

badea



المصرف العربي للتنمية الاقتصادية في أفريقيا



FRAMEWORK AGREEMENT FOR PROTECTION OF INVESTMENT

Between

The Republic of Sierra Leone

and

**The Arab Bank for Economic
Development in Africa**

DATED 17 November 2019



AGREEMENT between the Republic of Sierra Leone (hereinafter called the Host Country) and the Arab Bank for Economic Development in Africa (hereinafter called BADEA).

Whereas the Host Country has requested BADEA to assist in financing private sector activities (Investment Activities) involving entities located in the Host Country, with a view to improve the living standard of its people and strengthen the ties between African and Arab states.

And whereas the Host Country and BADEA being mindful that a stable framework arrangements for financing private sector activities within the territory of the Host Country will conduce to the effective utilization of economic resources and contribute towards the improvement of living standards, accordingly, have resolved to conclude a Framework Agreement for protection of such investment activities,

NOW, THEREFORE, the parties hereto hereby agree as follows:

ARTICLE I
DEFINITIONS

1.01 Wherever used in this Agreement, and unless the context otherwise requires, the following terms have the following meanings:

- (a) "Investment" means every kind of investment owned or controlled directly or indirectly by BADEA in the Territory of the Host Country and, without prejudice to the generality of the foregoing includes and not limited to, the form of:



- i. direct loans to the private sector entities located in the territory of the Host Country and eligible for BADEA's funding.
 - ii. shares, stocks , and other forms of equity participation, and bonds, credits, debentures, and other forms of debt interest, in an Enterprise ;
 - iii. tangible property, including real property; and intangible property, including rights, such as leases, mortgages, liens, pledges and rights to payment arising under any form of debt instrument of whatever nature;
 - iv. contractual rights, such as those under construction or management contracts, production or revenue-sharing contracts, concessions or other forms of contracts;
 - v. rights conferred by or pursuant to law, such as licenses and permits; and
 - vi. Intellectual property, including copyrights and related rights, patents, industrial designs, as well as advisory services and confidential business information.
- (b) "Enterprise" means any entity a corporation, partnership, sole or joint venture or association or any other organization wholly or partly privately owned with contribution of not less than 51% of its shares, and eligible for BADEA's funding pursuant to its related rules.
- (b) "Territory" means the territory of the Host Country.



ARTICLE II
GENERAL PRINCIPLES

- 2.01 With respect to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of investments, the Host Country shall accord treatments thereto no less favorable than that it accords in like situations, to Investments in its Territory by any other multilateral development finance institution operating in the Host Country (hereinafter referred to as "most favored party").
- 2.02 The Host Country shall ensure that its laws, regulations, administrative practice and procedures of general application, and adjudicatory decisions that pertain to or affect Investments are promptly published or otherwise made publicly available.
- 2.03 The Host Country shall provide effective means of asserting claims and enforcing rights with respect to Investments and shall not in any way impair, by unreasonable or discriminatory measures, the management, conduct, operation, sale or other disposition of any such investment.
- 2.04 The Host Country shall at all times accord to Investments in its Territory fair and equitable treatment and full protection and security, and shall in no case accord less favored treatment than that required by or under international law.
- 2.05 The Host Country shall pursuant to its laws and regulations accord to BADEA and its Investments or, as the case may require, the officials, agents and other representatives of BADEA, treatment no less favorable than the Host Country accords to the most favored party and its Investments (hereinafter referred to as "most favored party treatment"), and such treatment shall extend but not be limited to the issuance of visas or permits to enter and remain in its Territory for the purpose of initiating, appraising, establishing or administering, winding up or otherwise terminating any Investment or any other activity connected therewith located in its Territory.



ARTICLE III
PRIOR NOTIFICATION OF INVESTMENT PROPOSAL

- 3.01 BADEA shall prior to each Investment request the Enterprise to secure the approval of the Government of the Host Country of the envisaged Investment. Such approval will be forwarded to BADEA by the representative of the Host Country designated in that behalf.

