

**CENTRAL TRANSPORT ORGANIZATION (WORKSHOPS EXTENSIONS)
LOAN (RATIFICATION) ACT, 1979**

No. 8



of 1979

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Ratification of loan agreement
3. Loan charged upon Consolidated Fund
4. Loan to be paid into Development Fund
5. Powers of Minister

SCHEDULE

An Act to ratify and give effect to the agreement entered into in February, 1979, between the Government of Botswana and Kreditanstalt Fur Wiederaufbau ("KFW") whereby KFW agreed to provide a loan of three million one hundred thousand Deutsche Mark for the purpose of financing extensions to the Central Transport Organization workshops in Gaborone and other depots outside Gaborone as well as the purchase of towing and recovery vehicles and other equipment.

Date of Assent: 20.4.79

Date of Commencement: 27.4.79

ENACTED by the Parliament of Botswana

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| <p>1. This Act may be cited as the Central Transport Organization (Workshops Extensions) Loan (Ratification) Act, 1979.</p> | Short title |
| <p>2. The agreement entered into in February, 1979, between the Government of Botswana and Kreditanstalt Fur Wiederaufbau and set out in the Schedule (hereinafter referred to as "the agreement") is hereby ratified.</p> | Ratification of loan agreement |
| <p>3. All sums required to repay the loan for which the agreement makes provision shall be charged upon and paid out of the Consolidated Fund.</p> | Loan charged upon Consolidated Fund |

Loan to be
paid into
Development
Fund
Powers of
Minister

4. The proceeds of the loan for which the agreement makes provision shall be paid into the Development Fund.

5. The Minister may do all such things as may be necessary to give effect to the agreement and may authorize any public officer to do any such things as the Minister may specify for that purpose.

SCHEDULE

(s. 2)

LOAN AGREEMENT

between

KREDITANSTALT FUR WIEDERAUFBAU, Frankfurt am Main,
("Kreditanstalt")

and

the REPUBLIC OF BOTSWANA
("Borrower")

On the basis of the agreement dated March 29, 1978, between the Government of the Federal Republic of Germany and the Government of the Republic of Botswana on Financial Co-operation ("Government Agreement"), the Borrower and Kreditanstalt hereby conclude the following Loan Agreement.

Article 1

Amount and Purpose of the Loan

1.1 Kreditanstalt undertakes to extend to the Borrower a Loan not exceeding

DM 3 100 000,00

(three million one hundred thousand Deutsche Mark).

1.2 The Borrower shall use the Loan — as well as a Financial Contribution of DM 0.9 million — exclusively to pay the cost arising in connection with civil works and for the purchase of towing and recovery vehicles for the central station of the Central Transport Organization (CTO) in Gaborone and its depots outside Gaborone ("Project")

By separate agreement, the Borrower and Kreditanstalt shall determine the details of the Project as well as the goods and services to be financed from the Loan.

1.3 Taxes and other public charges to be borne by the Borrower and import duties shall not be financed from the Loan.

Article 2

Disbursement

2.1 Kreditanstalt shall disburse the Loan upon request of the Borrower in accordance with the progress of the Project. By separate agreement, the Borrower and Kreditanstalt shall agree on the disbursement procedure, in particular on the evidence to be furnished by the Borrower for the disbursement of the Loan, proving the use of the loan amounts for the purpose stipulated in this Agreement.

2.2 Kreditanstalt shall have the right to refuse to make disbursements after December 31, 1982.

Article 3

Commitment Charge, Interest, and Repayment

- 3.1 The Borrower shall pay a commitment charge of $\frac{1}{4}\%$ p.a. (one quarter of one per cent per annum) on undisbursed loan amounts. The commitment charge shall be computed for a period beginning three months after the signing of this Agreement and ending at the respective dates at which disbursements are debited.
- 3.2 The Borrower shall pay interest on the Loan at a rate of $\frac{3}{4}\%$ p.a. (three-fourth of one per cent per annum). Interest shall be charged from the dates at which disbursements are debited to the dates at which repayments are credited to Kreditanstalt's account specified in Article 3.9.
- 3.3 The Borrower shall pay the commitment charge, the interest, and the interest on arrears pursuant to Article 3.5, if any, semi-annually on June 30 and on December 31 for the half-year then ending. The first commitment charge shall be due together with the first interest payment.
- 3.4 The Borrower shall repay the Loan as follows:

