

CHAPTER 204.

TONKOLILI SUPPLEMENTARY AGREEMENTS
(1947) RATIFICATION.

16 of 1948. **An Ordinance to Ratify and Confirm Certain Agreements Supplementary to An Agreement Made Between the Crown Agents for the Colonies on behalf of the Government of Sierra Leone and the Sierra Leone Development Company Limited Regulating the Mining of the Iron Ore Deposits and other Minerals and Metals in the Tonkolili Area of the Protectorate.**

[3RD DECEMBER, 1947.]

WHEREAS an Agreement was made on the sixteenth day of April, 1937, between the Crown Agents for the Colonies on behalf of the Government of Sierra Leone (hereinafter referred to as "the Government") of the one part and the Sierra Leone Development Company, Limited (hereinafter referred to as "the Company") of the other part which Agreement was set out in the Schedule to an Ordinance shortly entitled the Tonkolili Agreement Ordinance (which Agreement is hereinafter referred to as "the Tonkolili Agreement"):

Cap. 202.

And whereas an Agreement was made on the nineteenth day of February, 1944, between the same parties which Agreement was supplementary to the Tonkolili Agreement and was set out in the Schedule to an Ordinance shortly entitled the Tonkolili (Supplementary) Agreement Ordinance (which Supplementary Agreement is hereinafter referred to as "the Tonkolili Supplementary Agreement"):

Cap. 203.

And whereas under the terms of the Tonkolili Agreement (as amended) the Government agreed with the Company (*inter alia*) that it would not during the term therein mentioned impose upon the Company a tax on profits (as therein defined) made from or in respect of and/or any duty on or in respect of the exercise of any of the rights conferred by the Tonkolili Agreement (as so amended) and any mining rights or leases issued in pursuance thereof exceeding a total amount equivalent to five *per centum* per annum on such profits for such year as assessed to income tax in the United Kingdom:

And whereas by virtue of an arrangement made between the Government and His Majesty's Government in the United

Kingdom under the Income Tax Ordinance, as amended (in particular) by the Income Tax (Amendment) Ordinance, 1947, relief from double taxation was afforded in respect of income tax in Sierra Leone and income tax in the United Kingdom, so that, if certain further amendments were made to the Tonkolili Agreement (as amended), the Company could be made liable to income tax in Sierra Leone without increasing its total liability to taxation both in Sierra Leone and the United Kingdom:

Cap. 112.*
No. 1 of 1947.

And whereas the Company agreed to the further amendments of the Tonkolili Agreement (as amended) so as to become liable to pay income tax in Sierra Leone, subject to certain conditions:

And whereas the amendments and conditions aforesaid are contained in two Agreements and a Memorandum of Agreement all made on the third day of December, 1947, between the same parties, which Agreements and Memorandum of Agreement are set out in Schedules A, B and C hereto:

Schedules A,
B and C.

Now, therefore, be it enacted by the Governor of Sierra Leone, with the advice and consent of the Legislative Council thereof, as follows—

1. This Ordinance may be cited as the Tonkolili Supplementary Agreements (1947) Ratification Ordinance, 1948. It shall apply to the Colony and Protectorate and shall be deemed to have come into force on the third day of December, 1947, save however that any provision of the Agreements or the Memorandum of Agreement contained in Schedules A, B and C hereto which therein is expressly stated to have effect from some earlier date, shall have effect as from such earlier date.

Short title,
application
and com-
mencement.

2. The Agreements and the Memorandum of Agreement set out in Schedules A, B and C hereto in so far as they amend or otherwise affect the Tonkolili Agreement as amended by the Tonkolili Supplementary Agreement are hereby ratified and confirmed and all rights and obligations purported to be conferred or imposed thereby are hereby declared valid, any law to the contrary notwithstanding, and, notwithstanding anything in any law contained, the Governor or the Crown Agents shall have power to do on behalf of the Crown any act which the said Agreements and the said Memorandum of Agreement may require or allow in the name of the Governor or of the Crown Agents or of the Government.

Confirmation
of Supple-
mentary
Agreement.

SCHEDULE A.

