

SIGNED this 31st day of December, 1974.

SIAKA STEVENS,  
*President.*

LS

No. 21



Sierra Leone

1974

**The Bayer Preussag Agreement 1973  
(Ratification) Act, 1974**

Short title

Being an Act to ratify and confirm an agreement made for and on behalf of the Government of Sierra Leone (hereinafter referred to as the Government) of the one part and the Bayer Preussag Companies (hereinafter referred to as the Companies) of the other part

[29th January, 1973.]

Date of  
commence-  
ment.

WHEREAS an agreement was made on the 29th day of January, 1973 between Sheku Bockari Kawusu-Konte, Esquire Minister of Mines acting for and on behalf of the Government of Sierra Leone of the one part and Bayer Aktiengesellschaft, a Company incorporated and existing under the laws of the Federal Republic of Germany whose registered office is at Leverkusen, Germany and Preussag Aktiengesellschaft a Company incorporated and existing under the laws of the Federal Republic of Germany whose registered office is at Hannover, Germany Leibhizufer 9: both hereinafter referred to as the Companies of the other part:

AND WHEREAS it is provided in the said Agreement that the said Government of Sierra Leone will introduce legislation for the purpose of ratifying and confirming the said Agreement:

AND WHEREAS it is desirable that the aforesaid Agreement should be ratified and confirmed:

BE IT THEREFORE ENACTED by the President and Members of Parliament in this present Parliament assembled, as follows:—

Commence-  
ment.

1. This Act shall be deemed to have come into operation on the 29th day of January, 1973.

Confirmation  
of Agree-  
ment.

2. The aforesaid 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 Minister assigned with responsibilities for matters relating to Mines or any other persons shall have power to do on behalf of the Government of Sierra Leone any act which the aforesaid Agreement may require or allow in the name of the said Minister or of the Government of Sierra Leone.

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THIS AGREEMENT IS MADE 29th day of January, 1973 between the Honourable Sheku Bockari Kawusu-Konte, Esquire, Minister of Mines acting for and on behalf of the Government of the Republic of Sierra Leone (hereinafter referred to as "the Government") of the one part and Bayer Aktiengesellschaft, a company incorporated and existing under the laws of the Federal Republic of Germany whose registered Office is at Leverkusen, Germany (hereinafter referred to as "Bayer") and Preussag Aktiengesellschaft a company incorporated and existing under the laws of the Federal Republic of Germany whose registered office is at Hannover, Germany, Leibnizufer 9 (hereinafter referred to as "PREUSSAG") of the other part ("Bayer" and "PREUSSAG" being hereinafter called "the Companies").

WHEREAS:

- (1) It is desirable to develop efficiently enterprises in Sierra Leone which will utilize its natural resources.
- (2) Acting under Special Exclusive Prospecting Licence No. 2070 granted by the Government the Companies have expended substantial sums of money in an effort to determine whether there are in Sierra Leone deposits of titanium-bearing minerals of such quality and in such quantity as would justify commercial mining thereof.
- (3) The Companies desire to pursue further such explanatory activities and to make detailed economic studies with respect thereto and, before investing additional time, effort and money in the enterprise, to establish their right to mine and remove such minerals and to ascertain the terms and conditions under which such further exploratory activities and mining operations can be pursued.
- (4) The Government and the Companies have determined to enter into this Agreement with a view to the deposits of titanium-bearing minerals in Sierra Leone being explored, prospected, developed and worked in the manner, and subject to the terms, conditions and events hereinafter appearing.

NOW IT IS HEREBY AGREED AND DECLARED AS FOLLOWS:

1. DEFINITIONS

In this Agreement the following expressions shall, unless a contrary intention appears, have the following meanings, that is to say:

"*The prospecting Areas*"—The lands, including the seabed and sub-soil of submarine areas, for the time being comprised within special Exclusive Prospecting Licence No. 2070, and any other Special Exclusive Prospecting Licences granted to the Companies for titanium-bearing and associated minerals.

" *The Mining Areas* "—The lands, including the seabed and subsoil of submarine areas, for the time being comprised in any mining lease granted to the Companies pursuant to Clauses 5 (a) and 5 (f) hereof.

" *The Minerals Act* "—Means and include The Minerals Act (Cap. 196) and any Act amending the same or substituted therefor and all Rules now in force or which may come into force under any of the said Acts during the continuance of this Agreement, provided however that only those provisions of the said Act and Rules which are consistent with the Agreement shall apply hereto.

" *Titanium-bearing Minerals* "—Ilmenite, Rutile and other Minerals containing Titanium.

" *Associated Minerals* "—Zircon, monazite, columbite, graphite and garnet when occurring in the same deposit with titanium-bearing minerals.

" *Minerals Concentrates* "—The mixture of titanium-bearing minerals and associated minerals from which a major portion of the sand, gravel and other material has been removed.

" *Commencement of Mining Operations* "—The earlier of:

- (a) The employment of Major items of Machinery and equipment on mining and dredging operations; or
- (b) a period of not more than three years after the grant of the lease shall constitute the Commencement of Mining operations under the lease for the purposes of this agreement:

Provided that in case (a) the Companies promptly furnish to the Director of Mines notification to that effect.

## 2. SPECIAL EXCLUSIVE PROSPECTING LICENCE

(1) The Government hereby acknowledge the grant of S.E.P.L. 2070 granted to the Companies on 1st day of October, 1970 (hereinafter referred to as "The Licence") for all titanium-bearing and associated minerals within the prospecting areas described in the Second Schedule attached to the Licence.

