



Treaty Series No. 48 (2002)

Exchange of Notes

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

concerning Certain Commercial Debts (The United Kingdom/Ghana Debt Agreement No. 2 (2001))

Accra, 20 May and 15 July 2002

[The Agreement entered into force on 15 July 2002]

*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
November 2002*

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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 GHANA CONCERNING CERTAIN
COMMERCIAL DEBTS (THE UNITED KINGDOM/GHANA
DEBT AGREEMENT NO. 2 (2001))**

No. 1

The British High Commission at Accra to The Minister of Finance of The Republic of Ghana

*Accra
20 May 2002*

The British High Commission presents its compliments to the Ministry of Finance and has the honour to refer to the Agreed Minute on the Consolidation of the Debt of the Republic of Ghana which was signed in Paris on 10 December 2001, 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 Ghana 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 Ghana, 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/Ghana Debt Agreement No. 2 (2001)' and which shall enter into force on the date of your reply.

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

ANNEX

Section 1

Definitions and Interpretation

- (1) In this Annex, unless the contrary intention appears:
 - (a) "the Agreed Minute" means the Agreed Minute on the Consolidation of the Debt of the Republic of Ghana which was signed in Paris on 10 December 2001;
 - (b) "Appropriate Market Rate" means the Reference Rate plus 0.5 per cent;
 - (c) "Business Day" means a day on which dealings are carried on in the London interbank market and (if payment is required to be made on such day) on which banks are open for domestic and foreign exchange business in London in the case of sterling and in both London and New York City in the case of US dollars;
 - (d) "Contract" means a contract, including any agreement supplemental thereto, entered into on or before 20 June 1999, the parties to which include the Debtor and a Creditor and which either was for the sale of goods and/or services from outside Ghana to a buyer in Ghana, or was for the financing of such a sale, and which in either case granted or allowed credit to the Debtor for a period exceeding one year;
 - (e) "Creditor" means a person or body of persons or corporation resident or carrying on business in the United Kingdom, the Channel Islands or the Isle of Man, or any successor in title thereto;
 - (f) "Currency of the Debt" means the currency specified in the relevant Contract as being the currency in which that Debt is to be paid;
 - (g) "Debt" means any debt to which, by virtue of the provisions of Section 2(1), the provisions of this Annex apply;

- (h) “Debtor” means the Government of the Republic of Ghana whether as primary debtor or as guarantor or any person or body of persons or corporation resident or carrying on business in Ghana or any successor in obligation to that debtor;
 - (i) “the department” means the Export Credits Guarantee Department or any other Department of the Government of the United Kingdom which that Government may subsequently nominate for the purpose hereof;
 - (j) “Ghana” means the Republic of Ghana;
 - (k) “Late Interest” means interest charged under Section 4(4) of this Agreement on any amount of Debt or interest which remains unpaid after the date for payment specified therefor;
 - (l) “Maturity” in relation to a Debt specified in:
 - (i) Section 2(1)(a) or (b) means the due date for repayment thereof under the relevant Contract,
 - (ii) Section 2(1)(c) means 31 January 2002;
 - (m) “the Ministry” means the Ministry of Finance of the Republic of Ghana or any other institution which the Government of the Republic of Ghana may nominate for the purpose of this Annex;
 - (n) “Reference Rate” means the rate (rounded upwards where necessary to the nearest multiple of 1/16 (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 eurodollar deposits, in the case of a Debt denominated in US dollars, or six-month sterling deposits, in the case of a Debt denominated in sterling or any other currency, are offered in the London Interbank Market at 11 am (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 1/16 (one sixteenth) of one per cent) quoted to the Department by a bank to be agreed by the Department and the Ministry, as the rate at which that bank is offering six-month eurodollar deposits or six-month sterling deposits as the case may be;
 - (o) “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 360 days, in the case of Debts denominated in US dollars, and 365 days, in the case of Debts denominated in sterling.
- (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 Debt

- (1) The provisions of this Annex shall, subject to the provisions of paragraph (2) of this Section and Article IV paragraph 5 of the Agreed Minute, apply to:
- (a) any amount, whether of principal or of contractual interest accruing up to Maturity, which is owed by the Debtor to a Creditor and:
 - (i) arises under or in relation to a Contract;
 - (ii) is guaranteed by the Department as to payment according to the terms of the Contract;
 - (iii) is not expressed by the terms of the Contract to be payable in the lawful currency of Ghana;

