



REPUBLIC OF LIBERIA MILLENNIUM CHALLENGE ACCOUNT

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BOARD OF DIRECTORS

Meeting Minutes 005

December 14, 2017

I. CALL TO ORDER

This fifth meeting of the MCA Liberia Board of Directors was called to order at 11:33 a.m. on December 14, 2017 at the MCA Liberia Office in Mamba Point, Monrovia, Liberia by The Acting Chairman, Hon. W. Gyude Moore, who was acting in the place of the Chairman of the Board, Hon. Boima S. Kamara.

The following persons were present:

Board Members

1. Hon. W. Gyude Moore, Minister of Public Works (Acting Chairman)
2. Mr. Monie R. Captan, MCA Liberia Chief Executive Officer (Board Secretary)
3. Dr. Clarence K. Moniba, Head of the Presidential Delivery Unit/L.E.C. Board of Directors Chairman
4. Hon. Alvin E. Attah, Deputy Minister of Finance and Development Planning (Proxy for the Minister of Finance and Development Planning)

Other Participants

5. Mrs. Kateri Clement, MCC Resident Country Director (MCC Observer)
6. Cllr. James A. A. Pierre II, MCA Liberia General Counsel (Asst Board Secretary)
7. Cllr. Harriette G. Badio, Deputy Minister of Justice for Economic Affairs
(on behalf of the Minister of Justice)

II. ADOPTION OF AGENDA

The Agenda was distributed to the attendees. Hon. Alvin Attah moved that the Agenda as circulated should be adopted. Dr. Clarence Moniba seconded the motion. The Board Members present then unanimously approved the circulated agenda.

III. WELCOME STATEMENT

Following the adoption of the Agenda, the Acting Chairman welcomed everyone for taking the time out of their busy schedules to attend the meeting. He then noted that, due to the absence of the non-statutory Board Members, quorum had not been established for the meeting. Therefore, without quorum, the Board Members will only discuss the items on the agenda because they lacked authority to make any decisions.

IV. REVIEW AND ADOPTION OF PREVIOUS MEETING'S MINUTES

The minutes of the previous meeting, which occurred on August 29, 2017, was distributed to the attendees. Dr. Clarence Moniba moved that the minutes as circulated should be adopted. Mr. Monie Captan seconded the motion. The Board Members present then unanimously approved the circulated minutes.

V. UPDATE ON MCA-LIBERIA'S ACTIVITIES

Mr. Monie Captan, as the CEO of MCA-Liberia, made a PowerPoint Presentation that apprised the Board Members of the progress MCA-Liberia has made since the last meeting of the Board. His presentation highlighted the following:

- a. Financials: The CEO noted that, as of November 30, 2017, 72% of the total Compact funds have been committed and 52% have been disbursed. He clarified that a commitment is when a contract is signed that commits the contract amount to be paid and a disbursement is when an amount due under a contract is actually paid. Although he disclosed that it is very impressive for a MCA to have committed 72% of their funds in Year 2 of a Compact, most of those funds pertain to the rehabilitation of the Mount Coffee Hydro and MCA-Liberia is not the entity responsible for that Compact activity.

Dr. Moniba took note of the US\$5 million that was disbursed to VOLPE and he asked what was the basis of that payment. The CEO responded that VOLPE is within the US Department of Transportation and MCC requested for the \$5 million go to VOLPE to pay for data collection and capacity building.

- b. LEC Management Services Contract (MSC): The CEO mentioned that, on October 20, 2017, the Compact and Program Implementation Agreement between MCC and the Government of Liberia were amended to make LEC the Accountable Entity for procuring, executing and overseeing the MSC. Therefore, in keeping with the amendment to the Compact, on November 8, 2017, LEC entered into a MSC with ESB International (ESBI), which is a subsidiary of the Irish public power utility company. During the first week of December, ESBI mobilized its CEO, CFO, and Generation Manager to Liberia and its management authority over LEC commences 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 this optional period will not be financed by MCC Funding. Mr. Captan further noted that, having learned the lessons from what transpired when Manitoba Hydro International (MHI) managed LEC, there are certain minimum key performance indicators that ESBI must achieve, failing to do so, ESBI would be required to pay liquidated damages. Additionally, ESBI's compliance with its obligations in the MSC will be monitored by Azorom, a company with whom MCA-Liberia has entered in to a Contract Monitoring Consultancy (CMC) agreement.

- c. **Coordination Agreement:** Although the Board previously approved the Coordination Agreement between MCA-Liberia and LEC, which establishes an operational partnership for the Compact's two Accountable Entities, the CEO reminded the Board that the signing of the Coordination Agreement is important because, while LEC is the Accountable Entity to oversee ESBI, MCA-Liberia also plays a role in relation to the MSC and those coordinating details are contained in the Coordination Agreement, as the members of the Board should be aware of since they reviewed and approved the Agreement.

