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BOARD OF DIRECTORS

Meeting Minutes 006

May 10, 2018

I. CALL TO ORDER

This sixth meeting of the MCA-Liberia Board of Directors, the notice of which was delivered on May 3, 2018, was called to order at 2:25 p.m. on May 10, 2018 at the MCA-Liberia Office in Mamba Point, Monrovia, Liberia by The Board Chairman, Hon. Samuel D. Tweah.

The following persons were present:

<u>Board Members</u>

1. Hon. Samuel D. Tweah, Minister of Finance and Development Planning (Chairman)
2. Hon. Archibald Bernard, L.E.C. Board of Directors Chairman
3. Hon. Gesler E. Murray, Minister of Mines and Energy
4. Mr. Charles Ananaba, President of the Chamber of Commerce
5. Mr. Monie R. Captan, MCA Liberia Chief Executive Officer (Board Secretary)
6. Atty. Michael Korkpor, President Delivery Unit Coordinator (Proxy for the Head of PDU)
7. Atty. Kou Dorliae, Deputy Minister of Justice for Economic Affairs (Proxy for the Minister of Justice)
8. Mrs. Kateri Clement, MCC Resident Country Director (MCC Observer)

<u>Other Attendees</u>

9. Ambassador Christine Elder, US Ambassador to Liberia
10. Ms. Stephanie S. Duncan, Secretary General Liberia Chamber of Commerce
11. Cllr. James A. A. Pierre II, MCA Liberia General Counsel (Asst. Board Secretary)
12. Mr. Stanley D. Barh, Roads Project Technical Focal Person (on behalf of the Minister of Public Works)
13. Mrs. Hilary Mara, MCC Program Officer

II. ADOPTION OF AGENDA

The Agenda was distributed to the attendees. Hon. Gesler E. Murray moved that the Agenda as circulated should be adopted. Atty. Michael Korkpor seconded the motion. The Board Members present then unanimously approved the circulated agenda.

III. WELCOME STATEMENT

Following the adoption of the Agenda, the Chairman welcomed everyone to the first MCA-Liberia Board Meeting of President George Weah's administration. He thanked Ambassador Elder for being present and also expressed thanks to the United States Government for entering into the US$256 million Compact with the Government of Liberia that is aimed at reducing poverty by increasing economic growth. He mentioned that the Compact's objectives are consistent with the Government's pro-poor agenda, which is why it is important that the Compact should be effectively implemented. The Chairman stated that he was one of the members of the team that worked on the development of the Compact, so he is aware that one of the key factors in determining whether Liberia gets a second Compact is how well Liberia performs with the current Compact. That is why he declared that the Government is committed to resolving any challenges that could hinder the implementation of the Compact.

Ambassador Elder began her comments by thanking the Board for allowing her to participate in the first MCA-Liberia Board meeting of the new administration. She noted that an important aspect of Compact implementation is strong oversight by the MCA-Liberia Board so she hopes the Board will exercise its duty to oversee the MCA-Liberia management team. The Ambassador agreed with the Chairman that the Compact aligns with the Government's pro-poor agenda. She informed the Directors that the United States Congress recently amended the Millennium Challenge Corporation statute to allow for regional compacts. The Ambassador stated that prior to the amendment, the MCC could only enter into compacts with individual countries but, with the amendment, it is now conceivable that Liberia could apply to form a part of a regional West African compact. However, she emphasized that Liberia's ability to be awarded a second compact or participate in a regional compact would be heavily influenced by how successfully the current Compact is implemented.

IV. INTRODUCTION OF BOARD MEMBERS

Since this meeting was the first for the Board's newly appointed statutory members, each Board Member, along with the other meeting attendees, introduced themselves. It was at this point that Cllr. James A. A. Pierre, II, the MCA-Liberia General Counsel, stated that the Association of Female Lawyers of Liberia (AFELL) would be replacing their representative to the Board because their previous representative, Atty. Nadia Kamara, is currently residing out of the country. The new AFELL representative is Cllr. Frances Johnson Allison.

