PRIVATE ENTERPRISE PARTNERSHIP FOR AFRICA
(PEP AFRICA)

Legal, Tax, Regulatory and Market Review of the leasing sector in Liberia

by

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EXECUTIVE SUMMARY

IFC commissioned this survey in Liberia to access the business case for leasing in the country. The study focused on the market, legislative, accounting and tax environment for leasing. The market review used the following three approaches to determine the potential size of leasing.

- Equipment imports
- Net Loans
- GDP

Equipment Import Approach
Leasing experience from some developed and emerging market suggests that 20-30% of equipment imports is financed through leases, and for developing countries, 10-20% is financed through leasing. Ghana, Kazakstan and Russia however recorded less than 10%. Since Liberia is a developing country undergoing a post-conflict transformation, we used a leasing potential of 1.0% of equipment imports for Liberia and obtained a potential market size of leasing for the first five years to be $65.5 million.

Net Loan Approach
It is estimated that in developed economies, approximately 15-20% of the bank loans can be attributed to leasing while in developing economies, the ratio is between 5% and 8%. From our empirical studies in Liberia, we obtained a rate of 6.1% of equipment loans to total net loans. Since Liberia has no leasing market, we based our estimate for the potential for leasing on the 6.1% and obtained a potential market size for leasing in the first five years to be $ 87.8 million.

GDP Approach
A survey on leasing market in Ghana by IFC, June 2008 indicates that leasing accounts for 0.5 to 2% of GDP in developing countries. A USAID report on Armenia Leasing Market, 2006 also indicates that in developed and growing economies this ratio might be as high as 10%. The percentage of leasing to GDP in Ghana and Kazakhstan between 2004 and 2007 was however less than 1%. For a post-war country like Liberia, with a program for reconstruction, we consider a percentage of 1% of GDP to be prudent. Using 1% therefore, we obtained a potential market size for leasing to be $31.2 million in the first five years.
Summary of Approaches

The table below summarizes the results of the three approaches:

<table>
<thead>
<tr>
<th>Year</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
<th>Total for 5 years</th>
</tr>
</thead>
<tbody>
<tr>
<td>% of Imported Equipt</td>
<td>3.47</td>
<td>5.90</td>
<td>10.03</td>
<td>17.05</td>
<td>28.99</td>
<td>65.45</td>
</tr>
<tr>
<td>% of Net Loans</td>
<td>7.29</td>
<td>10.58</td>
<td>15.35</td>
<td>22.27</td>
<td>32.31</td>
<td>87.80</td>
</tr>
<tr>
<td>% of Real GDP</td>
<td>5.42</td>
<td>5.80</td>
<td>6.21</td>
<td>6.65</td>
<td>7.11</td>
<td>31.20</td>
</tr>
</tbody>
</table>

From the foregoing, we estimate that the potential size for leasing in Liberia will be between **US$31.2 million** and **US$87.8 million** over the next 5 years, beginning 2009. These figures represent the potential for leasing. The potential does not represent the full limit of the market. This potential will keep rising as the economy grows.

It is worthy to note that there will always be a variance between the potential and the actual market figures. The actual is a fraction of the potential. In Ghana, the actual represents less than 50% of the potential.

**Legislative and Regulatory Framework**

Leasing is permitted as one of the activities under the New Financial Institutions Act of 1999 in Liberia and is subject to prudential regulation of the Central Bank of Liberia as applicable to Deposit-taking Institutions and Non Deposit-Taking Institutions. This Act governs the institutional set up of leasing companies and empowers the Central Bank to regulate and supervise the establishment, operations, and closure of leasing companies.

Section 3 of the New Financial Institutions Act 1999 provides that both commercial banks and non-banking financial institutions may provide finance-leasing services. The Central Bank of Liberia permits a universal banking license whereby commercial banks are authorized to carry business generally reserved for non-bank financial institutions. However, non-banks will require a special license to carry out finance leasing activities.

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1. Section 8 of the New Financial Services Act
2. the New Financial Institutions Act 1999
3. Sections 2(1),(2),(3),(4),(9) of the New Financial Institution Act 1999
A major obstacle preventing banks from engaging in finance leasing is the absence of a legislation governing leasing. Legislation is required to protect and provide redress for all the parties involved in leasing, namely: investors, lessors, lessees and suppliers. Related to this is the absence of a clear definition of finance lease as distinct from other forms of asset-based financing; eligible assets; rights and responsibilities of parties to a lease; scope of leasing; the lease period; liens by third parties and restriction on operations.

It is recommended that:

a. for leasing to commence in Liberia legislation must be enacted which would ensure the successful enforcement of leasing contracts. Such enforcement must be swift thus preventing further financial loss to the aggrieved party. The penalty for default must be clearly spelt out in any such legislation.

b. the right of repossession of a leased asset for default without any court order. If the other party is aggrieved by any such repossession provision must be made for that person to institute action to recover damages for wrongful repossession.

c. An amendment to the New Financial Institutions Act 1999 to include a definition of finance leasing, definitions of a finance lease as distinct from other forms of asset-based financing; eligible assets; rights and responsibilities of parties to a lease; scope of leasing; the lease period; liens by third parties and restriction on operations

d. An amendment of the Civil Procedure code of Liberia to ease the burden of court procedures, to create a fast track commercial court and to ensure proper and swift enforcement of court judgments.

**Accounting and Tax Framework**

Leasing is defined by the International Financial Reporting Standards (IFRS) as an agreement whereby the lessor conveys to the lessee in return for a payment or series of payments the right to use an asset for an agreed period. A finance lease is defined as a lease that transfers

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4 All banks interviewed including the Central Bank
substantially all the risks and rewards incident to ownership of an asset. An operating lease is described as “a lease other than a finance lease”.

There is no Liberia Accounting Standards. However, the LICPA currently uses the Ghana National Accounting Standards (GNAS 11), which is consistent with IFRS and the US GAAP. In the event that lease finance is actively offered the LICPA would continue to adopt the Ghana Accounting Standards or IFRS.

