EUROPEAN INVESTMENT BANK

KENYA - GLOBAL PRIVATE ENTERPRISE LOAN III
(Own Resources)

FINANCE CONTRACT

between

THE REPUBLIC OF KENYA

and

EUROPEAN INVESTMENT BANK
E U R O P E A N  I N V E S T M E N T  B A N K

Fi N° : 1.9226 KENYA

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(Own Resources)

FINANCE CONTRACT

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THE REPUBLIC OF KENYA

and

EUROPEAN INVESTMENT BANK

Luxembourg, 13th December 1996
THIS CONTRACT IS MADE BETWEEN:

The Republic of Kenya acting pursuant to the powers conferred by the External Loans and Credit Act (Cap. 422 of the Laws of Kenya), represented by [redacted]

hereinafter called: "THE BORROWER"

of the first part, and

European Investment Bank having its head office at 100 boulevard Konrad Adenauer, Luxembourg, represented by [redacted]

hereinafter called: "THE BANK"

of the second part.
WHEREAS:

- THE BORROWER has requested from THE BANK a subsidised global loan on THE BANK’s own resources in an amount equivalent to 20 000 000 (twenty million) ecus (the ecu being defined in Schedule A hereto) to be made available through the Central Bank of Kenya (hereinafter referred to as “CBK”), acting for and on behalf of THE BORROWER, to financial intermediaries in the Republic of Kenya approved by THE BANK (each such approved financial intermediary being hereinafter called an “AFI”) on terms that each AFI shall onlend such funds to small- and medium-sized private-sector enterprises (each such enterprise hereinafter called a “Final Beneficiary”) in the Republic of Kenya carrying out projects in the manufacturing, agro-industrial, horticultural, floricultural, mining/quarrying and tourism sectors, and related services, of the economy.

- By this Contract, THE BANK agrees to make available a credit in an amount equivalent to 20 000 000 ecus from its own resources under the Fourth ACP-EEC Convention of Lomé (hereinafter called “the Convention”) signed at Lomé on 15th December 1989 between certain states in Africa, the Caribbean and the Pacific on one hand (hereinafter called “the ACP States”) and the Member States and the Council of the European Communities (hereinafter called the “EC”) on the other hand.

- The financing of a project will be made pursuant to a letter of participation (hereinafter called a “Participation Letter”) regarding the financing relationship between CBK and the AFI concerned. The provision of finance (a “Subloan”) for each project is to be further the subject of a letter of offer or other documentation (hereinafter called a “Subloan Agreement”) between the AFI and the Final Beneficiary concerned.

- By a Finance Contract of even date herewith, THE BANK has made available to THE BORROWER a credit in an amount of ecus 15 000 000 (fifteen million ecus) from risk capital resources.

- Since part of the credit granted under this Contract to THE BORROWER may be disbursed in ecus, for the purposes of this Contract the term “currency” includes the ecu. The European Council took decisions at the Madrid Summit of 15th and 16th December 1995 relating to the change of name of the European monetary unit from “ecu” to “Euro” with effect from the start of the third stage of European economic and monetary union (EMU).

- The Minister for Finance of Kenya has consented to the present credit to be granted by THE BANK.

- Under Article 235(b) of the Convention the loan from THE BANK carries an interest subsidy.

- By Article 237(b) of the Convention, the ACP States undertook to place at the disposal of beneficiaries the currency necessary for the payment of interest, commission and the amortisation of loans due in terms of financing contracts granted for the implementation of projects and programmes on their territories.
By Article 237(a) of the Convention, the ACP States agreed to grant exemption from all national or local duties or fiscal charges on the interest, commissions and amortisation of loans due in accordance with the law or laws of the ACP State concerned.

THE BANK, being satisfied that the present loan operation comes within the scope of its functions and conforms to the aims of the Convention and having regard to the matters recited above, has decided to grant THE BORROWER’s request in an amount equivalent to 20 000 000 ecus.

[Redacted], has been authorised to execute this Contract on behalf of THE BORROWER (Annex I).

References herein to Articles, Recitals, Schedule and Annexes are references respectively to articles of, and recitals, schedule and annexes to, this Contract.

NOW THEREFORE it is hereby agreed as follows:

ARTICLE 1
Disbursement

1.01 Amount and Allocation of Crédit

A. **Amount:** By this Contract THE BANK establishes in favour of THE BORROWER, and THE BORROWER accepts, a credit (hereinafter called "the Credit") in an amount equivalent to ecus 20 000 000 (ecus twenty million).

B. **Availability:** The Credit shall be made available by THE BORROWER through CBK to AFIs for on-lending to Final Beneficiaries in foreign currency for the purpose of financing projects specified in the first Recital.

C. **Tranches:** In accordance with Article 1.02, the amount of the Credit shall be allocated in tranches over a period of up to three years from the date of signature of this Contract or as hereinafter provided.

D. **Submittal or Notification of Project:** THE BORROWER shall procure that CBK shall submit to THE BANK a proposal prepared by an AFI which CBK agrees is eligible for financing under the Credit for each project in respect of which CBK seeks finance under this Contract. Each proposal shall conform to the eligibility criteria supplied by THE BANK to CBK.

E. **Allocation:** If a proposal for a project submitted to THE BANK pursuant to Article 1.01D falls within the parameters specified in the first Recital, and if the proposal is approved by it, THE BANK shall notify CBK by way of a letter of allocation (hereinafter called a "Letter of Allocation") stating:

(a) that the project is or the projects are approved (each approved project being hereinafter called a "Project"); and
the portion of the Credit which THE BANK allocates to the Project or Projects (each such portion being hereinafter called an "Allocation", which term shall include a re-allocation under Article 1.05).

