

*and Minister for Finance.*

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LEGAL NOTICE NO. 140

**THE INCOME TAX ACT**

(Cap. 470)

**DECLARATION OF SPECIAL ARRANGEMENTS FOR RELIEF  
FROM DOUBLE TAXATION**

IN EXERCISE of the powers conferred by section 41 of the Income Tax Act, the Deputy Prime Minister and Minister for Finance declares that the arrangements specified in the Schedule hereto, between the Government of the Republic of Kenya and the Government of the French Republic for the Avoidance of Double Taxation and the Prevention of Fiscal evasion with Respect to Taxes on Income, entered into on the 4th December, 2007, shall, notwithstanding anything to the contrary in the Income Tax Act or in any other written law, have effect in relation to income tax.

**SCHEDULE**

The Government of the French Republic and the Government of the Republic of Kenya, desiring to conclude a convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income:

**HAVE AGREED AS FOLLOWS:**

**ARTICLE I**

**PERSONAL SCOPE**

This Convention shall apply to persons who are residents of one or both of the Contracting States.

## ARTICLE 2

## TAXES COVERED

1. This Convention shall apply to taxes on income imposed on behalf of a Contracting State or of its local authorities, irrespective of the manner in which they are levied:

2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises as well as taxes on capital appreciation.

3. The existing taxes to which the Convention shall apply are in particular :

(a) in the case of France :

- (i) the income tax ("l'impôt sur le revenu") ;
- (ii) the widespread security contributions (CSG) ;
- (iii) the reimbursement of the debt of social security contributions (CRDS);
- (iv) the corporation tax ("l'impôt sur les sociétés") ;
- (v) the tax on salaries ("la taxe sur les salaires") ;

including any withholding tax, prepayment (précompte) or advance payment with respect to the aforesaid taxes ;

(hereinafter referred to as "French tax") ;

(b) In the case of Kenya, taxes on income chargeable under the Income Tax Act, Cap. 470.

(hereinafter referred to as "Kenyan tax")

4. The Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of substantial changes which have been made in their respective taxation laws.

## ARTICLE 3

## GENERAL DEFINITIONS

1. For the purposes of this Convention, unless the context otherwise requires :

(a) the terms "Contracting State" and "other Contracting State" mean France or Kenya, as the context requires ;

(b) the term "France" means the European and overseas departments ("départements d'Outre-mer") of the French Republic including the territorial sea, and any area outside the territorial sea within which, in accordance with international law, the French Republic has sovereign rights

for the purpose of exploring and exploiting the natural resources of the seabed and its subsoil and the superjacent waters ;

- (c) the term "Kenya" means all territory of Kenya in state boundaries, including internal and territorial waters and also special economic zone and continental shelf, and all installations erected thereon as defined in the Continental Shelf Act, over which Kenya exercises its sovereign rights for the purpose of exploiting natural resources of the seabed, its subsoil and the superjacent waters, in accordance with international law ;
- (d) the term "person" includes an individual, a company and any other body of persons ;
- (e) the term "company" means any body corporate, or any entity which is treated, for tax purposes, as a body corporate;
- (f) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State ;
- (g) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise which has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- (h) the term "competent authority" means—
  - (i) in the case of France, the Minister in charge of the budget or his authorised representative ;
  - (ii) in the case of Kenya, the Minister for Finance or his authorised representative ;
- (i) the term "national" means—
  - (i) any individual possessing the nationality of a Contracting State ;
  - (ii) any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State.

2. As regards the application of the Convention at any time by a Contracting State, any term not defined therein shall have the meaning which it has at that time under the law of that State for the purposes of the taxes to which the Convention applies. The meaning of a term under the applicable tax laws of that State shall have priority over a meaning given to the term under other laws of that State.

## ARTICLE 4

## RESIDENT

1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature and also includes that State and any local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State or capital situated therein.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:

- (a) he shall be deemed to be a resident only of the State in which he has a permanent home available to him ; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests) ;
- (b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident only of the State in which he has an habitual abode ;
- (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident only of the Contracting State of which he is a national ;
- (d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the State in which its place of effective management is situated.

4. The term "resident of a Contracting State" shall include any partnership or group of persons which has its place of effective management in a Contracting State and all the shareholders, associates or other members of which are personally liable to tax therein in respect of their part of the profits according to the laws of that State.

