

No. 24570

**UNITED KINGDOM OF GREAT BRITAIN
AND NORTHERN IRELAND
and
MEXICO**

**Agreement on certain commercial debts (with schedules).
Signed at Mexico City on 31 January 1985**

Authentic texts: English and Spanish.

*Registered by the United Kingdom of Great Britain and Northern Ireland
on 26 November 1986.*

**ROYAUME-UNI DE GRANDE-BRETAGNE
ET D'IRLANDE DU NORD
et
MEXIQUE**

**Accord relatif à certaines dettes commerciales (avec
annexes). Signé à Mexico le 31 janvier 1985**

Textes authentiques : anglais et espagnol.

*Enregistré par le Royaume-Uni de Grande-Bretagne et d'Irlande du Nord
le 26 novembre 1986.*

AGREEMENT¹ BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE UNITED MEXICAN STATES ON CERTAIN COMMERCIAL DEBTS

The Government of the United Kingdom of Great Britain and Northern Ireland (hereinafter referred to as “the Government of the United Kingdom”) and the Government of the United Mexican States (hereinafter referred to as “the Government of Mexico”);

As a result of the Conference regarding the consolidation of Mexican debts held in Paris on 20, 21 and 22 June 1983 at which the Government of the United Kingdom, the Government of Mexico, the Governments of certain other creditor nations, the International Monetary Fund, the International Bank for Reconstruction and Development, the Secretariat of the United Nations Conference on Trade and Development, the Commission of the European Communities, the Organisation for Economic Co-operation and Development and the Inter-American Development Bank were represented;

Have agreed as follows:

Article 1. DEFINITIONS

In this Agreement, unless the contrary intention appears:

(a) “Certificate” shall mean a certificate issued by Nacional Financiera S.A. to account for the payment in Mexican pesos made by the debtor;

(b) “Contract” shall mean a contract as defined in Article 2 of this Agreement;

(c) “Creditor” shall mean a creditor as defined in Article 2 of this Agreement;

(d) “Credit period” shall mean in relation to a contract the longest period of credit in respect of debts under that contract and references to contracts where the credit period is less than one year shall include those contracts which do not provide for any credit to be given;

(e) “Currency of the debt” shall mean sterling where the contract is expressed as payable in that currency or United States dollars where the contract is expressed as payable in that currency. Where the contract is expressed as payable in any other currency not being Mexican pesos the currency of the debt shall be agreed between the Bank and the Department as either sterling or United States dollars;

(f) “Debt” shall mean any debt to which, by virtue of the provisions of Articles 2 and 10 of this Agreement and of Schedule 2 thereto, the provisions of this Agreement apply;

(g) “Debtor” shall mean a debtor as defined in Article 2 of this Agreement;

¹ Came into force on 31 January 1985 by signature, in accordance with article 11.

(h) "Maturity" in relation to a debt shall mean the date for the repayment thereof under the relevant contract or under a promissory note or bill of exchange drawn up pursuant to the terms of such contract;

(i) "Mexican private firms" shall mean a person or body of persons or corporation legally established in Mexico except the Bank of Mexico, Government-owned Mexican banks and the Public Sector entities other than minority-owned companies as defined and listed in the publication of "Diario Oficial" issued on 15 November 1982;

(j) "Payment in pesos" shall mean payment in Mexican pesos as specified in Article 3 of this Agreement;

(k) "The Bank" shall mean Nacional Financiera S.A. or any other bank or Department which the Government of Mexico may subsequently nominate for the purposes of this Agreement;

(l) "The Department" shall mean the Export Credits Guarantee Department of the Government of the United Kingdom or any other Department or Agency thereof which the Government of the United Kingdom may subsequently nominate for the purposes of this Agreement;

(m) "Transfer scheme" shall mean the transfer scheme referred to in Article 4 of this Agreement.

