



Treaty Series No. 18 (2006)

# Exchange of Notes

between the Government of the United Kingdom of Great Britain and  
Northern Ireland and the Government of the Republic of Kenya

## concerning Certain Commercial Debts (The United Kingdom/Kenya Debt Agreement No. 3(2004))

Nairobi, 13 and 30 August 2004

[The Exchange of Notes entered into force on 30 August 2004]

*Presented to Parliament  
by the Secretary of State for Foreign and Commonwealth Affairs  
by Command of Her Majesty  
July 2006*

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**EXCHANGE OF NOTES BETWEEN THE GOVERNMENT OF THE  
UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND  
AND THE GOVERNMENT OF THE REPUBLIC OF KENYA  
CONCERNING CERTAIN COMMERCIAL DEBTS (THE UNITED  
KINGDOM /KENYA DEBT AGREEMENT NO. 3 (2004))**

**No. 1**

*The British High Commission at Nairobi to the Ministry of Finance of the  
Republic of Kenya*

Nairobi  
13 August 2004

The British High Commission present their compliments to the Ministry of Finance of the Republic of Kenya and has the honour to refer to the Agreed Minute on the Consolidation of the Debt of the Republic of Kenya which was signed in Paris on 15 January 2004, and to inform Your Excellency that the Government of the United Kingdom of Great Britain and Northern Ireland is prepared to provide debt relief to the Government of the Republic of Kenya on the terms and conditions set out in the attached Annex.

If these terms and conditions are acceptable to the Government of the Republic of Kenya, the High Commission has the honour to propose that this Note together with its Annex, and your reply to that effect, shall constitute an Agreement between our two Governments in this matter which shall be known as “The United Kingdom/Kenya Debt Agreement No. 3 (2004)” and which shall enter into force on the date of your reply.

The British High Commission avail themselves of this opportunity to renew to the Ministry of Finance the assurances of their highest consideration.

**BRITISH HIGH COMMISSION  
NAIROBI**

## ANNEX

### SECTION 1

#### 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 Republic of Kenya which was signed in Paris on 15 January 2004;
  - (b) "Appropriate Market Rate" means the Reference Rate plus 0.5 per cent;
  - (c) "Business Day" means a day on which banks are open for domestic and foreign exchange business in London;
  - (d) "Debt" means any of the payments of principal and interest to which by virtue of the provisions of Section 2 this Annex applies;
  - (e) "Department" means the Export Credits Guarantee Department or any other department or entity that the Government of the United Kingdom may subsequently nominate to perform the functions of the Export Credits Guarantee Department hereunder;
  - (f) "Kenya" means the Republic of Kenya;
  - (g) "Late Interest" means the interest accrued in accordance with Section 5 (4) and Section 5 (5) of the Second Agreement that remains unpaid as of 31<sup>st</sup> December 2003;
  - (h) "Maturity" means the date on which a Debt fell due for payment under the Second Agreement;
  - (i) "Ministry" means the Ministry of Finance and Planning of Kenya or any other institution which the Government of the Republic of Kenya may nominate for this purpose;
  - (j) "Reference Rate" means the rate (rounded upwards where necessary to the nearest multiple of one sixteenth of one per cent) quoted by the Reuters Monitor Money Rate Services (International Swap Dealers Association Interbank Rate from London) (page reference "ISDA") as the rate at which six-month sterling deposits are offered in the London Interbank Market at 11am (London time) two Business Days before the commencement of the relevant interest period. If the Reuters Monitor Money Rate Services are unavailable at that time on that date, the rate to be used will be the rate (rounded upwards where necessary to the nearest multiple of one sixteenth of one per cent) quoted by a bank to

be agreed by the Department and the Ministry, as the rate at which that bank is offering six-month sterling deposits;

- (k) "Second Agreement" means the Agreement between the Government of the United Kingdom and the Government of the Republic of Kenya on Certain Commercial Debts<sup>1</sup>, which entered into force on 24 May 2001;
- (l) "United Kingdom" means the United Kingdom of Great Britain and Northern Ireland.

(2) All interest payable pursuant to this Annex shall be calculated on the basis of actual days elapsed and a year of 365 days.

(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 Section of this Annex.

(5) The headings to the Sections are for ease of reference only.

## SECTION 2

### **The Debts**

The provisions of this Annex shall, subject to the provisions of Article IV paragraph 3 of the Agreed Minute, apply to:

- (a) one hundred per cent (100%) of the principal and of the interest (excluding Late Interest) payments payable under the Second Agreement and whose Maturity occurred between 1 January 2004 and 31 December 2004 both dates inclusive and remains unpaid; and
- (b) one hundred per cent (100%) of the principal and fifty per cent (50%) of the interest (excluding Late Interest) payments payable under the Second Agreement and whose Maturity occurs between 1 January 2005 and 31 December 2005 both dates inclusive.

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<sup>1</sup> Treaty Series No. 40 (2001) Cm 5249

## SECTION 3

### **Payments under the Second Agreement**

Subject to Section 10, the provisions of the Second Agreement insofar as they relate to the payment of any Debt as defined herein shall cease to apply upon the entry into force of this Agreement.