## ARTICLE 5

## PERMANENT ESTABLISHMENT

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term "permanent establishment" includes especially:
  - (a) a place of management;
  - (b) a branch;
  - (c) an office;
  - (d) a factory;
  - (e) a workshop; and
  - (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.
3. A building site or construction or assembly project constitutes a permanent establishment only if it lasts more than six months.
4. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:
  - (a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
  - (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
  - (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
  - (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information for the enterprise;
  - (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
  - (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.
5. Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom paragraph 7 applies - is acting on behalf of an enterprise and has, and habitually exercises in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

6. Notwithstanding the preceding provisions of this article, an insurance enterprise of a Contracting State shall, except in regard to re-insurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of an independent status to whom paragraph 7 applies.

7. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

8. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

#### ARTICLE 6

##### INCOME FROM IMMOVABLE PROPERTY

1. Income from immovable property (including income from agriculture or forestry) may be taxed in the Contracting State in which such immovable property is situated.
2. For the purposes of this Convention, the term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated; the term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.
3. The provisions of paragraph 1 shall also apply to income derived from the direct use, letting, or use in any other form of immovable property.
4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.
5. Where shares or other rights in a company, trust or comparable institution entitled to the enjoyment of immovable property situated in a Contracting State and held by that company, trust or comparable institution, income derived from the direct use, letting or use in any other form of that right of enjoyment may be taxed in that State notwithstanding the provisions of Articles 7 and 14.

ARTICLE 7  
BUSINESS PROFITS

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other Contracting State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

3. (a) In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.

(b) Unless it can be demonstrated that another method is more appropriate, the executive and general administrative expenses shall be determined by applying a ratio of turnover or gross profits of a permanent establishment as related to that of the enterprise as a whole.

4. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

5. Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this article.

6. For the purposes of the preceding paragraphs of this Article, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

7. Where profits include items of income which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

## ARTICLE 8

## SHIPPING AND AIR TRANSPORT

1. Profits of an enterprise of a Contracting State from the operation of aircrafts in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

2. Profits of an enterprise of a Contracting State from the operation of ships in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

Provided that where such an enterprise derives profits from such operation in the other Contracting State;

(a) Such profits shall be deemed to be an amount not exceeding 5 per cent of the full amount received by the enterprise on account of the carriage of passengers or freight embarked in that other State; and

(b) The tax chargeable in that other state shall be reduced by an amount equal to fifty per cent thereof.

3. If the place of effective management of a shipping enterprise is aboard a ship or boat, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship or the boat is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship or the boat is a resident.

4. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

5. The provisions of the agreement between the Government of the French Republic and the Government of the Republic of Kenya for the avoidance of double taxation with respect to air transport in international traffic, signed on January, 12th, 1996 shall remain in force but its provisions shall apply only to cases not covered by nor subject to the provisions of this Convention.

## ARTICLE 9

## ASSOCIATED ENTERPRISES

1. Where :

(a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or

(b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State, and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from



those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. Where a Contracting State includes in the profits of an enterprise of that State - and taxes accordingly - profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits if that other State considers the adjustment justified. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

#### ARTICLE 10

#### DIVIDENDS

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

2. (a) Dividends mentioned in paragraph 1 may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the dividends.

(b) This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. A resident of Kenya who receives dividends paid by a company which is a resident of France may obtain the refund of the prepayment (*précompte*) to the extent that it was effectively paid by the company in respect of such dividends. The gross amount of the prepayment (*précompte*) refunded shall be deemed to be a dividend for the purposes of the Convention. It shall be taxable in France according to the provisions of paragraph 2. The provisions of paragraph 2 shall apply to such gross amount.

4. The term "dividend" means income from shares, "jouissance" shares or "jouissance" rights, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income treated as a distribution by the taxation laws of the Contracting State of which the company making the distribution is a resident. It is understood that the term "dividend" does not include income mentioned in Article 16.

5. The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

6. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

7. The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the shares or other rights in respect of which the dividend is paid to take advantage of this Article by means of that creation or assignment.

