

CONFORMED COPY

CREDIT NUMBER 2440 KE

Development Credit Agreement

(Parastatal Reform and Privatization
Technical Assistance Project)

between

REPUBLIC OF KENYA

and

INTERNATIONAL DEVELOPMENT ASSOCIATION

Dated December 28, 1992

CREDIT NUMBER 2440 KE

DEVELOPMENT CREDIT AGREEMENT

AGREEMENT, dated December 28, 1992, between REPUBLIC OF KENYA (the Borrower) and INTERNATIONAL DEVELOPMENT ASSOCIATION (the Association).

WHEREAS: (A) the Borrower, having satisfied itself as to the feasibility and priority of the Project described in Schedule 2 to this Agreement, has requested the Association to assist in the financing of the Project;

(B) the Borrower has published on July 1, 1992, a Policy Paper on Public Enterprise Reform and Privatization which sets forth the policies, principles, guidelines and procedures for its Public Enterprise Reform and Privatization Program (the Program);

(C) the Borrower and the Overseas Development Administration of the United Kingdom intend to enter into a Memorandum of Understanding (the ODA Memorandum of Understanding) for the purpose of making available goods and services to the Borrower with a value equivalent to four million two hundred thousand dollars (\$4,200,000) (the ODA Grant) to assist in financing Part B of the Project on terms and conditions set forth in the ODA Memorandum of Understanding;

(D) the Borrower intends to obtain from the United Nations Development Programme (UNDP) a grant in an amount of four hundred thousand dollars (\$400,000) to assist in financing part of the Project on the terms and conditions set forth in an agreement (the UNDP Agreement) to be entered into between the Borrower and UNDP;

(E) the Borrower has requested from the European Economic Community (EEC) a grant approximately equivalent to four hundred eighty thousand dollars (\$480,000) (the EEC Grant) to assist in financing part of the Project, on terms and conditions set forth in an agreement (the EEC Grant Agreement) to be entered into between the Borrower and EEC;

(F) the Borrower has requested from the Kingdom of the Netherlands (the Netherlands) a grant in an amount approximately equivalent to four hundred eighty thousand dollars (\$480,000) (the Netherlands Grant) to assist in financing Part B of the Project; and

WHEREAS the Association has agreed, on the basis, inter alia, of the foregoing, to extend the Credit to the Borrower upon the terms and conditions set forth in this Agreement;

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 last sentence of Section 3.02 deleted (the General Conditions) constitute an integral part of this Agreement.

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) "MOF" means the Borrower's Ministry of Finance;
- (b) "PRPC" means the Borrower's Parastatal Reform Program Committee reconstituted pursuant to a Presidential Order, dated August 5, 1992, as amended from time to time;
- (c) "ESTU" means the Executive Secretariat and Technical Unit of the PRPC;
- (d) "PE" means a Public Enterprise;
- (e) "PIT" means a Privatization Implementation Team established by ESTU to prepare individual PE's for privatization;
- (f) "CMA" means the Capital Markets Authority established pursuant to the Capital Markets Authority Act, Chapter 485A of the laws of the Borrower;
- (g) "NSE" means the Nairobi Stock Exchange established pursuant to the Companies Act, Chapter 480 of the laws of the Borrower;
- (h) "DGIPE" means the Department of Government Investments and Public Enterprises within MOF;
- (i) "MIS" means Management Information System;
- (j) "Project Preparation Advance" means the project preparation advance granted by the Association to the Borrower pursuant to a letter, dated March 31, 1992 from the Association and countersigned by the Borrower on April 8, 1992; and
- (k) "Special Accounts" means the accounts referred to in

Section 2.02 (b) 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 the Development Credit Agreement, an amount in various currencies equivalent to sixteen million one hundred thousand Special Drawing Rights (SDR 16,100,000).

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 and services required for the Project described in Schedule 2 to this Agreement and to be financed out of the proceeds of the Credit.

