

CONFORMED COPY

CREDIT NUMBER 2049 KE

Development Credit Agreement

(Financial Sector Adjustment Credit)

between

REPUBLIC OF KENYA

and

INTERNATIONAL DEVELOPMENT ASSOCIATION

Dated July 12, 1989

CREDIT NUMBER 2049 KE

DEVELOPMENT CREDIT AGREEMENT

AGREEMENT, dated July 12, 1989, between REPUBLIC OF KENYA (the Borrower) and INTERNATIONAL DEVELOPMENT ASSOCIATION (the Association).

WHEREAS (A) the Association has received a letter dated April 28, 1989, from the Borrower describing a program of actions, objectives and policies designed to achieve structural adjustment of the Borrower's financial sector (hereinafter called the Program), declaring the Borrower's commitment to the execution of the Program, and requesting from the Association, assistance in the financing of urgently needed imports and services required during such execution; and

(B) on the basis, inter alia, of the foregoing, the Association has decided in support of the Program to provide such assistance to the Borrower by making the Credit in two tranches as hereinafter provided;

NOW THEREFORE the parties hereto hereby agree as follows:

ARTICLE I

General Conditions; Definitions

Section 1.01. The "General Conditions Applicable to Development Credit Agreements" of the Association, dated January 1, 1985, with the modifications thereof set forth below (the General Conditions) constitute an integral part of this Agreement:

(a) Section 2.01, paragraph 9, shall be modified to read:

"'Project' means the imports and other activities that may be financed out of the proceeds of the Credit pursuant to the provisions of Schedule 1 to the Development Credit Agreement.";

(b) Section 9.06 (c) shall be modified to read:

"(c) Not later than six months after the Closing Date or such later date as may be agreed for this purpose between the Borrower and the Association, the Borrower shall prepare and furnish to the Association a report, of such scope and in such detail as the Association shall reasonably request, on the execution of the Program referred to in the Preamble to the Development Credit Agreement, the performance by the Borrower and the Association of their respective obligations under the Development Credit Agreement and the accomplishment of the purposes of the Credit."; and

(c) the last sentence of Section 3.02 is deleted.

Section 1.02. Unless the context otherwise requires, the several terms defined in the General Conditions and in the Preamble to this Agreement have the respective meanings therein set forth and the following additional terms have the following meanings:

(a) "SITC" means the Standard International Trade Classification, Revision 3 (SITC, Rev. 3), published by the United Nations in Statistical Papers, Series M, No. 34/Rev. 3 (1986);

(b) "Ksh" and "Kenya Shilling" mean the currency of the Borrower;

(c) "NBFI" means the near-bank financial institutions;

(d) "NSE" means the Nairobi Stock Exchange;

(e) "Fiscal Year" means the period from July 1 to June 30;

(f) "Special Project Preparation Advance" means the project preparation advance granted by the Bank to the Borrower pursuant to an exchange of letters, dated February 5, 1988, and February 12, 1988, between the Borrower and the Bank from the Special Project Preparation Facility for Sub-Saharan Africa created by the Executive Directors on January 8, 1985; and

(g) "Special Account" means the accounts referred to in Section 2.02 (c) of this Agreement.

ARTICLE II

The Credit

Section 2.01. The Association agrees to lend to the Borrower, on the terms and (-conditions set forth or

referred to in this Agreement, an amount in various currencies equivalent to ninety two million nine hundred thousand Special Drawing Rights (SDR 92,900,000).

Section 2.02. (a) The amount of the Credit may be withdrawn from the Credit Account in accordance with the provisions of Schedule 1 to this Agreement for expenditures made (or, if the Association shall so agree, to be made) in respect of the reasonable cost of goods required during the execution of the Program and to be financed out of the proceeds of the Credit.

(b) Promptly after the Effective Date, the Association shall, on behalf of the Borrower, withdraw from the Credit Account and pay to the Bank an amount required to repay the principal amount of the Special Project Preparation Advance withdrawn and outstanding as of such date and to pay all unpaid charges thereon. The unwithdrawn balance of the authorized amount of the Special Project Preparation Advance shall therefore be cancelled.