(2) The provisions of the Minerals Act relating to exclusive prospecting licences shall apply to the Licence granted hereunder except to the extent inconsistent with the Special provisions incorporated in this Agreement under the authority granted to the President in Section 22 of the Minerals Act.

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3. TERMS OF LICENCE

- (a) The term of the licence is for five (5) years.
- (b) The Licence shall confer on the Companies, in addition to the rights granted by the Minerals Act the right to raise or obtain in the course of prospecting such quantities of titanium-bearing minerals as they may reasonably deem necessary to test the adequacy and operating effectiveness of the machinery and equipment which the Companies propose to use in their commercial operations under the mining leases granted herein or to be granted hereunder, and to retain or dispose of any minerals so raised or obtained, subject to the same conditions as are prescribed in section 17 of the Minerals Act with respect to Minerals raised or obtained to test the mineral bearing qualities of the Land.
- (c) Subject as hereinafter mentioned, the Companies shall be under no obligation during the period of the Licence to survey, demarcate, beacon or clear the boundaries of the Prospecting Areas.
- (d) If the Companies and/or the owner of any adjacent prospecting licence, mining right or lease shall require that any common boundary be cleared, surveyed, beacons and demarcated, the Companies shall procure that this be done and the Companies and each adjacent owner shall share the cost thereof in accordance with the provisions of the General Minerals Rules.
- (e) The Companies shall throughout the period of the Licence spend a total sum of not less than Le500,000 (Five hundred thousand leones) on exploring, prospecting and developing the Prospecting Areas, including the procurement of equipment necessary therefor provided, however, that if during such period the approximate area included in the Prospecting Areas becomes less than 3,000 square miles as a result of changes made therein by the Companies pursuant to Paragraph (h) of this Clause 3, there shall be a proportional reduction in such minimum total sum. Compliance with this Paragraph (e) shall constitute full compliance with the requirements of Section 18 of the Minerals Act relating to bona fide prospecting operations. All amounts spent by the Companies in conducting prospecting operations under Special Exclusive Prospecting Licence No. 2070 shall be credited against the minimum amount required to be spent by the Companies under this Paragraph (e).

The Companies shall submit to the Director of Mines at the end of each prospecting year detailed returns of expenditure incurred in respect of this Paragraph (e).

- (f) The Government, from the date of this Agreement, shall during the term of the Licence indemnify the Companies against all claims of any owners or occupiers (including chieftdom councillors) in respect of the Prospecting Areas other than claims for compensation made in accordance with the provisions of Section 20 of the Minerals Act but subject to Clause 9 (b) of this Agreement.
- (g) The rent payable by the Companies in respect of the Prospecting Areas shall be stated in the licences.
- (h) The Companies may surrender the Licence in its entirety or relinquish any part or parts of the prospecting Areas at any time during the term of the licence by written notice to the Director of Mines to that effect.
- (i) Upon the surrender or other termination of the Licence granted herein, or of any portion thereof the Companies shall be granted a period of not less than one year, or such longer period as the Director of Mines may specify, immediately following such expiration or termination in which to remove all or any of their buildings, structures, plants, machinery or effects from the Prospecting Areas so surrendered or terminated. Any such buildings, structures, plants, machinery or effects which are not removed in accordance with the provisions of this paragraph (i) within the period stated herein, or such longer periods as the Director of Mines may specify shall at the termination of such period become the property of the Government.

#### 4. RENEWAL OF LICENCE

Upon written application by the Companies prior to the expiration of the licence the Companies shall be entitled to the renewal of the Licence for a further period of one year under the same terms and conditions provided that the companies are not then in default under any of the terms and conditions of the Licence or this Agreement. The Companies are alternately entitled to receive a renewal of the Licence for a further period of five (5) years but under terms and conditions to be agreed upon. But the said renewal for a further five years will only be granted if the Companies have applied for a Mining Lease under Clause 5 of this Agreement.

#### 5. MINING LEASE AND DREDGING LICENCE

(a) At any time during the life of the Licence the Companies shall be entitled to the grant of a mining lease and dredging licence (hereinafter called the lease), covering all titanium-bearing and associated minerals in and under any portion of the Prospecting Areas, as described in the Companies' said request. The provisions of the Minerals Act relating to the mining leases and dredging licences shall apply to the Lease except to the extent inconsistent with the special provisions incorporated in this Agreement under the authority granted the Minister by Section 42 of the Minerals Act.

(b) The term of the Lease shall commence as of the date of its grant by the Government and shall at the expiration of 25 years from the date of commencement of mining operations as defined in this Agreement; provided that the Companies shall have the right to terminate the same at any time by not less than six (6) months notice in writing to the Government to that effect; and provided also that if the Lease shall not earlier have been terminated under this paragraph (b) the Companies may by at least six (6) months' previous notice in writing to the Government, given prior to the expiration of the period of the Lease, request the Government to grant them a new lease for a further minimum term of 10 years from the date of expiration of the first Lease period upon the terms and conditions of the original Lease (other than the terms relating to payments by the Companies or to renewal of the Lease). Upon any such request, provided the Companies are not then in default hereunder the Companies shall be entitled to the grant of such new lease for a further minimum term of ten years upon such fair and equitable terms as to payment by the Companies as may then be agreed upon, or failing agreement, as shall be settled by arbitration in accordance with the provisions of clause 10 (c) hereof.

