

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.]

Cap. 202.

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"):

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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"):

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:

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.

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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