

No. 13307

**DENMARK
and
KENYA**

**Agreement on a Danish Government Loan to Kenya
(with annexes and exchange of letters). Signed at
Nairobi on 10 October 1973**

Authentic text: English.

Registered by Denmark on 21 May 1974.

**DANEMARK
et
KENYA**

**Accord relatif à un prêt du Gouvernement danois au
Kenya (avec annexes et échange de lettres). Signé à
Nairobi le 10 octobre 1973**

Texte authentique : anglais.

Enregistré par le Danemark le 21 mai 1974.

AGREEMENT¹ BETWEEN THE GOVERNMENT OF DENMARK AND THE GOVERNMENT OF KENYA ON A DANISH GOVERNMENT LOAN TO KENYA

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 the economic development of Kenya, a Danish Government Loan will be extended to Kenya 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 Kenya (hereinafter called “the Borrower”) a Loan in an amount of 40 million Danish Kroner for 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, at the Borrower’s request, 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 capital goods and services procured within the amount of the Loan.

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 capital goods or services procured under the Loan.

Article III. RATE OF INTEREST

The Loan will be free of interest.

Article IV. REPAYMENTS

Section 1. The Borrower will repay the Loan in fifty semi-annual instalments of 800,000 Danish Kroner each, commencing on October 1, 1983, and ending on April 1, 2008.

¹ Came into force on 10 October 1973 by signature, in accordance with article X (1).

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 Danish Kroner to Danmarks Nationalbank to the credit of the current account of the Ministry of Economic and Budget Affairs 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 Kenya) of such Danish capital goods as are to be used for identifiable projects and are needed for the economic development of Kenya. 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 Kenya, 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 local cost expenditures related to projects for which contracts for supplies of Danish capital equipment or services have been approved by the Lender for financing under this Agreement. The total amount of drawings for the financing of such costs cannot at any time exceed 33½ per cent of the total amount for which contracts for supplies of Danish capital equipment and services have been approved by the Lender for financing under this Agreement.

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 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 credit 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. Withdrawals from the Loan account may take place in fulfilment of contracts which are approved within a period of three years after the entry into force of the Agreement or such other date as may be mutually agreed upon 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 that accorded to other foreign creditors.

Section 2. All shipment 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:

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

Cablegrams:

Financé Nairobi

For the Lender with respect to disbursements:

Ministry of Foreign Affairs
Danish International Development Agency
Copenhagen

Cablegrams:

Etrangères Copenhagen

For the Lender with respect to servicing of the Loan:

Ministry of Economic and Budget Affairs
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 Nairobi on October 10, 1973.

For the Government of Denmark:
H. E. HETTING

For the Government of Kenya:
MWAI KIBAKI

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.

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 Kenya of:

A. Capital Equipment

I. Stationary Equipment

- Water Supply Installations
- Drainage and Irrigation Installations
- Dairies
- Cold Store
- Cement Works
- Abattoirs

II. Non-stationary Equipment

- Agricultural Machinery
- Hospital Equipment
- Printing Machinery

B. Services

- Consultations for project preparation in connection with projects under A.I. and A.II. above.

Such other equipment or services as may be mutually agreed upon between the Parties.

EXCHANGE OF LETTERS

I

Nairobi, October 10, 1973

Excellency,

With reference to the Agreement of today's date between the Government of Denmark and the Government of Kenya, 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 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 Kenya will submit to the Danish Ministry of Foreign Affairs for Danish approval copies of contracts or substantiated claims approved by the Government of Kenya for financing under article VI of the Agreement.

(3) When a contract or substantiated claim submitted by the Government of Kenya with its approval has been approved by the Government of Denmark, the Government of Kenya may draw on the Loan Account to effect payment of the consignment or claim in question. Payments out of this account 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 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:

H. E. HETTING

The Hon. Mwai Kibaki, E.G.H., M.P.
Minister for Finance and Planning
Nairobi

II

Nairobi, October 10, 1973

Sir,

I have the honour to acknowledge receipt of your letter of today 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, Sir, the assurance of my high consideration.

For the Government of Kenya:

MWAI KIBAKI

Mr. H. E. Hetting
Chargé d'affaires a.i.
Royal Danish Embassy
Nairobi