#### ARTICLE 11

##### INTEREST

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such interest may also be taxed in the Contracting State in which it arises, and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State the tax so charged shall not exceed 12 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2, interest referred to in paragraph 1 shall be taxable only in the Contracting State of which the recipient of the interest is a resident, if such recipient is the beneficial owner of such interest, and if one of the following conditions is met;

- (a) such recipient is a Contracting State, a local authority or a statutory body thereof, including the Central Bank of that State; or such interest is paid by one of those States, local authorities or statutory bodies;
- (b) such interest is paid in respect of a debt-claim or of a loan directly or indirectly guaranteed or insured or subsidised by a Contracting State or by any other person sponsored or directly or indirectly controlled by a Contracting State.

4. The term "interest" means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

5. The provisions of paragraph 1 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the interest, whether a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

8. The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the debt-claim in respect of which the interest is paid to take advantage of this Article by means of that creation or assignment.

## ARTICLE 12

### ROYALTIES

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State, if such resident is the beneficial owner of the royalties.

2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other

Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of such royalties.

3. The term "royalties" as used in this article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work, including cinematograph films, or films or tapes used for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment or for information concerning industrial, commercial or scientific experience.

4. The provisions of paragraph 1 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the royalties, whether a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base, with which the obligation to pay the royalties was incurred and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

7. The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the rights in respect of which the royalties are paid to take advantage of this Article by means of that creation or assignment.

#### ARTICLE 13

##### CAPITAL GAINS

1. (a) Gains derived from the alienation of immovable property referred to in Article 6 may be taxed in the Contracting State where such immovable property is situated.

(b) Gains from the alienation of shares or other rights in a company, a trust or a comparable institution, the assets or property of which consist for more than 50 per cent of their value of, or derive more than 50 per cent of their value, directly or indirectly through the interposition of one or more other companies, trusts or comparable institutions, from immovable property referred to in Article 6 and situated in a Contracting State or of rights connected with such immovable property may be taxed in that State. For the purposes of this provision, immovable property pertaining to the industrial, commercial or agricultural operation of such company or to the performance of its independent personal services shall not be taken into account.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

3. Gains from the alienation of property forming part of the business property of an enterprise and consisting of ships or aircraft operated by such enterprise in international traffic or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

4. Gains from the alienation of any property, other than that referred to in paragraphs 1, 2 and 3 shall be taxable only in the Contracting State of which the alienator is a resident.

#### ARTICLE 14

##### INDEPENDENT PERSONAL SERVICES

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State except in the following circumstances, when such income may also be taxed in the other Contracting State:

- (a) if he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; in that case, only so much of the income is attributable to that fixed base may be taxed in that other Contracting State; or
- (b) if his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned; in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other State.

2. The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

#### ARTICLE 15

##### DEPENDENT PERSONAL SERVICES

1. Subject to the provisions of Articles 16, 18, 19 and 20 salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any period of twelve consecutive months commencing or ending in the fiscal year concerned, and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived by a resident of a Contracting State in respect of an employment exercised aboard a ship or aircraft operated in international traffic shall be taxable only in that State.

#### ARTICLE 16

##### DIRECTOR'S FEES

1. Director's fees and other similar payments derived by a resident of a Contracting State in the capacity of a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other State.

2. Salaries, wages and other similar remuneration derived by a resident of a Contracting State in his capacity as an official in a top-level managerial position of a company which is a resident of the other Contracting State may be taxed in that other State.

#### ARTICLE 17

##### ARTISTES AND ATHLETES

1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as an athlete, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or an athlete in his capacity as such accrues not to the entertainer or athlete himself but to another person, whether a resident of a Contracting State or not, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.

3. The provisions of paragraphs 1 and 2 shall not apply to personal activities exercised by entertainers and athletes if those activities are supported wholly or substantially from public funds of one Contracting State, its local authorities or by one of their statutory bodies; in that case, income derived from such activities by entertainers and athletes shall be taxable only in that State.

#### ARTICLE 18

##### PENSIONS

Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration paid in consideration of past employment to a resident of a Contracting State shall be taxable only in that State.

#### ARTICLE 19

##### PUBLIC REMUNERATION

1. (a) Salaries, wages and other similar remuneration, other than a pension, paid by a Contracting State or a local authority thereof, or by one of their statutory bodies of either to an individual in respect of services rendered to that State, authority or body shall be taxable only in that State.