It is recommended that:

a) The Tax laws need to be revised to address the taxation of leased assets. When this done prospective lessors and lessees would know the tax implications when they engage in such activity. We would urge the tax authorities to consider the following matters when a revision to the Revenue Tax Code is carried out:

b) Measures should be put in place to ensure and/or monitor that the lessors pass on the benefits of capital allowance on leased assets to the lessee by way of cheaper lease payments;

c) Specific tax concessions such as lower corporate taxes on leased assets for both the lessee and the lessor can be offered for a limited period say the first 5 years after leasing is introduced;

d) Provide a tax rebate to banks and/or financial institutions for lending money to leasing companies. This rate of rebate should not be less than the prevailing corporate tax rate if it is to be attractive;

e) To adopt the International Accounting Standards as stipulated in the IAS17

SUMMARY OF RECOMMENDATIONS

i. Market Potential: The market potential for leasing is between US$31million and US$ 88 million. We recommend that IFC in association with some banks in Liberia to jointly exploit the potential for leasing in Liberia.
ii. **Industry Segments and Equipment-Specific leases:** There is considerable absorptive capacity for growth in leasing in the areas of mining, timber and construction. Consequently, we recommend that leasing focuses on these industry sectors that are ready and able to pay off the leases through their operations.

iii. **Funding:** We recommend that long-term debt funds are made available for leasing transactions. The total funding potential over the first five years is estimated to range from US$31 million to US$88 million. We recommend that financiers start from the lower end of the potential and exploit the market upwards. Experience from Ghana indicates that the actual is about 50% of the potential market size.

iv. **Advisory Services:** We recommend IFC’s participation to offer advisory services to stimulate legislators and regulators to make favorable leasing laws, banks to embrace and promote leasing and the business community to consider leasing options. We further recommend capacity building for leasing in the areas of marketing, tax, accounting and legal.

v. **Legal Refinement:** We recommend laws setting out the definitions, the rights and the responsibilities of all parties to the lease must be promulgated and clarified.

vi. **Insurance:** We recommend that leasing companies factor in the cost of insurance in the lease rentals over the duration of the lease, and not leave lessees to do this themselves.
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List of Abbreviations

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<th>Description</th>
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<tr>
<td>CAR</td>
<td>Capital Adequacy Ratio</td>
</tr>
<tr>
<td>IFC</td>
<td>International Finance Corporation</td>
</tr>
<tr>
<td>GDP</td>
<td>Gross Domestic Products</td>
</tr>
<tr>
<td>GEMAP</td>
<td>Governance and Economic Management Assistance Program</td>
</tr>
<tr>
<td>GST</td>
<td>Goods and Service Tax</td>
</tr>
<tr>
<td>HCPI</td>
<td>Harmonized Consumer Price Index</td>
</tr>
<tr>
<td>IAS</td>
<td>International Accounting Standards</td>
</tr>
<tr>
<td>IT</td>
<td>Information Technology</td>
</tr>
<tr>
<td>MSU</td>
<td>Maintenance Service Unit</td>
</tr>
<tr>
<td>NPA</td>
<td>National Port Authority</td>
</tr>
<tr>
<td>NPL</td>
<td>Non-Performing Loans</td>
</tr>
<tr>
<td>Abbreviation</td>
<td>Full Form</td>
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<tr>
<td>--------------</td>
<td>-------------------------------</td>
</tr>
<tr>
<td>PRS</td>
<td>Poverty Reduction Strategy Paper</td>
</tr>
<tr>
<td>VAT</td>
<td>Value Added Tax</td>
</tr>
</tbody>
</table>
1.0 BACKGROUND TO STUDY

IFC’s mission is to promote sustainable private sector investment in developing countries to help reduce poverty and improve lives. IFC does this by collaborating with governments, donors and the private sector to stimulate growth and investment. IFC considers leasing as one of such tools to help stimulate growth in the private sector, especially, the SME segment. IFC has worked on legislative enhancements in 35 countries and invested in 96 leasing companies in 50 countries, totaling over US$1.0 billion. In January 2008, IFC formally launched the Africa Leasing Facility to introduce and promote leasing as an innovative and alternative financial mechanism for businesses in West and Central Africa. The main goal of this Facility is to increase the volume of lease transactions in the regions.

IFC commissioned this survey in Liberia to access the business case for leasing for the country. The study focused on the market, legislative, accounting and tax environment for leasing.

1.1 Methodology

Our team comprised 3 consultants in three expert areas namely: leasing, legal, accounting/tax. We used face-to-face interviews, questionnaires and published reports from several stakeholders to carry out this study. Our data sources include:

1. Responses to Questionnaires
2. Annual reports of some banks and the central banks
3. Published Statistical Information
4. Un-published Statistical Information
5. Face to face interviews

We met with officials from the Ministries and Revenue Agencies, the central bank of Liberia, major commercial banks, insurance companies, equipment suppliers, business associations, and micro finance institutions. These sources gave us both qualitative and quantitative data, which we used jointly to reach our conclusions. All projections in this report are based on post-war Liberia figures.

The Legislative, Tax and Accounting Review is aimed at assessing the total legislative framework for leasing with the aim of promoting the growth of leasing in Liberia. The
section is a review of the relevant laws, regulations, notices, reports, drafts, tax and accounting issues affecting leasing operations. The section concludes with recommendations aimed at the overall advancement of finance leasing operations in Liberia.

1.2 Approach for determining Market Potential

Based on evidence collected from a number of local sources, three scenarios for prospects for leasing growth were prepared, Equipment Imports, Net Loans and GDP as a basis for calculating the potential leasing market. We have used all three approaches to determine a potential range for leasing in Liberia.

1.3 Limitations

Our terms of reference required that we determine the actual and the potential for the leasing market. However, leasing does not exist in Liberia so we could not give its actual situation. We have therefore used the three approaches to determine the potential for leasing in Liberia, and compared it with statistics from other developing countries. We based our analyses on information made available to us from the field and have provided the sources of this information some of which we were unable to independently verify. Our study is therefore limited to the extent of the accuracy of this information.

This report has not factored in the global economic crises and its likely effect on Liberia. Depending on the response of the donor community, Liberia may attract more or less Foreign Direct Investment. Certain operational and environmental factors, including the effect of the global economic crunch will affect the optimization of this leasing potential. The actual market size for leasing will consequently move more towards the lower end or the higher end of the potential market size range, depending on these factors. The range of the potential leasing size in the first five years is therefore to serve as a guide and a gauge.

This report is dated May 2009, and accordingly, it is based on the laws of the Republic of Liberia and other relevant information available to THCLR Ghana Limited as of this date. The exchange rate used as of the tie of preparing this report is

$$1 \text{ US$} = 64.76 \text{ Liberian Dollars}$$
The Report is addressed to and given for the sole benefit of IFC. Its contents may not be disclosed to or relied upon by any other person, or quoted or referred to in any public document, or filed with anyone, without the prior written consent of IFC.