(c) The Companies may surrender any part or parts, but not all, of the Mining Areas at any time during the term of the Lease by notice in writing to the Government to that effect and upon such surrender the lands surrendered shall cease to be comprised in or subject to the provisions of the Lease.

(d) The Government shall during the term of the Lease indemnify the Companies against all claims of any owners or occupiers (including Chieftom Councillors) in respect of the Mining Areas other than claims for compensation made in accordance with the provisions of the Minerals Act but subject to Clause 9 (b) of the Agreement.

(e) Upon the surrender or other termination of the Lease or of any other lease granted hereunder, or of any portion thereof, the Companies shall be granted period of not less than two (2) years, or such longer period as the Director of Mines may specify, immediately following such expiration or termination in which to remove all or any of their buildings, structures, plant, machinery equipment (including dredges, barges and tow boats) or other effects from the areas covered by the Lease or portion of the Lease surrendered or terminated. Any of the Companies' buildings, structures, plant, machinery or effects which are not removed in accordance with the provisions of this paragraph (e) within the period stated herein, or such longer periods as the Director of Mines may specify, shall at the expiration of such period become the property of the Government. Nothing in this paragraph (e) contained shall prejudice the right of the Government under section 40 (2) of the Minerals Act to take possession of any building, plant, machinery or other effects which are the property of the Companies and which on the expiration, surrender or other termination of any lease are left upon the area of such lease if the Companies are knowingly in default in payments due to the Government in respect of such lease.



(f) At any time and from time to time while the Licence is in effect, the Companies shall request and shall be entitled to the grant of additional mining leases for titanium-bearing minerals covering such areas within the Prospecting Areas as the Companies may designate by filing with the Director of Mines a map of the areas selected together with a descriptive statement setting forth in general terms the approximate boundaries and area thereof. All such additional leases granted pursuant to the provisions of this paragraph (f) shall be upon terms and conditions provided herein with respect to the Lease granted pursuant to Paragraph (a) of this Clause 5, except that, upon the expiration of 25 years from the date of commencement of mining operations for titanium-bearing minerals or mineral concentrates the Government may require that the terms of any such additional mining leases as may then be in effect or as may be thereafter granted, insofar as they relate to payments by the Companies, be redetermined in the manner provided in paragraph (b) of this Clause 5 for determining terms as to payments by the Companies that will be applicable during the renewal term of the Lease.

(g) Although the lease is to be confined to titanium-bearing and associated minerals, and the Companies mining operations will be directed toward the extraction and recovery thereof, the parties recognize that dredging operations such as the Companies plan to conduct will of necessity turn up along with titanium-bearing and associated minerals any other minerals or metals that may be intermixed with or in close proximity to the titanium-bearing and associated minerals.

If any diamonds are recovered by the Companies they shall be delivered by the Companies to the Director of Mines or to such other Government Agency or Depository as the Director of Mines shall designate for such purpose. The Government shall have the right to make such disposition of any diamonds so delivered by the Companies as the Government deems proper, making such distributions of the proceeds derived therefrom as the Government considers fair and equitable. Except with respect to diamonds, the Companies shall have the right to extract, recover, process and sell any such other minerals and metals which they dredge up with titanium-bearing and associated minerals in their mining operations. It is expressly understood, however, that the Companies will be governed by and will comply with all applicable Acts, rules and regulations governing the possession and marketing of any such other minerals and metals, including any applicable Acts, rules or regulations relating to radioactive minerals and will pay any valid taxes or other governmental charges assessed against and paid by other producers thereof, including any royalty.

If no royalty is established in the Minerals Act for any such other mineral or metal other than diamonds surrendered to the Government the Government reserves the right to establish a royalty payable therefor that shall be consistent with the royalties payable for comparable minerals or metal and the Companies agree to pay a royalty hereunder.

## 6. RENTS AND TAXES

(a) Mining and Surface Rent—The companies shall pay to the Government annually, in advance, a mining rent at the rate of Le320 (three hundred and twenty) per year for each square mile embraced within the Mining Lease Areas.

In addition, the Companies shall pay to the Government annually, in advance, a surface rent for all land occupied or used for the purpose enumerated in Section 35 (1) of the Minerals Act at a rate determined by the President pursuant to such Section 35. The Companies may designate and shall demarcate one or more areas within the Mining Areas, not to exceed two square miles in total area, on which to erect permanent processing and other plant facilities.

### (b) (1) ROYALTY

Beginning as of the date on which the Companies begin Shipments of titanium-bearing and associated minerals from Sierra Leone, the Companies shall pay to the Government a royalty on all such shipments at the following rates:

- (i) For Rutile (provided that  $\text{TiO}_2$  contents is not less than 95% Le3 per metric ton up to 30,000 tons.

Le5 per metric ton for the next 30,000 tons and Le6 per metric ton for tonnage in excess of 60,000 tons shipped during the Companies accounting year.

- (ii) Other Minerals (provided that in the case of ilmenite the  $\text{TiO}_2$  content is not less than 50%). For each other minerals exploited in connection with Rutile the Companies shall pay royalty as provided for in the Minerals Act. If such Royalty is not provided for in the Minerals Act the parties shall agree upon a royalty to be paid.