(b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of, and a national of, that State without being also a national of the first-mentioned State.

2. (a) Any pension paid by, or out of funds created by, a Contracting State or a local authority thereof or by one of their statutory bodies of either to an individual in respect of services rendered to that State, authority or body shall be taxable only in that State.

(b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State without being also a national of the first-mentioned State.

3. The provisions of Articles 15, 16 and 18 shall apply to salaries, wages and other similar remuneration, and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a local authority thereof, or by one of their statutory bodies.

## ARTICLE 20

## STUDENTS

Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxable in that State, provided that such payments arise from sources outside that State.

## ARTICLE 21

## OTHER INCOME

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.
2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.
3. Where, by reason of a special relationship between the person referred to in paragraph 1 and some other person, or between both of them and some third person, the amount of the income referred to in paragraph 1 exceeds the amount (if any) which would have been agreed upon between them in the absence of such a relationship, the provisions of this Article shall apply only to the last mentioned amount. In such a case, the excess part of the income shall remain taxable according to the laws of each Contracting State, due regard being had to the other applicable provisions of this Convention.
4. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing Articles of this Convention and arising in the other Contracting State may also be taxed in that other State.
5. The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the rights in respect of which the income is paid to take advantage of this Article by means of that creation or assignment.



ARTICLE 22

ELIMINATION OF DOUBLE TAXATION

1. In the case of France, double taxation shall be avoided in the following manner :

(a) Notwithstanding any other provision of this Convention, income which may be taxed or shall be taxable only in Kenya in accordance with the provisions of the Convention shall be taken into account for the computation of the French tax where such income is not exempted from corporation tax according to French domestic law. In that case, the Kenyan tax shall not be deductible from such income, but the resident of France shall, subject to the conditions and limits provided for in sub-paragraphs (i) and (ii) be entitled to a tax credit against French tax. Such tax credit shall be equal :

(i) in the case of income other than that mentioned in sub-paragraph (ii), to the amount of French tax attributable to such income provided that the resident of France is subject to Kenyan tax in respect of such income ;

(ii) in the case of income subject to the corporation tax referred to in Article 7, paragraph 2 of article 13 and in article 21, and in the case of income referred to in Article 10, Article 11, Article 12, paragraph 1 of Article 13, Article 16, paragraphs 1 and 2 of Article 17 and article 21, the amount of tax paid in Kenya in accordance with the provisions of those Articles ; however, such tax credit shall not exceed the amount of French tax attributable to such income.

(b) (i) It is understood that the term "amount of French tax attributable to such income" as used in sub-paragraph a) means:

— where the tax on such income is computed by applying a proportional rate, the amount of the net income concerned multiplied by the rate which actually applies to that income ;

— where the tax on such income is computed by applying a progressive scale, the amount of the net income concerned multiplied by the rate resulting from the ratio of the tax actually payable on the total net income taxable in accordance with French law to the amount of that total net income.

(ii) It is understood that the term "amount of tax paid in Kenya" as used in sub-paragraph a) means the amount of Kenyan tax effectively and definitively borne in respect of the items of income concerned, in accordance with the provisions of the Convention, by a resident of

France who is taxed on those items of income according to the French law.

2. In the case of Kenya, double taxation shall be avoided in the following manner:

(a) where a resident of Kenya receives income derived from sources within France, which, in accordance with the provisions of this Convention, shall be taxable only in France and is exempt from Kenyan tax, then Kenya may, in calculating the tax on the remaining income of that person, apply the rate of tax which would have been applicable if the income derived from the sources within France had been not exempted;

(b) where a resident of Kenya receives income derived from sources within France, which, in accordance with the provisions of this Convention may be taxed in both Contracting States, then Kenya shall allow as a deduction from the tax on the income of that person an amount equal to the tax paid in France. Such a deduction, however, shall not exceed that part of the Kenyan tax as computed before the deduction is given, which is appropriate to the income derived from France

3. Each of the Contracting States shall keep the right of taxing in accordance with its domestic law any income of its residents, the taxation of which is attributed to the other Contracting State, but which is not taken into account in the tax base in that State, in cases where such double exemption results from a divergent qualification of the income concerned.

