



Treaty Series No. 31 (1990)

# Exchange of Notes

between the Government of the  
United Kingdom of Great Britain and Northern Ireland  
and the Government of the Republic of Malawi  
concerning Certain Commercial Debts  
(The United Kingdom/Malawi Debt Agreement No. 3 (1988))

Lilongwe, 23 and 27 January 1989

[The Agreement entered into force on 27 January 1989]

*Presented to Parliament  
by the Secretary of State for Foreign and Commonwealth Affairs  
by Command of Her Majesty  
May 1990*

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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 MALAWI  
CONCERNING CERTAIN COMMERCIAL DEBTS  
(THE UNITED KINGDOM/MALAWI DEBT AGREEMENT No. 3 (1988))**

No. 1

*The United Kingdom High Commissioner at Lilongwe to the Minister of Finance of Malawi*

*British High Commission  
Lilongwe  
23 January 1989*

Sir,

I have the honour to refer to the Agreed Minute on the Consolidation of the Debt of the Republic of Malawi which was signed at the Conference held in Paris on 22 April 1988, and to inform you 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 Malawi 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 Malawi 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/Malawi Debt Agreement No. 3 (1988)' and which shall enter into force on the date of your reply.

I avail myself of this opportunity to renew the assurance of my highest consideration.

DENIS G. OSBORNE

**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 Republic of Malawi which was signed at the Conference held in Paris on 22 April 1988;
  - (b) "the Bank" means the Reserve Bank of Malawi;
  - (c) "Contract" means a contract, or any agreement supplemental thereto, entered into before 1 January 1982, the parties to which include the Debtor and a Creditor and which is either for the sale of goods and/or services from outside Malawi to a buyer in Malawi, or is in respect of the financing of such a sale, and which in either case granted or allowed credit to the Debtor for a period exceeding one year;
  - (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 relevant Contract or in the relevant Previous Agreement as being the currency in which a Debt is to be paid;
  - (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 Malawi (whether as primary debtor or as guarantor);

- (h) "the Department" means the Secretary of State of Her Britannic Majesty's Government acting through the Export Credits Guarantee Department or any other Department of Her Britannic Majesty's Government which that Government may nominate for the purpose hereof;
  - (i) "the Government of Malawi" means the Government of the Republic of Malawi;
  - (j) "the Government of the United Kingdom" means the Government of the United Kingdom of Great Britain and Northern Ireland;
  - (k) "Maturity" in relation to a Debt specified in Section 2(1)(a) means the due date for repayment under the relevant Previous Agreement and to a Debt specified in Section 2(1)(b) means the due date for the payment or repayment thereof under the relevant Contract, or on a promissory note or bill of exchange drawn up pursuant thereto;
  - (l) "Previous Agreements" means the Debt Agreements between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Malawi on Certain Commercial Debts signed on 7 July 1983<sup>1</sup> and 29 August 1984<sup>2</sup>;
  - (m) "Reference Rate" means the rate quoted to the Department by a bank to be agreed upon by the Department and the Bank at which six-month sterling deposits are offered to that bank by prime banks in the London interbank market at 11am (London time) two business days before the commencement of the relevant interest period in each year;
  - (n) "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, excluding contractual interest, shall be to interest accruing from day to day and 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 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 Section IV paragraph 3 of the Agreed Minute, apply to:
- (a) any amount of principal payable under either of the Previous Agreements which fell due or will fall due for payment on or before 31 May 1989 and which remains unpaid;
  - (b) any other amount, whether of principal or of contractual interest accruing up to Maturity, owed by the Debtor to a Creditor, and which:
    - (i) arises under or in relation to a Contract;
    - (ii) fell due or will fall due for payment on or before 31 May 1989 and remains unpaid;
    - (iii) is guaranteed by the Department as to payment according to the terms of the Contract; and
    - (iv) is not expressed by the terms of the Contract to be payable in Malawian Kwacha.
- (2) The Department and the Bank 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. The Debt List may be reviewed from time to time at the request of the Department

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<sup>1</sup> Treaty Series No. 54 (1983), Cmnd. 9036.

<sup>2</sup> Treaty Series No. 77 (1984), Cmnd. 9375.

or of the Bank, but shall not be added to or amended without the agreement of both the Department and the Bank. Delay in the completion of the Debt List shall neither prevent nor delay the implementation of the other provisions of this Annex.

### SECTION 3

#### **Payments under the Previous Agreements**

The provisions of the Previous Agreements 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 Malawi shall pay to the Department in accordance with the provisions of Section 6(1) the following:

- (a) in respect of each Debt which fell due on or before 31 March 1988:  
100 per cent by twenty equal and consecutive half-yearly instalments commencing on 30 April 1998.
- (b) in respect of each Debt which fell due, or will fall due, between 1 April 1988 and 31 May 1989:  
100 per cent by twenty equal and consecutive half-yearly instalments commencing on 30 April 1999.

### SECTION 5

#### **Interest**

- (1) Interest shall be deemed to have accrued and shall accrue on the unpaid portion of each Debt during, and shall be payable in respect of, the period from Maturity until the settlement of that Debt by payment to the Department in accordance with Section 4.
- (2) The Government of Malawi 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 it 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 half-yearly on 30 April and 31 October each year commencing on 30 April 1989.
- (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 Malawi 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 to the Department**

- (1) As and when payments become due under the terms of Sections 4 and 5, the Bank shall arrange for the necessary amounts, without deduction for taxes, fees, other public charges or any other costs accruing inside or outside Malawi, to be paid 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 Bank. In this respect the Department shall be regarded as acting as agent for each Creditor concerned.

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

(3) The Government of Malawi undertakes to comply with the provisions of Section III paragraph 8 of the Agreed Minute.

#### SECTION 7

##### **Exchange of Information**

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

#### SECTION 8

##### **Other Debt Settlements**

(1) The Government of Malawi undertakes to comply with the conditions of Section III paragraphs 1 to 3 and 7 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 and obligations of any Creditor under a Contract other than those rights and obligations in respect of which the Government of the United Kingdom is authorised to act on behalf of, and to bind, such Creditor.

No. 2

*The Minister of Finance of Malawi to the United Kingdom High Commissioner at Lilongwe*

*Ministry of Finance  
Lilongwe  
27 January 1989*

Your Excellency,

I have the honour to acknowledge the receipt of Your Excellency's Note of 23 January, 1989 which reads as follows:—

[As in No.1]

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 Republic of Malawi 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/Malawi Debt Agreement No. 3. (1988)' and which shall enter into force today.

I avail myself of this opportunity to renew to Your Excellency the assurance of my highest consideration.

LOUIS CHIMANGO



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