If the extracted mineral-concentrates are shipped from Sierra Leone before separation, so the royalties as defined in the aforesaid paragraph will be assessed by ascertainment of the quantities of each mineral, which are contained in the concentrates at the time of shipment. Samples taken before shipment shall be analysed by an independent analyst on whom the parties shall agree. Copies of the certificate of the analysis shall be made available to the parties. The cost of analysis shall be met by the Companies.

- (2) Royalty shall not be deducted as an operating expense.

- (3) On or before the 15th day of January, April, July and October the Companies shall present at the Office of the Director of Mines a statement showing (1) the quantities exported by the Companies

during the preceding months. Every statement of export shall specify the designations and names and addresses of consignees and shall be accompanied by a certificate from the Comptroller of Customs showing the amount of each exportation. The Companies shall pay the royalty on the amount of titanium-bearing and associated minerals exported during the preceding months at the time of presenting each statement.

(c) INCOME TAX

The Companies in the conduct of their activities in Sierra Leone pursuant to the provisions of this Agreement shall be liable to income tax upon their income derived therefrom as well as upon any other income accruing in, brought into or received in Sierra Leone in accordance with the provisions of the Income Tax Act (Cap. 273) applicable to companies generally and as may be from time to time amended.

- (d) The Companies shall, in addition to income tax referred to in paragraph (c) above, be liable to surtax in accordance with the provisions of the Surtax (Temporary Imposition) Act (No. 14 of 1968) as may be from time to time amended and any other taxes with respect to income accruing in, derived from, brought into or received in Sierra Leone in respect of any trade, business, profession or vocation.
- (e) Notwithstanding the provisions of the immediately preceding paragraphs (c) and (d) the aggregate of all taxes payable by the Companies in respect of any year of assessment shall be an amount equal to fifty per centum of the profits as computed for income tax purposes:

Provided, however, that—

- (i) The amount of profits of the Companies as adjusted for tax purposes in accordance with the provisions of the Income Tax Act (Cap. 273) upon which tax at the appropriate rate is to be levied and paid shall be reduced by the amount of the royalty paid in the basis period of the relevant year of assessment; and
- (ii) the limitation imposed by paragraph (e) above shall in no way operate to reduce the total amount payable to Government by the Companies in respect of taxes and royalties for any year of assessment below the amount payable as royalty under this Agreement in the basis period relating to such year of Assessment.
- (iii) any reduction in the aggregate amount of such taxes required to give effect to the provisions of this paragraph shall be effected primarily by a reduction of the amount of surtax payable in such

year of assessment and if this reduction shall be insufficient, then by a reduction of the amount of income tax payable in such year of assessment.

- (f) Notwithstanding further that the Companies may apply for and be granted development certificates in accordance with the provisions of the Development Act or otherwise in respect of their trading activities in Sierra Leone pursuant to the provisions of this Agreement—
- (i) The provisions of the Income Tax Act, except for the provisions of section 28 thereof, shall apply in every other respect;
- (ii) in the event of the Companies winding-up voluntarily or otherwise or ceasing to carry on the trade or business in Sierra Leone prior to or within three years after the expiration of the tax holiday period, whichever period is the longer, or the development certificate having been cancelled and deemed never to have taken effect it shall be lawful for the Government to recover from the Companies the amount of any taxes on profits of the Companies derived during any of the years of the tax holiday period which would have been otherwise, chargeable with tax if the Companies were not granted development certificate under the Development Act or otherwise.
- (g) Subject to paragraph (e) (ii) any amount paid by the Companies as royalty in any accounting year relating to any year of assessment shall be deemed to be payment on account of the aggregate liability of the Companies to Sierra Leone income tax, surtax and any other taxes on income arising from the operations of the Companies in Sierra Leone.
- (h) Net dividends paid, that is after deduction of taxes at source, shall not be subject to any further taxation.
- (i) No discriminatory tax, duty fee, charge or any other imposition shall be imposed on the Companies and their employees serving in Sierra Leone; for the purpose of this clause, a tax, duty fee, charge or other imposition shall be considered discriminatory if its effect is confined wholly or mainly to the Companies or their employees.
- (j) The Companies will use their best endeavours to use ships belonging to or chartered by the Sierra Leone National Shipping Company Ltd. for the shipment of their mineral ores and other products, provided that the conditions of shipment by the Sierra Leone Shipping Company Ltd. are competitive.

## 7. LIMITATION ON RIGHTS TO BE GRANTED TO OTHERS

The Government shall use its best endeavours to discourage or prevent the grant of any concession contemplated by the Concessions Act which would or might hamper or restrict the operations of the Companies or prove an inconvenience to the Companies in the due exercise of their rights under the Agreement.

## 8. AUDIT AND CERTIFICATION OF COMPANIES' BOOKS

The Companies shall cause their books to be audited as soon as practicable after each accounting year by such independent Chartered Accountant as may be chosen by the Companies and approved by the Government. The Companies Accounts books together with the audited report and certificate shall then be forwarded to the Commissioner of Income Tax.

## 9. GENERAL RIGHTS OF THE COMPANIES

In addition to the other rights granted them by this Agreement and the Minerals Act and other applicable laws of Sierra Leone, the Companies shall have the following rights:—

(a) Rights incident to Dredging Operations—Except with respect to mineral concentrates recoverable from coastal beaches, it is contemplated that the bulk of the Companies' mining operations under this Agreement will consist of dredging in the beds and in the environs of rivers, streams and water courses. To permit and facilitate such dredging the Companies shall have the right, without further permit or licence:

(1) Either within or outside the Mining Areas:

(a) To dig, widen and deepen channels in rivers, streams and water courses as may be necessary to permit or facilitate dredge access to the area to be mined and to afford barge access thereto.

