

No. 17596

**DENMARK
and
KENYA**

**Agreement on a Danish Government loan to Kenya (with
annexes and exchange of letters). Signed at Nairobi on
14 July 1978**

Authentic text: English.

Registered by Denmark on 2 March 1979.

**DANEMARK
et
KENYA**

**Accord relatif à un prêt du Gouvernement du Danemark
au Kenya (avec annexes et échange de lettres). Signé
à Nairobi le 14 juillet 1978**

Texte authentique : anglais.

Enregistré par le Danemark le 2 mars 1979.

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

The Government of Denmark and the Government of the Republic of Kenya, desiring to strengthen the traditional cooperation 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 the Republic of Kenya (hereinafter called "the Borrower") a Loan in an amount of 90 (ninety) 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 No. 4" (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 Ministry of Finance and Planning 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 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 1,800,000 Danish kroner each, commencing on October 1, 1988, and ending on April 1, 2013.

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 Danish Ministry of Finance with Danmarks Nationalbank.

¹ Came into force on 14 July 1978 by signature, in accordance with article X (1).

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 the projects mentioned in annex II.

Section 2. The Loan may also be used to pay for Danish services required for the implementation of the projects mentioned in annex II 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 and purchases of non-Danish capital equipment which are 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 such drawings for the financing of such costs cannot at any time exceed $33\frac{1}{3}$ 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 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 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 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. In case of competitive bidding for contracts to be financed under the Loan the Borrower will forward to the Lender for transmission to the potential bidders all material relevant to the bidding.

Section 4. 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:

FINANCE NAIROBI

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 transmission of bidding material:

Ministry of Foreign Affairs
Commercial Department
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 originals in the English language, each text being equally authentic.

DONE in Nairobi, July 14, 1978.

For the Government of Denmark:

HANS JESPERSEN

For the Government of the Republic 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 the Republic 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

(i) The Loan shall be used for the implementation of the following projects:

- (a) Equipment for extension of the Athi River Cement Factory (East African Portland Cement Company Ltd.) (approx. D.kr. 22 million);
- (b) Equipment for drying of maize (Maize and Produce Board of Kenya) (approx. D.kr. 11 million);
- (c) Equipment for drying of wheat (Wheat Board of Kenya) (approx. D.kr. 24 million);
- (d) A boat for transport of cattle (Kenya Meat Commission) (approx. D.kr. 16 million);
- (e) Equipment for modernization of the slaughterhouses at Athi River and in Mombasa (Kenya Meat Commission) (approx. D.kr. 10 million);
- (f) Equipment for coffee drying (Co-operative Bank of Kenya Ltd.) (approx. D.kr. 7 million).

(ii) Any proposal on the part of the Government of Kenya implying substantial changes in the plans laid down for the implementation of the projects described above, and any proposal on the part of the Government of Kenya for the substitution of new projects for any of the above-mentioned projects, shall be subject to the approval of the Government of Denmark.

EXCHANGE OF LETTERS

I

Nairobi, July 14, 1978

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 make available to the Danish Ministry of Foreign Affairs copies of the contracts 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 out 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 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 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:

HANS JESPERSEN

H.E. Mr. Mwai Kibaki
Minister of Finance
Nairobi

II

Nairobi, July 14, 1978

Excellency,

I have the honour to acknowledge receipt of your letter of today's date 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 Kenya:

MWAI KIBAKI

H.E. Mr. Hans Jespersen
Ambassador of Denmark
Nairobi