F. **Number and Amount of Allocations:** The amount of each Allocation for any Project shall not exceed the equivalent of 1 500 000 ecus or amount to less than the equivalent of 50 000 ecus.

1.02 **Disbursement Procedures**

(1) The Credit shall be disbursed to THE BORROWER in a series of tranches (each a "Tranche"). The amount of each Tranche shall be in a minimum amount of ecus 2 000 000 unless otherwise agreed by THE BANK at CBK's request.

(2) Disbursement of each Tranche shall be subject to receipt by THE BANK of a written request (a "Request") from CBK on behalf of THE BORROWER specifying:

(a) the amount of the Tranche;

(b) the currency of the Tranche;

(c) the preferred date for disbursement, it being understood that THE BANK may disburse the Tranche up to four calendar months from the date of the Request.

THE BORROWER through CBK may also at its discretion specify in the Request the subsidised interest rate previously indicated by THE BANK, without commitment, to be applicable to the currency of the Tranche during its lifetime.

Provided that THE BORROWER may also indicate in the Request its preference as between the following options with regard to the action that THE BANK may take, where necessary, in order to ensure that the net rate of interest on the Tranche should not fall below 3% pa:

(i) accepting that the rate of interest subsidy may be reduced; or

(ii) (a) accepting that the composition of the Tranche may differ in denomination or proportion from what is specified in the Request by including a component of any currency specified in Article 1.03 and (b) specifying its preference as to the additional currency, if any, to be so included in the Tranche.

No Request may be made before the elapse of one month from the immediately preceding Request except in agreement with THE BANK nor may any Request be made later than 10th December 1999 after the date of the Contract. Subject to the proviso to Article 1.02(3) each Request is irrevocable.

(3) Between 10 and 15 days before the date of disbursement THE BANK shall, if the Request conforms to Article 1.02(2) and subject to Articles 1.03 and 1.07, deliver to THE BORROWER a notice (a "Disbursement Notice") which shall (i) confirm the amount in ecus and in the currency requested of the Tranche specified in the Request; (ii) specify the subsidised interest rate or rates during the Tranche's lifetime pursuant to Article 3.01; (iii) specify the date of disbursement of the Tranche, and (iv) specify the currency to be disbursed; provided that if one or more of the elements specified in the Disbursement Notice does not conform to the corresponding element in the Request CBK on behalf of THE BORROWER within three Business Days (a Business Day being a day on which THE BANK and CBK are open for business) following receipt of the Disbursement Notice revoke the Request by notice to THE BANK and thereupon the Request and the Disbursement Notice shall be of no effect.
(4) Disbursement shall be made to such account or accounts of CBK as CBK shall notify to THE BANK on behalf of THE BORROWER not less than fifteen days before the date of disbursement.

1.03 Currency of Disbursement

Subject to availability, THE BANK shall disburse each Tranche in United States dollars, or such eligible currency as CBK shall request.

1.04 Conditions of Disbursement

A. The first disbursement pursuant to Article 1.02 shall be subject to the fulfilment of the following conditions to the satisfaction of THE BANK, namely that 30 days before the date of disbursement:

(a) THE BORROWER shall have taken all action necessary to exempt from taxation all payments of principal, interest and other sums due to THE BANK hereunder and to permit the payment of all such sums gross without deduction of tax at source;

(b) the Attorney General of Kenya shall have issued a favourable legal opinion on the due execution of this Contract by THE BORROWER;

(c) CBK shall have submitted to THE BANK in writing a list of AFls under this Contract and THE BANK shall have approved those acceptable to it;

(d) THE BANK shall have approved the terms of each Participation Letter and the model Subloan Agreement, which shall conform to the requirement of Articles 6.02 and 6.03;

(e) a letter shall have been issued by THE BORROWER to CBK authorising it to request disbursement under the Credit;

(f) THE BORROWER shall have demonstrated to THE BANK that the project management unit ("PMU") is in existence and is available to perform its functions under the terms of this Contract;

(g) that there is no bar to the disbursement of the funds under the Finance Contract on risk capital resources of even date herewith; and

(h) a first Allocation shall have been approved by THE BANK.

B. Each disbursement (other than the first disbursement) pursuant to Article 1.02 shall be subject to THE BANK's receipt, not less than thirty days before the date of the relevant disbursement, of evidence satisfactory to THE BANK that the full amount (less an amount of at most ecss 1 000 000) of all previous disbursements has been lent to AFls under the relevant Participation Letters and in the amounts specified by THE BANK to CBK in the corresponding Letters of Allocation.

C. Each disbursement shall be further subject to evidence of the availability of funding for the PMU.
1.05 Annulment, Reduction and Re-allocation

A. Annulment of Non-Allocated Credit:

Any part of the Credit which has not been allocated under Article 1.01 by 10th December 1999, or by any later date agreed by THE BANK at the request of CBK on behalf of THE BORROWER, shall be deemed annulled.

B. Revocation or Reallocation of Undisbursed Allocation:

Upon and in accordance with any reasoned request by CBK on behalf of THE BORROWER, THE BANK shall revoke the whole or any undisbursed part of any Allocation.

THE BANK may at its discretion, upon request by CBK on behalf of THE BORROWER made at any time before 10th June 2000, reallocate in accordance with Article 1.01 any part of the Credit which has been allocated but not disbursed or whose allocation has been revoked under the preceding paragraph.

As from 10th December 2000 THE BANK may declare, by notice to THE BORROWER, that any amount of the Credit allocated but not yet disbursed be in whole or in part annulled.