1.4 Acknowledgements

We thank all of the staff in Liberia; the financial institutions, the equipment suppliers, ministries and group associations we visited for the interviews and for their active participation and assistance in the development of the Survey. We are grateful to them for the cooperation given to us.
2.0 LIBERIA –MARKET REVIEW

2.1 Overview

Figure 1: Map of Liberia

The Republic of Liberia is on the west coast of Africa, boarded by Sierra Leone, Guinea, Cote D’Ivoire and the Atlantic Ocean. The country has an estimated population of 3.8 million and covers 111,369 square kilometers. Liberia has its roots as a colony founded by freed slaves from the United States. Liberia has witnessed two civil wars that displaced hundreds of thousands of people and devastated the country’s economy. The civil war lasted for 14 years from 1989 to 2003. The first part of the Civil War began in 1989 and ended in 1999, with a two-year period of democratic rule, when Charles Taylor was elected President in 1997. The second part of the Liberian Civil War began in 1999 and ended in 2003. Liberia went through a two-year transitional period to pave the way for a democratic, sovereign government in 2005. The political situation has remained stable since the 2005 elections.

2.2 Snapshot of the Economy

Liberia is undergoing post-conflict reconstruction with substantial assistance from international communities. Within the constraints of a collapsed infrastructure, degraded
institutional capacity and loss of experienced and skilled manpower, the economy is slowly bouncing back following the end of the civil conflicts.

The economy is based on the agricultural sector (subsistence agriculture, rubber and timber), mining (iron-ore, gold and diamonds) and services. Rubber is the most important cash crop and it accounts for 30% of the total exports, employs about 4000 workers and generates income for a significant number of small and medium landholders. Logging is the largest provider of foreign currency. Estimates of employment from logging are in the order of 6-7000 people.

Iron-ore mining production has resumed. Gold and diamond are also being mined in small quantities. The manufacturing sector has not been a significant contributor to GDP. Traditionally, the iron-ore and rubber processing activities have dominated the manufacturing sector. The construction sector is likely to develop fast once the rehabilitation and reconstruction process start to increase its share of GDP. The informal sector constitutes the largest segment of the service sector and is the main source of employment and income for more than 500,000 unemployed Liberians.

The Governance and Economic Management Assistance Program (GEMAP) was initiated in response to the years of conflict that saw a collapse of the country’s main productive sector. The adoption of the Poverty Reduction Strategy Paper (PRS) along with GEMAP has resulted in modest economic gains. The table below summarises Liberia’s economy from 2005 to 2007.
Table 1: Liberia’s Economy

<table>
<thead>
<tr>
<th>Liberia</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
</tr>
</thead>
<tbody>
<tr>
<td>Population, total (millions)</td>
<td>3.44</td>
<td>3.58</td>
<td>3.71</td>
</tr>
<tr>
<td>Population growth (annual %)</td>
<td>2.7</td>
<td>3.9</td>
<td>3.7</td>
</tr>
<tr>
<td>Surface area (sq. km) (thousands)</td>
<td>111.4</td>
<td>111.4</td>
<td>111.4</td>
</tr>
<tr>
<td>GNI, PPP (current international $) (billions)</td>
<td>0.85</td>
<td>0.87</td>
<td>1.02</td>
</tr>
<tr>
<td>GNI per capita, PPP (current international $)</td>
<td>250</td>
<td>240</td>
<td>280</td>
</tr>
<tr>
<td>GDP (current US$) (billions)</td>
<td>0.53</td>
<td>0.61</td>
<td>0.73</td>
</tr>
<tr>
<td>GDP growth (annual %)</td>
<td>5.3</td>
<td>7.8</td>
<td>9.4</td>
</tr>
<tr>
<td>Inflation, GDP deflator (annual %)</td>
<td>13.8</td>
<td>8.8</td>
<td>16.0</td>
</tr>
<tr>
<td>Agriculture, value added (% of GDP)</td>
<td>66</td>
<td>55</td>
<td>54</td>
</tr>
<tr>
<td>Industry, value added (% of GDP)</td>
<td>16</td>
<td>17</td>
<td>19</td>
</tr>
<tr>
<td>Services, etc., value added (% of GDP)</td>
<td>18</td>
<td>28</td>
<td>27</td>
</tr>
<tr>
<td>Exports of goods and services (% of GDP)</td>
<td>38</td>
<td>29</td>
<td>33</td>
</tr>
<tr>
<td>Imports of goods and services (% of GDP)</td>
<td>52</td>
<td>83</td>
<td>84</td>
</tr>
<tr>
<td>Foreign direct investment, net inflows (BoP, current US$) (millions)</td>
<td>76</td>
<td>108</td>
<td>132</td>
</tr>
<tr>
<td>Official development assistance and official aid (current US$) (millions)</td>
<td>233</td>
<td>268</td>
<td>696</td>
</tr>
</tbody>
</table>

Source: www.worldbank.org

Liberia’s inflation as measured by the Harmonized Consumer Price Index (HCPI) averaged 17.5% in 2008. It peaked 26.5% at end-August 2008 but declined to 9.4% at end December 2008. The average lending rate as at end-November, 2008 stood at 14.2% decreasing by 0.1% from the previous year. Liberia also formally entered the HIPC process, which allows the IMF and other creditors to forgive Liberia’s debt of over US$4.7 billion. Liberia’s real GDP was US$507 million in 2008. GDP per capita in 2008 was US$144.85. Total imports were US$797.8 million and exports US$238.8 million, giving a trade deficit of US$559 million in 2008. This compares to US$200.2 million for export and US$501.5 for import with a trade deficit of US$301.3 in 2007 (Source: Central Bank of Liberia – 2008 Annual Report).
2.3 Banking System

There are currently seven (8) commercial banks operating with full licenses in Liberia. They are;

1. International Bank (Liberia) Limited (IB)
2. Liberian Bank for Development and Investment (LBDI)
3. Ecobank Liberia Limited
4. First International Bank Liberia (FIBL)
5. Platinum Habib Bank (PHB) formerly Global Bank Liberia (GBL)
6. AccessBank Liberia
7. United Bank for Africa Liberia (UBAL)
8. Guaranty Trust Bank, Liberia

As of the end of the 4th quarter in 2008, there were 30 branches and 12 windows of commercial banks in 7 counties across the country. Expansion of the industry continues with the Central Bank of Liberia (CBL) granting provisional license to an international bank, Oceanic Bank Incorporated.

The Central Bank increased the minimum capital requirement for commercial banks from US$2.0 million to US$6.0 million by end-December 2008 and is expected to reach $10 million by 2010.