V. COMPACT OVERVIEW

a. Structure of the Compact

In his presentation, the MCA-Liberia General Counsel described the structure of the Compact and provided the Directors key information related to the following essential Compact documents:

i. The Compact
ii. Program Implementation Agreement
iii. Coordination Agreement
iv. Implementing Entity Agreement
v. Procurement Agent Agreement
vi. Fiscal Agent Agreement
vii. Bank Agreement

b. Roles and Responsibilities of the Board

The General Counsel further provided the Directors with details about the important duties that the Board is required to fulfill, which includes, but not limited to:

i. Performing non-delegable tasks such as approving procurement plans, implementing agreements and other material agreements (or any modification, termination, or suspension thereof).
ii. The selection and dismissal of any of MCA-Liberia's key staff. However, this Board approval authority is subject to concurrent MCC's approval.
iii. Working closely with the relevant Government ministries, agencies and entities and other stakeholders to identify Compact-related challenges and solutions in order to resolve impediments to the implementation of the Compact.
iv. Complying with the MCA-Liberia Conflict of Interest and Confidentiality Policies to act in a manner that is in the best interest of the Compact and MCA-Liberia.

The Board was informed that MCC's Office of General Counsel would attend a future Board meeting in order to provide the Directors a more in-depth explanation on the above-subject matter.

The General Counsel then described the process in which MCA-Liberia accesses Compact funds. The Directors were informed that, once MCA-Liberia has a procurement plan that has been approved by MCC and the Board, MCA-Liberia, each quarter, submits a disbursement request package to MCC that asks for MCA-Liberia's authority to spend MCC funds on specific items for the ensuing quarter. MCC and the Board must approve this quarterly disbursement request. However, consistent with the MCA-Liberia bylaws, the Board has delegated this authority to the Board's Executive Committee and, in a very specific situation, to the MCA-Liberia CEO.

c. Compact Implementation Status

The CEO of MCA-Liberia presented the Board with an implementation status update that highlighted the following:

a. Financials. The CEO noted that, with two years and seven months remaining in the five-year Compact period, 73% of the total Compact funds have been committed and 58% have been disbursed. He clarified that a commitment is when a contract or purchase order is signed because the signing of a contract or purchase order commits the total amount to be paid under a contract and a disbursement is when an amount due under a contract is actually paid.

b. Administration. MCA-Liberia's Management Information System (MIS) has been installed; the staff was successfully trained on how to use SAP and the subsequent migration has been successful. In addition, PriceWaterhouseCoopers has concluded the first audit of MCA-Liberia and the draft audit report was submitted to the MCC's Office of Inspector General for its review and approval.

c. Energy Project.

   i. Rehabilitation of Mt. Coffee Hydro Power Plant. The CEO explained that the rehabilitation of the hydro was originally supposed to be financed by the Liberian Government, the Government of Norway, the German Development Bank (KfW) and the European Investment Bank (EIB). In the original financing arrangement, the Government made a pledge to its donor partners that it would be responsible for 20% of the estimated costs plus 100% of the overages for the rehabilitation of the hydro with three turbines; the construction of a 66 kilovolt substation; three 66 kilovolt transmission lines between Mt. Coffee and Monrovia; and the expansion of the two receiving substations in Monrovia and Paynesville. However, during the development of the Compact, which occurred after the commencement of the hydro rehabilitation, the Government asked MCC to assume its financial commitments that it had made to the Mt. Coffee Project in view of the impact of the EBOLA epidemic on the country's economic recovery. MCC agreed to do so but MCC also pledged to pay for additional items that included, amongst other things, the cost required to provide a fourth turbine with total installed generation capacity of up to 88 MW and the cost of a second 66 kV transmission line from the hydro plant to the Paynesville substation. In the Compact, these activities are described as the Mt. Coffee Rehabilitation Activity.

   The CEO clarified that, under the Compact, MCA-Liberia is not responsible for the implementation of the Mt. Coffee Rehabilitation Activity since it commenced prior to MCA-Liberia becoming operationalized. Notwithstanding the Government of Liberia designating LEC as the government entity responsible for the rehabilitation of the Mt. Coffee, the CEO informed the Directors that MCA-Liberia still has an obligation to make sure that all of the Compact's activities are successfully implemented. For this reason, it is important to keep the Board apprised of all the Compact's activities.