This agreement is made the third day of December, one thousand nine hundred and forty-seven BETWEEN THE CROWN AGENTS FOR THE COLONIES whose office is at No. 4 Millbank in the City of Westminster for and on behalf of the Government of the Colony and Protectorate of Sierra Leone (hereinafter referred to as "the Government" which expression shall where the context so requires or permits include the Governor for the time being of the said Colony or Protectorate) of the one part and SIERRA LEONE DEVELOPMENT COMPANY, LIMITED, whose registered office is at No. 24 Old Broad Street in the City of London (hereinafter referred to as "the Company" which expression shall where the context so requires or permits include its successors and assigns) of the other part.

Whereas—

(a) This Agreement is supplemental to an Agreement (hereinafter referred to as "the Principal Agreement") dated sixteenth April one thousand nine hundred and thirty-seven and made between the Government of the one part and the Company of the other part as modified by an Agreement dated nineteenth February one thousand nine hundred and forty-four and made between the same parties whereby (*inter alia*) the Government agreed with the Company that it would not during the term therein mentioned impose upon the Company a tax on profits (as therein defined) made from or in respect of and/or any duty on or in respect of the exercise of any of the rights conferred by the Principal Agreement (as so amended) and any mining rights or leases issued in pursuance thereof exceeding a total amount equivalent to five *per centum* per annum on such profits for such year as assessed to income tax in the United Kingdom.

Cap. 202.

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(b) By the Tonkolili Agreement Ordinance 1937 and the Tonkolili (Supplementary) Agreement Ordinance 1944 the Principal Agreement and the said Agreement of nineteenth February one thousand nine hundred and forty-four were duly ratified and confirmed respectively.

*Ords. Nos. 1
of 1943,
1 of 1944,
21 of 1946
and 1 of 1947.

(c) By the Income Tax Ordinance 1943 as amended by the Income Tax (Amendment) Ordinance 1944, the Income Tax (Amendment) Ordinance 1946 and the Income Tax (Amendment) Ordinance 1947 the Government imposed income tax upon the income of persons accruing in, derived from or received in Sierra Leone in respect of the profits, gains and other matters therein referred to, but by virtue of the Principal Agreement (as so amended) and section 9 (1) (g) of the said Income Tax Ordinance 1943, the Company is exempt from income tax in respect of the income derived by it from or in respect of the exercise of any of the rights conferred by the Principal Agreement (as so amended) or from any mining rights or leases issued in pursuance thereof.

Cf. section 9
(1) (g) of
Cap. 273.

(d) In order to assist the Government the Company has offered to become liable for the payment of income tax under the said Income Tax Ordinance 1943 (as so amended) on the income so derived by it as aforesaid, to the extent and upon and subject to the terms and conditions hereinafter contained and on the understanding that such offer and the Government's acceptance of it will not in any way directly or indirectly result in the Company becoming liable to pay more in the aggregate by way of taxation in Sierra Leone and the United Kingdom respectively than the Company would have been liable to pay if such offer had not been accepted, and the Government has accepted the Company's said offer.

* Now included in Cap. 273.

Now This Agreement Witnesseth as follows—

1. THE Company agrees that notwithstanding anything contained in the Principal Agreement (as so amended) and the said section 9 (1) (g) but subject to the provisions hereinafter contained the Government may impose income tax under the said Income Tax Ordinance 1943 (as so amended) upon the Company for the year of assessment current on the date hereof and for any subsequent year of assessment in respect of the income derived by the Company from or in respect of the exercise of any of the rights conferred by the Principal Agreement (as so amended) or any mining rights or leases issued in pursuance thereof subject to the deduction from the amount of such income tax of the amount of Tonkolili Profits Tax (as hereinafter defined) payable by the Company for any such year provided and it is hereby agreed that the Government shall grant the Company relief from the aggregate amount of Tonkolili Profits Tax and of income tax payable by the Company to the extent, if any, by which this aggregate amount exceeds the amount of credit given to the Company in respect of such aggregate amount against the amount of the United Kingdom tax payable by the Company or if no credit in respect of such aggregate amount is given against United Kingdom tax or if there shall be no liability on the Company to pay any United Kingdom tax, the relief shall extend to the whole amount of the said income tax and Tonkolili Profits Tax.

The expression "Tonkolili Profits Tax" means any taxes on profits made from or in respect of and/or any duties on or in respect of the exercise of any of the rights conferred by the Principal Agreement (as so amended) and any mining rights or leases issued in pursuance thereof for the time being imposed by the Government on the Company, the total amount whereof is by virtue of clause 8 (j) of the Principal Agreement not to exceed a total amount equivalent to Five *per centum* per annum on such profits.