### ARTICLE 23

#### NON-DISCRIMINATION

1. (a) Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

(b) For the purposes of sub-paragraph (a), it is understood that an individual, legal person, partnership or association who or which is a resident of a Contracting State is not placed in the same circumstances as an individual, legal person, partnership or association who or which is not a resident of that State; this shall apply whatever the definition of nationality, even if legal persons, partnerships or associations are deemed to be nationals of the Contracting State of which they are residents.

2. The taxation of a permanent establishment that an enterprise of a Contracting State has in the other Contracting State, or of a fixed

base that a resident of one Contracting State has available in the other Contracting State for the purpose of performing independent personal services, shall not be less favorably levied in that other State than the taxation levied on enterprises or residents of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

3. Except where the provisions of paragraph 1 of Article 9, paragraph 5 of Article 11, or paragraph 5 of Article 12 apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall be deductible, for the purpose of determining the taxable profits of that enterprise, under the same conditions as if they had been paid to a resident of the first-mentioned State. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of that enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.

4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

5. The exemptions and other advantages provided by the tax laws of a Contracting State for the benefit of that State or local authorities or of their statutory bodies of either which carry on a non-business activity shall apply under the same conditions respectively to the other Contracting State or local authorities or to their statutory bodies which carry on the same or similar activity. Notwithstanding the provisions of paragraph 7, the provisions of this paragraph shall not apply to taxes or duties payable in consideration for services rendered.

6. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

7. If any bilateral treaty or agreement between the Contracting States, other than this Convention, includes a non-discrimination clause or a most-favoured nation clause, it is understood that such clauses shall not apply in tax matters.

#### ARTICLE 24

##### MUTUAL AGREEMENT PROCEDURE

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those

States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or the application of the Convention. In particular, they may consult together to endeavour to agree to the same allocation of income between associated enterprises mentioned in Article 9. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.

4. The competent authorities of the Contracting States may communicate with each other directly, including through a joint commission consisting of themselves or their representatives, for the purpose of reaching an agreement in the sense of the preceding paragraphs of this Article.

5. Notwithstanding any other bilateral treaty, agreement or Convention to which the Contracting States are parties, the tax issues between the Contracting States (including a dispute on whether this Convention applies) shall be settled only under this Article unless the competent authorities agree otherwise.

#### ARTICLE 25

##### EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2.

2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use information only for

such purposes. They may disclose the information in public court proceeding or in judicial decisions.

3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:

- (a) to carry out administrative measures at variance with the laws and administrative practice of that or the other Contracting State ;
- (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State ;
- (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy (order public).

4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or fiduciary capacity or because it relates to ownership interests in a person.

#### ARTICLE 26

##### DIPLOMATIC AGENTS AND CONSULAR OFFICERS

1. Nothing in this Convention shall affect the fiscal privileges of members of diplomatic missions, of members of consular posts, and of members of permanent missions to international organizations under the general rules of international law or under the provisions of special agreements.

2. Notwithstanding the provisions of Article 4, an individual who is a member of a diplomatic mission, consular post or permanent mission of a Contracting State which is situated in the other Contracting State or in a third State shall be deemed for the purposes of the Convention to be a resident of the sending State if he is liable in the sending State to the same obligations in relation to tax on his total income and capital as are residents of that State.

3. The Convention shall not apply to international organizations, to organs or officials thereof and to persons who are members of a diplomatic mission, consular post or permanent mission of a third State, being present in a Contracting State and not liable in one of the

Contracting State to the same obligations in relation to tax on their total income and capital as are residents of that State.

#### ARTICLE 27

##### MODE OF APPLICATION

1. The competent authorities of the Contracting States may settle jointly or separately the mode of application of the Convention.

2. In particular, in order to obtain, in a Contracting State, the benefits provided for in Articles 10, 11 and 12, the residents of the other Contracting State shall, unless otherwise settled by the competent authorities, present a form of certification of residence providing in particular the nature and the amount or value of the income concerned, and including the certification of the tax administration of that other State.