Article 2. THE DEBT

(1) The provisions of this Agreement shall, subject to the provisions of paragraph (2) of this Article, apply to any debt, owed as primary or principal debtor or as guarantor by Mexican private firms (hereinafter referred to as "debtor") to a person or body of persons or corporation resident or carrying on business in the United Kingdom or to any successor thereto (hereinafter referred to as "creditor") provided that the debt:

- (a) Arises under or in relation to a contract or any agreement supplemental thereto (hereinafter referred to as a "contract") which was entered into before 20 December 1982 by the debtor and the creditor for the supply from outside Mexico of goods or services or both or of finance therefor, where the goods were delivered or services performed or finance provided, as the case may be, prior to that date;
- (b) (i) Relates to principal and interest accruing up to maturity under a contract which was due for payment on or before 30 June 1983 but remains unpaid to the creditor, or
(ii) Relates to principal arising under a contract where the credit period is more than one year, which was due for payment between 1 July 1983 and 31 December 1983 both dates inclusive but which where maturity has occurred remains unpaid to the creditor;
- (c) Is in respect of a contract guaranteed as to payment of that debt under a guarantee issued by the Department;
- (d) Is not the subject of a guarantee of payment issued to the creditor by the Government of Mexico, the Bank of Mexico, any Government-owned Mexican banks, or Mexican Public Sector entities other than minority-owned companies as defined and listed in the publication of *Diario Oficial* issued on 15 November 1982, and

(e) Is not expressed by the terms of the contract to be payable in pesos.

(2) The provision of this Agreement shall not apply to so much of any debt as arises from an amount payable upon or as a condition of the formation of the contract or upon or as a condition of the cancellation or termination of the contract.

Article 3. PAYMENTS IN PESOS IN RESPECT OF DEBTS

(1) The Government of Mexico undertakes to invite and encourage debtors to register their debts with the relevant Mexican Authorities and shall extend the period for registration wherever necessary.

(2) The Government of Mexico shall make foreign exchange available to debtors at a rate equal to that applied to Public Sector obligations of a similar nature. The Government of Mexico undertakes to invite and encourage debtors to make payments directly into the appropriate foreign exchange hedging facility (FICORCA) equivalent to the amounts due to the creditors and to be transferred as specified in subparagraphs (1)(a), (2)(a) and (3) of Schedule 1 hereto and further undertakes to provide debtors where necessary with facilities including loans in pesos to enable them to make such payments.

(3) Each payment in pesos by a debtor in respect of a debt shall upon the entry into force of this Agreement or upon payment by the debtor including any amounts awarded as a result of legal action, whichever is the later, be transferred to the creditors in accordance with the provisions of Article 4 of this Agreement.

Article 4. PAYMENT TO CREDITORS

(1) The Government of Mexico undertakes that the foreign currency equivalent of the amounts paid by the debtors will be transferred punctually to the creditors in the United Kingdom in the currency of the debt in accordance with the transfer scheme set out in Schedule 1 to this Agreement.

(2) The Government of the United Kingdom acknowledges that where a payment has been made by a debtor from a loan made by the Bank to facilitate that payment, the obligation of the Government of Mexico to transfer further foreign currency to the creditor in the United Kingdom in the currency of the debt will, to the extent that such payments relate to such transfers.

(a) Be suspended upon the request of the Government of Mexico in the event that:

(i) The debtor has defaulted on six consecutive monthly repayment instalments of the loan, and

(ii) The Bank has filed a "Judicial Payment Claim" in the Courts of Mexico; and

(b) Cease upon notification to the Department by the Bank that:

(i) The debtor has been declared by the Courts of Mexico to be in "suspensión de pagos", (suspension of payments), or

(ii) The debtor has been declared by the Courts of Mexico to be in a state of bankruptcy.

