



# TOWARDS A NEW AGRIBUSINESS INVESTMENT APPROVAL PROCESS FOR **SIERRA LEONE**



*Ministry of Agriculture and Forestry*



With the support of  
FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS (FAO)



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## INTRODUCTION

The *Voluntary Guidelines on Responsible Governance of Tenure of Land, Fisheries and Forest Resources* (VGGT), endorsed by the World Food Committee in May 2012, have received great attention and support by governments, civil society organizations and other stakeholders. Sierra Leone is one of the international leaders in embracing and adopting the VGGT.

To support the implementation of the VGGT at country level, FAO has implemented blended learning courses in several countries since 2015. One such course is based on the FAO Technical Guide entitled “Safeguarding Land Tenure Rights in the Context of Agricultural Investment.” That guide—and the course—aims to support the application of the VGGT by providing technical guidance on how to safeguard tenure rights in the context of agricultural land-related investment.

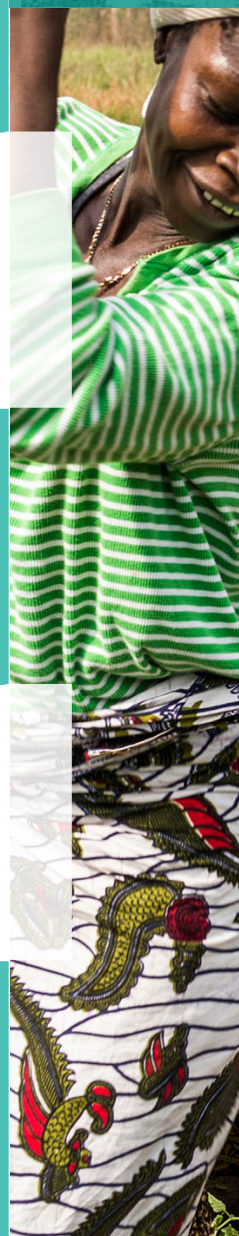
The course was provided to government officials from Sierra Leone and Liberia in 2016. The target audience was government authorities involved in investment promotion, approval, and monitoring activities. This encompassed a wide range of individuals such as those working in the government institutions responsible for agriculture, land, environment, investment promotion and other subjects. The primary focus was on helping those officials to fulfill their role of targeting investments in a way that furthers national development goals (e.g. safeguarding tenure and contributing to food security and nutrition).

One of the take-aways from the training program was that many of the Sierra Leonean participants saw the need to improve the country’s Agribusiness Investment Approval Process (AIAP) to bring it more into line with the VGGT. This recommendation was made to FAO which agreed to support a process for improving the AIAP.

Accordingly, a working group was established to review and modify the agribusiness investment approval processes currently in use in Sierra Leone. The group consisted of representatives of the government of Sierra Leone and FAO. The team developed an updated version of the agribusiness investment approval process to make it more consistent with the VGGT.



Representatives of government institutions, civil society, NGOs and the private sector attended a validation workshop in Freetown on October 18-19, 2017. One and One-half days of discussions provided suggested revisions to the draft AIAP. Based on this input, the working group prepared a revised AIAP, which is described below.