(2) Within the Mining Areas only:

(a) To use the water and to return the same together with dredging spoils to the river, streams or water course; provided that, in so doing, the Companies shall not discharge or permit to be discharged any poisonous or noxious matter in any natural water course.

(b) To fell trees, subject to the provisions of section 37 of the Minerals Act, and otherwise clear the land to be dredged.

(c) To divert streams, including the right to secure water from a river, stream or watercourse for the purpose of obtaining and maintaining a dredging pool, also build temporary dams and to impound water therein as required for such dredging operations:

Provided however, that before taking any action under sub-paragraph (1) (a) or (2) (c) which would alter the water supply of any lands in such a manner as would prejudicially affect the water supply enjoyed by any person or lands, the Companies shall obtain the prior consent of the District Officer having jurisdiction over the person or lands that would be prejudicially affected.

The Companies agree that, if their dredging operations, including the exercise of any of the rights incident thereto as herein above enumerated, shall be deemed by the Director of Mines to be likely to pollute, impair, divert or destroy the normal supply of potable water of any village, the companies will provide adequate water supply to be determined by the Ministry of Health.

(b) Occupation of Surface Land—In order to exercise their exploration rights and mining rights under this Agreement and subject to the limitations of sections 8 and 36 of the Minerals Act, the Companies shall have the right to occupy and utilize permanently or temporarily, within the prospecting or Mining Areas, such parts of the surface land, whether Government owned or otherwise, as may be reasonably required for accessory works and installations of the type listed in paragraph (c) of this Clause 8 which are necessary or useful for their operations, and such part of the surface as may be required for their prospecting and mining operations. The Company shall endeavour to make satisfactory arrangements with the owner or occupier thereof, if other than the Government, for payment of a fair and reasonable compensation for any prospective damage to any crops, buildings, trees or works thereon.

It is recognised that the Companies' dredging operations will of necessity disturb the top soil and intermix sub-soil strata therewith, and that such disturbance and intermixing is a necessary incident to the alluvial mining of titanium-bearing and associated minerals. Accordingly, it is agreed that such disturbance and inter-mixing, and their effect, if any on the future use and occupancy of the surface land shall not be taken into account or evaluated in determining compensatable damages payable to the owner or occupier of the land. To minimise such disturbances, the Companies agree that they will restore all dredged areas to reasonable surface contours not in substantial contrast with the contours of the adjacent and surrounding land surface.

In case it shall not be possible for the Companies to reach a satisfactory agreement with the owner or occupier of the surface in the case of land not owned by the Government within thirty (30) days after the commencement of their efforts to do so, or such extended time as the Companies and such owner or occupier shall agree, the Companies unless they elect not to occupy and utilize such surface areas, shall bring the matter to the attention of the District Officer having jurisdiction, filing a petition setting forth the facts of the case and specifying as exactly as may be possible the land which they require and the nature of the occupation of the same which they require, whether for necessary works

and instalations or for prospecting or mining operations. As soon as may be conveniently done thereafter but not more than sixty (60) days after the date of the filing of the said petition, the Government shall cause the District Officer to assess the compensation to be paid to the owner of the land when and if such prospective damages, loss or destruction of goods or property is inflicted by the Companies, and to promptly notify the parties of the sum awarded. If the owner of the land should be unknown or there should be a controversy as to the ownership, the Companies shall make payment to the District Officer who shall determine its disposition. Either party who is dissatisfied with the award of the District Officer may appeal to the Minister who may render a decision or refer the dispute for determination by arbitration. The decision by the Minister, or the arbitrators shall be final and binding on the parties. Upon agreeing to pay the amount specified the Companies may enter the land, but the Companies shall not be required to agree to pay such amount if they shall withdraw their petition to enter upon such land and have not already entered upon such land.

The compensation payable by the Companies pursuant to this Clause 9 (b) shall be based on the estimated monetary amount (or value) of the damage to be done to the crops, buildings, trees or works on the land. Any compensation with reference to the fact that the owner will be deprived of the use and occupancy of the land is included in and covered by the surface rent payable pursuant to section 35 of the Minerals Act.

(c) Accessory works and Installations—Subject to the provisions of sections 8 and 36 of the Minerals Act the Companies shall have the right to construct and operate within the Prospecting or Mining Areas, roads, buildings, plant structures, living quarters, water supply system, pipelines, communication systems, electric power systems, ship loading stations, airstrips, barges, channels, storage facilities, and other similar accessory works and installations which are necessary or useful in carrying out their operations under this agreement, subject to the approval of the appropriate authority, if any such approval is required under and pursuant to the Minerals Act, and subject to such reasonable requirements and conditions, if any, as may be imposed by such authority as a condition to the granting of such approval. Such right shall exist as inherent in the Agreement and without the necessity for obtaining hereafter special permits for the exercise thereof, other than the official approvals above referred to.

(d) Customs Duties—The Companies in the conduct of their activities in Sierra Leone pursuant to the provisions of the Agreement shall be subject to the provisions of the Customs Act Cap. 271 and the Customs Tariff Act No. 15 of 1968 and Rules thereunder currently in force as may be from time to time amended.