(b) The Borrower shall, for the purposes of the Project, open and maintain in dollars two special deposit accounts in the Central Bank of Kenya on terms and conditions satisfactory to the Association for Parts A and B of the Project respectively, including appropriate protection against set-off, seizure or attachment. Deposits into, and payments out of, the Special Account shall be made in accordance with the provisions of Schedule 5 to this Agreement.

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

Section 2.03. The Closing Date shall be June 30, 1997, 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 the 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 from 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 March 1, 2003, and ending September 1, 2032. Each installment to and including the installment payable on September 1, 2012, shall be one percent (1%) of such principal amount, and each installment thereafter shall be two percent (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

Execution of the Project

Section 3.01. (a) The Borrower declares its commitment to the objectives of the Project as set forth in Schedule 2 to this Agreement, and, to this end, shall carry out the Project through MOF, in accordance with the policies, principles, guidelines and procedures contained in the Program, and with due diligence and efficiency and in conformity with appropriate public enterprise reform, privatization, financial and administrative practices, and shall provide, promptly as needed, the funds, facilities, services and other resources required for the Project.

(b) Without limitation upon the provisions of paragraph (a) of this Section and except as the Borrower and the Association shall otherwise agree, the Borrower shall carry out the Project in accordance with the Implementation Program set forth in Schedule 4 to this Agreement.

Section 3.02. Except as the Association shall otherwise agree, procurement of the goods and consultants' services required for the Project and to be financed out of the proceeds of the Credit shall be governed by the provisions of Schedule 3 to this Agreement.

Section 3.03. The Borrower shall bring at least 20 PEs to the point of sale or privatized, as follows: at least 5 by December 31, 1992; at least 10 by December 31, 1993; and at least 5 more by December 31, 1994; of these for at least 10 PEs the privatization transaction shall be completed by December 31, 1994. For the purposes of this Agreement "to bring to the point of sale" means

that for the PE concerned, ESTU shall have completed the valuation of the assets and liabilities, and evaluation of such PE, prepared the strategy for privatization and determined the modality for sale, and except in the case of the existence of pre-existing legal rights, prepared, advertised, issued the prospectus or tender document and issued necessary advertisements and notices.

Section 3.04. The Borrower shall furnish to the Association, a list of PE's to be liquidated during Project implementation and liquidate PEs in accordance with such timetable program.

Section 3.05. Notwithstanding the provisions of Section 3.01 (a) above, the Borrower shall make adequate budget allocations annually, for ESTU and DGIPE respectively in its budgets, during Project implementation.

ARTICLE IV

Financial Covenants

Section 4.01. (a) The Borrower shall maintain or cause to be maintained records and accounts adequate to reflect in accordance with sound accounting practices the operations, resources and expenditures in respect of the Project of the departments or agencies of the Borrower responsible for carrying out the Project or any part thereof.

(b) The Borrower shall:

- (i) have the records and accounts referred to in paragraph (a) of this Section including those for the Special Account 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, 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 or payment out of the Special 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 audit 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 V

Remedies of the Association

Section 5.01. Pursuant to Section 6.02 (h) of the General Conditions, the following additional events are specified:

(a) a situation has arisen which shall make it improbable that the Program or a significant part thereof will be carried out;

(b) Presidential Order dated August 5, 1992, establishing PRPC and ESTU has been amended, suspended, abrogated, repealed or waived so as to affect materially and adversely the ability of ESTU to perform any of its obligations under the Project; and

(c) (i) Subject to subparagraph (ii) of this paragraph the right of the Borrower to withdraw the proceeds of the ODA grant made to the Borrower for the financing of the Project shall have been suspended, cancelled or terminated in whole or in part, pursuant to the terms thereof.

(ii) Subparagraph (i) of this paragraph shall not apply if the Borrower establishes to the satisfaction of the Association that: (A) such suspension, cancellation, termination or prematuring is not caused by the failure of the Borrower to perform any of its obligations under such agreement; and (B) adequate funds for the Project are available to the Borrower from other sources on terms and conditions consistent with the obligations of the Borrower under this Agreement.