(c) The Borrower shall, for the purposes of the Program open and maintain in dollars two Special Accounts (the Import Special Account and the Restructuring Special Account) in a commercial bank on terms and conditions satisfactory to the Association. Deposits into and payments out of, the Special Accounts shall be made in accordance with the provisions of Schedule 4 to this Agreement.

Section 2.03. The Closing Date shall be September 30, 1991, or such later date as the Association shall establish. The Association shall promptly notify the Borrower of such later date.

Section 2.04. (a) The Borrower shall pay to the Association a commitment charge on the principal amount of the Credit not withdrawn from time to time at a rate to be set by the Association as of June 30 of each year, but not to exceed the rate of one-half of one percent (1/2 of 1%) per annum.

(b) The commitment charge shall accrue: (i) from a date sixty days after the date of this Agreement (the accrual date) to the respective dates on which amounts shall be withdrawn by the Borrower from the Credit Account or cancelled; and (ii) at the rate set as of the June 30 immediately preceding the accrual date or at such other rates as may be set from time to time thereafter pursuant to paragraph (a) above. The rate set as of June 30 in each year shall be applied as of the next payment date in that year specified in Section 2.06 of this Agreement.

(c) The commitment charge shall be paid: (i) at such places as the Association shall reasonably request; (ii) without restrictions of any kind imposed by, or in the territory of, the Borrower; and (iii) in the currency specified in this Agreement for the purposes of Section 4.02 of the General Conditions or in such other eligible currency or currencies as may from time to time be designated or selected pursuant to the provisions of that Section,

Section 2.05. The Borrower shall pay to the Association a service charge at the rate of three-fourths of one percent (3/4 of 1%) per annum on the principal amount of the Credit withdrawn and outstanding from time to time.

Section 2.06. Commitment charges and service charges

shall be payable semiannually on March 1 and September 1 in each year.

Section 2.07. (a) Subject to paragraphs (b) and (c) below, the Borrower shall repay the principal amount of the Credit in semi-annual installments payable on each March 1 and September 1 commencing September 1, 1999, and ending March 1, 2024. Each installment to and including the installment payable on March 1, 2009, shall be one and one-fourth percent (1-1/4%) of such principal amount, and each installment thereafter shall be two and one-half percent (2-1/2%) of such principal amount.

(b) Whenever: (i) the Borrower's gross national product per capita, as determined by the Association, shall have exceeded \$790 in constant 1985 dollars for five consecutive years; and (ii) the Bank shall consider the Borrower creditworthy for Bank lending, the Association may, subsequent to the review and approval thereof by the Executive Directors of the Association and after due consideration by them of the development of the Borrower's economy, modify the terms of repayment of installments under paragraph (a) above by requiring the Borrower to repay twice the amount of each such installment not yet due until the principal amount of the Credit shall have been repaid. If so requested by the Borrower, the Association may revise such modification to include, in lieu of some or all of the increase in the amounts of such installments, the payment of interest at an annual rate agreed with the Association on the principal amount of the Credit withdrawn and outstanding from time to time, provided that, in the judgment of the Association, such revision shall not change the grant element obtained under the above-mentioned repayment modification.

(c) If, at any time after a modification of terms pursuant to paragraph (b) above, the Association determines that the Borrower's economic condition has deteriorated significantly, the Association may, if so requested by the Borrower, further modify the terms of repayment to conform to the schedule of installments as provided in paragraph (a) above.

Section 2.08. The currency of the United States of America is hereby specified for the purposes of Section 4.02 of the General Conditions.

ARTICLE III

Particular Covenants

Section 3.01. (a) The Borrower and the Association shall from time to time and at least semiannually, at the request of either party, exchange views on the progress achieved in carrying out the Program and the actions specified in Schedule 3 to this Agreement.

(b) Prior to each such exchange of views, the Borrower shall furnish to the Association for its review and comment a report on the progress achieved in carrying out the Program, in such detail as the Association shall reasonably request.

Section 3.02. Except as the Association shall otherwise agree, procurement of the goods to be financed out of the proceeds of the Credit shall be governed by the provisions of Schedule 2 to this Agreement.