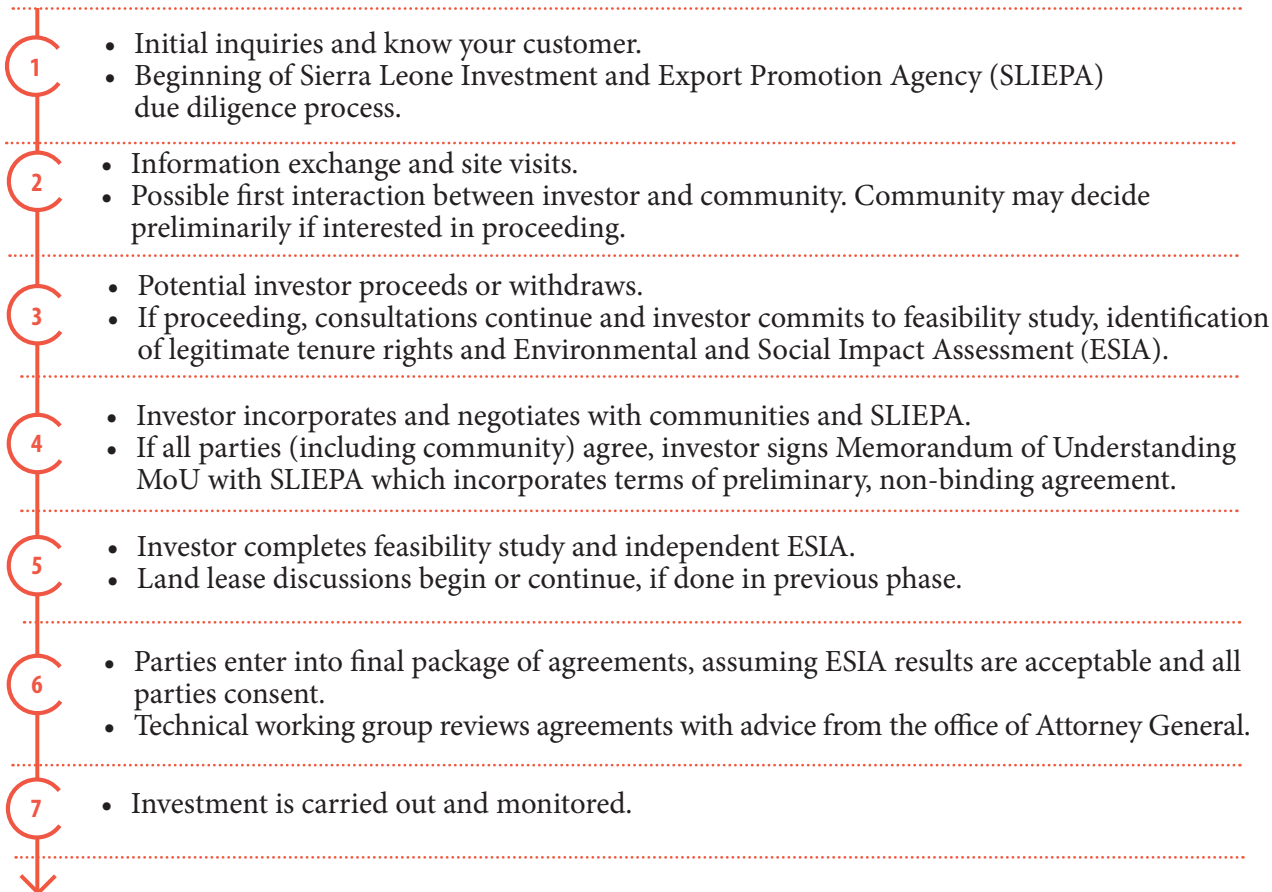




# ACRONYMS

AG	Attorney General
AGMoJ	Office of the Attorney General and Minister of Justice
CAC	Corporate Affairs Commission
CAPPA	Commercial Agricultural Producers and Processors Association
CSO	Civil Society Organisations
EPA-SL	Environmental Protection Agency of Sierra Leone
ESIA	Environmental and Social Impact Assessment
GoSL	Government of Sierra Leone
LCA	Local Content Agency
LOD	Law Officers' Department
MAF	Ministry of Agriculture and Forestry
MDA	Ministry Departments and Agencies
MLHE	Ministry of Lands, Housing and the Environment
MoF	Ministry of Finance
MoU	Memorandum of Understanding
MTI	Ministry of Trade and Industry
NGOs	Non-Governmental Organisation
SC/TWG	Steering Committee/Technical Working Group
SLeCAD	Sierra Leone Chamber of Agribusiness Development
SLIEPA	Sierra Leone Investment and Export Promotion Agency