Section 5.02. Pursuant to Section 7.01 (d) of the General Conditions, the following additional event is specified namely that any event specified in paragraph (a) of Section 5.01 of this Agreement shall occur.

ARTICLE VI

Effective Date; Termination

Section 6.01. The following events are specified as additional conditions to the effectiveness of the Development Credit Agreement within the meaning of Section 12.01 (b) of the General Conditions:

(a) The Borrower has completed the Subsidy Study referred to in Part 2 (b)(i) of Schedule 2 to this Agreement and prepared an action plan, satisfactory to the Association, for its implementation;

(b) the Borrower has approved a policy for, (i) corporate governance of PE's, and (ii) the relationship between PEs and the Borrower, satisfactory to the Association;

(c) the Borrower has privatized or brought to the point of sale five PEs;

(d) the Borrower has furnished to the Association a statement on its policy for the allocation of privatization proceeds, satisfactory to the Association; and

(e) ESTU has appointed at least six (including the accountant) of the following staff, the Deputy Director, Accountant, Legal Specialist, MIS Specialist, Personnel and Administration Officer, Financial Analyst, Economist, Media Specialist and

Privatization Adviser.

Section 6.02. 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 VII

Representatives of the Borrower; Addresses

Section 7.01. 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 7.02. 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:	Telex:
FINANCE Nairobi	22003

For the Association:

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

Cable address:	Telex:
INDEVAS Washington, D.C.	248423 (RCA) 82987 (FTCC) 64145 (WUI) or 197688 (TRT)

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/ Denis D. Afande
Authorized Representative

INTERNATIONAL DEVELOPMENT ASSOCIATION

By /s/ F.J. Aguirre-Sacasa
Acting 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 the Credit 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) Consultants' services:		100%
(a) for Part A of the Project	6,650,000	
(b) for Part B of the Project	5,940,000	
(2) Training:		100%
(a) for Part A of the Project	235,000	
(b) for Part B of the Project	170,000	
(3) Equipment and vehicles		100% of foreign expenditures and 80% of local expenditures
(a) for Part A of the Project	150,000	
(b) for Part B of the Project	450,000	

Category	Amount of the Credit Allocated (Expressed in SDR Equivalent)	% of Expenditures to be Financed
(4) Refunding of Project Preparation Advance	1,470,000	Amounts due pursuant to Section 2.02 (c) of this Agreement
(5) Unallocated	1,035,000	
TOTAL	16,100,000 =====	

2. For the purposes of this Schedule:

(a) 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; and

(b) the term "local expenditures" means expenditures in the currency of the Borrower or for goods or services supplied from the territory of the Borrower.

3. Notwithstanding the provisions of paragraph 1 above, no withdrawals shall be made in respect of payments made for: (a) expenditures prior to the date of this Agreement; and (b) expenditures under Categories (2)(a) and (2)(b) respectively, until the Borrower has furnished to the Association a training program, satisfactory to the Association for ESTU and DGIPE, respectively.

SCHEDULE 2

Description of the Project

The main objective of the Project is to support the Borrower's Public Enterprise Reform and Privatization Program.

The Project consists of the following parts, subject to such modifications thereof as the Borrower and the Association may agree upon from time to time to achieve such objectives:

Part A: Privatization

1. Institutional Support for ESTU

- (a) Strengthening ESTU's management and staff.
- (b) Carrying out marketing and publicity campaigns for privatization.
- (c) Acquisition of office equipment, computers and vehicles.

2. Divestiture of Selected PEs

- (a) Privatization or bringing to the point of sale at least 20 PEs.
- (b) Establishment of PITs to prepare specific enterprises for privatization and carry out transactions.
- (c) Preparation of PEs for privatization, including diagnosis, review of legal requirements, financial restructuring, management analysis, definition of strategic objectives and constraints, valuation, and preparation of prospectus or tender documents.