## SECTION 4

### **Payment of Debts**

The Government of the Republic of Kenya shall pay to the Department the Debts, in accordance with the provisions of Section 6, on the following dates or on any other dates agreed by the Department and the Ministry subject to relevant amendments made to the Agreed Minute and in the following percentages:

Repayment date	Percentage of the Debts to be repaid
31 December 2010	1.00
30 June 2011	1.15
31 December 2011	1.32
30 June 2012	1.51
31 December 2012	1.74
30 June 2013	1.99
31 December 2013	2.29
30 June 2014	2.63
31 December 2014	3.02
30 June 2015	3.46
31 December 2015	3.98
30 June 2016	4.56
31 December 2016	5.24
30 June 2017	6.02
31 December 2017	6.91
30 June 2018	7.93
31 December 2018	9.10
30 June 2019	10.45
31 December 2019	11.99
30 June 2020	13.71

## SECTION 5

### **Interest**

(1) Interest on the balance of each Debt shall be deemed to have accrued and shall continue to accrue and be payable from Maturity until the complete payment of that Debt.

(2) The Government of the Republic of Kenya shall be liable for and shall pay to the Department interest on each Debt until such Debt has been settled by payment to the Department in the United Kingdom. Such interest shall be paid half-yearly on 31 December and 30 June or on any other dates agreed by the Department and the Ministry (the "Due Dates") each year commencing on 1 October 2004.

(3) All interest payable in accordance with the provisions of this Section shall be paid at the Appropriate Market Rate applicable to each half-yearly interest period commencing with the half-yearly interest period within which the Maturity of the Debt concerned occurs.

(4) If any amount of interest payable in accordance with the provisions of paragraph (2) of this Section is not paid on the pertinent Due Date for payment thereof, the Government of the Republic of Kenya shall pay to the Department interest on any such amount of overdue interest. Such additional interest shall accrue at the Appropriate Market Rate plus 0.4% from day to day from the Due Date and until the date of receipt of the payment by the Department, and shall be due without further notice or demand.

(5) If any amount of Debt payable in accordance with the provisions of Section 4 is not paid on the pertinent Due Date therefor, the Government of the Republic of Kenya shall pay to the Department interest on such outstanding amount. Such additional interest shall be in addition to the interest payable under paragraph (2) of this Section. It shall accrue at the Appropriate Market Rate plus 0.4% from day to day from the Due Date and until the date of receipt of the payment by the Department, and shall be due without further notice or demand.

## SECTION 6

### **Payments to the Department**

(1) When payment becomes due under the terms of Section 4 or Section 5, the Ministry shall arrange for the necessary amounts, without deduction of taxes, fees, other public charges or any other costs incurred outside the United Kingdom, to be paid in sterling to the account notified by the Department to the Ministry, details of which account shall be notified to the Ministry at least 15 Business Days before the Due Date.

(2) If the day on which such a payment falls due is not a Business Day, payment shall be made on the next succeeding Business Day.

(3) The Ministry shall give the Department on the date of payment full particulars of the Debts and/or interest to which the payments relate.

## SECTION 7

### **Exchange of Information**

The Department and the Ministry shall exchange in writing or, where it is considered reasonable and expeditious, electronically all information required for the implementation of this Annex. The Department will notify the Ministry within 15 Business Days of the commencement of each interest period of the Reference Rate to be applied during that interest period.

## SECTION 8

### **Other Debt Settlements**

(1) The Government of the Republic of Kenya undertakes to fulfil its commitments 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, 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 under Section 5.

## SECTION 9

### **Debt Swaps Option**

The Department shall notify the Government of the Republic of Kenya if it wishes to exercise the option given in Article II paragraph 4 of the Agreed Minute to sell or exchange Debt. This option may only be implemented with the consent of the Government of the Republic of Kenya and will only be exercised on condition that the Debt sold or exchanged is discharged in the legal currency of the Republic of Kenya.



## SECTION 10

### **Conditionality**

Unless the Department otherwise agrees in writing, the conditions of Article III paragraph 6 and Article IV paragraph 3 of the Agreed Minute shall apply to this Annex. If this Annex ceases to apply because any of these conditions has not been fulfilled, all outstanding payments shall be due according to the payment schedules in the Second Agreement, as if this Annex had never existed.

### **No. 2**

*The Ministry of Finance of the Republic of Kenya to the British High Commission at Nairobi*

Nairobi  
30 August 2004

The Ministry of Finance has the honour to acknowledge receipt of the British High Commission's Note of 13 August 2004 which reads as follows:

### **[As in No. 1]**

The Ministry of Finance has the honour to confirm that the terms and conditions set out in the Annex to your Note are acceptable to the Government of the Republic of Kenya, 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/Kenya Debt Agreement No 3 (2004)' and which shall enter into force today.

The Ministry of Finance has the honour to convey to the British High Commission the assurance of their highest consideration.

**MINISTRY OF FINANCE  
NAIROBI**







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