## AIAP STAGES AT A GLANCE



## MAJOR CHANGES TO AIAP

- STAGE 1** SLIEPA to be the primary entry point for all agricultural investments in the country versus multiple government entry points.
- STAGE 2** During initial site visit, investor is expected to inform community of possible investment, begin consultations and obtain preliminary response from community whether it could support the project. Previously, no such expectation.
- STAGE 3** If community has not expressed opposition in stage 2, investor increases engagement with community, engages in process to identify legitimate tenure rights and commits to preparing a feasibility study, business plan, ESIA and community engagement plan. Previously, this stage did not involve such additional work at the community level.
- STAGE 4** While this stage still leads to an MoU between the investor and SLIEPA, in the revised stage 4, the MoU must reflect commitments to the affected community, based on their input. SLIEPA also does additional due diligence on the investor and project.
- STAGE 5** The major change in this stage is that the ESIA must include potential impacts on tenure rights, human rights, food security and community livelihoods in addition to the environment. Previously, the ESIA has focused primarily on environmental impacts. In addition, the affected community must be involved in and support the results of the ESIA.
- STAGE 6** The final investment agreement in stage 6 now should include a number of different contracts, including a land lease, outgrower contracts, community impact and benefit agreement, community engagement plan and monitoring plan in addition to the investment contract with the government. The relevant members of the local community should be fully informed about and ultimately must agree to the package of agreements.
- STAGE 7** The main change here is the requirement that performance of the agreements be monitored based on a monitoring plan entered into in stage 6. The community must be involved in that plan.



# THE NEW AIAP

## PROCESS STAGES

## WHO IS INVOLVED

### Stage 1: Initial Inquiries & Know Your Customer (Due Diligence) Assessments

- A. SLIEPA should be the primary entry point for all agricultural investments in the country. SLIEPA will coordinate with other Ministry Departments and Agencies (MDAs) in working with proposed investors.
- B. SLIEPA approached by potential investor (or in some cases SLIEPA may reach out to a potential investor)
- C. SLIEPA conducts Know Your Customer (KYC) checks
  1. SLIEPA issues a questionnaire that is designed to learn more about the proposed investment and the potential investor.
  2. The questions are categorized by SLIEPA in order to score the potential investor's and/or the project's reputation, strategic alignment with SLIEPA/GoSL objectives and policies, transparency, readiness and sophistication.
  3. This questionnaire will be revised soon to incorporate content from a new Due Diligence (DD) tool. Portions of this DD tool will be used in Stage 1 to conduct DD on the investor. (Additional DD using this tool will be done later in the process after the ESIA, feasibility study and business plan are completed.)
  4. SLIEPA prioritises its work based on the outcome of this assessment, fast tracking the high-rated potential investors and devoting less time to those who receive lower ratings. Categories for potential investors and projects include: wish list, inquiries, site visits, projects and aftercare.

SLIEPA

Potential investor

Relevant MDAs

SLeCAD

### Stage 2: Information Exchange & Site Visits

- A. SLIEPA continues to provide information to the investor. It also begins to coordinate the investor's interaction with other government agencies and help the investor locate service providers, suppliers and potential joint venture partners in Sierra Leone.
  1. Based on the nature of the inquiry and the potential investor's score on the KYC checks, SLIEPA furnishes the potential investor with the information, documentation and resources it needs to further its proposal.
  2. SLIEPA coordinates with relevant Government entities, such as the Corporate Affairs Commission (CAC), Office of the Administrator and Registrar General (OARG), Environmental Protection Agency (EPA-SL), Local Content Agency (LCA), Ministry of Finance (MoF), Ministry of Trade and Industry (MTI) and Ministry of Agriculture and Forestry (MAF) to provide contacts for and information on permitting, licensure and specific projects.
    - i. SLIEPA coordinates with the potential investor to arrange for a visit to Sierra Leone (if that has yet to occur) and to view possible sites for the potential project.
    - ii. SLIEPA introduces the potential investor to various, relevant Government entities.