The industry’s Capital Adequacy Ratio (CAR), which indicates the ratio of the bank’s capital to its risk, decreased from 23% in 2007 to 21% as at end-November, 2008. This is however above the minimum requirement of 8.0%. Ratio of Interest Income to Total Income increased from 28% in 2007 to 32% in 2008, giving an indication of increases in credit facilities over the period. The sector’s liquidity ratio as at end-November 2008 was 53%. This is far in excess of the 15% required minimum and clearly confirms the risk averse nature of commercial banks operating in Liberia.
2. 3.1 Deposit Growth

Liberia’s banking system has witnessed steady growth in key areas of the banks’ balance sheet. The deposit base, gross loans and total assets of the banking industry showed significant increases. As at end-November, 2008, the banking sector gross assets totaled L$19,034.0 million (US$294 million) an increase of 35.4% over the level recorded at end-December, 2007. Bank deposits increased by 43.5% from L$9,298.0 million (US$144 million) in 2007 to L$13,341.8 million (US$206 million) as at end-November, 2008. The US dollar denominated deposits accounted for L$11,449 million (US$179.0 million) of total deposit at end-November, 2008 while the Liberian component accounted for L$1,892.0 million (US$ 27 million). Source: Central Bank of Liberia – 2008 Annual Report

2.3.2 Credit Culture

Net Loans increased from L$3,608.8 million (US$ 56 million) to L$5,316.6 million (US$ 82 million) reflecting an increase of 47% in the same period under consideration. Net loans to deposits increased by 2% to 40% from 2007 to end-November 2008. Average lending rate at end-November 2008 was 14.2% while the average saving rate was 2.12% for the same period. Banks find the credit culture very challenging. Banks are saddled with huge Non-Performing Loans (NPL). Non-performing loans as a ratio of total loans in the sector remained the same at 19% for 2007 and end-November 2008, having dropped from as high as 40% two years earlier. Central Bank of Liberia (CBL) serves as a credit reference bureau by checking the creditworthiness of prospective borrowers before loans are granted by banks. Even though this sometimes makes processing of loans slow, this definitive measure by the central bank is intended to take direct preventive measures against the poor credit culture.

A summary of financial soundness indicators between 2007 and November 2008 is summarized below;


Table 2: Financial Soundness Indicators (in percentage)

<table>
<thead>
<tr>
<th></th>
<th>2007</th>
<th>2008</th>
</tr>
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<tbody>
<tr>
<td>Net Capitalisation</td>
<td>13.0</td>
<td>13.0</td>
</tr>
<tr>
<td>Capital Adequacy Ratio</td>
<td>23.0</td>
<td>21.0</td>
</tr>
<tr>
<td>Classified Loans to Total Loans</td>
<td>23.0</td>
<td>24.0</td>
</tr>
<tr>
<td>Non-performing Loans to Total Loans</td>
<td>19.0</td>
<td>19.0</td>
</tr>
<tr>
<td>Provision to Classified Loans Net of Interest-In-Suspense</td>
<td>71.0</td>
<td>65.0</td>
</tr>
<tr>
<td>Return on Assets</td>
<td>0.2</td>
<td>-0.2</td>
</tr>
<tr>
<td>Return of Equity</td>
<td>1.0</td>
<td>-2.0</td>
</tr>
<tr>
<td>Net-Interest Income to Total Income</td>
<td>72.0</td>
<td>66.0</td>
</tr>
<tr>
<td>Liquid Assets to Net Assets</td>
<td>56.0</td>
<td>56.0</td>
</tr>
<tr>
<td>Net Loans to Deposits</td>
<td>38.0</td>
<td>40.0</td>
</tr>
<tr>
<td>Liquidity Ratio</td>
<td>49.9</td>
<td>53.0</td>
</tr>
</tbody>
</table>

Source: Central Bank of Liberia, Annual Report

The risk profile, credit history of clients and the level of non-performing loans in the banking sector have fed into interest rate numbers. Average lending rates as at end-November 2008 was 14.2% reducing slightly by 0.1 from 14.3% at end-December 2007. Table 2 below indicates the average interest rates on personal loans, mortgage, time deposit, savings and Certificates of Deposits (CDs)

Table 3: Interest Rates

<table>
<thead>
<tr>
<th>RATINGS</th>
<th>2006</th>
<th>2007</th>
<th>Nov-2008</th>
</tr>
</thead>
<tbody>
<tr>
<td>Average Lending Rate</td>
<td>15.20</td>
<td>14.30</td>
<td>14.20</td>
</tr>
<tr>
<td>Average Personal Loan Rate</td>
<td>13.00</td>
<td>14.90</td>
<td>14.42</td>
</tr>
<tr>
<td>Average Mortgage Rate</td>
<td>12.00</td>
<td>12.00</td>
<td>14.00</td>
</tr>
<tr>
<td>Average Time Deposit Rate</td>
<td>4.90</td>
<td>4.30</td>
<td>3.70</td>
</tr>
<tr>
<td>Average Savings Rate</td>
<td>3.00</td>
<td>2.10</td>
<td>2.12</td>
</tr>
<tr>
<td>Average Rate on CD</td>
<td>0.00</td>
<td>3.00</td>
<td>3.00</td>
</tr>
</tbody>
</table>

Source: Central Bank of Liberia, Annual Report
2.4 Potential for Leasing

Actual Market Size Vrs Potential Market Size

In Ghana, the percentage of actual market size is about 46.7% of the estimated potential. The total actual market size from 2003 to 2007 was US$ 242 million while the total estimated market potential was $518 million in the same period. The reasons for such variations may be attributed mainly to inadequate funding, single obligor limitations, and unutilised capacities in the financial sector.

All assumptions are based on post-war figures. The gains made in the on-going financial and economic sector reforms were taken into account. Over the past three years, even though banks still hold excess liquidity, net loans have increased by about 47%, capital imports by at least 70% and real GDP has increased by at least 7%.

2.4.1 Economic Activity: The Bedrock of Leasing for Liberia

The reconstruction of Liberia is what will drive the growth of leasing in Liberia. Mining, timber, and infrastructural construction will be the bedrock for leasing operations in Liberia. Specifically, the lifting of the UN ban on timber exports, Bong Mines, Buchanan Energy Renewables and Arcelor Mittal Steel, will be the major drivers for the demand for leasing in Liberia in the coming years. These sectors, mostly funded externally, will provide the absorptive capacity for leasing. They will cause an increase in the demand for earth-moving equipment as well as subcontracts. Mining experience from Ghana has shown that most mines prefer to lease rather than own equipment. The experience also shows that, mines would rather sub-contract an operation to private operators than carry out the operation themselves. Such contracts, fuel the demand for leases. Other non-core services like, bussing, vehicle rental and hospitality services are additional off-shoot activities likely to increase the leasing potential when these sectors grow. Please refer to the appendices for a table of potential typical equipment and their prices in the mining, timber and construction sector.
Three scenarios for prospects for leasing growth are presented below: They include the determination of the potential for leasing in Liberia using equipment imports, net loans and the GDP. These figures show the potential range for leasing in Liberia. The figures are based on a growth trends in the financial and economic sectors since political stability was achieved in 2005.

