, pre-investment studies, preparation of projects, provision of consultants during the implementation of projects, assembly or construction of plants or buildings and technical and administrative assistance during the initial period of 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 ⅓ per cent of the value of the Danish capital equipment procured for all projects.

*Section 4.* All contracts to be financed under the Loan shall be subject to approval by the Borrower and the Lender.

*Section 5.* The approval by the Lender of a contract for financing under the Loan shall not imply any responsibility for the proper performance of such contracts.

The Lender also disclaims responsibility for the efficient use of supplies and services financed under the Loan and for the proper operation of the projects, etc. to which such supplies have been made and such services have been rendered.

*Section 6.* A contract under the Loan shall contain no clauses involving any special facilities from the Danish party to the contract.

*Section 7.* The proceeds of the Loan may be used only for payment of capital goods and services contracted for after the entry into force of the Agreement, unless otherwise agreed by the Borrower and the Lender.

*Section 8.* The proceeds of the Loan shall not be used for payment to the Borrower of any import duty, tax, national or other public charge such as import surcharges, duties to compensate for domestic excise taxes, charges or deposits in connection with the issuance of payments licences or import licences.

*Section 9.* The Borrower may draw against the Loan Account in fulfilment of contracts approved by the Parties for up to three years after the entry into force of the Agreement or from such other date as may be mutually agreed by the Borrower and the Lender.

*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 accorded to other foreign creditors.

*Section 2.* All shipments of capital goods 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 and other requirements laid down by statute in the Borrower's home country have been met, so that this Loan Agreement will constitute an obligation binding on the Borrower.

*Section 2.* The Borrower will inform the Lender of persons who are authorized to take any action on behalf of the Borrower, and supply authenticated specimen signatures of all such persons.

*Section 3.* Any notices, requests or agreements under this Agreement shall be in writing.

*Article IX*

## PARTICULAR COVENANTS

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 existing or future laws of the Borrower in connection with the issue, execution, registration, entry into force of the Agreement, or otherwise.

*Article X*

## DURATION OF THE AGREEMENT

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

*Section 2.* When the Loan has been repaid, the Agreement shall terminate forthwith.

*Article XI*

## 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

Cablegrams:

Finance  
Zomba, Malawi

For the Lender with respect to disbursements:

Ministry of Foreign Affairs  
Danish International Development Agency  
Copenhagen

Cablegrams:

Étrangères Copenhagen

For the Lender with respect to servicing of the Loan:

Ministry of Finance  
Copenhagen

Cablegrams:

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 Blantyre on this second day of March, 1971.

For the Government of Denmark:

KAI JOHANSEN

For the Government of Malawi:

ALEKE K. BANDA

## ANNEX I

The following provisions shall govern the rights and obligations under the Agreement between the Government of Denmark and the Government of Malawi on a Danish Government Loan to Malawi (hereinafter called the Agreement), of which they are considered an integral part with the same force and effects 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.

*Section 2.* In the event of default by the Borrower in the fulfilment of any commitment or arrangement under the Agreement, the Lender may suspend, in whole or in part, the right of the Borrower to make withdrawals from the Loan Account.

If the default which entitled the Lender to suspend the Borrower's right to draw against the Loan Account persists beyond a period of sixty days after the Lender's notice to the Borrower of the suspension, the Lender may at any time claim immediate repayment of all withdrawals made from the Loan Account, notwithstanding anything in the Agreement to the contrary, unless the basis on which the suspension was made has ceased to exist.

*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*

## SETTLEMENT OF DISPUTES

*Section 1.* Any dispute between the 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 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 Party will observe and carry out awards given by the tribunal.

## ANNEX II

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

- (1) Modernization and extension of hotel facilities
- (2) Telecommunication
- (3) The dairy industry
- (4) Such other machinery, equipment and services for the implementation of Malawi's development projects as may be agreed upon between the Parties.

## EXCHANGES OF LETTERS

### I, *a*

Blantyre, March 2nd, 1971

Excellency,

With reference to the Agreement of to-day's date between the Government of Malawi and the Government of Denmark 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 Malawi importer or prospective investor shall negotiate a contract, subject to the final approval of the Malawi and the Danish authorities. No contract below 200,000 Danish Kroner, except for utilization of any final balance below that amount, shall be eligible for financing under the 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 for fall within the framework of the 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.

(3) When the contracts have been approved, the Government of Malawi may draw on the Loan Account 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 payment have otherwise been complied with.

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

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

For the Government of Denmark:

KAI JOHANSEN

The Honourable Aleke K. Banda  
Minister of Finance  
Zomba, Malawi

II, a

Blantyre, March 2nd, 1971

Excellency,

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

[See letter I, a]

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:

ALEKE K. BANDA

His Excellency Mr. Kai Johansen  
Ambassador of Denmark

I, *b*

Blantyre, March 2nd, 1971

Excellency,

I have the honour to refer to the Development Loan Agreement No. 3 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:

(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) Subject to the provisions of the existing legislation 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 licences 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 accrued to Danish Nationals performing activities in companies in Malawi in which investments are guaranteed fully or in part by the Government of Denmark.

(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 Annex I, Article II 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 thereto constitute an Agreement between our two Governments on this matter and that this Agreement may be terminated by either Government at one year's notice in writing, provided that it shall not expire before the expiry of the Loan Agreement of to-day's date between our two Governments.

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

For the Government of Denmark:

KAI JOHANSEN

His Excellency Mr. Aleke K. Banda  
Minister of Finance  
Malawi

II, b

Blantyre, March 2nd, 1971

Excellency,

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

[See letter I, b]

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:

ALEKE K. BANDA

His Excellency Mr. Kai Johansen  
Ambassador of Denmark

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