

No. 27659

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

Exchange of notes constituting an agreement concerning certain commercial debts (with annex). Lagos, 23 August 1989

Authentic text: English.

Registered by the United Kingdom of Great Britain and Northern Ireland on 23 November 1990.

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

Échange de notes constituant un accord relatif à certaines dettes commerciales (avec annexe). Lagos, 23 août 1989

Texte authentique : anglais.

Enregistré par le Royaume-Uni de Grande-Bretagne et d'Irlande du Nord le 23 novembre 1990.

EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT¹ BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE FEDERAL REPUBLIC OF NIGERIA CONCERNING CERTAIN COMMERCIAL DEBTS

I

*The United Kingdom High Commissioner at Lagos to the Director-General,
Federal Ministry of Finance and Economic Development of Nigeria*

BRITISH HIGH COMMISSION
LAGOS

23 August 1989

Sir,

I have the honour to refer to the Agreed Minute on the Consolidation of the Debt of the Federal Republic of Nigeria which was signed at the Conference held in Paris on 3 March 1989, and to inform Your Excellency that the Government of the United Kingdom of Great Britain and Northern Ireland are prepared to provide debt relief to the Government of the Federal Republic of Nigeria on the terms and conditions set out in the attached Annex.

If these terms and conditions are acceptable to the Government of the Federal Republic of Nigeria I have the honour to propose that this Note together with its Annex, and your reply to that effect, shall constitute an Agreement between the two Governments in this matter which shall be known as "The United Kingdom/Nigeria Debt Agreement No. 2 (1989)" and which shall enter into force on the date of your reply.

I have the honour to convey to Your Excellency the assurance of my highest consideration.

B. L. BARDER

¹ Came into force on 23 August 1989, the date of the note in reply, in accordance with the provisions of the said notes.

ANNEX

SECTION I

Definitions and Interpretation

- (1) In this Annex, unless the contrary intention appears:
- (a) “Agreed Minute” means the Agreed Minute on the Consolidation of the Debt of the Federal Republic of Nigeria which was signed at the Conference held in Paris on 3 March 1989;
 - (b) “Consolidation Period” means the period from 1 January 1989 to 30 April 1990 inclusive;
 - (c) “Contract” means a contract or any agreement supplemental thereto, the parties to which include a Debtor and a Creditor and which is either for the sale of goods and/or services from outside Nigeria to a buyer in Nigeria, or is in respect of the financing of such a sale;
 - (d) “Creditor” means a person or body of persons or corporation resident or carrying on business in the United Kingdom, or any successor in title thereto;
 - (e) “Currency of the Debt” means the currency specified in the First Agreement or the relevant Contract as being the currency in which a Debt is to be paid except:
 - (i) any Debt specified in Section 2(1)(e)(ii) which is denominated in a currency other than sterling or US dollars shall be converted into sterling at the middle spot rate of exchange for that currency prevailing on 1 January 1987; and
 - (ii) any Debt specified in Section 2(1)(e)(i) which is denominated in French francs shall be converted into sterling at the rate of 10·76 = £1;
 - (f) “Debt” means any debt to which, by virtue of the provisions of Section 2(1), the provisions of this Annex apply;
 - (g) “Debtor” means the Government of Nigeria or any of its federated states, whether as primary debtor or guarantor, or any person or body of persons or corporation resident or carrying on business in Nigeria or any successor in title thereto;
 - (h) “the Department” means the Secretary of State of the Government of the United Kingdom acting through the Export Credits Guarantee Department or any other Department of the Government of the United Kingdom which that Government may nominate for the purpose hereof;
 - (i) “the First Agreement” means the Agreement between the Government of the United Kingdom and the Government of Nigeria on Certain Commercial Debts¹ which entered into force on 18 May 1987 ;
 - (j) “the Government of Nigeria” means the Government of the Federal Republic of Nigeria;

¹United Nations, *Treaty Series*, vol. 1656, No. I-28494.