Section 3.03. The Borrower shall take appropriate measures to ensure that the Kenya Shillings generated by the sale of foreign exchange allocated to Category 2 in

the table set forth in paragraph 1 of Schedule 1 to this Agreement shall be deposited into a separate account which shall be opened in the name of the Deposit Protection Fund and be used by the Deposit Protection Fund for restructuring financial institutions under action programs acceptable to the Association.

Section 3.04. (a) The Borrower shall maintain or cause to be maintained records and accounts adequate to reflect in accordance with consistently maintained sound accounting practices the expenditures financed out of the proceeds of the Credit.

(b) The Borrower shall:

- (i) have the records and accounts referred to in paragraph (a) of this Section including the Special Accounts for each fiscal year audited, in accordance with appropriate auditing principles consistently applied, by independent auditors acceptable to the Association;
- (ii) furnish to the Association as soon as available, but in any case not later than six months after the end of each such year, a certified copy of the report of such audit by said auditors, of such scope and in such detail as the Association shall have reasonably requested; and
- (iii) furnish to the Association such other information concerning said records and accounts and the audit thereof as the Association shall from time to time reasonably request.

(c) For all expenditures with respect to which withdrawals from the Credit Account were made on the basis of statements of expenditure, the Borrower shall:

- (i) maintain or cause to be maintained, in accordance with paragraph (a) of this Section, records and accounts reflecting such expenditures;
- (ii) retain, until at least one year after the Association has received the audit report for the fiscal year in which the last withdrawal from the Credit Account was made, all records (contracts, orders, invoices, bills, receipts and other documents) evidencing such expenditures;
- (iii) enable the Association's representatives to examine such records; and
- (iv) ensure that such records and accounts are included in the annual audits referred to in paragraph (b) of this Section and that the report of such audit contains a separate opinion by said auditors as to whether the statements of expenditure submitted during such fiscal year, together with the procedures and internal controls involved in their preparation, can be relied upon to support the related withdrawals.

ARTICLE IV

Additional Event of Suspension

Section 4.01. Pursuant to Section 6.02 (h) of the General Conditions, the following additional event is specified, namely, that a situation has arisen which shall make it improbable that the Program, or a significant part thereof, will be carried out.

ARTICLE V

Termination

Section 5.01. The date ninety (90) days after the date of this Agreement is hereby specified for the purposes of Section 12.04 of the General Conditions.

ARTICLE VI

Representative of the Borrower; Addresses

Section 6.01. The minister at the time responsible for finance of the Borrower is designated as representative of the Borrower for the purposes of Section 11.03 of the General Conditions.

Section 6.02. The following addresses are specified for the purposes of Section 11.01 of the General Conditions:

For the Borrower:

Ministry of Finance
P.O. Box 30007
Nairobi
Kenya

Cable address:

FINANCE
Nairobi

Telex:

22921 MINFIN-KE
22003
FOREIGN Nairobi

For the Association:

International Development Association
1818 H Street, N.W.
Washington, D.C. 20433
United States of America

Cable address:

INDEVAS
Washington, D.C.

Telex:

440098 (ITT)
248423 (RCA)

or

64145 (WUI)

IN WITNESS WHEREOF, the parties hereto, acting through their duly authorized representatives, have caused this Agreement to be signed in their respective names in the District of Columbia, United States of America, as of the day and year first above written.

REPUBLIC OF KENYA

By /s/ D. D. Afande
Authorized Representative

INTERNATIONAL DEVELOPMENT ASSOCIATION

By /s/ Edward V. K. Jaycox
Regional Vice President
Africa

SCHEDULE 1

Withdrawal of the Proceeds of the Credit

1. The table below sets forth the Categories of items to be financed out of the proceeds of the Credit, the allocation of the amounts of such proceeds to each Category and the percentage of expenditures for items so to be financed in each Category.

Category	Amount of the Credit Allocated (Expressed in SDR Equivalent)	% of Expenditures to be Financed
(1) Goods to be imported subject to conditions under paragraph 4 below	61,546,000	100% of foreign expenditures
(2) Goods to be imported subject to conditions under paragraph 5 below	30,967,000	100% of foreign expenditures
(3) Refunding of Special Project Preparation Advance	387,000	Amount due pursuant to Section 2.02 (b) of this Agreement
TOTAL	92,900,000	

2. For the purposes of this Schedule the term "foreign expenditures" means expenditures in the currency of any country other than that of the Borrower for goods or services supplied from the territory of any country other than that of the Borrower.