2.4.2 Leasing as a Percentage of Equipment Imports

In 2007, machinery and transport was 19% of total imports, third after food and livestock (live animals) which was 27%. Mineral, Fuel and Lubricants accounted for 20.1% of total imports. However, in 2008, equipment imports overtook imports for mineral. Fuel and lubricants ranked second with a percentage of 25.6% of all imports with Food and livestock still being the leading import item with a percentage of 26.4%. (See figure 2 below)

**Figure 2: Import Statistics for 2007 and 2008**

Source: Division of Foreign Trade/Ministry of Commerce and Industry

Imports of Machinery & Transportation rose significantly at end-November, 2008, from US$97.4 million in 2007 to US$204.2 million in 2008, increasing by 109.7%. The more-than-doubling of imports in this category is reflective of the on-going reconstruction and mining activities. The machinery category includes importation of equipment by major concession entities, such as Arcelor Mittal Steel, Buchanan Renewable Energy (BRE) and others. The proliferation of motorcycle and vehicles in the country during the year also gave
rise to the expansion in import bills to the category. (Source: Central Bank of Liberia Annual Report 2008). These figures were also confirmed by the Ministry of Trade and Commerce.

Leasing experience from some developed and emerging market suggests that 20-30% of capital goods import are financed with leases, while for developing countries 10-20% of capital goods import is financed through leasing. (Source: Leasing in Ghana, a survey of the leasing market, IFC, June 2008)

Ghana, Kazakstan (independence in 1991) and Russia have however recorded less than 10% leasing to equipment import between 2004 and 2006 (see figure 3 below).

Figure 3: Leasing to equipment import in Estonia, Russia, Kazakhstan and Ghana

<table>
<thead>
<tr>
<th></th>
<th>Estonia</th>
<th>Russia</th>
<th>Kazakhstan</th>
<th>Ghana</th>
</tr>
</thead>
<tbody>
<tr>
<td>2004</td>
<td>24.28%</td>
<td>6.02%</td>
<td>1.53%</td>
<td>3.20%</td>
</tr>
<tr>
<td>2005</td>
<td>27.90%</td>
<td>7.10%</td>
<td>1.52%</td>
<td>3.22%</td>
</tr>
<tr>
<td>2006</td>
<td>27.99%</td>
<td>7.22%</td>
<td>1.79%</td>
<td>4.45%</td>
</tr>
<tr>
<td>2007</td>
<td>27.99%</td>
<td>7.22%</td>
<td>1.79%</td>
<td>7.61%</td>
</tr>
</tbody>
</table>

We have assumed a leasing potential of 1% of equipment imports for Liberia. Table 4 below shows equipment imports for Liberia from 2005 to 2008 (Source: Ministry of Trade and Commerce) as well as its percentage growth year-on-year.
The average annual growth rate between 2005 and 2007 is approximately 85%. We project that imported equipment will grow by 70% annually. Projected equipment imports and estimated potential size of leasing is shown in Table 5 below.

### Table 5: Projected equipment import and estimated size of leasing in Liberia

<table>
<thead>
<tr>
<th>Year</th>
<th>2008</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
</tr>
</thead>
<tbody>
<tr>
<td>Projected equipment import (US$’ million)</td>
<td>204.2</td>
<td>347</td>
<td>590</td>
<td>1003</td>
<td>1706</td>
<td>2899</td>
</tr>
<tr>
<td>Percentage share for leasing</td>
<td>1%</td>
<td>1%</td>
<td>1%</td>
<td>1%</td>
<td>1%</td>
<td>1%</td>
</tr>
<tr>
<td>Estimated Value of Leasing (US$’million)</td>
<td>2.04</td>
<td>3.47</td>
<td>5.90</td>
<td>10.03</td>
<td>17.05</td>
<td>28.99</td>
</tr>
</tbody>
</table>

Potential annual size of leasing, using this method is thus, expected to grow from US$3.47 million in year 1 increasing to **US$ 28.99 million in year 5**. This gives a total of **US$ 65.45 million** for the first five years.

#### 2.4.3 Leasing as a Percentage of Net Loans

The figure below shows the composition of loans by sector. Overall, there was an increase in credit to all sectors of the economy during 2008 with over 70% of total loans going towards trade, hotel and others services. The “Others” category (Figure 4) consists of lending to individuals and services-related entities.
We have based our projection for leasing on its closest substitute, equipment loans since leasing is not offered in Liberia. We present the data for equipment loans given by three out of the seven banks operating in Liberia. The combined loan portfolio of these three banks constitutes about 80% of the total loans in the industry. This is a good representation of the industry’s profile.

Out of US$ 13.2million worth of loans granted by International Bank (Liberia) in 2008, US$ 2.3 million went into equipment financing representing 17.4% of credit facilities offered by the bank. Ecobank Liberia Ltd offered US$2.4 million worth of credit facilities in 2008, of which US$589,881 went into equipment financing. This represents 24% of credit facilities offered by the bank. Liberian Bank for Development and Investment (LBDI), the largest bank in Liberia, offered US$ 62.0 million worth of credit facilities in 2008, of which US$ 3.0 million went into equipment financing, representing 5% of loans offered by the bank.

Table 6: value of equipment loans
Total equipment financing between the three banks is US$5.89 million, representing 6.1% of all loans granted in 2008. Even though some banks confirmed that a proportion of their working capital loans are normally diverted to finance equipment acquisition, they could not confirm the actual proportion due to inadequate record-keeping. In developed countries, it is estimated that approximately 15-20% of the bank loans can be attributed to leasing while for other developing economies 5-8% of total lending goes into leasing (Source: Leasing in Ghana, a survey of the leasing market, IFC, June 2008). We have based our assumption for Liberia on a constant rate 6.1% of net loans.

The table below shows the growth in net loans in Liberia from 2005 to 2008. The average growth rate of 45.1% was obtained over the four years.

Table 7: Net Loans and Growth Trend for Liberia (2005-2008)

<table>
<thead>
<tr>
<th>Year</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net Loans (US$’million)</td>
<td>27.25</td>
<td>35.21</td>
<td>55.91</td>
<td>82.36</td>
</tr>
<tr>
<td>Growth Trend Year-on-Year (%)</td>
<td>29.21</td>
<td>58.79</td>
<td>47.3</td>
<td></td>
</tr>
</tbody>
</table>

(Source: Bank of Liberia)

Table 8 below is a projection of net loans for five years using 45.1% annual growth rate.