#### ARTICLE 28

##### MISCELLANEOUS

If any Agreement or Convention between Kenya and a member State of the Organization for Economic Co-operation and Development entering into force after the date of entry into force of this Convention provides that Kenya shall exempt from tax dividends, interest or royalties (either generally or in respect of specific categories of dividends, interest or royalties) arising in Kenya, or limit the tax charged in Kenya on such dividends, interest or royalties (either generally or in respect of specific categories of dividends, interest or royalties) to a rate lower than that provided for in paragraph 2 of Article 10, paragraph 2 of Article 11 or paragraph 2 of Article 12 of this Convention, such exemption or lower rate shall automatically apply to dividends, interest or royalties (either generally or in respect of those specific categories of dividends, interest or royalties) arising in Kenya and beneficially owned by a resident of France dividends, interest or royalties arising in France and beneficially owned by a resident of Kenya under the same conditions as if such exemptions or lower rate had been specified in those paragraphs. The competent authority of Kenya shall inform the competent authority of France without delay that conditions for application of this paragraph have been met.

#### ARTICLE 29

##### ENTRY INTO FORCE

1. Each of the Contracting States shall notify to the other the completion of the procedures required as far as it is concerned for the bringing into force of this Convention. The Convention shall enter into force on the first day of the second month following the day when the latter of these notifications has been received.

2. The provisions of the Convention shall have effect:

- (a) in respect of taxes on income withheld at source, for amounts taxable after the calendar year in which the Convention enters into force ;

- (b) in respect of taxes on income which are not withheld at source, for income relating, as the case may be, to any calendar year or accounting period beginning after the calendar year in which the Convention enters into force ;
- (c) in respect of the other taxes, for taxation the taxable event of which will occur after the calendar year in which the Convention enters into force.

#### ARTICLE 30

#### TERMINATION

This Convention shall continue in effect indefinitely but either of the Contracting States may on or before the thirtieth day of June in any calendar year beginning after the expiration of a period of five years from the date of its entry into force, give the other Contracting State, through diplomatic channels, written notice of termination and, in such event, the Convention shall cease to have effect.

(a) In Kenya

- (i) in respect of taxes withheld at source, on amounts paid or credited to non-residents on or after the 1st day of January, in the calendar year next following that in which the notice is given.
- (ii) In respect of other taxes on income arising for the year of income next following that in which the notice of termination is given, and subsequent years.

(b) In France

- (i) in respect of taxes on income withheld at source, for amounts taxable after the calendar year in which the notice of termination is given ;
- (ii) in respect of taxes on income which are not withheld at source, for income relating, as the case may be, to any calendar year or accounting period beginning after the calendar year in which the notice of termination is given ;
- (iii) in respect of the other taxes, for taxation the taxable event of which will occur after the calendar year in which the notice of termination is given.

#### PROTOCOL

The Government of the French Republic and the Government of the Republic of Kenya on signing the Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income have agreed on the following provisions which shall form an integral part of the Convention.

1. In respect of subparagraph (a) of paragraph 3 of Article 2, the tax on salaries is regulated by the provisions of the Convention

applicable, as the case may be, to business profits or income from independent personal services.

2. In respect of subparagraph (b) of paragraph 1 of Article 3, it is understood that the French overseas departments ("departements d'Outre-mer") are : Guadeloupe, Martinique, Guyane and La Reunion.

3. In relation to article 7 (1), it is agreed that, if an enterprise of a Contracting State sells goods or merchandise of the same or similar kind as those sold by the permanent establishment, or carries out business activities of the same or similar kind as those carried out by the permanent establishment, the profits of such sales or activities may be attributed to the permanent establishment if it is demonstrated that these profits are related to the activities of the permanent establishment.

4. In respect of paragraph 3 of Article 7, it is considered that the amount of expenses to be taken into account as incurred for the purposes of the permanent establishment should be the actual one so incurred and supported by documents. Subject to this, it is agreed that, in the case of general administrative expenses incurred at the head office of the enterprise, it is appropriate to take into account a proportionate part based on the ratio that the permanent establishment's turnover bears to that of the enterprise as a whole.

5. The provisions of the Convention shall not prevent the Contracting States from applying the provisions relating to thin capitalisation in accordance with their domestic laws.

6. Each of the Contracting States shall keep the right of taxing in accordance with its domestic law any income of its residents, the taxation of which is attributed to the other Contracting State, but which is not taken into account in the tax base in that State, in cases where such double exemption results from a divergent qualification of the income concerned.

Dated the 1st September, 2009.

UHURU KENYATTA,  
*Deputy Prime Minister  
and Minister for Finance.*