ARTICLE IV
EXPROPRIATION

- 4.01 The Host Country shall not expropriate or nationalize an Investment either directly or indirectly through measures tantamount to expropriation or nationalization except for a public purpose; in a non-discriminatory manner, upon payment of prompt, adequate and effective compensation; and in accordance with due process of the law and the general principles of treatment provided for in Article II above.
- 4.02 Compensation shall be paid without delay and shall be equivalent to the fair market value of the expropriated Investment immediately before the expropriatory action was taken; and be fully realizable and freely transferable. The fair market value of such Investment shall not be adversely affected by any change in value occurring because the expropriatory action had become known before the date of expropriation or its implementation.

ARTICLE V
COMPENSATION FOR LOSSES

- 5.01 The Host Country shall accord most favored party treatment to the Investments as regards any measures relating to losses that Investments suffer in its Territory owing to the newly established regulatory arrangements, war or other armed conflict, revolution, state of national emergency, insurrection, civil disturbance of similar event.



02 The Host Country shall effect restitution, or pay compensation in accordance with Section 4.02 above, in the event that Investments suffer losses in its Territory, owing to newly established regulatory arrangements, war or other armed conflict, revolution, state of national emergency, insurrection, civil disturbance, or similar events; that result from:

- (a) Requisitioning of all or part of such Investment by the Host Country's forces or authorities; or
- (b) Destruction of all or part of such Investments by the Host Country's forces or authorities that was not required by the necessity of the situation.

ARTICLE VI
PAYMENTS AND TRANSFERS

01 The Host Country shall permit all transfers relating to an Investment to be made without restrictions and without delay into and out of its Territory. Such transfers include:

- (a) Loans principals, interests, royalty payments, management fees, technical assistance and other fees;
- (b) Profits, capital gains,
- (c) Proceeds from the sale of all or any part of the Investment or from the partial or complete liquidation of the Investment;
- (d) Contributions to capital;
- (e) Payments made under a contract; and
- (f) Compensation pursuant to Articles IV and V.

02 The Host Country shall permit transfers to be made in a freely convertible currency at the most preferred rate of exchange prevailing offered by the foreign exchange authorities.



ARTICLE VII
EXEMPTION FROM TAXATION

1 In compliance with the general principles set out in Article II and, in particular, the stipulations relating to the most favored party treatment, BADEA, its assets, loan principals, interest amount, commitment and other eventual charges, property, operations, and any obligation or security issued or guaranteed by BADEA, and any other transactions undertaken by BADEA in connection with any Investment in the Territory or the Host Country, authorized by or pursuant to this Agreement, shall be exempt from any withholding tax or any other form of taxation on dividends or on any other payment or transaction specified under or pursuant to Section 6.01 or levies or duties chargeable or otherwise imposed by, or in the Territory of, the Host Country; and references in this article BADEA shall be construed as including references to the officials, agents and other representatives of BADEA specified in Section 2.05 above.

2 Notwithstanding Section 7.01, it is hereby understood that:

- (a) the reference therein to the officials of BADEA shall not include nationals and other third parties resident in the Host Country;
- (b) any Enterprise in which BADEA has an Investment shall at all times be deemed to be subject to the laws of the Host Country and, without limiting the Generality thereof, shall include all applicable tax or other form of fiscal legislation.

ARTICLE VIII
CONSULTATION

01 The parties to this Agreement agree to consult promptly, on the request of either party, to resolve any dispute, controversy or claim in connection with this Agreement or the breach, termination or invalidity thereof or otherwise relating to the interpretation or application of this Agreement or the realization of the objectives of this Agreement.