3. Capital Market Development

- (a) Strengthening of CMA and NSE in the area of financial management.
- (b) Implementation of an improved clearing, settlement and central registration system for NSE.
- (c) Simplification of the CMA rules and regulations in order to expedite the listing or floatation of companies.
- (d) Creation of an education, training and public relations program for the securities industry.
- (e) Development of the brokerage industry.

4. Studies, Investment Promotion and Training

- (a) Carrying out of sectoral, legal and other studies, including studies on Employee Stock Option Plans, mutual funds/unit trust, absorptive capacity of stock market.
- (b) Carrying out of publicity campaigns for the privatization program.
- (c) Training of PRPC and ESTU staff to build up capacity for carrying out privatization, undertaking enterprise diagnosis and various techniques of divestiture and project finance.

Part B: Public Enterprise Reform

1. Institutional Support to DGIPE

- (a) Capacity building for DGIPE staff in carrying out DGIPE's functions, as well as in the areas of debt management.
- (b) Acquisition of computers and other office equipment, and three vehicles for DGIPE.
- (c) Training of DGIPE staff in monitoring, restructuring and

supervision.

2. Sector-Wide Reform Actions

(a) Improving capacity for corporate planning, performance monitoring and related reform actions, including (i) developing corporate profiles for all thirty-three strategic PEs; (ii) designing and implementation of a MIS System; and (iii) preparation of formats for performance evaluation and performance contracts.

(b) Carrying out the following studies:

- (i) evaluation of direct and indirect subsidies and subventions in favor of the major PEs;
- (ii) indebtedness of PEs to the Borrower and other PEs;
- (iii) roles and functions of institutions established as authorities and regulatory Boards; and
- (iv) further review of the legal and regulatory framework for PEs.

(c) Improving accounting systems and practices of PEs.

3. Restructuring of Five Major PEs

Assisting DGIPE to design, monitor, coordinate and facilitate the implementation of the restructuring of the following five PEs, Kenya Railways Corporation, Kenya Posts and Telecommunications Corporation, Kenya Tea Development Authority, Kenya Ports Authority and National Cereals and Produce Board.

4. Safety Net

Design and administration of a safety net for retrenched workers of PEs.

5. Related Institutions

(a) Development of a MIS System to improve security and accessibility of company and other records in the Registrar-General's Department.

(b) Training of Auditor-General (State Corporations) staff.

(c) Training of Attorney-General's staff in areas relevant to the Program, i.e. privatization, public enterprise reform, negotiation skills, as well as in legislative drafting skills for the Legislative Drafting Section.

(d) Acquisition of computers and office equipment for above activities.

* * *

The Project is expected to be completed by December 31, 1996.

SCHEDULE 3

Procurement and Consultants' Services

Section I. Procurement of Goods

Part A: International Competitive Bidding

Except as provided in Part B hereof, goods shall be procured under contracts awarded 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 1992 (the Guidelines).

Part B: Other Procurement Procedures

Items or groups of items required under Part A.1 (b) of the Project, up to an aggregate amount equivalent to \$370,000, and for goods and vehicles estimated to cost the equivalent of \$50,000 or less per contract, up to an aggregate amount equivalent to \$150,000, may be procured under contracts awarded on the basis of competitive bidding, advertised locally, in accordance with procedures satisfactory to the Association.

Part C: Review by the Association of Procurement Decisions

1. Review of invitations to bid and of proposed awards and final contracts:

(a) With respect to each contract for goods estimated to cost the equivalent of \$50,000 or more, the procedures set forth in paragraphs 2 and 4 of Appendix 1 to the Guidelines shall apply. Where payments for such contract are to be made out of the Special Account, such procedures shall be modified to ensure that the two conformed copies of the contract required to be furnished to the Association pursuant to said paragraph 2 (d) shall be furnished to the Association prior to the making of the first payment out of the Special Account in respect of such contract.

