

Foreign Investment Opportunities for Agriculture - *Investment Contracts in West Africa*

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Sustainable Development through Investment Contracts and Concession Agreements

- ▶ Investment Contracts and Concession Agreements
- ▶ Regional Treaties and Protocols in West Africa relative to Sustainable Development
- ▶ Impact of International and Domestic Laws and Regulations on Sustainable Agricultural Investment Opportunities
- ▶ Key tenants for sustainable development in Concession and Investment Agreements
- ▶ “Before and After” - sustainable agreements

Investment Contracts Versus Concession Agreements

- ▶ Investment Contracts by definition are contracts designed to attract foreign investments and capital into a country
 - ▶ Investment contracts are designed for short to medium term investment opportunities primarily in infrastructure or capital equipment.
 - ▶ Investment contracts are for amounts under US\$25 million. In Liberia, the threshold is US\$10 million.
 - ▶ Investment contracts may or may not have accompanying fiscal reductions.
- ▶ Concession Agreements in contrast are long term in nature, ratified by the national legislature
 - ▶ Concession Agreements are generally longer than 15 years in duration and are generally for investments in excess of US\$25million.
 - ▶ Concession Agreements are generally for a public asset i.e. land, facilities, etc
 - ▶ Concession Agreements given there duration have some fiscal incentives that are outside of the country's tax regime which must be ratified by the national legislature or parliament.
 - ▶ Concession Agreements include some form of social benefits for the citizens including employment, labor, housing, local content, health and education.

Investment Contracts Versus Concession Agreements

Understanding the Similarities and Differences

Investment Contracts

- ▶ Attract Foreign Direct Investment
- ▶ Small to medium projects in equipment, infrastructure
- ▶ May be Public Private Partnerships, i.e a government sponsored agro-processing, or agro industrial facility
- ▶ Limited in investment size – up to \$25 million

Concession Agreements

- ▶ Attract Foreign Investment
- ▶ Larger plantations of agricultural produce including oil palm, cocoa, coffee, etc.
- ▶ Projects are holistic and all inclusive of value additions
- ▶ Generally will include government concessions including but not limited to fiscal and facilities
- ▶ Usually prescribed by law
- ▶ Generally ratified by the Legislature or House of Parliament

Sustainable Development through Investment Contracts and Concession Agreements

Regional and International Protocols, Conventions, etc.

During the negotiations of investment contracts and concession agreements, there are several regional and international treaties and principles that affect the performance and sustainable of the projects.

▶ West Africa Treaties

▶ Ecowas and Mano River Protocols

- ▶ For the sustainable development of agriculture and food security in the region, free movement of goods and people. of the region
- ▶ Harmonization of standards, taxation
- ▶ Proposed harmonization of sustainable tenets within the various Agreements in agriculture, mining and other sectors.
- ▶ Regional Courts and courts of Appeals

▶ International “Principles”

- ▶ Oil Palm - Roundtable on Sustainable Palm Oil
- ▶ Fair Trade International (Coffee & Cocoa)
- ▶ Sustainable Agriculture Network- Rainforest Alliance
- ▶ Free Prior Informed Consent, Land Rights, and Sustainable Development
- ▶ CFS Principles on Responsible Investments in Agriculture and Food Systems
- ▶ LPI Guiding Principles for Large Scale Land development

Sustainable Development through Investment Contracts and Concession Agreements

Impact of regional and International Protocols, Conventions

▶ Intent versus Localization

- ▶ Intent is to ensure sustainable development to avoid child labor, to ensure fair play and equal treatment, and to ensure that farmers, producers in less developed countries get the best price and improved living standards
- ▶ Localization - it is crucial that all standards imposed meet the realities within the host country.
 - ▶ In the case of Liberia, we are encouraging farmers to go into oil palm production however, under RSPO rules farmers can't slash and burn but realistically, local farmers can't afford mechanized clearing.
 - ▶ Fair play prohibits "child labor" but the reality is that throughout Africa, children begin helping with the family farm from an early age. How do we regulate but educate and maintain a balance?
 - ▶ FPIC - in countries that have had migration as a result of civil crises, the issues of squatting, illegal communities etc
 - ▶ Arbitration and dispute resolution - should now be localized or regionalized at a minimum.
 - ▶ In all agreements communities are represented by the Government.

Investment & Concession Agreements

Pre 1960s - 2005

- ▶ Intended primarily for extraction industries and plantations.
- ▶ Land Tenure > 50 years.
- ▶ Development Areas.
- ▶ Importation of Materials.
- ▶ Use of surface areas including use of timber, water, etc.
- ▶ Employment - limited to local hire and the number of employees.
- ▶ Taxes.