2. The said income of the Company for each year of assessment shall be computed for the purposes of assessment to the said income tax in an amount equal to—

(a) the income as determined for that year for the purposes of clause 8 (j) of the Principal Agreement, and

(b) the deduction, if any, made in respect of the National Defence Contribution or Profits Tax in computing such income, but after deducting

(c) the amount of any loss incurred in any other trade or business carried on by the Company in Sierra Leone which the Company may be entitled to deduct or set off in computing its profits for purposes of income tax in the United Kingdom or in computing its total income from all sources under section 20 of the said Income Tax Ordinance 1943 or any section amending or replacing the same Provided that the aggregate amount of such deductions for losses under this sub-clause shall not exceed the amount of such losses.

3. With effect from the beginning of the year of assessment current on the date hereof, the Principal Agreement (as so modified) shall be deemed to be further modified in the following respects—

(a) by the deletion therefrom of the first proviso to clause 8 (j) thereof

(b) by the insertion in paragraph 4 (b) (v) of the Second Schedule thereto of the word "net" between the words "equivalent to the" and the words "amount which"

(c) by the insertion in paragraph 4 (b) (v) of the Second Schedule thereto of the words "income tax and/or" between the words "and as" and the words "Profits Tax".

4. No tax or duty shall be payable in Sierra Leone in respect of the profits of the Company or dividends declared in respect thereof except as provided for in (a) the Principal Agreement (as so amended) and this Agreement and (b) an Indenture dated sixteenth June one thousand nine hundred and thirty-one and made between the Government and the Company as varied by an Indenture of even date herewith and made between the same parties relating *inter alia* to taxes or duties in respect of profits or income derived by the Company from the Marampa Concession.

5. Except as hereby varied the Principal Agreement (as so amended) shall remain in full force and effect and shall be read in conjunction with and as modified by these presents and shall be construed accordingly.

In witness whereof Sir John Alexander Calder, K.C.M.G., one of the Crown Agents for the Colonies has hereunto set his hand and seal and the Company has caused its Common Seal to be hereunto affixed the day and year first above written.

Signed Sealed and Delivered by
Sir John Alexander Calder, K.C.M.G.,
one of the Crown Agents for the
Colonies in the presence of—

A. W. ABBOTT,
4, Millbank, London, S.W.1,
Civil Servant.

L.S.

J. A. CALDER.
L.S.

The Common Seal of Sierra Leone
Development Company Limited was
hereunto affixed in the presence of—

ROBERT L. ANGUS,
J. M. CAMPBELL,
Directors.

SCHEDULE B.

This Agreement is made the third day of December one thousand nine hundred and forty-seven BETWEEN THE CROWN AGENTS FOR THE COLONIES whose office is at Number 4 Millbank in the City of Westminster for and on behalf of the Government of the Colony and Protectorate of Sierra Leone (hereinafter called "the Government") of the one part and SIERRA LEONE DEVELOPMENT COMPANY LIMITED whose registered office is situated at 24 Old Broad Street in the City of London (hereinafter called "the Company") of the other part.

Whereas this Agreement is supplemental to the following Indentures and Agreements each of which was made between the Government and the Company respectively—(i) an Indenture (hereinafter referred to as "the

Marampa Principal Indenture”) dated sixteenth June one thousand nine hundred and thirty-one (ii) an Indenture (hereinafter referred to as “the Marampa Supplemental Indenture”) of even date herewith (iii) an Agreement (hereinafter referred to as “the Tonkolili Principal Agreement”) dated sixteenth April one thousand nine hundred and thirty-seven (iv) an Agreement (hereinafter referred to as “the Tonkolili First Supplemental Agreement”) dated nineteenth February one thousand nine hundred and forty-four and (v) an Agreement (hereinafter referred to as “the Tonkolili Second Supplemental Agreement”) of even date herewith.

And whereas the parties hereto have agreed to enter into this Agreement for the purpose of giving effect to the understanding set out in Recitals (d) to the Marampa Supplemental Agreement and the Tonkolili Second Supplemental Agreement respectively.