June 30, 1989	DM	38 000,00
December 31, 1989	DM	38 000,00
June 30, 1990	DM	38 000,00
December 31, 1990	DM	38 000,00
June 30, 1991	DM	38 000,00
December 31, 1991	DM	38 000,00
June 30, 1992	DM	38 000,00
December 31, 1992	DM	38 000,00
June 30, 1993	DM	38 000,00
December 31, 1993	DM	38 000,00
June 30, 1994	DM	38 000,00
December 31, 1994	DM	38 000,00
June 30, 1995	DM	38 000,00
December 31, 1995	DM	38 000,00
June 30, 1996	DM	38 000,00
December 31, 1996	DM	38 000,00
June 30, 1997	DM	38 000,00
December 31, 1997	DM	38 000,00
June 30, 1998	DM	38 000,00
December 31, 1998	DM	38 000,00
June 30, 1999	DM	38 000,00
December 31, 1999	DM	38 000,00
June 30, 2000	DM	38 000,00
December 31, 2000	DM	38 000,00
June 30, 2001	DM	38 000,00
December 31, 2001	DM	38 000,00
June 30, 2002	DM	38 000,00
December 31, 2002	DM	38 000,00
June 30, 2003	DM	38 000,00
December 31, 2003	DM	38 000,00
June 30, 2004	DM	38 000,00
December 31, 2004	DM	38 000,00
June 30, 2005	DM	38 000,00

December 31, 2005	DM	38 000,00
June 30, 2006	DM	38 000,00
December 31, 2006	DM	38 000,00
June 30, 2007	DM	38 000,00
December 31, 2007	DM	38 000,00
June 30, 2008	DM	38 000,00
December 31, 2008	DM	38 000,00
June 30, 2009	DM	38 000,00
December 31, 2009	DM	38 000,00
June 30, 2010	DM	38 000,00
December 31, 2010	DM	38 000,00
June 30, 2011	DM	38 000,00
December 31, 2011	DM	38 000,00
June 30, 2012	DM	38 000,00
December 31, 2012	DM	38 000,00
June 30, 2013	DM	38 000,00
December 31, 2013	DM	38 000,00
June 30, 2014	DM	38 000,00
December 31, 2014	DM	38 000,00
June 30, 2015	DM	38 000,00
December 31, 2015	DM	38 000,00
June 30, 2016	DM	38 000,00
December 31, 2016	DM	38 000,00
June 30, 2017	DM	38 000,00
December 31, 2017	DM	38 000,00
June 30, 2018	DM	38 000,00
December 31, 2018	DM	39 000,00
June 30, 2019	DM	39 000,00
December 31, 2019	DM	39 000,00
June 30, 2020	DM	39 000,00
December 31, 2020	DM	39 000,00
June 30, 2021	DM	39 000,00
December 31, 2021	DM	39 000,00
June 30, 2022	DM	39 000,00
December 31, 2022	DM	39 000,00
June 30, 2023	DM	39 000,00
December 31, 2023	DM	39 000,00
June 30, 2024	DM	39 000,00
December 31, 2024	DM	39 000,00
June 30, 2025	DM	39 000,00
December 31, 2025	DM	39 000,00
June 30, 2026	DM	39 000,00
December 31, 2026	DM	39 000,00
June 30, 2027	DM	39 000,00
December 31, 2027	DM	39 000,00
June 30, 2028	DM	39 000,00
December 31, 2028	DM	39 000,00
June 30, 2029	DM	39 000,00
	DM	<hr/> 3 100 000,00 <hr/>