1.06 Deferment Commission

If any disbursement of any Tranche under Article 1.02 is deferred at the request of THE BORROWER, with the consent of THE BANK, or by reason of non-fulfilment of the conditions of disbursement, THE BORROWER shall pay deferment commission on the amount of which disbursement is deferred at an annual rate of calculated from the original specified disbursement date to the actual disbursement date or, if the Tranche is not wholly disbursed, to the date of annulment or cancellation of the Tranche. The Request for deferral must be received by THE BANK at least fifteen days before the original disbursement date. Such commission shall accrue from day to day and shall be payable on each date specified in Article 5.03.

1.07 Suspension of Disbursement

Without prejudice to Articles 1.05, 1.08 and 10, THE BANK may at any time suspend disbursement of the Credit following the occurrence of any event mentioned in Article 10. THE BANK may continue to suspend disbursement for so long as it considers that the situation persists.

1.08 Cancellation of Credit

THE BANK may, by notice to THE BORROWER, in whole or in part cancel the undisbursed portion of the Credit at any time, and with immediate effect:

(a) following the occurrence of any event mentioned in Article 10; or

(b) if exceptional circumstances shall arise which adversely affect THE BANK's access to national or relevant international capital markets;
provided that THE BANK shall not be entitled to cancel, on grounds of case (b), any Tranche which has been the subject of a Disbursement Notice.

Alternatively, if THE BANK is of the opinion that a situation described in case (a) or (b) has arisen and is temporary, it may by notice to THE BORROWER suspend the undisbursed portion of the Credit. In such case, the suspension shall continue until, following the issue of a further Request, THE BANK is again in a position to issue a Disbursement Notice.

The undisbursed portion of the Credit shall be considered as cancelled if THE BANK demands prepayment under Article 10.

If the Credit is cancelled pursuant to this Article 1.08(a), THE BORROWER shall pay commission on the cancelled amount at an annual rate of [Redacted] calculated from the date of this Contract to the date of cancellation. Such commission shall be payable in addition to any commission payable under Article 1.06.

1.09 Currency of Sums due under Article 1

Commission due under this Article 1 shall be calculated in ecus and be payable in ecus, in one or more currencies of the Member States of the EC or in other currencies which are widely traded on the principal foreign exchange markets, at the option of THE BORROWER.

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ARTICLE 2

The Loan

2.01 Amount of Loan

The loan (hereinafter the "Loan") shall comprise the aggregate of the amounts disbursed in the currency provided by THE BANK, as confirmed by THE BANK upon the occasion of each disbursement.

2.02 Currency of Repayments

The Loan shall be repaid by THE BORROWER under Article 4 or, as the case may be, Article 10 in the currencies disbursed.

2.03 Currency of Interest and Other Charges

Interest and other charges payable by THE BORROWER under Articles 3, 4 and, where applicable, 10 shall be calculated and paid in the currency in which the Loan is repayable.

Any other payment shall be made in the currency specified by THE BANK, having regard to the currency of the expenditure to be reimbursed by means of the payment in question.
2.04 Notification by THE BANK

After disbursement of each Tranche, THE BANK shall deliver to THE BORROWER a summary statement showing the disbursement date, the amount, the repayment terms and the interest rate of and for that Tranche. Such confirmation shall include the relevant amortisation table referred to in Article 4.01.

ARTICLE 3
Interest

3.01 Rate of Interest

The common net interest rate applicable to every currency comprised in a Tranche shall be the greater of:

(a) the rate of 3% pa; and

(b) the average (weighted according to the respective proportions of the currencies comprised in the Tranche) of the standard interest rates applicable at the date of issue of the Disbursement Notice to comparable loans made by THE BANK, denominated in the respective currencies of the Tranche and bearing the same final maturity and repayment conditions as the Tranche, reduced by an annual interest rate subsidy of 3.23%, according to the terms of the Lomé Convention (unless it is reduced according to Article 1.02(2)(i)).

Interest shall be payable semi-annually in arrear on the days specified in Article 5.03.

3.02 Interest on Overdue Sums

Without prejudice to Article 10 and by way of exception to Article 3.01, interest shall accrue on any overdue sum payable under the terms of this Contract from the due date to the date of payment at an annual rate calculated as follows:

Such interest is payable in the same currency as the overdue sum on which it accrues.
ARTICLE 4
Repayment

4.01 Normal Repayment

THE BORROWER shall repay the Loan in accordance with the amortisation table to be provided by THE BANK by 16 semi-annual instalments commencing on 10th June 2001.

4.02 Voluntary Prepayment

A. THE BORROWER may prepay all or any proportion of a Tranche upon giving written notice (hereinafter a "Prepayment Notice") specifying the amount (the "Prepayment Amount") to be prepaid and the proposed date of prepayment (the "Prepayment Date"), which shall be a date specified in Article 5.03 (each a "Payment Date"). The Prepayment Notice shall be delivered to THE BANK at least one month prior to the Prepayment Date. Prepayment shall be subject to the payment by THE BORROWER of the compensation, if any, due to THE BANK in accordance with the provisions of paragraphs B and C below.

B. The amount of compensation shall be the amount of the shortfall in interest incurred by THE BANK in respect of each half-year ending on successive Payment Dates falling after the Prepayment Date calculated in the manner stated in the following subparagraph and discounted in accordance with the last sentence of this paragraph B.

The amount of the shortfall shall be calculated as the amount by which:

(x) the interest calculated at the basic rate of interest specified in the Disbursement Notice plus the ratio of subsidy given in Article 3.01;

exceeds

(y) the interest which would have been so payable during that half-year if calculated at the Reference Rate; for which purpose the "Reference Rate" means the rate which THE BANK quotes on the date falling one month prior to the Prepayment Date for a loan to a borrower, made in the relevant composition of currencies, having an semi-annual date for the payment of interest and having an average maturity equal to the remaining average life of the Loan, or, if THE BANK does not quote such a rate, the rate quoted for the period most closely corresponding to that average life.

