

CHAPTER 205.

TONKOLILI AND MARAMPA SUPPLEMENTARY
AGREEMENT (1956) RATIFICATION.6 of 1956.
12 of 1956.

An Ordinance to Ratify and Confirm an Agreement supplementary to certain Agreements made for and on behalf of the Government of Sierra Leone, of the one Part, and by the Sierra Leone Development Company Limited, of the other Part, to regulate the Mining of the Iron Ore Deposits and other Minerals and Metals in the Marampa and Tonkolili Areas of the Protectorate.

[10TH FEBRUARY, 1956.]

Preamble.

WHEREAS certain Indentures and Agreements were made for and on behalf of the Government of Sierra Leone (hereinafter referred to as the Government) of the one part and by the Sierra Leone Development Company Limited (hereinafter referred to as the Company) of the other part, which Indentures and Agreements are specified in the Schedule to the Agreement set out in the Schedule to this Ordinance and numbered (1) to (6) inclusive therein:

AND WHEREAS a Memorandum of Agreement was made between the same parties, which Memorandum of Agreement is specified in the Schedule to the Agreement set out in the Schedule to this Ordinance and numbered (7) therein:

Cap. 202.

Cap. 203.

Cap. 204.

AND WHEREAS, of the aforesaid Indentures and Agreements and Memorandum of Agreement, the Agreements and the Memorandum of Agreement were ratified and confirmed by the Tonkolili Agreement Ordinance, the Tonkolili (Supplementary) Agreement Ordinance, and the Tonkolili Supplementary Agreements (1947) Ratification Ordinance, 1948:

Cap. 273.

AND WHEREAS the Company in pursuance of certain of the aforesaid Indentures and Agreements became liable (*inter alia*) for the payment of income tax in Sierra Leone under the provisions of the Income Tax Ordinance, as amended from time to time, so however that the Company would not thereby become 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 the aforesaid Indentures and Agreements not been made:

AND WHEREAS by section 32c of the Income Tax Ordinance, * as inserted by the Income Tax (Amendment) Ordinance, 1946 to 1948, the income tax payable by the Company was reduced by the amount of tax or duty payable under section 35 of the Concessions Ordinance and by the amount of Tonkolili profit tax as defined in the said section 32c: †

Cap. 121.
†

AND WHEREAS the Company has agreed to further amendments of the aforesaid Indentures and Agreements so as to become liable for the payment of income tax as aforesaid and, in addition, for the payment of an Iron Ore Concessions Tax upon the income derived from the Company's operations in Sierra Leone, subject to certain conditions:

AND WHEREAS the amendments and conditions aforesaid are contained in an Agreement made on the tenth day of February, 1956, between the Crown Agents for and on behalf of the Government and the Company, which Agreement is set out in the Schedule hereto:

AND WHEREAS it is desirable that the Agreement set out in the Schedule hereto should be ratified and confirmed and should be given the force of law, any law to the contrary notwithstanding:

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 and Marampa Supplementary Agreement (1956) Ratification Ordinance, 1956, and shall be deemed to have come into force on the tenth day of February, 1956, save however that any provision of the Agreement set out in the Schedule hereto which therein is expressly stated to have effect from some earlier date, shall have effect as from such earlier date.

Short title
and com-
mencement.

2. The Agreement set out in the Schedule hereto is 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 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
(1956).

* Section 32c has been renumbered and is section 37 of the Income Tax Ordinance (Cap. 273) (see section 5 of this Cap. 205).

† Section 35 of the Concessions Ordinance has been repealed.

Company to
be chargeable
with Iron Ore
Concessions
Tax.*

3. The Company shall be charged with the payment to Her Majesty of an Iron Ore Concessions Tax, which shall be assessed in the manner provided for in the Agreement set out in the Schedule hereto and shall be paid at such rate as may from time to time be determined by resolution of the House of Representatives.

Amendment
of Income Tax
Ordinance.

5. The Income Tax Ordinance is hereby amended by the repeal of section 32c thereof and the substitution therefor of the following section—

† “32c. Notwithstanding any other provisions of this Ordinance, income tax shall be payable by the Sierra Leone Development Company Limited in respect of income derived from or in respect of the Marampa Concession and the Tonkolili Concession in accordance with the terms of the Agreement set out in the Schedule to the Tonkolili and Marampa Supplementary Agreement (1956) Ratification Ordinance, 1956.”

SCHEDULE.