- (k) “the Government of the United Kingdom” means the Government of the United Kingdom of Great Britain and Northern Ireland;
- (l) “Maturity” in relation to a Debt means the due date for the payment or repayment thereof under either the First Agreement or the relevant Contract or on a promissory note or bill of exchange drawn up pursuant thereto or, in the case of a Debtor other than the Government of Nigeria or any of its federated states, or any public entity wholly owned by the Federal Republic of Nigeria acting as either primary obligor or guarantor, the date on which the naira counterpart of the obligation was deposited with a commercial bank in Nigeria, whichever is the later;
- (m) “the Ministry” means the Federal Ministry of Finance and Economic Development acting on behalf of the Government of Nigeria;
- (n) “Nigeria” means the Federal Republic of Nigeria;
- (o) “Reference Rate” means the arithmetic mean (rounded upwards where necessary to the nearest multiple of 1/16th (one sixteenth) of one per cent) of the rates quoted to the Department by three banks to be agreed upon by the Department and the Ministry at which six-month eurodollar deposits, in the case of Debts denominated in US dollars, and six-month sterling deposits in the case of all other Debts, are offered to those banks by prime banks in the London interbank market at 11 am (London time) two business days before the commencement of the relevant interest period in each year;
- (p) “United Kingdom” means the United Kingdom of Great Britain and Northern Ireland, and for the purposes of Section 1(1)(d) includes the Channel Islands and the Isle of Man.
- (2) All references to interest shall be to interest accruing from day to day and calculated on the basis of actual days elapsed and a year of 360 days, in the case of a Debt denominated in US dollars, and 365 days in the case of any other Debt.
- (3) Where the context of this Annex so allows, words importing the singular include the plural and *vice versa*.
- (4) Unless otherwise indicated, reference to a specified Section shall be construed as a reference to that specified Section of this Annex.
- (5) The headings to the Sections are for ease of reference only.

SECTION 2

The Debt

(1) The provisions of this Annex shall, subject to the provisions of paragraph (2) of this Section and paragraph 4 of Article II and paragraphs 2–5 of Article IV of the Agreed Minute, apply to:

(a) any amount of interest charged under Section 5 of this Annex in respect of amounts specified in:

- (i) paragraph (1)(b);
- (ii) paragraph (1)(d)(i);
- (iii) paragraph (1)(e)(i)(aa); and
- (iv) paragraph (1)(e)(ii);

of this Section, such interest having accrued on or before 31 December 1988;

(b) any amount of principal or interest payable under the First Agreement which fell due for payment on or before 31 December 1988;

(c) any amount of principal or interest payable under the First Agreement which fell due or will fall due during the Consolidation Period and which remains unpaid;

(d) any amount of principal or contractual interest accruing up to the date for payment or repayment which arises under or in relation to a contract or any agreement supplemental thereto in respect of the sugar plant of SAVE referred to in paragraph 1 of Article II of the Agreed Minute which is guaranteed as to payment by the Government of Nigeria and which:

- (i) fell due for payment on or before 31 December 1988 and remains unpaid, or
- (ii) fell due or will fall due during the Consolidation Period and remains unpaid;

(e) any amount of principal or contractual interest accruing up to Maturity which is guaranteed by the Department as to payment according to the terms of a Contract; which is not expressed by the terms of that Contract to be payable in naira; which does not arise from any amount payable upon or as a condition of the formation of that Contract or as a condition of the cancellation or termination of that Contract, and which:

- (i) arises under or in relation to a Contract entered into before 1 October 1985 which granted or allowed credit for a period exceeding one year and is owed by a Debtor to a Creditor which:

(aa) fell due for payment on or before 31 December 1988 and remains unpaid; or

(bb) fell due or will fall due for payment during the Consolidation Period and remains unpaid; or

- (ii) arises under or in relation to a Contract allowing for credit for a period of one year or less (including letter of credit transactions), is owed by a Debtor to a Creditor, and fell due for payment on or before 31 December 1988 and remains unpaid.

(2) The Department and the Ministry shall, as soon as possible, agree and draw up a list of Debts (“ the Debt List ”) to which, by virtue of the provisions of this Section, this Annex applies. For the Debts referred to in Section 2(1)(e)(ii) the Ministry acknowledges the provisions of paragraph 2 of Article IV of the Agreed Minute and will accept these Debts for their entire value as soon as they are notified to the Central Bank of Nigeria. All other Debts shall be agreed by mutual consent and the Debt List in respect of these Debts may be reviewed from time to time at the request of the Department or of the Ministry but may not be added to or amended without the agreement of both the Department and the Ministry. Delay in the completion of the Debt List shall not prevent nor delay the implementation of the other provisions of this Annex.

SECTION 3

Payments under the First Agreement

The provisions of the First Agreement in so far as they relate to the payment of any Debt shall cease to apply upon entry into force of this Agreement.

SECTION 4

Transfer Scheme

The Government of Nigeria shall pay to the Department in accordance with the provisions of Section 6(1) the following:

- (a) in respect of each Debt specified in Section 2(1)(a)(i) and in respect of each Debt specified in Section 2(1)(b):
 - (i) at least 40 per cent on or before 31 January 1990; and
 - (ii) the remainder by six equal and consecutive half-yearly instalments commencing on 31 January 1990;
- (b) in respect of each Debt specified in Sections 2(1)(a)(ii) and (iii) and in respect of each Debt specified in Sections 2(1)(c), (d) and (e)(i): 100% by ten equal and consecutive half-yearly instalments commencing on 28 February 1995;
- (c) in respect of each Debt specified in Section 2(1)(a)(iv) and in respect of each Debt specified in Section 2(1)(e)(ii): 100% by ten equal and consecutive half-yearly instalments commencing on 30 June 1990.