Each amount so calculated shall be discounted to the Prepayment Date by applying a discount rate equal to the rate determined pursuant to indent (y) of this paragraph B.

C. THE BANK shall give notice to THE BORROWER of the compensation due to it pursuant to the foregoing paragraphs. Within two Luxembourg business days following its receipt of the said notice from THE BANK, THE BORROWER may in writing revoke the Prepayment Notice. Save as aforesaid, THE BORROWER shall be obliged to effect payment in accordance with the Prepayment Notice, together with accrued interest on the Prepayment Amount as well as any sum due under this Article 4.02.
4.03 General Provisions regarding Prepayment under Article 4

Prepayment shall be made in the currency of the Loan in proportion to the respective amounts outstanding. Each amount prepaid shall be applied pro rata in reduction of each outstanding instalment.

This Article 4 shall not prejudice Article 10.

ARTICLE 5
Payments

5.01 Place of Payment

Each sum payable by THE BORROWER under this Contract shall be paid to the respective account indicated by THE BANK to THE BORROWER. THE BANK shall indicate the account not less than fifteen days before the due date for the first payment by THE BORROWER and shall notify any change of account not less than fifteen days before the date of the first payment to which the change applies.

This period of notice does not apply in the case of payment under Article 10.

5.02 Calculation of Payments relating to a Fraction of a Year

Any amount due by way of interest, commission or otherwise from THE BORROWER under this Contract, and calculated in respect of any fraction of a year, shall be calculated on the basis of a year of three hundred and sixty days and a month of thirty days.

5.03 Dates for Payment

Sums due semi-annually under this Contract are payable to THE BANK on 10th June and 10th December in each year.

Other sums due under this Contract are payable within seven days of receipt by THE BORROWER of the demand made by THE BANK.

Any sum due from THE BORROWER shall be deemed paid when it is received by THE BANK.

ARTICLE 6
Particular Undertakings

6.01 Use of Proceeds of Loan

THE BORROWER, acting through CBK, shall use the proceeds of the Loan to make loans to AFIs for on-lending to Final Beneficiaries for the financing of Projects, as provided in Article 1.01.
6.02 Provisions concerning the Participation Letters

Each Participation Letter shall be in the form annexed as Annex II hereto and shall provide, inter alia:

(a) that the AFI shall conform with the conditions set out in the respective Letter of Allocation;

(b) that loans provided to AFIs by CBK ("AFI Loans") be denominated in foreign currency for an amount equivalent to the amount in ecus allocated to the Project concerned;

(c) that AFI Loans bear an interest rate which is THE BANK's lending rate for the respective currency and maturity at the time of allocation;

(d) that AFI Loans be of a duration and provide for a grace period approximately corresponding to the duration and grace period of the Sub-loan by the AFI to the Final Beneficiary;

(e) a requirement that each AFI use its best endeavours to ensure that all equipment, services and works pertaining to each Project are selected in accordance with procedures appropriate in the circumstances and, having regard to quality and efficiency, at the most advantageous prices.

Where such procedures involve international consultation or bidding, they shall be open at least to nationals of the Republic of Kenya and of the other states party to the Convention;

(f) a requirement that each AFI use its best endeavours to ensure that Final Beneficiaries fulfil all environmental regulations applicable to each Project, especially regarding its activities and location; and

(g) that Subloans shall finance up to 50% of the Project cost of a Final Beneficiary provided, however, that if a Subloan is combined with a Convertible Subloan under the Finance Contract on risk capital resources of even date herewith, the amount cumulatively covered may be 75% of the Project cost.

6.03 Provisions concerning Subloan Agreements

THE BORROWER shall insure that each Subloan Agreement shall provide:

(1) that in respect of each Project that the Final Beneficiary shall:

(a) complete the relevant Project as envisaged;

(b) use the funds received exclusively for the purpose of carrying out the Project; and

(c) permit persons designated by THE BANK, who may be accompanied by representatives of the Court of Auditors of the European Community, to visit the sites, installations and works comprising the Project and to conduct such checks as they may wish, and provide them with all necessary assistance for this purpose;
and:

(2) that the financing under the Subloan Agreement shall:

(a) be denominated in foreign currency;

(b) bear a fixed rate of interest negotiated between the AFI and the Final Beneficiary concerned and acceptable to THE BANK, and which would include a margin to cover the costs and provisions of the AFI;

(c) be of a minimum duration of 6 years and have a minimum grace period of 1 year.

6.04 Re-employment of Funds

In the event that sums disbursed by THE BANK to THE BORROWER under Article 1 and advanced by CBK to an AFI are:

(a) voluntarily prepaid by the AFI to CBK; or

(b) repaid to CBK in consequence of a demand for prepayment under the relevant Participation Letter,

CBK shall re-employ such sums to finance projects eligible for financing by THE BANK under this Contract, save to the extent that THE BORROWER voluntarily prepays such sums under Article 4.02.

6.05 Project Management Unit

THE BORROWER shall ensure that the PMU provides, inter alia, the following technical services:

(a) to promote and explain the availability of finance for eligible projects to AFIs and Final Beneficiaries;

(b) to train the staff of AFIs in project appraisal;

(c) to assist Final Beneficiaries with project development and documentation for submission to the AFIs;

(d) to ensure that all relevant information is included in the project submissions transmitted to CBK for approval by THE BANK; and

(e) to provide a monitoring service on the implementation and functioning of Projects financed.