Post 2005

- ▶ Land Tenure is limited - not more than 50 years.
- ▶ Development Cycle - one crop rotation and extendable maximum.
- ▶ Peace and Security.
- ▶ Sustainable Development.
- ▶ Watershed and Water Use Conservation practices.
- ▶ Value Addition & Agro processing
- ▶ Community involvement and sustainable development.

Agreements that promote Sustainable Agricultural Development

For the evaluation, review, negotiation and award of any investment Contract or Concession Agreement, Liberia has developed an institutional approach with sustainable goals, objectives, redlines that support sustainable growth and development through a prescribed (albeit slow at times) process that includes the key economic & development government agencies.

Agreements that promote Sustainable Agricultural Development

Building Blocks of the Agreements

▶ TERM OF AGREEMENT [WITH SPECIFIC BENCHMARKS]

- ▶ Term. The term of this Agreement shall commence on the Effective Date and shall continue for a period of [twenty five (25)] years (the “Term”). The Term may be extended pursuant to Section 3.2 or due to a Force Majeure event pursuant to Section 25, or terminated earlier in accordance with Section 26 of this Agreement.
- ▶ Benchmarks: On or before [_____], the Parties have identified the land of approximately [60,000] hectares from within the concession area specified in the Original Concession Agreement, which shall be the Concession Area hereunder. The Concession Area survey is attached as Schedule I to this Agreement. The Production Area shall be an area of Government Land within the Concession Area not to exceed 50,000 hectares that is, as much as possible, contiguous and shall exclude Private Land, towns and villages and lands or forest areas protected by Law. What is the criteria for a town to be denominated as “large town.”
- ▶ Investment. Investor shall make a minimum total investment, including land preparation cost, of [One Hundred Thirty Three Million US Dollars (US\$133,000,000)] over a period of ten (10) years beginning on the Effective Date in furtherance of the Investor Activities the details of which are stipulated in the Development Plan.
- ▶ Investor shall make investments in the Production Area and Investor Activities, shall expand the land under development for production of Rubber Products and Oil Palm Products, shall implement an Outgrowers Program, and shall carry out other Investor Activities, all in accordance with the Development Plan and the applicable provisions of this Agreement.
- ▶ The development plan (the “*Development Plan*”) covering the Term following the Effective Date has been agreed to by the parties and is attached to this Agreement as Appendix VI. On or before June 1st of each calendar year during the Term beginning with [2018], Investor shall submit a rolling five (5)-year development plan. At the end of each 5 years, Investor shall submit to the Government for review a report on the level of implementation of the Development Plan This agreement is for 25 years. No guarantees have been given for extension A report on the level of implementation of the development Plans must be reviewed by Government to ascertain if in fact the Company is operating consistent with the Plan

Agreements that promote Sustainable Agricultural Development

Development Criteria in the Agreements

- ▶ Health and Sanitation. Investor shall create modern public health conditions in accordance with generally accepted health and sanitation procedures and Law.
- ▶ Clean Water. Investor shall ensure that (i) all employee residential communities within the Production Area are being supplied on a regular basis with safe drinking water and (ii) common water sources shall be clean, safe, and accessible
- ▶ Employee Housing. Investor shall provide Adequate Housing Facilities (one unit per family with bathroom facilities with a toilet, sink and shower located in each house) for its employees and their resident Dependents
- ▶ MEDICAL CARE. Investor shall provide for its employees regular and emergency medical treatment, care and attention in accordance with Law and such other standards as may be agreed between the Parties.
- ▶ Education for Dependents. Investor agrees to provide in the Production Area, free of charge, elementary education up to the sixth grade within six (6) months, junior high school within one (2) years, and high school education facilities within two (3) years, of the Effective Date respectively.
- ▶ Employment. Investor'sIn no case shall Investor hire non-Liberian nationals for unskilled labor positions. Investor shall give preference for employment at all levels of financial, accounting, technical, administrative, supervisory and senior management positions and other skilled positions to qualified Liberian nationals.....soon as is practicable. Subject to availability of qualified applicants, Investor shall at all time from and after the Effective Date cause Liberian nationals to hold at least fifty percent (50%) of the ten most senior management positions. As of the Effective Date, and at least 75% of such positions within ten (10) years of the Effective Date. As of the Effective Date, the ten (10) most senior positions are the [President and Managing Director, the General Manager, the Comptroller, the Operations Manager, the Plant Manager, the Technical Services Manager, the Agricultural Operations Manager, the Research and New Development Manager, the Personnel/Human Resource Manager and the Chief Accountant].