SLIEPA

MTI

MAF

CAC

MLHE

MoF

OARG

EPA-SL

LCA

Other service providers (banks, tax firms, law firms, etc)



## PROCESS STAGES

3. SLIEPA introduces the potential investor to technical advisers, such as firms for taxation and accounting advice, agribusiness and agri-processing experts, who can assist with a feasibility study and transport, logistics, environmental experts (through the EPA-SL) and other experts who can assist with the business plan.
  3. SLIEPA introduces the potential investor to suppliers in Sierra Leone. (SLIEPA obtains this information from the current investors who recommend suppliers but SLIEPA does not conduct due diligence on the suppliers.)
- B. SLIEPA arranges country and site visits
1. SLIEPA shows potential sites for a project to the investor. Potential sites are identified through desk research and community visits. SLIEPA identifies areas that are suitable for raising particular crops, have access to infrastructure and water and where communities are receptive to investment projects. Sites are also identified when current investors express an interest in joint ventures and when the Government promotes the lease of a particular parcel of Government land.
    - i. Note that possible project sites are often identified by investors without input from SLIEPA or other government agencies.
  2. This may be the first opportunity for a meeting between investor and community. In this initial meeting, the investor should:
    - i. Ensure that all relevant/key stakeholders at the community level are present (i.e., section/ward representatives, women, youth, traditional and religious leaders, NGOs and CSOs, etc.). The number of meetings and consultations may vary by locality.
    - ii. Present at least a preliminary investment proposal, including discussion of the potential benefits and risks to the community and what the investor may expect from the community
    - iii. At this point and throughout the process communities can have the support of NGOs, CSOs and others to assist in consultations with the investor or government.
  3. At this time, or sometime relatively soon thereafter, the community should be asked to respond generally and preliminarily whether it is possible that they might welcome the investment.
    - i. Community will hold consultations among themselves to better understand the proposal and prepare themselves for future engagements.
    - ii. The community can say no at this stage (or later in the process).
    - iii. An agreement to proceed means only that the community agrees that the process can continue. It does not mean that the community has agreed to the project.
  4. Specific parcels of possibly suitable land could be preliminarily identified in this stage but that will vary from case to case.

## WHO IS INVOLVED

Investor reps

Member of Parliament

And other agency as requested or required depending on the discussions with the potential investor

SLeCAD

Chiefdoms council

Land owners and users and other members of community

CSOs and NGOs



## PROCESS STAGES

## WHO IS INVOLVED

### Stage 3: Potential Investor proceeds or withdraws

- A. In this stage, the investor reacts to the community's initial reaction to the potential project and the investor's own assessment of the viability of project and potential site. The Investor could decide to withdraw here and thus the process would stop. Or the investor could consider a different location, in which case the process reverts to stage 2 for the first site visit.
- B. If, despite the community's preliminary agreement, the investor decides to withdraw, the process ends. Reasons for this may include unfavourable market trends, a shift in corporate priorities or a reluctance to invest in the Sierra Leone market.
- C. If the potential investor demonstrates serious interest in proceeding and the community is supportive:
  - i. There should be more visits to the community to engage further, build relationships with the community and get them fully involved.
  - ii. In most cases this would be the time to carry out participatory land mapping to identify legitimate land tenure right holders, including women and vulnerable groups.
  - iii. The investor and the community should also begin to discuss a community engagement plan to guide the ongoing consultations.
- D. Investor should also commit to preparing a feasibility study, business plan, ESIA and community engagement plan and begin making arrangements for doing so.
  - i. MAFFS extension services are provided to investor
  - ii. MLCPE provides support to identify land tenure right holders, preferably in relation to the participatory mapping exercise.

SLIEPA  
Investor  
MAF  
MLHE  
EPA-SL  
SLeCAD  
Consultants contracted by the investor to do the ESIA, feasibility study, etc.  
Local or Chiefdom council  
Member of Parliament  
CSOs and NGOs  
Local land owners and users

### Stage 4: Potential investor incorporates in Sierra Leone and negotiates and enters into a Memorandum of Understanding ("MoU") with SLIEPA and representatives of the affected communities.