The terms of reference of the PMU shall be agreed between CBK, acting for THE BORROWER and THE BANK.
6.06 Use of Margin

THE BORROWER undertakes that from the margin accruing to THE BORROWER from the difference between the rate paid to THE BANK under Article 3.01 and the rate received from the AFI under the Participation Letter it shall fund the PMU and meet CBK's handling costs incurred in administering this facility.

ARTICLE 7
Security

7.01 Additional Security

If THE BORROWER grants to any unsecured creditor any security, it shall, if so required by THE BANK, provide equivalent security to THE BANK for the performance of its obligations under this Contract.

Nothing in the above paragraph shall apply (i) to any vendor's lien or other encumbrance on land or other assets where such encumbrance secures only the purchase price or any credit, having a term of not more than twelve months, obtained to finance it or (ii) to any pledge over stocks created to secure any short-term credit.

For the purpose of this Article 7.01, THE BORROWER declares that none of its property is subject to any encumbrance or any challenge to title.

ARTICLE 8
Information

8.01 Information concerning Projects and Final Beneficiaries

THE BORROWER shall ensure that CBK shall:

(a) deliver to THE BANK all documents and information reasonably requested by THE BANK concerning the financing, implementation and operation of each Project and the activities and financial condition of each AFI and each Final Beneficiary;

(b) inform THE BANK of any fact or event known to it which might substantially prejudice or affect the conditions of execution or operation of any Project or the general condition of any AFI or Final Beneficiary;

(c) immediately inform THE BANK of the amount, date and beneficiary of each disbursement made to an AFI under a Participation Letter;

(d) deliver to THE BANK, upon its request, a copy of any Subloan Agreement or Participation Letter and of any addendum or amendment thereto;

(e) inform THE BANK of any proposed alteration to any Participation Letter; and

(f) on request by THE BANK, facilitate the exercise by the persons nominated by THE BANK of their rights under Article 6.03(1)(c).
Information concerning THE BORROWER and AFI's

THE BORROWER shall ensure that CBK informs THE BANK:

(a) of any cessation of business by an AFI or of any failure by an AFI to perform a material obligation under a Participation Letter and the action that THE BORROWER or CBK proposes to take in relation thereto;

(b) immediately of any fact which obliges THE BORROWER or of any demand made to THE BORROWER to prepay any loan originally granted for a term exceeding five years;

(c) generally of any fact or event which might prevent the fulfilment of any obligation of THE BORROWER under this Contract; or

(d) at least one month in advance, if THE BORROWER proposes to grant any security to any initially unsecured creditor, so as to enable THE BANK to exercise its rights under Article 7.01.

Information on Prepayment and Re-employment of AFI Loan Funds

THE BORROWER shall ensure that CBK shall annually furnish to THE BANK a statement showing:

(a) all amounts prepaid by AFI's to CBK, whether voluntarily or consequent upon a demand for prepayment under the terms of a Participation Letter or Subloan Agreement; and

(b) all amounts re-employed by CBK pursuant to Article 6.04 and the use made of such amounts.

ARTICLE 9
Charges and Expenses

9.01 Taxes, Duties and Fees

THE BORROWER shall pay all taxes, duties, fees and other impositions of whatsoever nature, including stamp duty and registration fees, arising out of the execution of this Contract.

THE BORROWER shall pay all principal, interest, commission and other amounts due under this Contract gross without deduction of any national or local impositions whatsoever.

9.02 Other Charges

THE BORROWER shall bear any professional, banking, transfer or exchange costs incurred in the execution or implementation of this Contract.
ARTICLE 10
Prepayment upon an Event of Default

10.01 Right to demand Repayment

THE BORROWER shall repay the Loan or any part thereof forthwith upon demand being made therefor by THE BANK:

(A) immediately:

(a) if any fact stated in the Recitals proves to have been incorrect in any material particular;

(b) if THE BORROWER fails on due date to repay any part of the Loan, to pay interest thereon or to make any other payment to THE BANK as herein provided;

(c) if, following any default in relation thereto, THE BORROWER is required to repay any loan originally granted to it for a term exceeding five years; or

(d) if THE BORROWER is liable, by reason of any default, to be required to effect immediate prepayment of any loan granted by THE BANK from the resources of THE BANK or of the EC;

(B) upon expiry of a reasonable period of time specified in a notice served by THE BANK on THE BORROWER, without the matter being remedied to the satisfaction of THE BANK:

(a) if THE BORROWER fails to comply with any obligation under this Contract other than one mentioned in Article 10.01(A)(b);

(b) if the obligations contained in Article 237 of the Convention cease to be fulfilled as regards any loan made to any borrower in the Republic of Kenya from the resources of THE BANK or of the EC; or

(c) if any material fact stated in the Recitals substantially alters and is not materially restored and if the alteration prejudices the interests of THE BANK as lender to THE BORROWER.

10.02 Other Rights at Law

Article 10.01 shall not restrict any other right of THE BANK at law to demand repayment of the Loan.

10.03 Damages

In case of demand for prepayment under Article 10.01, THE BORROWER shall pay to THE BANK an amount calculated as at the date of demand, as the greater of:
10.04 Non-Waiver

No failure or delay by THE BANK in exercising any of its rights under this Article 10 shall be construed as a waiver of such right.

10.05 Application of Sums Received

Sums received following demand under this Article 10 shall be applied first in payment of damages, commission and interest in that order and secondly in reduction of outstanding instalments in inverse order of maturity.

ARTICLE 11
Final Clauses

11.01 Law

This Contract and its formation, construction and validity shall be governed by English law.