Before proceeding to discuss the modification of the Roads Project, the CEO mentioned the potential risk that the LEC Operation, Maintenance and Training (OMT) contract issue poses. The CEO explained that the contractor currently operating and maintaining the Mt. Coffee Hydro under the OMT contract has been paid by donors but that donor funding ends as of December 2017. Commencing in January of 2018, LEC takes over the payment responsibilities and, in anticipation of that, LEC was supposed to be deposit a certain amount of money in an escrow account, which it has yet to occur.

The CEO also mentioned the additional risk of the US\$2 million debt owed by LEC to Ivory Coast for the cross-border electricity that has been provided to Grand Gedeh and Maryland.

- d. **Roads Project Modification:** The CEO informed the Board members present that, on October 17, 2017, the Compact and the Program Implementation Agreement were amended to modify the Roads Project. The modification to the Roads Project included the cancellation of the Road Maintenance Centers (RMC) and the reallocation of the RMC funds (US\$7 million) to the Matching Road Maintenance Fund, which increases the budget for road maintenance to US\$15 million.

Mrs. Kateri Clement, the MCC Observer, raised the issue of the legal challenge to the application of the Road Fund Act that is currently at the Supreme Court and the potential risk it could pose to the Compact's Roads Project. Hon. Gyude Moore stated that the matter should soon be favorably resolved because the legal concern raised by

the complainant, which is the legality of the fees imposed under the Road Fund Act, can be remedied by both the House of Representatives and the Senate submitting a communication to the Road Fund's Inter-Ministerial Steering Committee that ratifies the fee imposed under the Road Fund Act. Hon. Attah mentioned that a couple of Senators expressed to him that the Senate's letter should be forthcoming shortly and he also expects that the letter from the House will be provided as well.

Hon. Attah then mentioned that the risk to the Roads Project that he has identified is not hiring the Road Fund Manager soon because any further deferral of the hiring could cause a prolonged delay in the administration of the Road Fund. Nonetheless, he stated that the Ministry of Finance will write a letter to Central Bank of Liberia asking the Bank to remove the revenue allocated for the Road Fund from the Government of Liberia's consolidated account so it can be placed in a separate Road Fund account. The CEO suggested to Hon. Attah that, in the handover notes to the next administration's Minister of Finance and Minister of Public Works, these risks should be highlighted so the incoming Minister can prioritize them.

Hon. Moore asked, given the risks cited in this meeting, whether there is a chance that the money earmarked in the Compact for the Roads Project could be reallocated towards other Compact activities. Mrs. Clement responded that given these risks plus other implementation challenges that have arisen, such as the delay in the completion of the road maintenance plan as well as the realities of the procurement process, the issue of reallocation of the Road Project's Compact funds is one that will have to be seriously considered.

- e. Quarter 9 Disbursement Request Package: The CEO informed the Board that the Executive Committee, on December 8, 2017, approved the Ninth Quarter Disbursement Request, which amounted to US\$3,673,466.18 (Three Million Six Hundred Seventy-Three Thousand Four Hundred Sixty-Six United States Dollars and Eighteen Cents). The key projected disbursements are the MSC Mobilization Payment, LERC Budget Support and the LEC Training Center Design Consultancy.

VI. OUTSTANDING BUSINESS

Civil Society Representation: The General Counsel informed the attendees that Atty. Nadia S. Kamara, the Vice-President of the Association of Female Lawyers of Liberia (AFELL), will be the Board's civil society representative. The General Counsel explained that the Chairman of the MCA-Liberia Board previously wrote to AFELL asking the organization to represent civil society on the Board and, in a transparent and competitive manner, select an individual to appear at the meetings on the organization's behalf. The President of AFELL, Atty. Vivian Neal, responded that AFELL will gladly represent the civil society on the Board. She then submitted documentation to MCA-Liberia that showed the process it undertook to select Atty. Kamara to appear on behalf of

AFELL. The documentation was forwarded to MCC's OGC and OGC stated that the supporting documents were sufficient to show that Atty. Kamara was duly selected.

The General Counsel stated that he will provide Atty. Kamara the key Compact documents to get her better acquainted with the Compact. Also, the Chairman of the Board will write a letter to Atty. Kamara welcoming her to the Board.

VII. NEW BUSINESS

Hon. Moore asserted that although the agenda indicates a decision would be made during this meeting to approve the listed documents, which had been circulated to the Board prior to the meeting, as had already been declared, no decisions could be made due to a lack of quorum. Furthermore, four of the listed documents, namely the Procurement Plan, Human Resources Manual, revised Form of Staff Member Agreement and the Amendment to the Key Staff Agreements have been submitted to MCC for its approval, which is required before any decision can be made by the Board. Therefore, the planned presentations should still take place but there will be no decisions taken thereafter. The CEO then said, due to the difficulty in scheduling another Board meeting during the holiday season, when the no objections are received from MCC, rather than calling another meeting to approve the documents, in accordance with the MCA-Liberia bylaws, the approval of the Board will be sought without a formal meeting.