- A. The potential investor incorporates with the CAC.
- B. SLIEPA does more in depth due diligence on the investor, utilizing the newly-adopted DD tool (i.e., additional information on financial capability, operational activities in other jurisdictions, any litigation, disputes/conflicts - and how they were resolved, etc.).
  - i. Additional due diligence done by SLIEPA should be shared with other stakeholders including MAF, MTI, local council, etc.
- C. The potential investor coordinates with SLIEPA to conduct additional site visits.
- D. Consultations with the community continue and a community engagement plan may be agreed to at this point.
- E. If the proposed project requires it, discussions on a land lease for a designated parcel of land may begin, depending on the state of consultations with the community.

SLIEPA  
MAFFS  
MTI  
MoF  
MLGRD  
AGMoJ  
CAC  
MLHE  
Local or Chiefdom councils



## PROCESS STAGES

- F. If all parties continue to be generally supportive of the proposed project, discussions begin about an MoU. (Note that the process for drafting the MoU is currently in transition. A new model MoU will be prepared.) The MoU should reflect the understandings of the investor, SLIEPA and the community regarding:
- The characteristics of the project
  - How much land is required and for how long
  - Benefits that may accrue to the community
  - Commitments to ongoing consultation, preparation of an ESIA, etc.
  - An expected timeline for continuing the project
- G. If the various parties continue to agree that the project is potentially feasible and agreeable, the MoU is drafted and signed.
- H. The MoU is not legally binding on any party and will not require approval of any government institution or agency other than SLIEPA.

### **Stage 5: Investor completes and shares a Feasibility Study, Business Plan and an independent Environmental and Social Impact Assessment (ESIA).**

- A. Feasibility study and business plan.
- The potential investor should complete the feasibility study and business plan (which could be incorporated into one document), with the support of the Government, if requested. The study is conducted typically after registration of the company and identification of a plot of land for the project.
  - Upon completion, these documents should be submitted to SLIEPA for use in its due diligence analysis. SLIEPA may request assistance from other government institutions in reviewing these documents, along with other documents provided in stage 5.
  - The feasibility study and non-proprietary portions of the business plan should be shared with other relevant stakeholders, especially members of the local community.
- B. Investor commissions independent ESIA.
- SLIEPA connects the potential investor with the EPA-SL which can recommend technical consultants to carry out the work.
  - Representatives of the local community should be involved in designing and conducting the ESIA and have the opportunity to review and provide input on the preliminary results. Their comments on the preliminary results should be reflected in the final document.
  - The ESIA should specifically assess the potential impact on land tenure rights, human rights, food security, livelihoods and the environment. It should also propose ways to avoid negative impacts on those factors.

## WHO IS INVOLVED

Member of Parliament  
Land owners  
Land users  
Investor  
CSOs and NGOs

SLIEPA  
Investor  
EPA-SL  
MAF  
MLHE  
LCA  
Local or Chiefdom council  
Consultants/  
Company  
contracted by the investor to do the ESIA, Feasibility study and/or other scoping activities  
Member of Parliament  
TWG  
Land owners  
Land users  
CSOs and NGOs



## PROCESS STAGES

- iv. The EPA is responsible for reviewing and determining whether the results of the ESIA are acceptable such that the project can proceed. (SLIEPA can provide support to EPA-SL in doing so.) If EPA-SL does not approve of the ESIA the project cannot proceed to stage 6
- v. Findings of the ESIA must be incorporated into the project design and business plan to avoid negative impacts on tenure rights, human rights, food security, livelihoods and the environment.
- C. If not already completed, a community engagement plan should be finished in this stage.
- D. If requested by the community, NGOs, CSOs and others can continue to support the community in this stage by helping the community to review and understand the various plans and reports produced, engage further with the investor and participate in the ESIA process.
- E. Land lease discussions can continue (if begun in previous phase) or begin. Leases should not be finalized and signed until Stage 6.
- F. During this stage the investor may wish to prepare to fulfill other requirements, such as the preparation of a Local Content Plan, and Environmental Management Plan and a Closure Plan.