(e) Export of Titanium Minerals—The Companies shall have the right to export to the Federal Republic of Germany all titanium minerals or minerals concentrate raised or obtained in the course of mining operations. Furthermore the Companies shall have the right to export to all other countries except those which are prohibited by the laws of Sierra Leone.

(f) Entry of Personnel—The Companies and/or their contractors shall not import unskilled labour for the carrying out of any operations, developments or maintenance undertaken by them by virtue of this Agreement, except in the event that the local labour supply shall prove inadequate to their needs, and in such event the Companies undertake to import only such foreign unskilled labour as shall be acceptable to the Minister of Mines.

Subject to the foregoing restrictions and to any applicable provisions of the Non-Citizens (Registration Immigration and Expulsion) Act, No. 14 of 1965, all persons deemed by the Companies and/or their contractors to be required for the prosecution of their work, including executives, officers, engineers, consultants, technicians, skilled and semi-skilled labour, shall have the right to enter and reside in Sierra Leone and to depart therefrom. The Government agrees that it will encourage and assist the efforts of the Companies to secure and maintain an adequate labour supply.

In selecting employees to carry out their operations under this Agreement, the Companies shall give preference to Sierra Leone executives, officers, engineers, consultants, technicians and skilled and semi-skilled labour which they deem to be qualified and competent.

(g) Housing of Labourers—Rule 43 (4) of the General Minerals Rules shall not preclude the Companies from demanding and receiving rents at such rates and subject to such conditions as may be approved by the Commissioner of Labour in respect of the occupation by Labourers or others of huts or houses constructed by or at the cost of the Companies within the Prospecting or Mining Areas.

(h) Force Majeure—Failure on the part of the Companies to fulfil any of the terms and conditions of this Agreement shall not give the Government any claim against the Companies or be deemed a breach of this Agreement in so far as such failure arises from force majeure and if through force majeure the fulfilment by the Companies of any of the terms and conditions of this Agreement is delayed, the period of such delay shall be added to the periods fixed by this Agreement

In this Clause the expression "Force Majeure" includes the act of God, war, insurrection, riot, civil commotion, tide, storm, tidal wave, flood, lightning, explosion, fire, earthquake and any other happening which the Companies could not reasonably prevent or control.

(i) Government Protection and Assistance—The Government undertakes to grant to the Companies such assistance as it reasonably can to enable the experts and other technicians sent by them to carry out their tasks and in the best and most efficient manner.



The Government will make available to the Companies all aerial, magnetometer and other geological surveys and photographs and all other plans, maps, information and advice relating to titanium-bearing minerals which in the opinion of the Government it can disclose and will permit the Companies to obtain copies of all such surveys, photographs, plans, maps, and information for their own use upon payment of the actual cost of making such documents. The Companies will make available to the Government Geological Survey Department all similar data that it compiles or acquires from others under circumstances which permit disclosure therefore to others; provided however, that the Government agrees that its said Department will treat all such data so made available to it as confidential and will not communicate it to others during the life of the Agreement, without the Companies prior consent.

(j) Repatriation of Profits—Without prejudice to the provisions of Clause 6 (c) and (d) of this Agreement, the Sierra Leone Government—

- (a) In accordance with exchange control regulations undertakes that dividends and interest payable by the Companies to non-residents of Sierra Leone in respect of approved investments may be transferred to them subject to such restrictions and conditions, if any, as may from time to time be applicable to non-residents who have made approved investments in Sierra Leone.
- (b) Confirms that it is its policy to allow the transfer to non-residents of such dividends and interest payable to them—
- (c) In accordance with exchange control regulations undertakes that capital invested in the Companies in an approved manner by non-residents, together with any sums of a capital nature arising from such investments shall be eligible for repatriation to the country of residence of the investor—
  - (i) In its entirety, so long as dividends and interest remain transferable in full;
  - (ii) in any other case, subject to any general conditions and restrictions which may be in force in respect of approved investments by non-residents under exchange control legislation and which are not less favourable than those in force in respect of the transfer of dividends and interest.

(k) Importation of Machinery—The Government agrees that it will grant all permits and permissions of whatsoever nature necessary for the importation into Sierra Leone of machinery, equipment and supplies necessary for the conduct of prospecting, mining, processing and transport operations contemplated by this Agreement and of such manufacture and types from whatsoever source as shall be customarily employed by the Companies.

## 10. GENERAL PROVISIONS

(a) Revocation by the Government—If and whenever any sum of money payable hereunder by the Companies as rent or royalty shall be in arrears for the space of six months after the date on which such sum becomes due and payable, or if there shall be any breach or non-observance by the Companies of any of the terms of any licence or lease granted herein or hereunder, or if the licensee or lessee thereunder shall become bankrupt or make or enter into any arrangement or composition with its creditors, or if a receiver is appointed by the licensee or lessee or if it shall enter into liquidation whether compulsorily or voluntarily (except a voluntary liquidation of a solvent company for the purpose of reconstruction) then and in any such case the Government may revoke the licence or lease in question and thereupon the same and all rights thereunder, granted pursuant to this Agreement, shall cease and determine, but subject nevertheless and without prejudice to any obligation or liability imposed by or incurred under the terms and conditions thereof. Provided always that save as to the non payment of rent or Royalty or other taxes the aforesaid power shall not be exercised unless and until notice has been given to the licensee or lessee specifying the particular breach complained of and, if the breach is capable of remedy, requiring the licensee or lessee to remedy the breach and in any case requiring the licensee or lessee to make compensation in money for the breach if such breach is compensatable, and the licensee or lessee fails within a reasonable time thereafter to remedy the breach if it is capable of remedy and to make reasonable compensation in money to the satisfaction of the Government for the breach.