THIS AGREEMENT is made the tenth day of February, 1956 BETWEEN THE CROWN AGENTS FOR OVERSEA GOVERNMENTS AND ADMINISTRATIONS whose office is at No. 4 Millbank in the City of Westminster for and on behalf 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 at City Gate House Finsbury Square in the County of London (hereinafter called “the Company”) of the other part.

WHEREAS:

- (A) This Deed is supplemental to the Indentures of which the dates and parties are set out in the first and second columns of the Schedule hereto (hereinafter called “the Principal Agreements”);
- (B) In this Deed the Principal Agreements when referred to separately will be identified by the numbers set out opposite them respectively in the said Schedule;
- (C) Save as provided in clause 1 hereof words and expressions defined in the Principal Agreements bear the same meaning in this Deed.

NOW THIS DEED WITNESSETH as follows—

1. (1) IN this Agreement the following expressions shall have the following meanings—

* It was resolved by the Legislative Council on 28th March, 1956, that the rate should be five per cent. (P.N. 48 of 1956.)

† Now section 37 of Chapter 205.

(a) "The Marampa Concession" shall mean the rights granted to the Company under the Agreements numbered (1) and (2) in the Schedule hereto;

(b) "The Tonkolili Concession" shall mean the rights granted to the Company under the Agreements numbered (3) (4) and (5) in the Schedule hereto;

(c) "Capital allowances" shall mean the initial allowances annual allowances investment allowances and balancing allowances as defined in the Income Tax legislation of the United Kingdom and any further allowances of a similar nature which may be granted under such legislation at a future date so far as they relate to expenditure for the purposes of the Marampa Concession and the Tonkolili Concession;

(d) "The corresponding year of assessment" shall mean the year of assessment to income tax in the United Kingdom commencing on the sixth day of April next following the first day of April on which the year of assessment shall have commenced in Sierra Leone;

(e) "Basis period for the year of assessment" shall have the meaning assigned to it in section 325 of the United Kingdom Income Tax Act, 1952;

(f) "Capital assets" shall mean those assets upon which capital allowances are or may be made to the Company;

(g) "The Marampa Authority" shall mean the Paramount Chief and Tribal Authority of the Marampa Chiefdom;

(h) "Commissioner" shall mean Commissioner as defined in section 2 of the Sierra Leone Income Tax Ordinance, 1943.

(2) IN this Agreement references to Acts of the United Kingdom shall be deemed to include references to any statutory modification thereof for the time being in force.

2. (1) THE Company HEREBY AGREES that notwithstanding the provisions of the Principal Agreements for the year of assessment 1954-55 and for each subsequent year of assessment the total income derived by it from or in respect of the Marampa Concession and the Tonkolili Concession shall subject to the provisions of sub-clause (4) hereof be assessed to Sierra Leone Income Tax on an amount equal to the total of the following sums that is to say—

(a) the profits of the Company derived by it from or in respect of the Marampa Concession and the Tonkolili Concession which are charged to Income Tax in the United Kingdom for the corresponding year of assessment with the deduction—

(i) of any annual payments made in the basis period for the year of assessment to which sections 169 and 170 of the United Kingdom Income Tax Act, 1952 apply and which have been allowed or would have been allowable under the legislation in force in the United Kingdom at the date hereof as a deduction in computing the profits of the Company for United Kingdom Profits Tax in the accounting period corresponding to the basis period except to the extent that such payments have been assessed and charged to tax on the Company under the said section 170; and

(ii) of any loss which could have been deducted under section 342 of the United Kingdom Income Tax Act, 1952 and of any

capital allowances which could have been deducted under section 323 of the said Act in charging the said profits to Income Tax in the United Kingdom had relief not previously been given in respect of the said loss and the said capital allowances under section 341 of the said Act provided that relief has not previously been given in respect of the said loss and the said capital allowances for Sierra Leone Income Tax;

(b) any deduction made or allowed on account of any Sierra Leone or United Kingdom taxation in charging the said profits to United Kingdom Income Tax;

(c) any capital allowances deducted in charging the said profits to United Kingdom Income Tax in excess of the expenditure incurred or deemed to have been incurred under the law relating to United Kingdom Income Tax in respect of the acquisition of any capital asset;

(d) any capital allowances deducted in charging the said profits to United Kingdom Income Tax which are not calculated on the basis of the cost of any particular capital asset.