### **Stage 6: The parties enter into final agreements, if such is the result of the previous stages.**

- A. The final agreement is likely to be contained in several individual agreements. While the precise requirements will vary from case to case, approved projects are likely to include some or all of the following:
  - i. Land lease agreement
  - ii. Outgrower contract(s)
  - iii. Community impact and benefit agreement
  - iv. Consultation plan (also known as a stakeholder engagement plan)
  - v. Monitoring plan
  - vi. Fiscal regimes agreement (providing investment incentives)
  - vii. Dispute resolution mechanisms should be contained in appropriate agreements
- B. The Technical Working Group reviews the package of agreements on behalf of the government, with legal advice from the Law Officers Department (LOD) in the Office of the Attorney General.
- C. The relevant members of the local community should be fully informed about and ultimately must agree to the package of agreements, even where they are not actual parties to a particular agreement.
- D. The investor will also provide other plans and documents required by law, including, but not limited to Local Content Plan, Environmental Management Plan, Closure Plan.

## WHO IS INVOLVED

SLIEPA  
MAF  
Local or  
Chiefdom  
Council  
EPA-SL  
LCA  
MTI  
MoF  
AGMoJ  
SLeCAD  
MLCPE  
LOD  
Investor  
representative  
Landholding  
families  
Other members  
of local  
community  
Member of  
Parliament



## PROCESS STAGES

## WHO IS INVOLVED

- E. Investors can be referred to Draft Guidelines on Sustainable Agricultural and Bioenergy Investment in SL for different templates and to the FAO publication “*Responsible Governance of Tenure: a Technical Guide for Investors* (pages 87-91) (<http://www.fao.org/3/a-i4998e.pdf>).

CSOs and NGOs  
Legal aid providers

### Stage 7: Investment is carried out and monitored.

- A. Although it actually occurs after the project is approved. It is included to stress the importance of monitoring the impact of the project and resolving disputes that may arise.
- B. Monitoring
- i. The purpose of monitoring is twofold:
    1. Determine whether all parties are complying with the various agreements.
    2. Assess the impact on legitimate land tenure right holders, human rights, food security, the environment, etc., as provided in the monitoring plan
  - ii. The community should be actively involved in the monitoring
  - iii. Results of monitoring should be shared with the investor and the community.
  - iv. Depending on the circumstances, MAF, MTI, SLIEPA and/or MoF may be responsible for monitoring.
- C. Dispute resolution
- i. The dispute resolution mechanism(s) agreed to in stage 6 should be used to resolve issues/complaints as and when they arise.
  - ii. Different types of mechanisms may be required for different types of disputes.
- D. SLIEPA’s Investor Aftercare programme
- i. SLIEPA has designed its Investor Aftercare programme to encourage the investor to stay in Sierra Leone.
  - ii. SLIEPA “facilitates reinvestment, expansions and diversification, anchoring foreign investment, providing the factor conditions to encourage existing investors to upgrade their activities and identifying ‘ambassadors’ and testimonials.” In doing this, SLIEPA visits sites and gains sectoral and commercial information, such as employment lists, snapshots of the performance on the business plan and challenges. SLIEPA does not check facts, review local content requirements, refer to the terms of contracts or evaluate Corporate social responsibility programmes.
  - iii. SLIEPA’s Investor Aftercare programme also supports it in identifying tracks of land suitable for investment in particular crops, communities with a readiness and resources for agribusiness and agri-processing projects, current investors who seek joint venture partners or financing and goods and services providers for the industry.

SLIEPA  
MAF  
AGMoJ  
SLeCAD  
Local or Chiefdom council  
Member of Parliament  
Investor rep  
Landholding families  
Other members of local community  
CSOs and NGOs  
Legal aid providers







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