3. Notwithstanding the provisions of paragraph 1 above, no withdrawals shall be made in respect of:

(a) expenditures for goods included in the following SITC groups or sub-groups, or any successor groups or sub-groups under future revisions to the SITC, as designated by the Association by notice to the Borrower:

Group	Sub-group	Description of Items
112	-	Alcoholic beverages
121	-	Tobacco, unmanufactured, tobacco refuse
122	-	Tobacco, manufactured (whether or not containing tobacco substitutes)

525	-	Radioactive and associated materials
667	-	Pearls, precious and semi-precious stones, unworked or worked
718	718.7	Nuclear reactors, and parts thereof, fuel elements (cartridges), non-irradiated for nuclear reactors
897	897.3	Jewelry of gold, silver or platinum group metals (except watches and watch cases) and goldsmiths' or silversmiths' wares (including set gems)
971	-	Gold, non-monetary (excluding gold ores and concentrates)

(b) expenditures in the currency of the Borrower or for goods or services supplied from the territory of the Borrower;

(c) payments made for expenditures prior to the date of this Agreement;

(d) expenditures for goods procured under contracts costing less than \$5,000 equivalent;

(e) expenditures for goods supplied under a contract which any national or international financing institution or agency other than the Association shall have financed or agreed to finance;

(f) expenditures for goods intended for a military or paramilitary purpose or for luxury consumption; and

(g) expenditures in excess of an aggregate amount equivalent to SDR 18,000,000 for petroleum products.

4. Notwithstanding the provisions of paragraph 1 above, no withdrawal shall be made and no commitment shall be entered into to pay amounts to or on the order of the Borrower in respect of expenditures to be financed out of the proceeds of the Credit allocated to Category (1) in the table set forth in paragraph 1 of this Schedule after the aggregate of the proceeds of the Credit withdrawn from that Category and the total amount of such commitments shall have reached the equivalent of SDR 30,000,000, unless the Association shall be satisfied, after an exchange of views as described in Section 3.01 of this Agreement based on evidence satisfactory to the Association: (a) with the progress achieved by the Borrower in the carrying out of the Program; and (b) that the actions described in Schedule 3 to this Agreement have been taken and are satisfactory to the Association.

5. Notwithstanding the provisions of paragraph 1 above: (a) no withdrawal shall be made and no commitment shall be entered into to pay amounts to or on the order of the Borrower in respect of expenditures to be financed out of the proceeds of the Credit allocated to Category (2) in the table set forth in paragraph 1 of this Schedule unless the Association shall be satisfied with evidence

submitted by the Borrower showing that (i): the Deposit Protection Fund has paid protected depositors; and/or (ii) has made new loans or made equity contributions to troubled financial institutions in accordance with an action program acceptable to the Association; and (iii) the account referred to in Section 3.03 of this Agreement has been opened;

(b) No withdrawal shall be made and no commitment shall be entered into to pay amounts to on the order of the Borrower in respect of expenditures to be financed out of the proceeds of the Credit allocated to Category (2) in the table set forth in paragraph 1 of this Schedule after the aggregate of the proceeds of the Credit withdrawn from said Category and the total amount of such commitments shall have reached the equivalent of SDR 23,000,000 unless the Association shall be satisfied that: (i) the conditions referred to in paragraph 5 (a) above have been fulfilled. and (ii) the Borrower has issued regulations allowing interest rates to be market-determined.

6. If, after the exchange of views described in paragraph 4 above, the Association shall have given notice to the Borrower that the progress achieved and actions taken are not satisfactory and, within 90 days after such notice, the Borrower shall not have achieved progress and taken actions satisfactory to the Association, then the Association may, by notice to the Borrower, cancel the unwithdrawn amount of the Credit allocated to Category 1 in the table set forth in paragraph 1 of this Schedule or any part thereof.