SECTION 5

Interest

(1) Interest shall be deemed to have accrued and shall accrue on the unpaid balance of each Debt during, and shall be payable in respect of the period from Maturity, or, in the case of a Debt specified in Section 2(1)(a), from 1 January 1989 until the settlement of that Debt by payment to the Department in accordance with Section 4.

(2) The Government of Nigeria shall be liable for and shall pay to the Department in accordance with the provisions of Section 6(1) and of this Section interest on each Debt to the extent that that Debt has not been settled by payment to the Department in the United Kingdom pursuant to Section 4. Such interest shall be paid to the Department on 31 October 1989 and thereafter half-yearly on 28 February and 31 August each year commencing on 28 February 1990.

(3) If any amount of interest payable in accordance with the provisions of paragraph (2) of this Section is not paid on the due date for payment thereof, the Government of Nigeria shall be liable for and shall pay to the Department interest on such amount of overdue interest. Such additional interest shall accrue from day to day from the due date for payment thereof in accordance with the provisions of paragraph (2) of this Section to the date of receipt of the payment by the Department, and shall be due and payable without further notice or demand of any kind.

(4) All interest payable in accordance with the provisions of this Section shall be paid at the rate of 0.5 per cent above the Reference Rate applicable to each six-monthly interest period commencing from Maturity of the Debt concerned.

SECTION 6

Payments in the Department

(1) As and when payments become due under the terms of Sections 4 and 5 of this Annex, the Ministry shall:

- (a) in the first instance draw upon the special account at the Bank of England referred to in paragraph 5 of Article IV of the Agreed Minute to meet such payments; and
- (b) arrange for the necessary amounts, with deduction for taxes, fees or other public charges or any other costs accruing inside or outside Nigeria, to be paid and transferred in the Currency of the Debt to the Department in the United Kingdom to an account, details of which shall be notified by the Department to the Ministry. In this respect the Department shall be regarded as acting as agent for each Creditor concerned.

(2) The Ministry shall give the Department full particulars of the Debts and/or interest to which the transfers relate.

SECTION 7

Exchange of Information

The Department and the Ministry shall exchange all information required for the implementation of this Annex.

SECTION 8

Other Debt Settlements

- (1) The Government of Nigeria undertakes to comply with its obligations under Article III of the Agreed Minute and agrees to accord to the Government of the United Kingdom terms no less favourable than those agreed with any other creditor country, notwithstanding any provision of this Annex to the contrary.
- (2) The provisions of paragraph (1) of this Section shall not apply to matters relating to the payment of interest determined by Section 5.

SECTION 9

Preservation of Rights and Obligations

This Annex and its implementation shall not affect the rights or obligations of any Creditor or Debtor under a Contract other than those rights and obligations in respect of which the Government of the United Kingdom and the Government of Nigeria are authorised to act respectively on behalf of and to bind such Creditor and Debtor.

SECTION 10

The Department's Intention

The Department intends, in the spirit of paragraph 1 of Article IV of the Agreed Minute, to consider whether it may become possible at some future time to make arrangements to refinance the whole or part of the Debt. If the Department shall wish to make such refinancing arrangements, the Government of Nigeria agrees to negotiate in good faith to attempt to agree the necessary provisions. It is agreed that if as a consequence of such negotiations, both parties agree that amendments should be made to this Annex, such amendments shall be effected by a further Exchange of Notes between the Government of Nigeria and the Government of the United Kingdom.

II

*The Director-General, Federal Ministry of Finance and Economic Development
of Nigeria to the United Kingdom High Commissioner at Lagos*

Lagos
23 August 1989

Your Excellency,

I have the honour to acknowledge receipt of your Excellency's Note of the 23rd day of August 1989 which reads as follows:

[See note I]

I have the honour to confirm that the terms and conditions set out in the Annex to your Note are acceptable to the Government of the Federal Republic of Nigeria and that your Note together with its Annex, and this reply, shall constitute an Agreement between our two Governments in this matter which shall be known as "The United Kingdom/Nigeria Debt Agreement No. 2 (1989)" and which shall enter into force today.

I have the honour to convey to Your Excellency the assurance of my highest consideration.

ALIYU MOHAMMED

[Annex as under note I]