(b) With respect to each contract not governed by the preceding paragraph, the procedures set forth in paragraphs 3 and 4 of Appendix 1 to the Guidelines shall apply. Where payments for such contract are to be made out of the Special Account, such procedures shall be modified to ensure that the two conformed copies of the contract together with the other information required to be furnished to the Association pursuant to said paragraph 3 shall be furnished to the Association as part of the evidence to be furnished pursuant to paragraph 4 of Schedule 5 to this Agreement.

(c) The provisions of the preceding subparagraph (b) shall not apply to contracts on account of which withdrawals from the Credit Account are to be made on the basis of statements of expenditure.

2. The figure of 15% is hereby specified for purposes of paragraph 4 of Appendix 1 to the Guidelines.

Section II. Employment of Consultants

In order to assist the Borrower in carrying out the Project, the Borrower shall employ consultants whose qualifications, experience and terms and conditions of employment shall be satisfactory to the Association. Such consultants shall be selected in accordance with principles and procedures satisfactory to the Association on the basis of the "Guidelines for the Use of Consultants by World Bank Borrowers and by the World Bank as Executing Agency" published by the Bank in August 1981.

SCHEDULE 4

Implementation Program

1. ESTU shall be responsible for carrying out Part A of the Project, DGIPE shall be responsible for the implementation of Part B of the Project.

2. ESTU and DGIPE shall each furnish to the Association for review and comment, quarterly progress reports, commencing June 30, 1993, on the status of Project implementation and work plans for the execution of the Project during the following six months.

3. The Borrower shall by November 30 in each year, discuss and agree with the Association on training programs for ESTU and DGIPE, respectively, for the following year.

4. The Borrower and the Association shall not later than one year after the Effectiveness Date carry out a mid-term review. Said review shall cover, inter alia, (i) progress made towards achieving Project objectives; (ii) effectiveness of institutional arrangements to implement the PE reform and privatization program; (iii) effectiveness of staffing of ESTU and DGIPE; (iv) progress in implementing the work program for Parts A and B of the Project, (v) need for further institutional and legal changes to ensure implementation of the reform program; (vi) review of recommendations of the various studies; (vii) liquidations carried out, (viii) preview of enterprises which have been on sale for a period of at least twelve months and for which no offers have been submitted or whose offers were declared unsatisfactory by the Borrower, and (ix) progress in implementing the restructuring plans for the 5 PEs referred to in Part B.3 of Schedule 2 to this Agreement.

Part A of the Project

5. (a) The Borrower shall furnish to the Association for its review by January 1 of each year, the draft annual privatization program with explicit targets, including the timetable and agenda for implementation and the steps to be followed to bring enterprises to the point of sale.

(b) The Borrower shall by November 30 of each year, review with the Association progress in the implementation of Part A of the Project, with particular attention to those enterprises for which offers were either not made or deemed unsatisfactory by the Borrower during the period.

(c) The Borrower shall, commencing June 30, 1993, furnish quarterly information to the Association on all final recommendations for sale of PEs that were rejected by PRPC, with the reasons for such rejection.

(d) The Borrower shall furnish to the Association, for information, draft contracts for the sale of assets or draft prospectus for the sale of shares when the preparatory privatization work is complete and the PE is ready to be announced for sale. The Borrower shall furnish the final contracts and prospectus once the transaction has been closed.

6. ESTU shall use the following methods to conduct preparatory work on PEs selected for privatization, namely utilizing (a) PITs consisting of groups of short-term consultants, or (b) contracting with a merchant bank, other specialized financial institution or professional firm.

7. The Borrower shall only undertake predetermined direct sale negotiations by private treaty after publicly solicited bids have been obtained, unless otherwise justified by the existence of legal rights.

8. The Borrower shall by the time of the Mid-term Review referred to in Paragraph 4 above, ensure that NSE has selected and implemented an improved clearing, settlement and central registration system.