He told the Directors that all four turbines have been satisfactorily tested and capable of providing power to the grid. Supply of electricity from Mt. Coffee Power Plant has led to significant savings in operating costs associated with fuel purchase. LEC tariffs have been reduced from 54 cents to 35 cents per KwH. The on-going activities at the hydro include construction of an access bridge, emergency spillway, and the second transmission line to Paynesville Sub-station.

The CEO did bring to the Board's attention two critical issues involving the rehabilitation of the hydro.

- Operation Maintenance and Training (OMT) contract: The CEO explained that a Swiss company (HOI) was procured to operate and maintain the hydro as well as train Liberian staff to take over the operation and maintenance of the hydro at the conclusion of the five-year OMT contract. In the first year of the contract, HOI was paid by donors with LEC being responsible to pay HOI during the contract's final four years. LEC's responsibility to pay commenced in January 2018 but the contractor has yet to be paid. The CEO mentioned that this is primarily because, throughout the calendar year of 2017, the previous LEC management was supposed to periodically make deposits into an escrow account that was designed to finance LEC's payment obligations to HOI. However, the deposits were not made and the account was not funded. In the meanwhile, HOI has notified LEC that it was in breach of the OMT contract and it would therefore soon begin the demobilization process with the aim of ceasing its operation and maintenance of the hydro. This issue was brought to the attention of the Minister of Finance and Development Planning, who then held a meeting to resolve the matter. The Minister, who is also MCA-Liberia Board Chairman, confirmed that a meeting did take place and he stated that HOI's outstanding invoices would soon be settled.

- Mt. Coffee Waste Disposal: The CEO revealed that during the rehabilitation of the hydro, there was an ample amount of hazardous waste that was accrued. In 2017, EPA approved of the designs of a waste disposal structure that needed to be built to dispose of the hazardous waste. A contractor had begun the work but EPA then surprisingly issued a halt order that has been in place for a couple of weeks. The contractor has demobilized and this impasse is very concerning to the donors.

ii. <u>LEC Management Services Contract (MSC)</u>: The CEO informed the Directors that, on November 8, 2017, LEC entered into a MSC with ESB International (ESBI), which is a subsidiary of the Irish public power utility company and its management authority over LEC commenced on January 8, 2018. The duration of the MSC contract is three years certain, which will be funded under the Compact. There is also an optional two-year period that may be exercised solely by LEC but MCC Funding will not finance this optional period. He also stated that LEC Board of Directors are responsible to supervise and oversee ESBI to ensure that ESBI complies with its contractual obligations.

The Minister of Mines and Energy, Hon Gessler Murray, asked the CEO to speak about the issue of the amount of foreign contractors versus the amount of Liberian staff at LEC under the MSC. The CEO responded that, under the contract, ESBI has seven key staff at LEC (CEO [team lead], CFO, Head – Commercial, Head – Transmission and Distribution, Head – Generation, Head – Planning and projects and Head – Procurement and Contracts) and six non-key staff (Manager – Grid Protection, Manager – Energy Metering, Manager – IT, Manager – HR, Manager – Environment and Social, Manager – Health and Safety). Moreover, the CEO declared that since ESBI took over the management of LEC, ESBI has not dismissed any LEC employee from his or her job.

iii. <u>Liberia Electricity Regulatory Commission (LERC)</u>: The CEO explained that the former President nominated three acting commissioners who were directed to serve in an acting capacity until confirmed by the Senate. It is now up to the new administration to appoint permanent commissioners, which appointments could include some of the acting commissioners. In January of 2018, MCA-Liberia entered into an Implementing Entity Agreement (IEA) with LERC that enables MCA-Liberia to fund the standing up of the regulator. The IEA includes a budget that expires in June of 2018, as opposed to lasting through the end of the Compact, because MCA-Liberia wants the commissioners appointed by the new administration to assist with the development of the long-term budget. The CEO informed the Directors that the acting commissioners have been working along with technical experts that the European Union have provided.