(b) Limitation on Minerals Act Application—The Provisions of the Minerals Act and amending Acts and Rules made and to be made thereunder including the provisions of any official forms prescribed by such Rules, shall be binding upon and insure to the benefit of the Companies except such provisions thereof as may be inconsistent with the terms or provisions of this Agreement. Any inconsistency between a provision of any such Act or Rule and a provision of this Agreement shall be resolved by giving effect to the provisions of this Agreement.

(c) Interpretation and Arbitration—Except as may be otherwise herein expressly provided, this Agreement shall be construed, and the rights of the Government and the Companies thereunder shall be determined according to the Laws of Sierra Leone. If at any time during the life of this Agreement, any question or dispute shall arise between the Government and the Companies regarding this Agreement or any matter or thing connected herewith or the powers, duties or liabilities of the Companies or the Government hereunder, or the amount or payment of any sum required to be paid by the Companies to the Government pursuant to any provision hereof, and the parties to the dispute shall be unable to resolve the same amicably, then and in all cases the matter in dispute shall be submitted to arbitration in accordance with the provisions of the Arbitration Act of Sierra Leone, or any Act or Law amending or replacing the same for the time being in force.

(d) Assignment—The Companies shall have the right to assign all or any portion of the rights, privileges and franchises including fiscal provisions and tax benefits and immunities granted to the Company, such assignment to include all obligations under this Agreement, to a Sierra Leone Company. An assignment if made and the issuance, ownership, transfer or redemption of securities, shares of stock, bonds, notes and other evidences of ownership and indebtedness issued by the Companies in connection with such assignment, shall be exempt from the payment of any tax, levy, duty or fee, exclusive of stamp or registration duties whether national or local. Provided that whenever an assignment is in the form of a security for a loan, the prospecting licences and mining leases and any rights and interests under them shall not be assigned and the Minister shall not signify his prior written consent to the assignment thereof. Except as herein above provided in this paragraph (d) the Company shall not assign this agreement or any rights, privileges or franchise included herein, without the prior written consent of the Government signified by endorsement on the Instrument of assignment. Whenever a prior written consent is signified, the Minister shall notify that it has been so signified by Order published in the *Gazette*.

- (e) Surveys—The Companies may arrange that all survey work required by the Minerals Act, or this Agreement to be performed in connection with the clearing, survey, demarcation and beaconing of boundaries or otherwise shall be carried out by a licensed surveyor approved by the Government, subject to the right of the Government to cause the required survey for any disputed boundary to be performed by the Director of Surveys and Lands, whose determination shall be final including the assessment of the survey costs as between the Companies and the other disputing party or parties.
- (f) The Companies will use their best endeavours to establish a processing plant in Sierra Leone, if the economic conditions allow them to do so.
- (g) Notices—All orders, approvals, declarations, notices and communications of any kind between the Minister or any other representative of the Government and the Companies shall be in writing; and the contracting parties shall not under any circumstances be permitted to allege or to rely upon any oral order, approval, declaration, notice or communication.

All orders, approvals, declarations, notices and communications from the Government to the Companies shall be delivered to the representative of the Companies in Freetown.

All declarations, notices and communications from the Companies to the Government shall, unless otherwise required by law or by the terms of this Agreement or unless the Government shall otherwise direct by written notice to the Companies, be mailed or delivered to the Director of Mines at his office in Freetown.

- (h) Prior Consent or Approval—Whenever, under the terms of this Agreement the rights of the Companies or of the Government, as the case may be, to do or perform any act or thing is conditioned on the prior consent of the other party to the Agreement, or of an official or representative of such other party, it is hereby stipulated and agreed by and between the parties hereto that the requisite consent or approval will not in any instance be unreasonably withheld.
- (i) Following the execution of this Agreement the Government will introduce and use its best endeavours to cause to be passed legislation for the purpose of ratifying and confirming this Agreement and implementing the terms hereof.