Table 8: Projected Net Loans and estimated size of leasing

<table>
<thead>
<tr>
<th>Year</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
</tr>
</thead>
</table>

Projected Net Loans (US$ million) | 119.50 | 173.40 | 251.60 | 365.08 | 529.73
---|---|---|---|---|---
% share for leasing | 6.1% | 6.1% | 6.1% | 6.1% | 6.1%
Estimated value for leasing (US$ million) | 7.3 | 10.6 | 15.3 | 22.3 | 32.3

Annual value of leasing using the Net Loans approach is thus estimated at **US$ 7.3 million** in year 1. This is projected to increase to **US$ 32.3 million** in year 5 and gives a total potential leasing size of **US$87.8 million** for the first five years.

**2.4.4 Potential for leasing using the GDP Approach**

A survey on leasing market in Ghana by IFC, June 2008 indicates that leasing has the potential to account for 0.5 to 2% of GDP in developing countries. A USAID report on Armenia Leasing Market, 2006 also indicates that in developed and growing economies this ratio might be as high as 10%.

We have presented the case for Ghana, Russia and Kazakhstan below to put the analyses in better perspective. Nominal GDP figures were used in these calculations that is why they appear lower than the rates quoted by the IFC above. The sharp rise in the growth rate in Ghana in 2007, is due to the effects of more banks writing leases as a result of the passing of the Universal Banking Act.

**Figure 5: leasing to GDP**

![Graph showing leasing to GDP for different countries]

We estimate a rate of 1%, of real GDP to be the potential for Liberia.

The table above shows the average real GDP for Liberia from 2005 to 2008 to be 8.07%. We have however, conservatively projected GDP to increase annually by 7.0% from year 1 to year 5 and estimated potential of leasing below:

This results in the potential for leasing to be between **US$5.42 million** in year 1 and **US$7.11 million** in year 5, giving a total of **US$31.2 million** for the first five years.

**2.4.5 Summary of Approaches**

The table below summarizes the results of the three approaches.

From the foregoing analyses, we estimate the potential range for leasing in Liberia to be between **US$31 million** and **US$88 million** over the next 5 years. The actual and potential for leasing will keep increasing as long as the economy picks up.
3.0 LIBERIA – LEGISLATIVE AND REGULATORY FRAMEWORK

3.1 Liberia Legal System

The Legal System in Liberia is a dual one of statutory law based on Anglo American Common law and customary law.

Sources of Law in Liberia

The Primary Sources of Law in Liberia are:
- The Constitution
- Legislation
- Statutes
- The Customary Law
- Court Precedents

The Constitution

The Constitution is the supreme law of the Republic of Liberia. According to Article 2 of the Constitution, all laws and decisions by the state institutions must be in strict conformity with the Constitution. According to Article 91 of the Constitution, the initiative to amend the Constitution may come from either two-thirds of the membership of both the Senate and House of Representatives or a petition submitted for approval to the Legislature by not fewer than 10,000 (ten thousand) citizens.

Legislation

The ultimate legislator in the Republic of Liberia is the bicameral national assembly.

Delegated Legislation

A wide variety of bodies, from government departments through local authorities and public corporations to private corporations, can be entrusted with powers by the legislature to implement and administer the requirements of the law.

Statutes

The Liberia Code of Laws (Revised) volume 1 1974 contains legal provisions for both Civil and Criminal Law.
Customary Law

The Constitution of Liberia recognizes customary law. Therefore, customs are a recognized source of law in Liberia. According to the Constitution, statutory laws and common law of the formal legal system govern all Liberians, whereas the old Rules and Regulation Governing the Hinterland refer to the adjudication of cases for “civilized people” and “natives.” According to Article 65 of Chapter V11 of the Liberian Constitution, the courts are empowered to apply statutory law as well as customary law in accordance with the standards enacted by the Legislature. The Rules and Regulations Governing Local Government officials of the Political Sub-Divisions of Liberia (Revised Edition 2000) provide a procedural framework for the adjudication of customary law cases. Local Commissions and Superintendents perform the functions of executive oversight over customary law in Liberia.

Court Precedents

Case law can serve as a source of law or it can help to interpret the law. According to Article 66 of the Constitution, judgments of the Supreme Court are final and binding and shall not be subject to appeal or review by any other branch of government.

3.2 Legal Overview of Leasing in Liberia

Leasing is permitted as one of the activities under the New Financial Institutions Act of 1999\(^5\) in Liberia and is subject to prudential regulation of the Central Bank of Liberia as applicable to Deposit-taking Institutions and Non Deposit-Taking Institutions. This Act governs the institutional set up of leasing companies and empowers the Central Bank to regulate and supervise the establishment, operations, and closure of leasing companies.

Beyond this, there is no other legislation that regulates the conduct of leasing transactions among parties apart from the common law as it relates to a contract between two people. The common law therefore governs finance leasing where a breach occurs and the courts of Liberia have jurisdiction to determine such a breach by any of the parties to a lease.

\(^5\) Section 8 of the New Financial Services Act
3.2.1 Legal and Regulatory Framework governing Market Entry

Section 3 of the New Financial Institutions Act 1999 provides that both commercial banks and non-banking financial institutions may provide finance-leasing services. The Central Bank of Liberia permits a universal banking license\(^6\) whereby commercial banks are authorized to carry business\(^7\) generally reserved for non-bank financial institutions. However, non-banks will require a special license to carry out finance leasing activities.

To qualify for a banking license an applicant must apply in writing to the central bank and submit all the documents provided for in Section 4(1) of the New Financial Institutions Act 1999\(^8\) and must have a minimum capital of U.S.$8,000,000/00 rising to U.S.$10,000,000 by the end of 2010. In addition, the Central Bank of Liberia shall carry out investigations into the character and experience of the Management, the adequacy of its capital structure, the convenience and needs of the community it intends to serve, the operations it intends to undertake and the earning prospects afforded primarily by the area to be served\(^9\).

Section 8 of the New Financial Institutions Act 1999 sets out the procedure for the licensing of Non Bank financial institutions. It provides as follows:

“In order to obtain a license to operate a non bank financial institution in Liberia, a person shall apply in writing to the central bank and submit the following

(1) In the case of all other non bank financial institutions, all of the requirements under section 4(1) and, to the extent not provided for herein, prudential requirements and applicable laws shall apply\(^{10}\),”

---

\(^{6}\) the New Financial Institutions Act 1999
\(^{7}\) Sections 2(1),(2),(3),(4),(9) of the New Financial Institution Act 1999
\(^{8}\) Section 2(2) of the New Financial Institution Act 1999
\(^{9}\) Sections 4(1)(a)to(e),(2),(3),(4),(5), of the New Financial Institution Act 1999 set out the licensing procedure in extension
\(^{10}\) Sections 14 to 25 New Financial Institutions Act 1999
To date, though permitted, none of the existing universal banks is doing finance leases and no non-bank leasing license has been issued.