- a. Procurement Plan: The CEO explained that MCA-Liberia is required to develop a six-month plan that covers all of the procurements that is anticipated to take place over that period. The procurement plan under which MCA-Liberia is currently operating expires at the end of December so the new plan for January to June of 2018 has been drafted and, once MCC approves, it will be shared with the Board.
- b. Human Resources Manual: Rosa Dillon, the Human Resources Manager, explained that, on October 5, 2017, the Compact was amended that directed MCA-Liberia to conform the HR Manual it was in the process of composing with a template human resources manual MCC had developed within 120 days of the date of the amendment. The two documents have been merged and the MCA-Liberia HR Manual will usher in policies that, amongst others, apply to:
 1. Staff Member Assessment
 2. Workplace Safety, Health, and Environment
 3. Sexual Harassment, Abuse of Power and Retaliation
 4. Disciplinary Standards
 5. Grievance Policy and Procedures
 6. Increased Holiday and Leave

- c. **Staff Member Agreements:** The General Counsel mentioned that the Compact requires the Board of Directors to approve the form agreements of the key staff members and any amendments to those agreements. He further explained that the contents of the new HR Manual necessitate revising the form agreement for future staff members and amending the agreements of the current staff in order for both to be in harmony. For example, he pointed out that under current staff agreement, staff members are allowed twenty work days of vacation leave each calendar year (with no unused vacation leave rolling over to the next calendar year), five work days of sick leave and five work days of bereavement leave. However, in the HR Manual and the revised staff agreement, staff members will receive twenty-two work days of Paid Time Off (PTO) leave, which includes both vacation leave and bereavement leave (and unused PTO leave accrued over a calendar year rolls over to the next calendar year but they will be forfeited if not used before the end of February of the new year) and twenty work days of sick leave. Additionally, staff members are now eligible to receive ninety work days of maternity leave, seven work days of paternity leave and seven work days of adoption leave, none of which are included in the current staff agreement.
- d. **Proposed Board Resolution:** The General Counsel stated that the Board's Executive Committee, which comprises of the MCA-Liberia CEO, the Head of the PDU and the Private Sector Representative, was given the authority to only approve certain items, including the quarterly disbursement request package. It is on this basis that the Executive Committee has approved each quarter's disbursement request package. He added that MCC OGC agrees that the Board may also authorize the MCA-Liberia CEO to approve the documents that may otherwise be approved by the Executive Committee. Accordingly, the General Counsel proposed that the Board should vote to allow the MCA-Liberia CEO to approve disbursement request packages. He contended that, with the upcoming change in administration, it is possible that the statutory members of the Board who are needed to approve a disbursement request may not be appointed and confirmed by the Senate prior to the deadline for MCA-Liberia to submit to MCC for no objection. Therefore, it would be prudent for the Board to also delegate that approval authority to the MCA-Liberia CEO.

Dr. Moniba asked since this could potentially lead to an abuse of power, what conditions would be put in place to ensure that the MCA-Liberia CEO does not render the Executive Committee of no use. The General Counsel replied that, as drafted, the resolution only applies in the limited instance where there is a MCC submission deadline that is less than three business days away and the Board has been unable to meet. He added that, without those two conditions, the MCA-Liberia CEO will not have the legal authority to approve.

The General Counsel informed the Board that the Liberia Electricity Regulatory Commission Implementing Entity Agreement, which will allow MCA-Liberia to fund the standing up of the Commission, will be submitted to MCC for no objection within the next day or so, afterwards it

will require approval of the Board. So, the Board should also soon expect a request to approve the LERC IEA.

Regarding the Liberia Electricity Corporation IEA, he provided an update that, after ESBI commences its management of LEC in January, the IEA will be shared with them for their input, following which, MCC no objection and MCA-Liberia's Board approval will be sought.

VIII. AOB:

Hon. Attah congratulated the CEO for putting together an impressive team at MCA-Liberia who is doing a good job of implementing the Compact, thereby representing Liberia very well.


IX. SUMMARY OF DECISIONS TAKEN

None

X. ADJOURNMENT

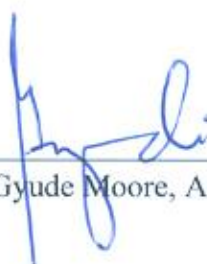
The Acting Chairman adjourned the meeting at 1:07 p.m.

Minutes submitted by:



Monie Captan, Secretary

Minutes approved by:



Hon. W. Gyude Moore, Acting Chairman