(3) In the event specified in subparagraph (2)(a) above, the Bank shall continue to prosecute its "Judicial Payment Claim" in the Courts of Mexico until such time as a judgement has been received. If

- (a) Judgement is obtained in favour of the Bank, the Bank shall continue to prosecute its claim until such time as the judgement has been satisfied from sale of the debtors' assets or otherwise. Upon receiving payment in satisfaction of such judgement the Bank shall apply such payment in or towards liquidation of the interest accrued on the peso loan made to the debtor and then unpaid, and to the balance of the loan outstanding. In the event that:
- (i) Such payment is more than sufficient to liquidate the accrued and unpaid interest and that part of the loan in respect of which transfers shall previously have been made by the Government of Mexico to the creditor, the Government of Mexico shall forthwith transfer such excess to the creditor in the United Kingdom in the currency of the debt at the controlled rate of exchange then ruling or, if no such controlled rate is in force, at the free market rate and the obligations of the Government of Mexico hereunder and in relation to that debt shall thereafter cease;
 - (ii) Such payment is less than or only sufficient to liquidate the said interest and said part of the loan, the Government of Mexico shall be under no further obligation hereunder in respect of that debt;
- (b) The judgement obtained is not in favour of the Bank then:
- (i) When the loan made to the debtor was in respect of 90 per cent or less of the amount of the debt due to be transferred as provided in paragraphs (1)(a), (2)(a), or (3) of Schedule 1 to this Agreement, the Government of Mexico shall forthwith pay to the creditor in the United Kingdom the amounts suspended from transfer by reason of the event specified in subparagraph (2)(a) above and the Government of Mexico shall meet when due such obligations for transfer to the creditor in the United Kingdom as thereafter remain, or
 - (ii) When the loan was for the full amount of such debt due to be transferred as provided in this Agreement, the obligations of the Government of Mexico hereunder shall thereupon cease.
- (4) The Government of Mexico acknowledges that if any amount remains owing from a debtor to a creditor in the United Kingdom when the Government of Mexico has by reason of subparagraphs (2)(b), or (3)(b)(ii) of this Article ceased to be under any obligation to make further transfers to the creditor in respect of the debt then the creditor shall then be free to pursue its legal rights against the debtor, and the Government of Mexico shall render to the creditor such assistance as it may request for this purpose. The Government of Mexico will make exchange available to the creditor at the controlled rate of exchange then ruling or, if no controlled rate is in force, at the free market rate, to enable the creditor to transfer into foreign currency such amounts as it may have obtained from pursuit of such legal rights.

Article 5. INTEREST

(1) The Government of Mexico shall be liable for and shall pay to the creditor interest in accordance with the provisions of this Article on any debt to the extent that it has not been and remains to be settled by payment to the creditor in the United Kingdom pursuant to Article 4 of this Agreement.

(2) Interest shall accrue, and shall be payable until the settlement of the debt by payment to the creditor, and shall be paid and transferred to the creditor

concerned in the currency of the debt half-yearly on 30 June and 30 December of each year. The first payment of interest shall be made not later than five business days from the date on which the debtor enters into the programme and has paid the corresponding deposits.

(3) Interest shall be calculated on the outstanding amounts on the basis of a 365 day year at the rate of 12.0 per cent per annum where the currency of the debt is sterling and 12.5 per cent per annum where the currency of the debt is United States dollars.

Article 6. EXCHANGE OF INFORMATION

The Department and the Bank shall exchange all information required for the implementation of this Agreement.

Article 7. OTHER DEBT SETTLEMENTS

(1) If the Government of Mexico agrees with any creditor country other than the Government of the United Kingdom terms for the settlement of indebtedness similar to the indebtedness the subject of this Agreement which are more favourable to creditors than are the terms of this Agreement, then the terms for the payment of debts the subject of this Agreement shall, subject to the provisions of paragraphs (2) and (3) of this Article, be no less favourable to creditors than the terms so agreed with that other creditor country notwithstanding any provision of this Agreement to the contrary.

(2) The provision of paragraph (1) of this Article shall not apply in case where the aggregate of the indebtedness to the other creditor country is less than the equivalent of SDR 1,000,000.

(3) The provisions of paragraph (1) of this Article shall not apply to matters relating to the payments of interest determined by Article 5 hereof.

