

## INTERNATIONAL FINANCE CORPORATION

### TERMS OF REFERENCE

#### Liberia Private Sector Development Program Liberian Land Lawyer and Legal Analysis

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#### A. BACKGROUND AND PURPOSE OF THE ASSIGNMENT

The International Finance Corporation (IFC), a member of the World Bank Group (WBG), is the largest global development institution focused on the private sector in developing countries. IFC is committed to financing private-sector businesses in emerging markets, mobilizing capital in the international financial markets, helping clients improve social and environmental sustainability, and providing advisory services to businesses and governments.

IFC Management recently approved and launched the Liberia Private Sector Development Program (IFC #603803), a technical assistance (TA)-advisory services project administered by IFC and the WBG Macroeconomics, Trade & Investment (MTI) Global Practice (GP). One key objective of the Project is to address policy and sector level binding constraints to Liberia's private sector by providing TA to the Government of Liberia (GoL) to promote investment-climate (IC) reforms, including assisting the GoL to implement its new national special economic zone (SEZ) regime in accordance with the 2017 SEZ Act<sup>1</sup>.

#### B. LEGAL CONTEXT OF THE ASSIGNMENT

The interplay of the 2017 SEZ Act and the 2018 Land Rights Act raises several legal issues that must be resolved by virtue of this Assignment, including: (i) whether any of the provisions of the 2018 Land Rights Act can adversely affect any existing or future agriculture concessions in Liberia; (ii) whether the language appearing in the last clause of the 2018 Land Rights Act constitutes a veritable conflict-of-law provision under Liberian law; (iii) whether the 2017 SEZ Act or the 2018 Land Rights Act takes priority in the event of a conflict between those two laws; and (iv) whether the innovative SEZ naturalization mechanism proposed below is in accordance with the Liberian Constitution. Accordingly, the purpose of this Assignment is to draft and to submit to IFC a Legal Memorandum that addresses and resolves these legal issues.

#### C. SCOPE OF WORK: LEGAL ISSUES TO BE RESEARCHED AND ANALYZED

Working under the direct supervision and the guidance of Senior Private Sector Specialists, **Vaani Baker** and **Craig R. Giesze**, the **Consultant / Firm** will research and resolve the following legal questions and present his or her findings and conclusions in a Legal Memorandum that is written in English:

1. Whether any of the statutory provisions of the 2018 Land Rights Act can adversely affect any existing or any future agriculture concessions already concluded or to be concluded in the future by the GoL and private parties?

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<sup>1</sup> The official name of the new SEZ law is The Act to Repeal Chapter 5 of the Public Authorities Law Creating the Liberia Industrial Free Zone Authority and To Enact in Lieu Thereof a New Chapter 5 to be Known as the Special Economic Zones Act of 2017.

2. Whether the statutory language appearing in the last clause of the 2018 Land Rights Act – that is, “ANY LAW TO THE CONTRARY NOTWITHSTANDING”<sup>2</sup> – constitutes a veritable conflict-of-law or pre-emption provision under Liberian law?
3. If the answer to the previous question is in the affirmative, whether any of the rules of statutory construction or any other maxim of statutory interpretation is the applicable rule of statutory construction in Liberia in the event of a conflict of laws between the 2017 SEZ Act and the 2018 Land Rights Act?
4. If the answer to the second question above is in the affirmative, whether the 2017 SEZ Act or the 2018 Land Rights Act takes priority in the event of a conflict between the two laws in accordance with the governing maxim of statutory interpretation?
5. Whether the innovative SEZ naturalization procedure proposed above is in accordance with the Liberian Constitution?

The Legal Memorandum shall be organized in the following manner: (i) Executive Summary; (ii) Background Information Relevant to the Legal Issues; (iii) Legal Questions Presented; (iv) Legal Discussion and Analysis that Summarize the Legal Research; and (v) Principal Findings and Conclusions.

#### **D. CONSULTANT DELIVERABLES/SPECIFIC OUTPUTS**

- Preparation of a Legal Memorandum written in English as described in the Scope of Work; and
- Submission of the Legal Memorandum to IFC within thirty (30) calendar days after the signature and execution date of the Short-Term Consultancy Contract entered into by the Consultant and IFC.

All written work produced under this Assignment shall be the property of the WBG. The **Consultant** shall maintain the confidentiality of all materials, unless otherwise specified.

#### **E. CONSULTANT REQUIREMENTS**

- Advanced degree in business law that is at least equivalent to a Master’s level;
- 10 to 15 years’ experience in addressing complex legal issues, with a special focus on West Africa;
- Excellent working knowledge of the relevant Liberian investment-climate policy, political, economic, legal, and social issues;
- Excellent working knowledge of the Liberian Constitution, national land laws, agriculture concessions, and conflict-of-law or pre-emption provisions;
- Strong professional work ethic and track record as a team player;
- Strong cultural sensitivity, as well as interpersonal and diplomatic skills;
- Fluency in English; and
- Dynamic, responsive, and a self-starter.

#### **F. TIMING, REPORTING, AND FUNDING FOR THE ASSIGNMENT**

The **Consultant** will report to Senior Private Sector Specialists, **Vaani Baker** or **Craig R. Giese**, for day-to-day supervision of this Assignment. To this end, the **Consultant** is expected to identify concerns or problems early on and to bring them to the attention of the designated Senior Private Sector Specialist, exercising his or her best judgment to flag issues that require urgent attention. The **Consultant** is generally expected to be proactive in proposing pragmatic solutions to address issues or concerns.

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<sup>2</sup> See Liberia Land Rights Act 2018, centered paragraph appearing following Section 72.

For the work described above, the **Consultant** will receive a short-term contract (which the parties may modify and/or extend if the need arises) as an **IFC/WBG Consultant**. The Assignment is expected to **begin on June 1, 2019** (or once the contract is signed and executed by the **Consultant** and **IFC**) and will **terminate thirty (30) calendar days later on June 30, 2019**. The estimated number of work days needed to complete this Assignment is **twenty (20) days**. Additional work days may be added at a later stage, provided that the **Consultant** is required to provide additional TA that arises out of these Terms of Reference.

The **Consultant** shall be reimbursed for work-related expenses and incidentals, such as telephone calls and other expenses related to the Assignment, provided that he or she receives the prior approval of the competent supervisor.

## **G. GUIDELINES FOR APPLICATION**

To apply for this position, interested candidates are invited to submit a cover letter, CV, and budget to [faby7319@yahoo.com](mailto:faby7319@yahoo.com) no later than Monday, 27<sup>th</sup> May 2019 at 5:00pm local time.