Part B of the Project

9. The Borrower shall by the time of the Mid-term Review referred to in Paragraph 4 above: (a) complete the preparation of corporate plans for at least 10 of the largest PEs; (b) negotiate and execute performance contracts with at least 5 of the PEs referred to in (a) above; (c) furnish to the Association the recommendations of the studies referred to in Part B.2 (b) of Schedule 2 to this Agreement, including action plans for their implementation; and thereafter commence implementation of such action plans satisfactory to the Association.

10. The Borrower shall commencing June 30, 1993, furnish quarterly reports to the Association on the progress of Part B of the project.

11. The Borrower shall by the mid-term review, complete the preparation of a comprehensive five year PE reform program and furnish such program to the Association for its review and comments.

12. The Borrower shall, for Kenya Railways Corporation, Kenya Ports Authority, the Kenya Posts and Telecommunications Corporation, National Cereals and Produce Board and the Kenya Tea Development Authority implement the action programs in the Annexes to this Schedule.

ANNEX A

Kenya Railways Corporation Restructuring Plan and Actions

A.	Corporate Governance:	Target Completion Date:
1.	Enabling laws and Board powers	December 31, 1993
2.	Performance Contract between Kenya Railways and Borrower	December 31, 1993
3.	Borrower payment of compensation to KRC for loss-making services	March 30, 1994
4.	Establishment of passenger services as financially autonomous business within Kenya Railways	March 31, 1994
B.	Efficient Operations:	
1.	Implementation of new locomotive maintenance delivery option	June 30, 1994
2.	Introduction of foreign exchange retention for spare parts procurement	December 31, 1993
3.	Rationalization of labor force through safety net	June 30, 1994
C.	Financial Structure:	
1.	Restructuring of Kenya Railways debts	February 28, 1994
2.	Preparation of land sale program completed	June 30, 1993

ANNEX B

Kenya Ports Authority Restructuring Plan and Actions

A.	Governance:	Target Completion Date:
1.	Enabling laws/Board powers for Kenya Ports Authority	December 31, 1993
2.	Performance Contract Kenya Ports Authority/Borrower	December 31, 1993
3.	Implementation of tariff review body study recommendations	June 30, 1993
4.	New Kenya Ports Authority tariff introduced	December 31, 1993
B.	Efficiency Restructuring:	
1.	Equipment maintenance contract(s) awarded to the private sector	July 31, 1994

- | | | |
|----|---|-------------------|
| 2. | Introduction of Foreign Exchange retention scheme | June 30, 1993 |
| 3. | Rationalization of labor through a safety net | December 31, 1993 |
| 4. | Introduction of performance-based compensation system | December 31, 1993 |
| 5. | Empower Kenya Ports Authority to contract stevedoring to private sector | December 31, 1993 |
| 6. | Privatization and development of land-based activities | December 31, 1994 |

ANNEX C

Kenya Posts and Telecommunications Restructuring Plan and Actions

	Action	Target Completion Date
A.	Short Term Program	
1.	Financial Aspects	Undertake financial restructuring to ensure overall financial objectives are met consistent with performance contract December 31, 1993
2.	Operational Aspects	Achieve improvement in operating targets consistent with performance contract December 31, 1994
B.	Organization:	
1.	Change of Corporate Culture	Draw up program to change corporate culture to make it more business-oriented June 30, 1993
2.	Manpower Development	Develop manpower planning and development system December 31, 1994
	Action	Target Completion Date
C.	Legal/Regulatory:	
1.	Performance Contract	Draw up a performance contract between the Borrower and KPTC June 30, 1993
2.	Tariff Policy	Define tariff policy September 30, 1993
D.	Market Liberalization:	
	Draw up and	December 31, 1993

implement a program for liberalization in the telecommunications sector, including terminal equipment, mobile services and value added services