SCHEDULE 2

Procurement

1. Contracts for the procurement of goods estimated to cost the equivalent of \$3,500,000 or more each shall be awarded through international competitive bidding in accordance with procedures consistent with those set forth in Sections I and II of the "Guidelines for Procurement under IBRD Loans and IDA Credits" published by the Bank in May 1985 (the Guidelines), subject to the following modifications:

(a) Paragraph 2.8 of the Guidelines is deleted and the following is substituted therefor:

"2.8 Notification and Advertising

The international community should be notified in a timely manner of the opportunity to bid. This will be done by advertising invitations to apply for inclusion in a bidder's invitation list, to apply for prequalification, or to bid; such advertisements should be placed in at least one newspaper of general circulation in the Borrower's country and, in addition, in at least one of the following forms:

- (i) a notice in the United Nations publication, Development Forum, Business Edition; or
- (ii) an advertisement in a newspaper, periodical or technical journal of wide international circulation; or
- (iii) a notice to local representatives of countries and territories referred to in the Guidelines, that are

potential suppliers of the goods required."

(b) The following is added at the end of paragraph 2.21 of the Guidelines:

"As a further alternative, bidding documents may require the bidder to state the bid price in a single currency widely used in international trade and specified in the bidding documents."

(c) Paragraphs 2.55 and 2.56 of the Guidelines are deleted.

2. Contracts for goods estimated to cost the equivalent of less than \$3,500,000 each shall be awarded on the basis of the normal procurement procedures of the purchaser of such goods. Such procedures shall be satisfactory to the Association.

3. With respect to each contract referred to in paragraph 1 of this Schedule, the Borrower shall furnish to the Association, prior to the submission to the Association of the first application for withdrawal of funds from the Credit Account in respect of such contract, two conformed copies of such contract, together with the analysis of the respective bids and recommendations for award, a description of the advertising and tendering procedures followed and such other information as the Association shall reasonably request.

4. With respect to each contract referred to in paragraph 2 of this Schedule, the Borrower shall furnish to the Association, prior to the submission to the Association of the first application for withdrawal of funds from the Credit Account in respect thereof, such documentation and information as the Association may reasonably request to support withdrawal applications in respect of such contract.

5. Notwithstanding the provisions of paragraphs 3 and 4 of this Schedule, where payments under a contract are to be made out of the proceeds of the Special Accounts, the copies of such contract or the documentation and the information to be furnished to the Association pursuant to the provisions of paragraph 3 or paragraph 4 of this Schedule, as the case may be, shall be furnished to the Association as part of the evidence required under paragraph 4 of Schedule 4 to this Agreement.

6. The provisions of the preceding paragraphs 3, 4 and 5 shall not apply to contracts on account of which the Association has authorized withdrawals from the Credit Account on the basis of statements of expenditure.

SCHEDULE 3

Actions Referred to in Paragraph 4 (b)
of Schedule 1 to this Agreement

The Borrower has:

(i) submitted to the Association evidence showing satisfactory performance in Fiscal Year 1989/90 against agreed targets for the budget deficits and levels of domestic financing contained in the Program;

(ii) submitted to the Association for approval

budgetary targets for Fiscal Year 1990/91 as contained in the Program;

- (iii) through the Central Bank of Kenya issued regulations linking capital adequacy for all financial institutions to assets (net of provisions, depreciations and write-offs).
- (iv) submitted to the Association, action programs, satisfactory to the Association, for the restructuring or strengthening of marginal institutions;
- (v) submitted to the Association for approval reform measures for the taxation of financial instruments;
- (vi) taken steps, satisfactory to the Association, for the implementation of investor protection measures; and
- (vii) carried out a review of the use of generalized monetary policy instruments and agree with the Association on appropriate steps to establish a more market-driven interest rate structure while maintaining savings deposit rates which are positive in real terms.

SCHEDULE 4

Special Accounts

1. For the purposes of this Schedule:

(a) the term "eligible Categories" means Category 1 (for the Import Special Account) and Category 2 (for the Restructuring Special Account) set forth in the table in paragraph 1 of Schedule 1 to this Agreement;

(b) the term "eligible expenditures" means expenditures in respect of the reasonable cost of goods required for the Project and to be financed out of the proceeds of the Credit allocated from time to time to the eligible Categories in accordance with the provisions of Schedule 1 to this Agreement provided, however, that disbursements out of Category (2) are subject to fulfillment of the conditions of disbursements set forth in paragraph 5 (a) of Schedule 1; and

(c) the term "Authorized Allocation" means an amount equivalent to \$10,000,000 for the Import Special Account and \$5,000,000 for the Restructuring Special Account to be withdrawn from the Credit Account and deposited into the Special Account pursuant to paragraph 3 (a) of this Schedule.