- 3.5 If repayments are not at Kreditanstalt's disposal when due, Kreditanstalt shall be entitled to increase the rate of interest on arrears to the discount rate of Deutsche Bundesbank prevailing at the respective due date plus 3% for the period beginning with the due date and ending at the date at which such repayments are credited. In the case of arrears of interest, Kreditanstalt shall be entitled to claim damages. Such damages shall not exceed the amount arrived at if interest on arrears were charged at the discount rate of Deutsche Bundesbank prevailing at the respective due date plus 3%.
- 3.6 Commitment charge, interest, and additions for default pursuant to Article 3.5, if any, shall be computed on the basis of a 360-day year and of 30-day months.
- 3.7 Undisbursed or prematurely repaid loan amounts shall be set off against such redemption instalments as shall fall due last under the repayment schedule except as otherwise agreed upon in a particular case.
- 3.8 Kreditanstalt shall be entitled to set off, at its discretion, payments received against payments due under this Agreement or under other loan agreements concluded between Kreditanstalt and the Borrower.
- 3.9 The Borrower shall remit all payments in no other currency than Deutsche Mark to Kreditanstalt's account No. 504 091 00 with Deutsche Bundesbank, Frankfurt am Main, no set-off against such payments being permitted.

Article 4

Suspension of Disbursement and Premature Repayment

- 4.1 The Borrower shall be entitled at any time –
 - (a) subject to his obligations under Article 7, to cancel any loan amounts not yet withdrawn;
 - (b) to repay the Loan in whole or in part in advance of maturity.
- 4.2 Kreditanstalt shall be entitled to suspend disbursement only if –
 - (a) the Borrower shall have failed to perform his obligation vis-a-vis Kreditanstalt to make payments when due;
 - (b) obligations under this Agreement or under separate agreements pertaining to this Agreement shall not have been duly performed;
 - (c) the Borrower shall not be able to prove the use of the loan amounts for the purpose stipulated in this Agreement; or
 - (d) any extraordinary situation shall have arisen which shall preclude or seriously jeopardize the accomplishment of the purpose of the Loan, the execution of the Project or the performance of the payment obligations assumed by the Borrower under this Agreement.
- 4.3 If any event specified in Article 4.2 (a), (b) or (c) shall have occurred and shall continue for a period to be specified by Kreditanstalt which shall, however, not be less than 30 days Kreditanstalt shall be entitled –
 - (a) in the case of events specified in Article 4.2 (a) or 4.2 (b) to demand the immediate repayment of all loan amounts outstanding as well as payment of all interest accrued and all other incidental charges; or

- (b) in the case of the event specified in Article 4.2 (c) to demand the immediate repayment of such loan amounts which the Borrower is unable to prove to have been used for the purpose stipulated in this Agreement.

Article 5

Costs and Public Charges

- 5.1 The Borrower shall make all payments to be made under this Agreement without any deduction for taxes, other public charges or other costs and shall pay any transfer and conversion costs arising in connection with the disbursement of the Loan.
- 5.2 The Borrower shall bear all taxes and other public charges accruing in connection with the conclusion and implementation of this Agreement outside the German part of the area of validity of the Government Agreement.

Article 6

Validity of the Loan Agreement and Power of Attorney

- 6.1 In due course prior to the first disbursement the Borrower shall furnish Kreditanstalt with evidence satisfactory to Kreditanstalt proving that the Borrower has met all requirements under his constitutional and other laws for the valid assumption of all his obligations under this Agreement.
- 6.2 The Minister of Finance and Development Planning and such persons as designated by him to Kreditanstalt and legitimized by specimen signature authenticated by him shall represent the Borrower in the implementation of this Agreement. In the event that a change in the representation shall occur the person authorized to represent the Borrower shall notify Kreditanstalt of the newly designated representative and of his address. The power of attorney shall expire only when its express revocation by the representative authorized at the time shall have been received by Kreditanstalt.
- 6.3 Amendments of, and additions to, this Agreement as well as any notice or statement which shall be given or made under this Agreement by the contracting parties shall be in writing. Any such notice or statement shall be deemed to have been received as soon as it shall have been delivered at the following address of the contracting party or at such other address as notified to the other contracting party:

For Kreditanstalt:

Postal address: Kreditanstalt für Wiederaufbau Palmengartenstrasse 5–9 D–6 000 Frankfurt am Main
Federal Republic of Germany

For the Borrower:

Postal address: Ministry of Finance and Development Planning
Private Bag 8
Gaborone/Botswana

Any change in the above address shall be effective only when notification thereof shall have been received by the other contracting party.