Agreements that promote Sustainable Agricultural Development Economic Benefits and Environmental Protection

- ▶ **USE OF LIBERIAN PRODUCTS AND SERVICES** ---Investor shall, when purchasing goods and services related to Investor Activities, give preference to goods produced in Liberia by Liberian nationals, and services provided by Liberian nationals resident in Liberia....
- ▶ Value Addition. Within eighteen (18) months of the Effective Date, Investor shall construct and operate a rubber processing facility capable of processing at least two (2) tons per hour into international commercial grade products. In the event that Investor develops oil palm within the Concession Area, Investor shall build and maintain an oil palm processing facility....
- ▶ Sales of XXX Products to Liberian Manufacturers. If any manufacturing facility using XXXX as a basic raw material shall be established within Liberia, Investor, ...shall sell to such manufacturers for use in their facilities situated in Liberia...up to 5% of its production for use in the local market.
- ▶ **ENVIRONMENTAL, WATERSHED & SOCIAL PROTECTION**
- ▶ Investor's obligations with respect to the environment shall be as prescribed by Law, including the EPML, the EIA Procedure Guidelines, and the Principles of the Roundtable on Sustainable Palm Oil (RSPO).
- ▶ Investor shall prepare and deliver to Government for approval by the EPA an Environmental and Social Impact Assessment Study Report and an Environmental Management Plan including water use, water shed and mangrove protection, rivershed and river pollution if any, protection of indigenous flora and fauna fully complying with Law and International Standards...

Agreements that promote Sustainable Agricultural Development Community Programs for Community Sustainability

▶ COMMUNITY RESOURCES

- ▶ **Community Programs.** It is the objective of the Parties that Production shall be carried out in a manner that is consistent with the continuing economic and social viability, both during the Term and thereafter,
 - ▶ **Support for Qualified Liberian Farmers.** Investor shall provide farm advisory support and, subject to availability, farm supplies to Qualified Liberian Farmers at charges no greater than Investor's own cost for such items to which shall be added any Taxes and Duties imposed by Law on such items..
 - ▶ **Outgrowers Program.** Investor shall establish a program, the details of and schedule for which shall be included in the Development Plan under which Investor shall develop at least five thousand (5,000) hectares of rubber trees and at least two thousand (2,000) hectares of oil palm trees for use by Outgrowers..
 - ▶ Investor shall annually contribute US\$5.00 per hectare within the Developed Area development fund established for development purposes (the "Community Development Fund"), . Expenses incurred by Investor for existing road maintenance to fulfill its obligations under this Agreement, including expenses related to the provision of housing, education, medical care and other social services, shall not be deducted from the Community Development Fund
 - ▶ **Oil Palm Development Fund.** During the Term, Investor shall contribute at least one percent (1%)]of its annual gross sales of Oil Palm Products, or such greater amount as may be required by Law, to the Oil Palm Development Fund, which shall be established and constituted by Government within twelve (12) months as of the Effective date of this agreement.
 - ▶ **Rubber Development Fund.** During the Term, Investor shall contribute at least one percent (1%) of its annual gross sales of Rubber Products, or such greater amount as may be required by Law, to the Rubber Development Fund which shall be established and constituted.

Agreements that promote Sustainable Agricultural Development

Community Programs for Community Sustainability

- ▶ As a result of our fragile state especially in light of the prolonged civil crises, a Secretariat is being set up within the National Bureau of Concessions that provides the following:
 - ▶ The Liberia National Police providing training for the Plant Protection Departments of each concession area;
 - ▶ Establishment of an Early warning and quick response framework within all the concession areas;
 - ▶ Attract and relocate under the RAP those who have migrated into the concession areas for relocation
 - ▶

Agreements that promote Sustainable Agricultural Development

Challenges and opportunities in attracting investment in post conflict countries

Challenges

- ▶ Migration - resulting in illegal habitation, illegal land occupation and squatting. Removal is usually problematic.
- ▶ Interference by international and Civil Society Organizations with erroneous information and claims.
- ▶ Monitoring and evaluation of Agreements with non-specific targets and expectations.

Opportunities

- ▶ Growth and development for communities can be monitored and measured.
- ▶ Small holders, children and women can benefit from employment, better facilities, adult literacy and other education programs.
- ▶ Environment and cultural heritage sites can be preserved.
- ▶ Economic growth and development occurs based holistically.

Foreign Investment Opportunities for Agriculture

With clearly defined goals, West Africa can succeed in attracting key players in all sectors of agriculture.

Thanks for your participation.