3.2.2 Review of Central Bank’s prudential guidelines affecting leasing companies

The Prudential guidelines for deposit and non-deposit financial institutions including leasing companies are contained in the New Financial Institutions Act 1999. Generally, these include rules for monitoring credit portfolios and risk assets, reporting requirements, corporate governance requirements including composition of boards and the quality of management, requirements for maintenance of proper accounts/accounting systems, and internal controls. The applicable prudential requirements include:

1. Restriction on use of names
2. Display of license in a conspicuous public place or places in the head office, other offices and branches and any other place
3. Effect change of its authorized share capital without consent of the central bank
4. Alter its name as set out in its license or amend the instrument under which it is organized without the consent of the central bank
5. Undertake banking operations other than those in its license without consent of the central bank
6. Have an investment in its fixed asset that exceeds 50% of its issued outstanding capital stock or its unimpaired capital, surplus or reserves without consent of the central bank
7. Have an investment of 10% in equity shares of the unimpaired capital, surplus and reserves of any company without the consent of the central bank
8. Maintain a reserve statutory account
9. Observes a single exposure limit of 15% of the aggregate amount of the financial institution’s unimpaired net worth
10. Restriction on granting outstanding secured or unsecured advances or credit to the members of its board unless such advances or credits are guaranteed by all members

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11 Central Bank of Liberia Regulations
12 Section 20(1) of the New Financial Institution Act 1999

11. of the board jointly and severally provided that the aggregate amount of such advances and credit made to all members of the board shall at no time exceed thirty percent of the net worth of the financial institution;

3.3 Gaps in the Legislative and Regulatory Framework to be Addressed:

The absence of a legislation governing leasing was cited as one major obstacle preventing banks from engaging in finance leasing\textsuperscript{13}. Legislation is required to protect and provide redress for all the parties involved in leasing, namely: investors, lessors, lessees and suppliers:

Over the past three years, banks in Liberia have struggled to reduce bad debts. It is not surprising that banks have a very high aversion to risk. Banks will not venture into leasing without a clear legislative compass, detailing out how their risks will be mitigated.

In relation to this, a concern by banks was the absence of a right of repossession in case of default and the non-judicial repossession mechanisms. Some banks go round this issue by invoking the principle of joint tenancy when giving out loans for purchase of cars. Joint tenancy relates primarily to the ownership of land. In a joint tenancy, the principle of survivorship is paramount. The surviving partner becomes the sole owner of the property and is entitled to immediate possession without an order of court. The bank has advanced this principle to loans given out for cars. It registers the title jointly in the name of the bank and the customer. If the customer defaults, the bank becomes the survivor and under the principles of survivorship the bank becomes the sole owner, the defaulter loses all his rights and the bank is entitled to immediate possession of the vehicle which it duly takes without a court order. Though the principle has been stretched to its limits it seems to work and is yet to be challenged in the Liberian Courts.

Other gaps relate to the definitions of a finance lease as distinct from other forms of asset-based financing; eligible assets; rights and responsibilities of parties to a lease; scope of leasing; the lease period; liens by third parties and restriction on operations.

\textsuperscript{13} All banks interviewed including the Central Bank
3.4 Recommendations for a Better Legislative and Regulatory Framework

It is recommended that:

a. for leasing to commence in Liberia legislation must be enacted which would ensure the successful enforcement of leasing contracts. Such enforcement must be swift thus preventing further financial loss to the aggrieved party. The penalty for default must be clearly spelt out in any such legislation.

b. the right of repossession of a leased asset for default without any court order. If the other party is aggrieved by any such repossession provision must be made for that person to institute action to recover damages for wrongful repossession.

c. An amendment to the New Financial Institutions Act 1999 to include a definition of finance leasing, definitions of a finance lease as distinct from other forms of asset-based financing; eligible assets; rights and responsibilities of parties to a lease; scope of leasing; the lease period; liens by third parties and restriction on operations

d. An amendment of the Civil Procedure code of Liberia to ease the burden of court procedures, to create a fast track commercial court and to ensure proper and swift enforcement of court judgments.
4.0 LEBERIA – ACCOUNTING AND TAX FRAMEWORK

4.1 Laws governing preparation of financial statements for leasing companies

The various laws that affect the accounting and tax matters of leasing companies in Liberia are:

(i) the Handbook for Procedures and Processes for Businesses – Ministry of Commerce and Industry

All registered companies must conform to this Handbook. A company becomes eligible to operate when it is registered and issued with a Certificate of Incorporation by the Ministry of Commerce and industry. However, the Article of Incorporation are processed through the Ministry of Foreign Affairs.

A registered company is governed by its Memorandum of Association and is obliged to prepare annual audited financial statements and file an annual return with the tax authorities not later than March 31 after its financial year-end.

The financial year-end is June 30 but in the event that a company opts for any other financial year-end, it would need the consent and approval of the Minister of Finance.

(source: Revenue Code of Liberia, ACT 2000 section 2203)

(ii) Revenue Code of Liberia 2000 as Amended

This is the applicable tax law for all registered companies and section 209 relates specifically to finance leases.

Section 209

General Rule. If a lessor leases tangible property to a lessee under a finance lease contract, for purposes of taxation the lessee is treated as the owner of the property, and the lease payments are treated as payments made on a loan to the lessor.

Definition: A lease property is a finance lease if –

- the lease agreement provides for transfer of ownership following the end of the lease term, or the lessee has an option to purchase the property after expiration of the lease term for a fixed or presupposed price; or
- the lease term exceeds 75 percent of the useful life of the leased property; or
IFC Liberia Leasing Survey

- the estimated residual value of the property after expiration of the lease term is less than 20 percent of its fair market value at the commencement of the lease; or
- the present value of the minimum lease payments equals or exceeds 90 percent of the fair market value of the property at the commencement of the lease term unless the lease commences during the last 25 percent of the useful life of the property; or
- the lease property is custom – made for the lessee and after expiration of the lease term, it will not be usable by anyone other than the lessee.

Additional Provisions. For the purpose of this section –

- the discount rate used to determine the present value of lease payments is equal to the rate of interest determined under section 11 (interest rates) on the date the lease is entered into;
- the lease term includes any additional periods for which the lessee has an option.

4.2 Accounting Principles and Standards of lease transactions

Definitions

International Financial Reporting Standards
Leasing is defined by the International Financial Reporting Standards (IFRS) as an agreement whereby the lessor conveys to the lessee in return for a payment or series of payments the right to use an asset for an agreed period. A finance lease is defined as a lease that transfers substantially all the risks and rewards incident to ownership of an asset. An operating lease is described as “a lease other than a finance lease”.