Action Target Completion Date

E. Separation of Posts & Telecommunications:

- | | |
|--|-------------------|
| (a) Study, and produce detailed policy proposals on, separation of posts and telecommunications, including possibilities of divestiture to private sector, and comprising policy legislative, licensing and regulatory framework | December 31, 1993 |
| (b) Obtain cabinet approval for above proposals | June 30, 1994 |
| (c) Submit approved proposals to Parliament for action | December 31, 1994 |

Action Target Completion Date

F. Divestiture of Gilgil Manufacturing Facility:

- | | |
|--|-------------------|
| Based on Maxwell Stamp Study recommendations and subsequent separation of the Gilgil Facility: | December 31, 1993 |
| (a) Identify options for divestiture of Gilgil to private sector, with specific recommendations; and | |
| (b) adopt and implement recommendations | |

ANNEX D

	Target Completion Date
A. Shift to Buyer and Seller of Last Resort (BSLR)	
1. Inclusion of BSLR policy in revised performance contract, and training in BSLR management	June 1993
2. Study on buffer stock and funding	April 1993
B. Domestic Wheat Decontrol	
1. Study to be undertaken to highlight the effect of decontrol	April 1993
2. Adoption in revised performance contract for fiscal year 1993/1994 of most appropriate decontrol measure arising from recommendations of study	June 1993
C. Pricing Policy	
Implementation of pricing policy as outlined in performance contract	June 1993

Target Completion Date

D. Scaling down National Cereal and Produce Board	
Implementation of scaling down as outlined in performance contract	Continuous, in conformity with timetable in performance contract
E. External Trade Liberalization	
A study to determine arguments for and against liberalization of external trade	May 1993
F. Modification of Performance Contract	
Adoption of new version of performance contract following adoption of next version by December 31, 1992	June 1993 and annually thereafter

ANNEX E

Kenya Tea Development Authority (KTDA) Restructuring Plan and Actions

	Target Completion Date
A. Governance	
1. Publish a Policy Statement on the tea sector, including divestiture of KTDA Share-	June 30, 1993

holding and control in tea factories, and define appropriate roles of Borrower, the Kenya Tea Board and private sector, including KTDA

2. Prepare legislative and regulatory changes necessary to implement policy December 31, 1993
- B. Internal Reorganization
1. Re-examine and clarify ownership of KTDA in light of A.1 above, and implement new ownership structure June 30, 1994
2. Prepare and execute commercial contracts for social services (e.g. extension services) between Borrower and KTDA June 30, 1994
3. Receive proposals from KTDA for internal restructuring of KTDA and reach agreement June 30, 1994

SCHEDULE 5

Special Accounts

1. For the purposes of this Schedule:

(a) the term "eligible Categories" means Categories (1)(a), (2)(a) and (3)(a) for Special Account A, and (1)(b), (2)(b) and (3)(b) for Special Account B 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 and services 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; and

(c) the term "Authorized Allocation" means an amount equivalent to \$1,000,000 for Special Accounts A and B respectively to be withdrawn from the Credit Account and deposited in the Special Account concerned pursuant to paragraph 3 (a) of this Schedule.

2. Payments out of the Special Accounts 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 Account concerned has been duly opened, withdrawals of the Authorized Allocation and subsequent withdrawals to replenish the Special Account concerned 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 in the respective Special Account such amount or amounts as the Borrower shall have requested.

- (b) (i) For replenishment of the Special Account concerned, the Borrower shall furnish to the Association requests for deposits into the Special Account concerned 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 Special Account concerned such amount as the Borrower shall have requested and as shall have been shown by said documents and other evidence to have been paid out of the Special Account concerned for eligible expenditures.

All such deposits shall be withdrawn by the Association from the Credit Account under the respective eligible Categories, 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 respective Special Account, 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 any Special Account:

- (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 twice the amount of the Authorized Allocation concerned.

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 concerned 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 any Special Account: (i) was made for an expenditure or in an amount not eligible pursuant to paragraph 2 of this Schedule; or (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 Special Account concerned (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 Account concerned 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 Account.

(d) Refunds to the Association made pursuant to paragraphs 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.