Now this agreement witnesseth and it is hereby agreed that the offer and acceptance referred to in the said recitals shall not in any way directly or indirectly result in the Company becoming liable to pay more in the aggregate by way of taxation in Sierra Leone and the United Kingdom respectively than the Company would have been liable to pay had such offer not been accepted and accordingly that if at any time the aggregate amount of the relevant taxes payable by the Company in Sierra Leone and the United Kingdom respectively exceeds the aggregate amount of the relevant taxes which would have been payable by the Company in Sierra Leone and the United Kingdom respectively if no tax or duty were payable by the Company in Sierra Leone except as provided for in the Marampa Principal Agreement the Tonkolili Principal Agreement and the Tonkolili First Supplemental Agreement and the Ordinances now in force giving effect to the same then the Government shall grant the Company relief from the aggregate amount of all Sierra Leone Taxes payable by the Company to the extent of the amount of such excess. The expression “relevant taxes” means all taxes and duties charged upon, measured by or calculated by reference to the income or profits of the Company or any part of such income or profits, and the expression “Sierra Leone Taxes” means all taxes and duties for the time being imposed by the Government of Sierra Leone.

In Witness whereof Sir John Alexander Calder, K.C.M.G., one of the Crown Agents for the Colonies has hereunto set his hand and seal and the Company has caused its Common Seal to be hereunto affixed the day and year first above written.

Signed Sealed and Delivered by
Sir John Alexander Calder, K.C.M.G.,
one of the Crown Agents for the
Colonies in the presence of—

J. A. CALDER.
L.S.

A. W. ABBOTT,
4, Millbank, London, S.W.1,
Civil Servant.

L.S.

The Common Seal of Sierra Leone
Development Company Limited was
hereunto affixed in the presence of—

ROBERT L. ANGUS,
J. M. CAMPBELL,
Directors.

SCHEDULE C.

TO CROWN AGENTS FOR THE COLONIES,
4, Millbank,
Westminster, S.W.1.

Dated 3rd December, 1947.

1. We refer to the Indentures and Agreements particulars of which are contained in the Schedule set out below some of which are hereinafter referred to by the descriptions set opposite the same respectively in the third column of such Schedule and all of which are in paragraph 3 below collectively referred to as "the Principal Agreements".

2. We confirm that if the Sierra Leone Government so desires we will consent to the new arrangements under the Tonkolili Second Supplemental Agreement, the Marampa Supplemental Agreement and the Fourth Supplemental Agreement commencing to operate with the year of assessment 1946/47, which would mean that the new arrangements would first apply to the Company's relative income for the year ended 31st December, 1945. Our consent to the above is given on condition that it will not in any way, directly or indirectly, result in our becoming liable to pay in respect of any year of assessment, more by way of taxation in Sierra Leone and the United Kingdom than we would have been liable to pay if we had not given our consent, and that any financial adjustments as a result of our giving our consent are to be made solely between the Governments of Sierra Leone and the United Kingdom.

3. We acknowledge and agree that neither the Governor of Sierra Leone nor the Crown Agents for the Colonies nor any officer of the Government of Sierra Leone shall be in any wise personally bound or liable for the acts or obligations of the said Government or the said Crown Agents or any of them under this Memorandum or the Principal Agreements or any of them or be answerable for any default or omission in the observance or performance of any of the acts, obligations, matters or things herein or in the Principal Agreements or any of them contained.

THE SCHEDULE ABOVE REFERRED TO—

<i>Date.</i>	<i>Parties.</i>	<i>Description.</i>
16th June, 1931	... (1) The Crown Agents for the Colonies, as agents for and on behalf of the Government of the Colony and Protectorate of Sierra Leone.	The Marampa Principal Indenture.
	(2) Sierra Leone Development Company Limited.	
3rd December, 1947	... do.	The Marampa Supplemental Indenture.
16th April, 1937	... do.	The Tonkolili Principal Agreement.
19th February, 1944	... do.	The Tonkolili First Supplemental Agreement.
3rd December, 1947	... do.	The Tonkolili Second Supplemental Agreement.
3rd December, 1947	... do.	The Fourth Supplemental Agreement.

The Common Seal of Sierra Leone Development Company, Limited, was hereunto affixed in the presence of—

ROBERT L. ANGUS,
J. M. CAMPBELL,

Directors.

L.S.