11.02 Jurisdiction

All disputes concerning this Contract shall be submitted to the Court of Justice of the European Communities.

The parties to this Contract hereby waive any immunity from or right to object to the jurisdiction of that Court.

A decision of the Court given pursuant to this Article 11.02 shall be conclusive and binding on the parties without restriction or reservation.

11.03 THE BORROWER's Agent for Service

THE BORROWER appoints the Ambassador from time to time of the Republic of Kenya to the European Communities whose present address is Av. Winston Churchill 208, 1180 Brussels, Belgium, to be its Agent for the purpose of accepting service on its behalf of any writ, notice, order, judgment or other legal process.

11.04 Evidence of Sums Due

In any legal action arising out of this Contract the certificate of THE BANK as to any amount due to THE BANK under this Contract shall be prima facie evidence of such amount.
ARTICLE 12
Final Clauses

12.01 Notices

Save as provided in Article 11.03, notices and other communications given hereunder by one party to this Contract to the other shall be sent to its respective address set out below or to such other address as it shall have previously notified to the former in writing as its new address for such purpose. Notices directed to THE BORROWER shall be properly sent to THE BORROWER at the address set out below:

- FOR THE BORROWER
  Ministry of Finance
  P.O. Box 30007
  Nairobi
  Kenya
  Fax: (002542) 330426

- FOR THE BANK
  100, boulevard Konrad Adenauer
  L-2950 Luxembourg
  Telex: 3530 BNKEU LU
  Telefax: (352) 43 77 04

12.02 Form of Notice

Notices and other communications, for which fixed periods are laid down in this Contract or which themselves fix periods binding on the addressee, shall be served by hand delivery, registered letter, telegram, telex or any other means of transmission which affords evidence of receipt by the addressee. The date of registration or, as the case may be, the stated date of receipt of transmission shall be conclusive for the determination of a period.

12.03 Recitals, Schedule and Annexes

The Recitals and following Schedule form part of this Contract:

Schedule A
Definition of ecu
The following Annexes are attached hereto:

- Annex I
- Annex II

Authority of Signatory on behalf of THE BORROWER
Form of Participation Letter

IN WITNESS WHEREOF the parties hereto have caused this Contract to be executed in three originals in the English language each page having been initialed by [REDACTED] on behalf of THE BANK.

Signed for and on behalf of
THE REPUBLIC OF KENYA

Signed for and on behalf of
EUROPEAN INVESTMENT BANK

this 13th day of December 1995, at Luxembourg
SCHEDULE A

The ECU

The ECU is the same as the eur that is used as the unit of account of the European Communities, and which is at present comprised of the specific amounts of the currencies of 12 of the Member States of the European Community shown below.

Pursuant to Council Regulation (EC) No. 3320/94 of 22nd December 1994, the composition of the eur basket is as follows:

<table>
<thead>
<tr>
<th>Currency</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>German mark</td>
<td>0.6242</td>
</tr>
<tr>
<td>pound Sterling</td>
<td>0.08784</td>
</tr>
<tr>
<td>French franc</td>
<td>1.332</td>
</tr>
<tr>
<td>Italian lira</td>
<td>151.8</td>
</tr>
<tr>
<td>Dutch guilder</td>
<td>0.2198</td>
</tr>
<tr>
<td>Belgian franc</td>
<td>3.301</td>
</tr>
<tr>
<td>Luxembourg franc</td>
<td>0.130</td>
</tr>
<tr>
<td>Danish krone</td>
<td>0.1976</td>
</tr>
<tr>
<td>Irish pound</td>
<td>0.008552</td>
</tr>
<tr>
<td>Greek drachma</td>
<td>1.440</td>
</tr>
<tr>
<td>Spanish peseta</td>
<td>6.885</td>
</tr>
<tr>
<td>Portuguese escudo</td>
<td>1.393</td>
</tr>
</tbody>
</table>

Changes to the eur may be made by the European Communities, in which event references to the eur shall be read accordingly (see Information).

If THE BANK should consider that the eur (see Payment in Euros and Information, hereafter) has ceased to be used as the unit of account of the European Communities and as the single currency of the European Union, it shall so notify THE BORROWER. As from the date of such notification, the eur shall be replaced by the currencies of which it was comprised - or their countervalue in one or more of those currencies - as at the time of its most recent use as the unit of account of the European Communities.

Payment in Euros

Upon substitution of the eur by the Euro, all payments due in ecus under this Contract shall be made in Euros at the rate of one Euro for one eur. The substitution of the eur by the Euro shall not have the effect of bringing about the payment in component currencies referred to in the preceding paragraph.

Information

Article 109G of the EC Treaty, as introduced by the Treaty on European Union, provides that the currency composition of the eur basket shall not be changed. From the start of the third stage of European economic and monetary union, the value of the eur as against the currencies of the Member States participating in the third stage will be irrevocably fixed and the eur will become a currency in its own right.

The European Council at the Madrid Summit in December 1995 decided that the name of that new currency will be the Euro. Consequently, references to the eur shall apply to the Euro. In the case of contracts denominated by reference to the official eur basket of the European Community, in accordance with the Treaty as confirmed by the European Council at the Madrid Summit in December 1995, substitution of the eur by the Euro will be made at the rate of one to one.