ARTICLE IX
ARBITRATION

- 01 Any disputes, controversy or claim arising out of or relating to this Agreement or the breach, termination or invalidity thereof or otherwise relating to the interpretation or application of this Agreement, that is not resolved through consultations within (90) days from the date of the consultation request, shall be submitted upon request of either party to an arbitral tribunal for a binding decision in accordance with the applicable rules of international law. In the absence of an agreement by the parties to the contrary, the UNCITRAL Arbitration Rules, in force and effect on the date of this Agreement, shall govern.
- 02 The Host Country and BADEA will each appoint one arbitrator and the two arbitrators so appointed shall together appoint the third arbitrator as Umpire, failing which such third arbitrator shall be appointed by the International Court of Arbitration in Paris, France. Where the UNCITRAL Arbitration Rules do not provide for a particular situation, the arbitrators shall in their absolute discretion decide what course of action should be followed and the arbitrator's decision shall be final.
- 03 Any arbitration under this Agreement shall be held in a state that is a party to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done in New York, United States of America, on June 10, 1958; and the English Language shall be used through the arbitration proceedings.
- 04 Each party to this Agreement hereby waives any right of sovereign immunity as to it and its property in respect of the enforcement and execution of any award rendered by an arbitral tribunal constituted under or pursuant to this Agreement.



ARTICLE X
GOVERNING LAW

10.01 This Agreement and all documents executed in connection therewith as well as their validity, enforcement, and interpretation, and all disputes arising thereunder, shall be governed by the applicable provisions of this Agreement and shall be supplemented by the applicable principles of international law, equity and justice.

ARTICLE XI
MAINTAINING OF OTHER RIGHTS AND OBLIGATIONS

11.01 This Agreement shall not be construed so as to derogate from any obligations of the Host Country under the following measures, especially in cases where such measures entitle the Investment to treatment more favorable than that accorded by this Agreement, that is to say:

- (a) the laws and regulations, administrative practices or procedures, or administrative or adjudicatory decisions of the Host Country;
- (b) international legal obligations; or
- (c) any other obligations assumed by the parties to this Agreement, including those contained in an Investment authorization or an agreement or other legally enforceable undertaking for or in connection with an Investment.



ARTICLE XII
COMMUNICATIONS

- 12.01 The Minister of Finance is designated as the representative of the Host country for the purpose of signing and implementing this Agreement.
- 12.01 Any notice or other communication required or permitted to be given or made under this Agreement shall be in writing. Such notice or communication shall, as appropriate for the concerned requirement, be deemed to have been duly given or made when it has been delivered by hand, mail, telefax or other electronic means to the party to which it is required to be given or made, at the party's address specified below or at any other address as the party shall have specified in writing to the party giving the notice or making the communication.

For the Host Country:

The Ministry of Finance
Treasury Building , George Street
Freetown-Sierra Leone
Tel: 222211/225826
Fax:228472/225826
E-Mail:jjsaffa@yahoo.co.uk

For BADEA:

The Arab Bank for Economic Development in Africa (BADEA)
P. O. BOX 2640
Post Code (11111), Khartoum
Republic of Sudan
Tel.: (249-183) 773709 / 773646
Fax: (249-183) 770600 / 770498
E-mail: badea@badea.org



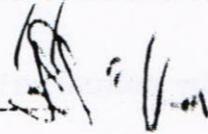
ARTICLE XIII
ENTRY INTO FORCE, AMEDMENTS, DURATION AND
TERMINATION

- 13.01 This Agreement shall enter into force following the receipt by BADEA of the instrument of ratification, a legal opinion or certification, or other documentary evidence of approval by the Host Country of this Agreement and upon the written certification by BADEA that all its internal legal requirements for the entry into force of this Agreement have been fulfilled.
- 13.02 This Agreement may be amended by mutual written agreement of the Parties
- 13.03 This Agreement shall remain in force for an indefinite period, on the understanding that either party is at liberty to terminate it at any time provided that a notice of termination is given to the other party six months in advance.
- 13.04 Notwithstanding the termination of this Agreement, all other provisions thereof, except those relating to the establishment of a new Investment shall continue to apply to any Investments established or acquired prior to the date of its termination.



IN WITNESS whereof, the parties hereto, acting through their duly authorized representative, have caused this agreement to be signed in two copies, each considered an original and both to the same and one effect.

FOR THE HOST COUNTRY:

Signature : 

Name: H.E. Saffa Jacob (UAI)

Title: Minister of Finance

FOR BADEA:

Signature : 

Name: Dr. Sidl Ould Fall

Title: Director General