- (iv) does not arise from an amount payable upon or as a condition of the cancellation or termination of the Contract; and
 - (v) fell due for payment on or before 31 May 2001 and remains unpaid, and
- (b) 70 per cent of any amount, whether of principal or of contractual interest accruing up to Maturity, which is owed by the Debtor to a Creditor and:
- (i) arises under or in relation to a Contract;
 - (ii) is guaranteed by the Department as to payment according to the terms of the Contract;
 - (iii) is not expressed by the terms of the Contract to be payable in the lawful currency of Ghana;
 - (iv) does not arise from an amount payable upon or as a condition of the cancellation or termination of the Contract; and
 - (v) has fallen due or will fall due for payment between 1 June 2001 and 31 January 2002 inclusive and remain unpaid; and
- (c) any amount of interest payable in accordance with this Annex accruing from 1 June 2001 to 31 January 2002.

(2) The Department and the Ministry shall, as soon as possible, agree and draw up a list of Debts (“the Debt List”) to which this Annex shall apply. The Debt List may be reviewed from time to time at the request of the Department or of the Ministry, but may not be added to or amended without the agreement of both the Department and the Ministry. Delay in the completion of the Debt List shall neither prevent nor delay the implementation of the other provisions of this Annex.

Section 3

Payment of Debt

The Government of the Republic of Ghana shall pay to the Department, in accordance with the provisions of Section 5, the following:

- (a) in respect of each Debt specified in Section 2(1)(a), 100 per cent in 10 equal and consecutive half-yearly instalments commencing on 1 April 2002;
- (b) in respect of each Debt specified in Section 2(1)(b), 100 per cent in 10 equal and consecutive half-yearly instalments commencing on 1 April 2002; and
- (c) in respect of each Debt specified in Section 1(1)(c), 100 per cent in 10 equal and consecutive half-yearly instalments commencing on 1 April 2002.

Section 4

Interest

(1) Interest on the balance of each Debt shall be deemed to have accrued and shall accrue during, and shall be payable in respect of, the period from Maturity until the settlement of that Debt by payment to the Department.

(2) The Government of Ghana shall pay to the Department interest on each Debt in accordance with the provisions of Section 5 to the extent that such Debt has not been settled by payment either to the Department or the relevant Creditor. Such interest shall be paid to the Department in half-yearly instalments on 1 April and 1 October (the “Due Dates”), commencing on 1 April 2002.

(3) All interest 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 Due Date for payment thereof, the Government of Ghana

shall pay to the Department Late Interest on such amount of overdue interest, such Late Interest accruing at the Appropriate Market Rate and becoming due and payable on the outstanding overdue amount without further notice or demand.

(5) If any amount of Debt payable in accordance with the provisions of Sections 3 is not paid on the date for payment specified therefor, the Government of Ghana shall pay to the department Late Interest on any such outstanding amount, such Late Interest accruing at the Appropriate Market rate and becoming due and payable on the outstanding overdue amount without further notice or demand.

Section 5

Payments to the Department

(1) When payment becomes due under the terms of Section 3 or 4, 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 the Currency of the Debt to an account notified by the Department to the Ministry.

(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 full particulars of the Debts and/or interest and compensation to which the payments relate.

Section 6

Exchange of Information

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

Section 7

Other Debt Settlements

(1) The Government of Ghana 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 determined by section 4.

Section 8

Preservation of Rights and Obligations

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

Section 9

Conditionality

Unless the Department otherwise agrees, the condition of Article IV paragraph 5 of the Agreed Minute shall apply to this Annex. If this Annex ceases to apply because this condition has not been fulfilled, all outstanding payments shall be due according to the original Contracts as if this Annex had never existed.

Section 10

Debts Swaps Option

The Department shall give prior notification to the Government of Ghana if it wishes to exercise the option given in Article II paragraph 3 of the Agreed Minute to sell or exchange Debt. This option may only be implemented with the consent of the Government of Ghana and will only be exercised on condition that the Debt sold or exchanged is discharged in Ghana.

No. 2

The Minister of Finance of the Republic of Ghana to the British High Commissioner at Accra

*Accra
15 July 2002*

I have the honour to acknowledge receipt of Your Excellency's Note of 20 May 2002 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 Ghana, 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/Ghana Debt Agreement No.2 (2001)' and which shall enter into force today.

I have attached a copy of the Annex I have initialized for your attention.

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

YAW OSAFO-MAAFO



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