SPECIAL AUTHORIZATION

In accordance with the provisions of Section Seven (7) of the External Loans and Credit Act, Chapter 422 of the Laws of Kenya, I, [Name], the [Office Title], hereby authorize [Name] to sign on behalf of the Government of the Republic of Kenya the Finance Contracts on Own Resources and Risk Capital Resources between the Republic of Kenya and European Investment Bank related to Kenya Global Private Enterprise Loan III with the power of the said person to bind the Government of the Republic of Kenya fully to all the conditions of the said Finance Contracts.
Ref DD/EIB-GPE
January 21, 1997

ALL AFIs

Dear Sir,

RE: PARTICIPATION LETTER - EUROPEAN INVESTMENT BANK GLOBAL PRIVATE-ENTERPRISE LOAN III

The Government has signed a loan agreement with the EIB amounting to ECU 45m (approx. US$ 60m) under the Global Private Enterprise Programme of the Lome IV Convention. Out of this amount ECU 35m will be immediately available for disbursement while ECU 10m will be availed after the signing of the second Financial Protocol to the fourth ACP-EC Convention of Lome.

This follows the successful implementation of the EIB-GPE II programme and the desire expressed by the private sector together with the EIB's willingness to provide additional funding under the programme.

We have pleasure to inform you that your institution has been nominated to participate in the Global Private Enterprise III programme. The Participation Letter in the annex attached outlines the financing facilities, their terms and conditions and serves as an invitation to your institution to register its interest and commitment to the letter and spirit of EIB-GPE III.

Funds under the Global Private Enterprise III programme will be made available through the Central Bank of Kenya (CBK), as the Implementing Agent on behalf of the Government of Kenya, to approved financial intermediaries (AFIs) which enjoy close contacts with the private sector having a thorough knowledge of local markets and economic development priorities.
Out of the expected loan amount, 20 million ECUs will be available in USD and is expected to be on-lent also in USD to small and medium scale enterprises engaged in foreign exchange earning activities (exporters and tourism operators). Interest rates shall be fixed for the term of the loan.

A further amount of 25 million ECU will be available in Kshs for financing, for which there are three options:

(i) funds may be on-lent in local currency;

(ii) funds may be used for Equity Participation;

(iii) funds may be on-lent with a provision that the loan may later be converted into equity, if the financial circumstances of the final beneficiary so require. These convertible loans are aimed specifically at helping smaller-scale ventures either starting or expanding.

It is the Government’s intention that the programme shall be operational within the next few weeks.

If you agree to participate in this programme under the terms and conditions outlined in the annex to this letter please indicate your acceptance by returning a signed copy of the annex.

Yours faithfully,
Annexe

1) OBJECTIVES

Through the Global Private Enterprise Programme, the Government of Kenya in conjunction with the EIB wishes to:

i) support the development of a long term capital market for the benefit of small and medium-scale private enterprises;

ii) provide deserving enterprises with access to offshore funds on competitive terms;

iii) support the development of a venture capital market;

iv) promote economic development by encouraging and facilitating new investment and growth of private enterprise in key sectors of the economy.

2) ELIGIBLE SECTORS

Funds shall be used to finance small and medium sized private enterprises in the Republic of Kenya carrying out investment projects in the agro-industrial, manufacturing, horticultural/floricultural, fishing/fish - processing, mining/quarrying, tourism sectors, and related services of the economy. The investment financed may relate to new projects and modernisation, restructuring, expansion and diversification of existing activities.

3) AMOUNTS AVAILABLE

i) Loans - whether in USD or in local currency - shall normally finance up to 50% of the project cost (fixed assets including, where appropriate, a reasonable allocation of working capital). In absolute terms, the minimum amount shall be 50,000 ECU equivalent and the maximum amount 1,500,000 ECU equivalent.

ii) An equity participation may cover up to 50% of a project cost. The absolute limits are set at minimum 25,000 ECU equivalent and the maximum at 350,000 ECU equivalent.
iii) Convertible subloans are reserved for small-scale ventures (start ups and expansions) In the case of start ups, the total project investment may not be more than 500,000 ECU while the new investment should exceed 500,000 ECU equivalent. These loans may be for amounts of between 25,000 and 350,000 ECU equivalent.

An AFI may ask for a combination of funds - loans in USD, in local currency, equity and/or convertible loans as appropriate for the particular financing needs for the project. Cumulatively, they should not exceed 50% of the overall project cost, with the exception of small scale ventures where the limit is 75% when a convertible loan is provided.

4) **LOAN TERM AND INTEREST RATES : from CBK to AFIs**

<table>
<thead>
<tr>
<th>Loans denominated in USD</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interest Rate</td>
</tr>
<tr>
<td>-----------------</td>
</tr>
<tr>
<td>4%</td>
</tr>
<tr>
<td>5%</td>
</tr>
<tr>
<td>6%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Loan denominated in Kenya Shillings</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interest Rate</td>
</tr>
<tr>
<td>----------------</td>
</tr>
<tr>
<td>4%</td>
</tr>
<tr>
<td>5%</td>
</tr>
<tr>
<td>6%</td>
</tr>
</tbody>
</table>


SUB LOAN AGREEMENTS (i.e. the terms of on-lending from AFIs to Final Beneficiaries)

All arrangements involving on-lending by the AFI shall be covered under a Subloan Agreement and shall be acceptable to the EIB and CBK. Each Subloan Agreement shall provide that in respect of each project, the Final Beneficiary shall:

i) complete the relevant project as envisaged;

ii) use the funds exclusively for the purpose of carrying out the project;

iii) permit persons designated by the EIB who may be accompanied by representatives of the Court of Auditors of the European Community, to visit the sites, installations and works comprising the project and to conduct such checks as they may wish and provide them with all necessary assistance for this purpose.

All lending by AFIs will be on a matched maturity basis against the funds drawn from CBK. AFIs may freely negotiate the rate of interest with the Final Beneficiary to cover their costs and provisions. This will be a margin above the CBK lending rate to the AFI. This margin should be indicated at the moment of presenting the loan request.