2. Payments out of the Special Account shall be made exclusively for eligible expenditures in accordance with the provisions of this Schedule.

3. After the Association has received evidence satisfactory to it that the Special Accounts have been duly opened, withdrawals of the Authorized Allocation and subsequent withdrawals to replenish the Special Accounts shall be made as follows:

(a) For withdrawals of the Authorized Allocation, the Borrower shall furnish to the Association a request

or requests for a deposit or deposits which do not exceed the aggregate amount of the Authorized Allocation. On the basis of such request or requests, the Association shall, on behalf of the Borrower, withdraw from the Credit Account and deposit into the respective Special Account such amount or amounts as the Borrower shall have requested.

- (b) (i) For replenishment of the respective Special Account, the Borrower shall furnish to the Association requests for deposits into that Special Account at such intervals as the Association shall specify.
- (ii) Prior to, or at the time of each such request, the Borrower shall furnish to the Association the documents and other evidence required pursuant to paragraph 4 of this Schedule for the payment or payments in respect of which replenishment is requested. On the basis of each such request, the Association shall, on behalf of the Borrower, withdraw from the Credit Account and deposit into the respective Special Account such amount as the Borrower shall have requested and as shall have been shown by said documents and other evidence to have been made out of the Special Account for eligible expenditures.

All such deposits shall be withdrawn by the Association from the Credit Account under the respective eligible Category, and in the respective equivalent amounts, as shall have been justified by said documents and other evidence.

4. For each payment made by the Borrower out of the Special Accounts, the Borrower shall, at such time as the Association shall reasonably request, furnish to the Association such documents and other evidence showing that such payment was made exclusively for eligible expenditures.

5. Notwithstanding the provisions of paragraph 3 of this Schedule, the Association shall not be required to make further deposits into the Special Accounts:

(a) if, at any time, the Association shall have determined that all further withdrawals should be made by the Borrower directly from the Credit Account in accordance with the provisions of Article V of the General Conditions and paragraph (a) of Section 2.02 of this Agreement; or

(b) once the total unwithdrawn amount of the Credit allocated to the eligible Categories less the amount of any outstanding special commitment entered into by the Association pursuant to Section 5.02 of the General Conditions with respect to the Project, shall equal the equivalent of the amount of the Authorized Allocation.

Thereafter, withdrawal from the Credit Account of the remaining unwithdrawn amount of the Credit allocated to the eligible Categories shall follow such procedures as the Association shall specify by notice to the Borrower. Such further withdrawals shall be made only after and to the extent that the Association shall have been satisfied that all such amounts remaining on deposit in the Special Account as of the date of such notice will be utilized in

making payments for eligible expenditures.

6. (a) If the Association shall have determined at any time that any payment out of the Special Accounts: (i) was made for an expenditure or in an amount not eligible pursuant to paragraph 2 of this Schedule; (ii) was not justified by the evidence furnished to the Association, the Borrower shall, promptly upon notice from the Association (A) provide such additional evidence as the Association may request, or (B) deposit into the respective Special Account (or, if the Association shall so request, refund to the Association) an amount equal to the amount of such payment or the portion thereof not so eligible or justified. Unless the Association shall otherwise agree, no further deposit by the Association into the Special Accounts shall be made until the Borrower has provided such evidence or made such deposit or refund, as the case may be.

(b) If the Association shall have determined at any time that any amount outstanding in the respective Special Account will not be required to cover further payments for eligible expenditures, the Borrower shall, promptly upon notice from the Association, refund to the Association such outstanding amount.

(c) The Borrower may, upon notice to the Association, refund to the Association all or any portion of the funds on deposit in the Special Accounts.

(d) Refunds to the Association made pursuant to paragraph 6 (a), (b) and (c) of this Schedule shall be credited to the Credit Account for subsequent withdrawal or for cancellation in accordance with the relevant provisions of this Agreement, including the General Conditions.