PROVIDED that (i) if and so long as the Company has any capital assets in respect of which the expenditure incurred or deemed to have been incurred under the law relating to United Kingdom Income Tax exceeds the capital allowances previously granted thereon the Company may set off the capital allowances to which sub-paragraph (d) hereof refers against the expenditure on such capital assets and the provisions of sub-paragraph (d) hereof shall thereupon cease to apply to any capital allowances which are so set-off but any such set-off shall be taken into account for the purposes of sub-paragraph (c) hereof and (ii) the Company shall have the right to request the Government that the provisions of sub-paragraphs (c) and (d) hereof shall be disregarded in any instance in computing its total income as aforesaid and the Government hereby undertake to give due consideration to such request.

(2) FOR the purposes of this Clause the Income Tax assessments made upon the Company in the United Kingdom will be accepted as conclusive by the Government. A copy of the said assessments shall be produced to the Commissioner every year but if in any year a copy of the said assessments shall not have been produced to the Commissioner within a reasonable time the Company shall be liable to make provisional payments to the Government in an amount to be agreed between the Company and the Commissioner and when the said assessments shall be produced such provisional payments shall be adjusted by additional payments or refund of over-payments as the case may require.

(3) FOR the purposes of the preceding sub-clause the Company shall in each year cause a full copy of the accounts and copies of the Schedules as supplied to the United Kingdom Inspector of Taxes and of the full computations for United Kingdom taxation purposes as agreed by him to be supplied to the Commissioner. Such Accounts, Schedules and Computations shall be accepted by the Commissioner as conclusive.

(4) (a) If the deductions arising under sub-clause (1) (a) (i) and (ii) hereof shall exceed the sum mentioned in sub-clause (1) (a) hereof arrived at before making the said deductions in any year of assessment such excess shall be deducted from the sums mentioned in sub-clause (1) (b) (c) and (d) hereof.

(b) If the said deductions shall exceed the total of the sums mentioned in sub-clause (1) (a) (b) (c) and (d) hereof arrived at before making the said deductions in any year of assessment such excess shall be treated as a loss for the purpose of section 20 (2) of the Sierra Leone Income Tax Ordinance, 1943 or any statutory modification thereof for the time being in force except that in computing the loss for the purpose of paragraph (a) of the said section 20 (2) no account shall be taken of sub-clause (1) (a) (ii) hereof.

3. IN ascertaining the total income of the Company for the purposes of assessment to Sierra Leone Income Tax only there shall be deducted from the total income ascertained in accordance with the provisions of Clause 2 hereof any loss incurred in any other trade or business carried on by the Company in Sierra Leone.

4. THE Company agrees to pay in addition to Sierra Leone Income Tax assessed on the total income under the provisions of Clause 2 hereof an Iron Ore Concessions Tax upon the said total income at the rate fixed by the Government from time to time.

5. NOTWITHSTANDING anything in the provisions of Clauses 2, 3 and 4 hereof the aggregate of the rates of the Sierra Leone Income Tax and of the Iron Ore Concessions Tax payable by the Company for any year of assessment shall not exceed ten shillings in the pound. Any reduction in the total amount of such taxes required to give effect to the provisions of this clause shall be effected primarily by a reduction of the amount of the Iron Ore Concessions Tax payable in such year and if this reduction shall be insufficient then by a reduction of the amount of Sierra Leone Income Tax payable in such year.

6. THE Company agrees that notwithstanding the provisions of the Principal Agreements but subject to the provisions of Clause 7 hereof no relief shall be granted to it in respect of the amount (if any) by which Sierra Leone Income Tax and Iron Ore Concessions Tax exceeds the amount of credit given by way of double taxation relief in respect of those taxes against United Kingdom taxes.

7. IF the Company shall not be entitled or shall cease to be entitled to double taxation relief against United Kingdom taxation (if any) in respect of the amounts of Sierra Leone Income Tax and Iron Ore Concessions Tax payable by the Company then this Agreement other than the provisions of this clause shall cease to have effect and the Company and the Government shall be bound by the terms of the Principal Agreements only.

8. IN the event of the Company being exempted from United Kingdom Income Tax under any future legislation of the United Kingdom Parliament in respect of Income assessed to Sierra Leone Income Tax under the provisions of this Agreement, this Agreement other than the provisions of this clause shall cease to have effect and the Company and the Government shall forthwith enter into negotiations with a view to concluding a new agreement which will place the Company and the Government in the same position as each is in under this Agreement or as nearly the same as is possible in the light of the circumstances then prevailing and pending such Agreement payments on account of Sierra Leone taxation shall be made which shall be as nearly the same as the payments made in the year of assessment immediately prior to the date of cessation of this Agreement as the altered circumstances then prevailing justify.