If the Kenya shilling loan is required with an annually adjustable rate, any reduction by the CBK in a given year will be passed on by the AFI to the Final Beneficiary. AFIs will similarly not exceed the rate of increase charged by CBK in a given year. Subloan Agreements are also expected to state all other substantive terms of the loan and should be in conformity with this Participation Letter.

Subloan Agreements may not be altered without the prior written consent of the EIB.
6) EQUITY PARTICIPATION

The principle of the equity facility is that the AFI is may take equity in enterprises which will be held in their own name and for their own account. They will pay no interest rate for the funds which they draw down. They will instead remunerate these funds by surrendering a share of annual dividends with respect to the shareholding financed with EIB funds.

All arrangements involving equity shall be covered under an Equity Agreement and be acceptable to the EIB and CBK. Each such Equity Agreement shall:

i) ensure that the Final Beneficiary appoint and maintain in office auditors acceptable to the CBK;

ii) state that the share structure of a Final Beneficiary shall not be changed so as to diminish the value of an Equity Participation or the amount of dividend likely to be paid in respect thereof. A Final Beneficiary may not enter into any arrangement for the sharing of revenue as would have such an effect.

Shares acquired by an AFI under this facility may be held for up to 12 years.
7) **CONVERTIBLE LOANS** *(i.e. loans that may be converted into equity)*

Loans granted for small scale ventures with total project investment cost of less than 500 000 ECU equivalent may take the form of convertible loans.

These will be denominated in Kenya Shillings with the minimum and maximum terms as for other Kshs loans under the GPE III programme.

The interest charged by CBK to the AFI will also be the same as for other Kshs loans, but the AFI’s on-lending margin will be fixed at

Such loans may be converted by the AFI into equity in the Final Beneficiary if the financial equilibrium of the enterprise so requires and subject to the EIB’s and CBK’s agreement. Once converted into equity, the loan will cease to bear interest. Remuneration conditions for equity contributions as above will then apply.
**N.B.** convertible loans will be granted only in conjunction with some long-term financing from AFI's resources in a proportion acceptable to the EIB.

**OTHER CONDITIONS FOR OBTAINING FINANCE**

Every AFI must at all times be in compliance with the Banking Act, the Central Bank Of Kenya act and any other acts which govern its operation. The Central Bank of Kenya may call for any report, article, document or information as it may deem necessary to confirm that the operations of the AFI will not jeopardise the operation of the scheme. In order to be able to do this, every AFI must subscribe to an inspection of its books by the CBK.

AFIs will not be expected to request funds prior to perfection of any formalities which can delay disbursement to final beneficiaries. Funds not disbursed within 4 months must be reported to CBK together with explanations for the delay. In the event of CBK recalling the funds, the affected AFI will meet the relative accrued interest and any other charges.

The AFI shall provide for each project an allocation request summary together with a detailed and complete project appraisal.

Each AFI shall use its best endeavour to ensure that equipment, services and works pertaining to each project are selected by the Final Beneficiaries in accordance with procedures appropriate in the circumstances and, having regard to quality and efficiency at the most advantageous prices. Where such procedures involve international consultation or bidding, they shall be open to nationals of the Republic of Kenya and other states party to the Lome IV Convention.

Each AFI shall use its best endeavour to ensure that final beneficiaries fulfill all environmental regulations applicable to each project, its activities and location.
9) **INFORMATION FROM AFIs**

The AFI shall deliver to CBK any documents or information reasonably requested by the CBK concerning the financing, implementation and operation of each project and the activities and financial condition of each Final Beneficiary. The AFI shall also inform the CBK of any fact or event which might prevent the fulfillment of any obligation of the AFI under this Letter.

In the case of equity participation, the AFI will make an annual report on dates specified by CBK, indicating dividends and other distributions paid by each Final Beneficiary to the respective AFI as remuneration for its share of the capital of the Final Beneficiary financed with EIB funds.

If any material fact stated by the AFI proves to be untrue, CBK may in agreement with the EIB cancel the credit and demand immediate repayment of the entire amount.

10) **EXPENSES AND PENALTIES**

11) **PROJECT MANAGEMENT UNIT (PMU)**

A Project Management Unit has been established whose task shall be:

i) to promote and explain the availability of finance for eligible projects to AFIs and Final Beneficiaries;

ii) to train the staff of AFIs in project appraisal;

iii) to assist Final Beneficiaries with project development and documentation for submission to the AFIs;

iv) to ensure that all relevant information is included in the project submissions transmitted to CBK for approval by the EIB.
The AFI shall be responsible for project selection, appraisal and preparation of all necessary documentation. Each loan request shall be presented to the PMU for screening and then passed to CBK which will be responsible for ensuring that each request conforms with the programme objectives, contacting the EIB and soliciting the funding. The EIB will be responsible for approving each request.

ACCEPTANCE OF TERMS AND CONDITIONS

If you agree to participate in this programme under the terms and conditions stated above, please indicate your acceptance by returning a signed copy of this letter on the space provided below.

........................................... ...........................................
Stamp & Authorised Signature          Countersigned

Date..............                      Date..............
GPE III - REVISED LIST OF APPROVED FINANCIAL INTERMEDIARIES

1. Barclays Bank of Kenya Ltd
2. Development Bank of Kenya Ltd
3. East African Development Bank
4. Industrial Development Bank
5. Kenya Commercial Bank Ltd
6. Kenya Equity Management Ltd
7. National Bank of Kenya Ltd
8. Standard Chartered Bank Kenya Ltd
9. Industrial Promotion Services
10. Citibank N.A.
11. Stanbic Bank

DEVELOPMENT DIVISION
CENTRAL BANK OF KENYA

February 12, 1997