iv. <u>Roads Project</u>: The CEO reported to the Directors that the Government and MCC agreed to modify the Compact's Roads Project to increase MCC's contribution to Matching Road Maintenance Fund from US$7m to US$15m through the deletion of the Regional Road Maintenance Centers and expand the criteria for roads that qualify for periodic maintenance. The modification also included an amendment of the conditions precedents that the Government has to satisfy before MCA-Liberia can fund the Roads Project. However, the implementation of the Roads Project has been delayed due to a lack of adequate progress on CPs. This delay is a major risk to project implementation because there are only 31 months remaining in the Compact (half of which falls in the rainy season) and that limited time introduces doubt as to whether the works can be completed before the expiration of the Compact. The CEO stated that another risk is the availability of the Government's matching funds. On this point, Chairman Tweah asserted that the legal matter that affected the Road Fund Act should be resolved soon.

VI. NEW BUSINESS

The General Counsel explained, in keeping with the MCA-Liberia bylaws, the Board's approval is necessary for all of the Compact's 'Material Agreements', which, as he stated earlier in his Compact Overview presentation, includes IEAs and the Coordination Agreement. This is why it the Board is being asked to approve the LEC IEA and the amendment to the Coordination Agreement. He told the Board that the objective of the LEC IEA is to formally establish an operational agreement between LEC and MCA-Liberia while Compact funds are being made available to support LEC. The IEA details the available budget, how funds will be expensed, resources to be provided by each entity, deliverables to be achieved, etc. The signing of the IEA is necessary in order for the following specific activities to be funded:

- Construction of LEC Training Center, provide training equipment and training materials, develop curriculum and academic program, and training of directors, instructors and support staff;
- The purchase of certain LEC connections goods, materials and spare parts;
- The construction of a prototype LEC Customer Service Innovation Center and rehabilitation of the existing customer service center at Waterside;

Regarding the Coordination Agreement, the General Counsel stated that the Liberia Compact is the only MCC compact that has two entities (LEC and MCA-Liberia) that are responsible for the implementation of Compact activities, such entities are known as Accountable Entities. As the Compact's two Accountable Entities, it was necessary for MCA-Liberia and LEC to enter into the Coordination Agreement to establish a working relationship. Accordingly, the Coordination Agreement lists the Compact Activities for which each Accountable Entity is responsible.

In the Coordination Agreement (and the Compact), LEC, through the Program Implementation Unit (PIU), is responsible for the rehabilitation of the LWSC raw water pipeline from the Mt. Coffee hydro power house to the hydro's site boundary. MCA-Liberia, on the other hand, is responsible for the rehabilitation of the raw water pipeline from the MCHPP site boundary to the LWSC White Plains Water Treatment Plant. However, MCC and the Government of

Liberia are modifying the Compact to consolidate the two aspects of the pipeline rehabilitation under one Accountable Entity (MCA-Liberia) and since the Coordination Agreement has to be consistent with the Compact, the Compact's modification necessitates an amendment of the Coordination Agreement.

The Chairman of the Board stated that there will not be a vote to approve these documents now because, although they were submitted to the Directors prior to the meeting, the Directors need more time to review before they can make an informed decision whether to approve or not. The General Counsel responded that the MCA-Liberia bylaws allow decisions to be made without a formal meeting so he notified the Directors that a formal request for the Board to provide its approval without a formal meeting would shortly be submitted.

The CEO asked the Board to approve an amendment to the procurement plan to enable MCA-Liberia to commence the procurement of several important items including much needed equipment and goods for LEC. The CEO described each of the proposed additions to the procurement plan. After which, the Board Chairman asked for a motion to be made to approve the procurement plan amendment. Atty. Michael Korkpor moved that the Board approve the amendment; Hon. Gesler E. Murray seconded the motion. The Board Members present then unanimously approved the amendment.

VII. AOB

None

VIII. SUMMARY OF DECISIONS TAKEN

The Board approved the proposed amendments to the MCA-Liberia procurement plan.

IX. ADJOURNMENT

The Board Chairman adjourned the meeting at 3:58 p.m.

Minutes submitted by: ______________________

Monie Captan, Secretary

Minutes approved by: ______________________

Hon. Samuel D. Tweah, Chairman