### SCHEDULE

ALL THAT PIECE OR PARCEL OF LAND situate and lying in Moyamba, Bonthe and Pujehun Districts of the Southern Province of Sierra Leone the boundary whereof commencing at a point numbered 1 situates on the High Water Mark of Yawri Bay whose geographical co-ordinates are Latitude  $8^{\circ} 14' 30''$  North, Longitude  $13^{\circ} 03' 42''$  West and thence on a True Bearing of  $90^{\circ}$  for 8.5 miles approximately to a point numbered 2 whose geographical co-ordinates are Latitude  $8^{\circ} 22' 10''$  North, Longitude  $13^{\circ} 03' 42''$  West and thence on a True Bearing of  $99^{\circ} 15'$  for 14.5 miles approximately to a point numbered 3 whose geographical co-ordinates are Latitude  $8^{\circ} 20' 00''$  North, Longitude  $12^{\circ} 51' 30''$  West and thence on a True Bearing of  $160^{\circ}$  for 4.5 miles approximately to a point numbered 4 whose geographical co-ordinates are Latitude  $8^{\circ} 16' 30''$  North, Longitude  $12^{\circ} 49' 00''$  West and thence on a True Bearing of  $142^{\circ} 00'$  for 12 miles approximately to a point numbered 5 whose geographical co-ordinates are Latitude  $8^{\circ} 08' 00''$  North, Longitude  $12^{\circ} 43' 00''$  West and thence on a True Bearing of  $176^{\circ} 00'$  for 9 miles approximately to a point numbered 6 whose geographical co-ordinates are Latitude  $8^{\circ} 00'$  North, Longitude  $12^{\circ} 42' 35''$  West and thence on a True bearing of  $146^{\circ}$  for 10 miles approximately to a point numbered 7 whose geographical co-ordinates are Latitude  $7^{\circ} 52' 33''$  North, Longitude  $12^{\circ} 37' 44''$  West and thence on a True bearing of  $78^{\circ}$  for 5 miles approximately to a point numbered 8 whose geographical co-ordinates are Latitude  $7^{\circ} 54' 00''$  North, Longitude  $12^{\circ} 33' 00''$  West and thence on a True bearing of  $125^{\circ}$  for 7 miles approximately to a point numbered 9 whose geographical co-ordinates are Latitude  $7^{\circ} 50' 00''$  North, Longitude  $12^{\circ} 27' 00''$  West and thence on a True bearing of  $163^{\circ} 30'$  for 16 miles approximately to a point numbered 10 whose geographical co-ordinates are Latitude  $7^{\circ} 36' 00''$  North, Longitude  $12^{\circ} 23' 00''$  West and thence on a True bearing of  $90^{\circ} 30'$  for 12.6 miles approximately to a point numbered 11 whose geographical co-ordinates are Latitude  $7^{\circ} 36' 00''$  North, Longitude  $12^{\circ} 12' 00''$  West and thence on a True bearing of  $181^{\circ} 30'$  for 3 miles approximately to a point numbered 12 whose geographical co-ordinates are Latitude  $7^{\circ} 33' 30''$  North, Longitude

12° 12' 00" West and thence on a True Bearing of 129° for 46 miles approximately to a point numbered 13 whose geographical co-ordinates are Latitude 7° 07' 30" North, Longitude 11° 41' 00" West and thence on a True bearing of 221° 00' for 4.9 miles approximately to a point numbered 14 whose geographical co-ordinates are Latitude 7° 04' 44" North, Longitude 11° 43' 38" West and thence on a True bearing of 210° 30' for 3.2 miles approximately to a point numbered 15 whose geographical co-ordinates are Latitude 7° 02' 15" North, Longitude 11° 45' 00" West and thence on a True bearing of 291° 30' for 101.2 miles approximately to a point numbered 16 whose geographical co-ordinates are 7° 35' 00" North, Longitude 13° 08' 00" West and thence on a True bearing of 6° 30' for 7.5 miles approximately to a point marked J whose geographical co-ordinates are Latitude 7° 41' 50" North, Longitude 13° 07' 35" West and thence on a True bearing of 102° for 21.5 miles approximately to a point marked II whose geographical co-ordinates are Latitude 7° 38' 00" N, Longitude 12° 49' 34" West and thence on a True bearing of 00° 00' for 2 miles approximately to a point marked G whose geographical co-ordinates are Latitude 7° 39' 35" North, Longitude 12° 49' 32" West and thence on a True bearing of 86° 30' for 6.5 miles approximately to a point marked F whose geographical co-ordinates are Latitude 7° 40' 00" North, Longitude 12° 43' 50" West and thence on a True bearing of 180° for 1.2 miles approximately to a point marked E whose geographical co-ordinates are Latitude 7° 39' 00" North, Longitude 12° 43' 50" West and thence on a True bearing of 85° for 6.5 miles approximately to a point marked D whose geographical co-ordinates are Latitude 7° 39' 22" North, Longitude 12° 38' 22" West and thence on a True bearing of 00° 00' for 2.3 miles approximately to a point marked C whose geographical co-ordinates are Latitude 7° 41' 00" North, Longitude 12° 38' 22" West and thence on a True bearing of 282° 30' for 6.5 miles approximately to a point marked B whose geographical co-ordinates are Latitude 7° 42' 35" North, Longitude 12° 43' 50" West; and thence on a True bearing of 305° for 30 miles approximately to a point marked A whose geographical co-ordinates are Latitude 7° 57' 25" North, Longitude 13° 05' 10" West; and thence on a True bearing of 6° 30' for 20 miles approximately to the point of commencement thus enclosing an area of 2,657 square miles approximately be the same several dimensions little more or less as the same is more or howsoever otherwise the same may be bounded, known, described or distinguished and numbered S.E.P.L. 2070 on the map attached hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

Signed, sealed and delivered  
by the said Sheku Bockari  
Kawusu-Konte, Minister of  
Mines, for and on behalf of  
the Government of Sierra  
Leone, in the presence of:

S. B. KAWUSU-KONTE

J. E. O. TAYLOR

For BAYER Aktiengesellschaft

G. Kienast      A. Giltges

For PREUSSAG Aktiengesellschaft

W. Haase      K. Weggen

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Passed in Parliament this 20th day of *August*, in the year of our Lord one thousand nine hundred and seventy-four.

M. MUNU,  
*Acting Clerk of Parliament.*

THIS PRINTED IMPRESSION has been carefully compared by me with the Bill which has passed Parliament and found by me to be a true and correctly printed copy of the said Bill.

M. MUNU,  
*Acting Clerk of Parliament.*