Article 7

The Project

7.1 The Borrower shall –

- (a) prepare, carry out, operate and maintain the Project in conformity with sound financial and engineering practices as well as substantially in accordance with the plans and data submitted to Kreditanstalt;
- (b) assign the preparation and supervision of the civil works of the Project to independent qualified consulting engineers and the execution of the civil works as far as these works shall not be carried out under public ownership and management to qualified Botswana firms upon prior tender according to the bidding procedure usually applied in Botswana;
- (c) prior to the award of the contracts for the towing and recovery vehicles including the low-bed trailer with tractor to be financed, request quotations from potential dealers and agencies, and instruct the Central Tender Board to evaluate these quotations and submit the evaluation report, together with the proposal for awarding the contract, to Kreditanstalt for approval;
- (d) secure the full financing of the Project and, upon request of Kreditanstalt, furnish it with evidence proving that all costs not to be paid from this Loan and the Financial Contribution of DM 0,9 million are covered;
- (e) maintain, or cause to be maintained, books and records showing all costs of goods and services required for the Project and identifying the goods and services financed from the Loan;
- (f) enable the representatives of Kreditanstalt at any time to inspect such books and records as well as any other documentation relevant to the execution of the Project and to visit the Project and all the installations related thereto;
- (g) supply any information and reports on the Project and its further progress which Kreditanstalt may request;
- (h) of his own accord promptly inform Kreditanstalt of any circumstances seriously affecting or jeopardizing the accomplishment of the purpose of this Agreement, above all the execution or operation of the Project.

7.2 The Borrower and Kreditanstalt shall lay down the details pertaining to Article 7.1 in a separate agreement.

7.3 Regarding sea and air transport of the goods to be financed from the Loan the provisions of the Government Agreement, which are known to the Borrower, shall apply.

Article 8

Miscellaneous Provisions

- 8.1 The invalidity of one provision of this Agreement shall not affect the validity of the other provisions. Any gap resulting in consequence shall be filled by a provision consistent with the purpose of this Agreement.
- 8.2 The Borrower shall not assign or transfer, pledge or mortgage any rights under this Agreement.
- 8.3 This Agreement shall be governed by the law of the Federal Republic of Germany. The place of performance shall be Frankfurt am Main. In case of doubt as to the interpretation of this Agreement, the German text shall be controlling.

DONE in four originals, two in German and two in English,

at Frankfurt am Main, Feb. 13, 1979

Brussels, Feb. 6, 1979

KREDITANSTALT FÜR
WIEDERAUFBAU

REPUBLIC OF
BOTSWANA

signed Dr Broder signed Dr Sturm

signed E.B. Mathe

Arbitration Clause

All disputes arising from the foregoing Agreement, including disputes on the validity of such Agreement and this Arbitration Clause, which cannot be settled amicably between the contracting parties shall be submitted to arbitration as agreed upon in the Arbitration Agreement pertaining to the Loan Agreement dated December 21, 1976 (Road Francistown-Serule). If and when all the payment obligations under the foregoing Agreement shall have been performed, such Arbitration Agreement shall forthwith terminate.

Frankfurt am Main, Feb. 13, 1979

Brussels, Feb. 6, 1979

KREDITANSTALT FÜR
WIEDERAUFBAU

REPUBLIC OF
BOTSWANA

signed Dr Broder signed Dr Sturm

signed E.B. Mathe

PASSED by the National Assembly this 4th day of April, 1979.

I.P. GONTSE,
Clerk of the National Assembly.