Article 8. PRESERVATION OF RIGHTS AND OBLIGATIONS

This Agreement and its implementation shall not affect the rights and obligations of creditors and debtors under their credit contracts.

Article 9. RULES

In the implementation of this Agreement the rules set out in Schedule 2 to this Agreement shall apply.

Article 10. THE SCHEDULES

The Schedules to this Agreement shall form an integral part thereof.

Article 11. ENTRY INTO FORCE AND DURATION

This Agreement shall enter into force on signature and shall remain in force until the last of the payments to be made to the creditors under Articles 4 and 5 of this Agreement has been made.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed this Agreement.

DONE in duplicate at Mexico City, Mexico, this 31st day of January, 1985, in the English and Spanish languages both texts being equally authoritative.

For the Government of the United Kingdom of Great Britain
and Northern Ireland:

C. M. JAMES

For the Government of the United Mexican States:

JESÚS SILVA HERZOG

SCHEDULE 1

TRANSFER SCHEME

(1) In respect of each debt being of principal arising under a contract which has a credit period of more than one year and which fell due between 1 July 1983 and 31 December 1983 both dates inclusive and remains unpaid to the creditor:

- (a) An amount equal to 90 per cent of each debt shall be paid and transferred from Mexico to the United Kingdom in 6 equal and consecutive half-yearly instalments on 30 June and 30 December of each year commencing on 30 December 1986; and
- (b) The remaining 10 per cent of each debt shall be paid and transferred from Mexico to the United Kingdom not later than five business days from the date on which the debtor enters into the programme and has paid the corresponding deposits.

(2) In respect of each debt being of principal and/or contractual interest arising under a contract which has a credit period of more than one year and which fell due on or before 30 June 1983 and remains unpaid to the creditor:

- (a) An amount equal to 90 per cent of each debt shall be paid and transferred from Mexico to the United Kingdom in 6 equal and consecutive half-yearly instalments on 30 June and 30 December of each year commencing on 30 December 1986; and
- (b) The remaining 10 per cent of each debt shall be paid and transferred from Mexico to the United Kingdom not later than five business days from the date on which the debtor enters into the programme and has paid the corresponding deposits.

(3) In respect of each debt arising under a contract which has a credit period of one year or less than one year and which fell due on or before 30 June 1983 and remains unpaid to the creditor payment shall be made and transferred from Mexico to the United Kingdom as follows:

- 10 per cent not later than five business days from the date on which the debtor enters into the programme and has paid the corresponding deposits.
- 30 per cent on 30 June 1985.
- 60 per cent on 30 June 1986.

SCHEDULE 2

RULES

(1) The Department and the Bank shall agree a list of debts to which, by virtue of the provisions of Article 2 of this Agreement, this Agreement applies.

(2) Such a list shall be completed as soon as possible. This list may be reviewed from time to time at the request of the Department or the Bank. The agreement of both the Department and the Bank shall be necessary before the list may be altered, amended or added to.

(3) Neither inability to complete the list referred to in paragraphs (1) and (2) of this Schedule nor delay in its completion shall prevent or delay the implementation of the other provisions of this Agreement.

(4) Upon the placing of a payment in pesos with the Bank pursuant to Article 3 of this Agreement the Bank shall notify the Department of such payment by remitting a certificate issued by the Bank which shall state:

- (a) The amount of such payment in pesos expressed in the currency of the debt at the rate of exchange prevailing at the time of such payment;
- (b) The date of such payment;
- (c) Particulars of the contract and date of payment of the debt to which such payment relates; and
- (d) Particulars of any peso loan made to facilitate such payments.

(5) (a) The Bank shall transfer the necessary amounts in the currency of the debt to a bank in the United Kingdom together with payment instructions in favour of the creditor to whom payment is due in accordance with this Agreement.

(b) When making such transfer the Bank shall give the Department particulars of the debts and of the interest to which the transfers relate.