9. THE Company agrees that with effect from the First day of January, One thousand nine hundred and fifty-five, the rent payable under the provisions of the Tonkolili Concession shall be increased from the annual sum of six pounds per square mile to the total annual rent of two thousand five hundred pounds for all the land comprised in the said Concession and that the said total annual rent shall be further increased to the sum of five thousand pounds with effect from the date of the first commercial shipment of iron ore won from the said land.

10. THE Company having declared its willingness to negotiate with the Marampa Authority for the grant of an increase in the rents payable by the Company under the leases comprised in the Marampa Concession has completed the said negotiations and has granted an increase accordingly.

11. THE Company agrees that the term of the lease granted under the Tonkolili Concession shall be reduced so that it will cease at the expiration of thirty years from the date of the first commercial shipment of iron ore won from the lands demised by the said lease PROVIDED that the Company shall have the right to require the Government when the said term shall cease to grant to it a new lease for a further term of thirty years upon such terms as to payments by the Company as may then be agreed or failing agreement as shall be settled by arbitration in accordance with the provisions of the United Kingdom Arbitration Act, 1950 but otherwise upon the terms of the lease granted under the Tonkolili Concession. The said new lease shall include a provision similar to that provided by this Clause for the grant of a further new lease for a term of thirty years from the expiration of the said new lease with a similar provision for renewal.

12. IN consideration of the benefits conferred upon the Government by the Company in the foregoing clauses hereof the Government agrees—

(a) that the Tonkolili Concession shall be varied in the manner following namely (i) that no royalties or dead rents accruing after the first day of January, One thousand nine hundred and fifty-five shall be payable by the Company thereunder and (ii) that for the year of assessment 1954-55 and for each year of assessment thereafter no Tonkolili Profits Tax shall be payable thereunder; and

(b) that for the year of assessment 1954-55 and for each year of assessment thereafter the Company shall be exempted from the Duty on the profit charged under the Concessions Ordinance, 1931.

13. THE terms for mining minerals other than iron ore in the areas comprised in the Tonkolili Concession shall be agreed between the Government and the Company at the time when the question of mining such other minerals shall arise.

14. SAVE as varied by the foregoing provisions of this Agreement the Principal Agreements shall remain in full force and effect.

15. (1) For the purpose of giving full effect to the terms of this Agreement the Government will forthwith introduce and use its best endeavours to cause to be passed legislation for the purpose of ratifying and confirming this Agreement and implementing all the terms hereof.

(2) If such legislation shall not be duly passed and become law within twelve months from the date hereof or within such extended time as the Government and the Company may in writing agree this Agreement shall be void *ab initio* and of no effect.

16. THE Crown Agents for Oversea Governments and Administrations enter into this Agreement in their official capacity and as Agents for the purpose of binding the Government and neither the Crown Agents nor any person on their behalf nor any officer or members of the Government shall personally be in any way liable for or in respect of any matter or thing hereby made obligatory on the Crown Agents or the Government.

IN WITNESS whereof SIR ALFRED WILLIAM LUNGLEY SAVAGE, K.C.M.G., one of the Crown Agents for Oversea Governments and Administrations has hereunto set his hand and seal and the Common Seal of the Company has been hereunto affixed the day and year first above written.

THE SCHEDULE.

<i>Date.</i>	<i>Parties.</i>	<i>Description.</i>
(1) 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. (2) Sierra Leone Development Company Limited.	The Marampa Principal Indenture
(2) 3rd December, 1947	do.	The Marampa Supplemental Indenture.
(3) 16th April, 1937 ...	do.	The Tonkolili Principal Agreement.
(4) 19th February, 1944	do.	The Tonkolili First Supplemental Agreement.
(5) 3rd December, 1947	do.	The Tonkolili Second Supplemental Agreement.
(6) 3rd December, 1947	do.	The Fourth Supplemental Agreement.
(7) 3rd December, 1947	do.	Memorandum of Agreement.
(8) 17th June, 1948 ...	Sierra Leone Government.	Ratification of the Agreements 1 to 6 above mentioned.

SIGNED SEALED AND DELIVERED
by the said SIR ALFRED WILLIAM
LUNGLEY SAVAGE, K.C.M.G., one of the
Crown Agents for Oversea Governments
and Administrations in the presence of—

ALFRED SAVAGE

L.S.

H. R. TWYMAN,
4 Millbank, Westminster, S.W.1,
Civil Servant.

THE COMMON SEAL OF SIERRA
LEONE DEVELOPMENT COMPANY
LIMITED was hereunto affixed in the
presence of—

L.S.

EDGAR SYLVESTER,
Director.
C. D. SMITH,
Director and Secretary.