Liberia Accounting Standard
There is no Liberia Accounting Standards. However, the LICPA currently uses the Ghana National Accounting Standards (GNAS 11), which is consistent with IFRS and the US GAAP.
VAT
Liberia does not have a Value Added Tax authority. However, Goods and Service Tax (GST) serves the same purpose as VAT. The Tax Authority for GST is the Revenue Division of the Ministry of Finance.

Accounting Standards of Leases
In the event that lease finance is actively offered by the banks or a non-banking financial institution to the Liberia financial sector and the LICPA would continue to adopt the Ghana Accounting Standards or IFRS, the following accounting treatment of lease transactions can be expected to be applied.

Lessee’s Financial Statements
Records and Transactions:
- recognition of the leased asset
- Depreciation of the leased asset
- a liability of the outstanding lease payment
- annual interest expense

Accounting
4.2.1a Finance Leases

- A finance lease is recorded in the balance sheet of a lessee by recognizing an asset and a liability of equal amounts at the inception of the lease to the fair value of the leased item net of grants and tax credits receivables by the lessor or, if lower at the present value of the minimum lease payments.

- Rental payment should be apportioned between the finance charge and the reduction of the outstanding liability. The finance charge should be apportioned over the lease period so that a constant periodic rate of interest is applied during the lease period.

- A finance lease gives rise to a depreciation charge for the assets as well as a finance charge for each accounting period. The depreciation policy for leased assets should be consistent with that for depreciable assets, which are owned. If there is no reasonable
certainty that the lessee will obtain ownership at the end of the lease term, the asset should be fully depreciated over the shorter of the lease term or its useful life. The lessee is not entitled to any capital allowance on the leased asset(s).

### 4.2.2b Operating Leases

- The charge to profit and loss account under an operating lease would be the rental expense on the leased assets for the accounting period, recognized on a systematic basis that is representative of the time pattern of the user’s benefit. The lessee has no benefits of the capital allowance BUT is entitled to treat the capital and interest thereon due on the rental payments as tax-deductible expenses.

### 4.2.3 Lessor’s Financial Statements

**Finance Leases**

- An asset classified as a finance lease should be recorded in the balance sheet not as property, plant and/or equipment but as a receivable, at an amount equal to the net investment in the lease.

- The recognition of finance income should be based on a pattern reflecting a constant periodic rate of return on either the lessor’s net investment outstanding or the net cash investment outstanding in respect of the finance lease. The method used should be applied consistently to leases with a similar financial character.

- Manufacturer or dealer lessors should include selling profit or loss of income in accordance with the policy normally followed by the lessor for outright sales. If artificially low rates of interest are quoted, selling profit should be restricted to that which would apply if a commercial rate of interest were charged. Initial direct costs should be charged to income at the inception of the lease. The lessor does not have the benefit of capital allowances.

**Operating Leases**

- Asset classified as operating leases should be recorded as property, plant and/or equipment in the balance sheet of lessor.
- Rental income should be recognized on a straight-line basis over the lease term, unless another systematic basis is more representative of the time pattern or the earning process contained in the lease.

- The depreciation of lease assets should be on a basis consistent with the lessor’s normal depreciation policy for similar assets. The lessor is entitled to offset the capital allowance due on the leased asset(s) against his corporate tax liability.

### 4.3 Applicable Taxes

**Revenue Code of Liberia, ACT 2000**

**Section 406:-Corporate Tax**

Corporate income tax is levied on every registered company and charged on taxable income. Taxable income is the difference between gross income and allowable expenses as stated in the Revenue Tax Code 2000. Currently the corporate income tax is levied at 35%.

**Section 1000:-Goods and Service Tax**

The Goods and Sales Tax (GST) is 7%.

**Section 200:-Presumptive Tax**

Under the presumptive tax, the taxpayer is charged 4% of gross taxable income if the annual taxable income amount is lower than or equal to L$5,000,000 (Liberia Dollar) and the taxpayer is then not obliged to file a tax return. In the event that the annual taxable income exceeds L$5,000,000 (Liberia Dollar) then the taxpayer is charged 2% and is required to file an annual tax return with the tax authorities. Presumptive tax is due and payable on the 10th of the month following each quarter. At the end of each tax year and in the event that the presumptive tax paid for the period under review is more than required, the difference is carried forward as a tax credit in favour of the taxpayer and can be used to offset any tax liability in the current year.

**Capital Gains tax**

No provision is made for capital gains tax that may arise on a sale and leaseback transaction.
Capital Allowances
Heavy-duty equipment attracts an incentive allowance of 30% in the first year of using the equipment in addition to a 30% depreciation allowance per annum. Light equipment attracts only a depreciation allowance of 40% per annum.

Customs and Excise Duty
The President of Liberia has the authority to grant duty waiver on road construction, forestry and agricultural equipment. With respect to the mining sector, duty is paid on the equipment in addition to an administration fee of 2.5% but exempt from GST.

4.4 Gaps: Tax and Accounting for Liberia

(i) Technical Know-How
The concept of leasing and in particular, finance lease is new in Liberia. During our study it was clear that bankers, entrepreneurs and other professional such as chartered accountants and lawyers were not familiar with leasing as an alternative to funding. We also determined a gap in the tax and accounting expertise in Liberia.

(ii) Regulatory Bodies
The central bank has oversight responsibility. However, there are no specific guidelines and criterion for setting up a leasing company. For example, the minimum capital requirement required to set-up a leasing company, the single obligo limit etc.

(iii) Tax incentive
The business community considers the two percent (2%) presumptive tax as punitive and stifling business potential because it is payable in addition to corporate tax. Although some tax credits have been recognised no cash refund has ever been paid since it was introduced. From the entrepreneur’s perspective cash is locked up when this tax is paid by the 10th of the month following each quarter.
(iv) Tax Rates
Corporate tax is currently 35% and is payable on taxable profit at the end of each year. For a relatively small and growing Liberian economy, the business community considers the tax regime rigid and severe.

4.5 Recommendations for Taxation of Finance leases
The Tax laws need to be revised to address the taxation of leased assets. When this done prospective lessors and lessees would know the tax implications when they engage in such activity. We would urge the tax authorities to consider the following matters when a revision to the Revenue Tax Code is carried out:

- Measures should be put in place to ensure and/or monitor that the lessors pass on the benefits of capital allowance on leased assets to the lessee by way of cheaper lease payments;

- Specific tax concessions such as lower corporate taxes on leased assets for both the lessee and the lessor can be offered for a limited period say the first 5 years after leasing is introduced;

- Provide a tax rebate to banks and/or financial institutions for lending money to leasing companies. This rate of rebate should not be less than the prevailing corporate tax rate if it is to be attractive;

- To adopt the International Accounting Standards as stipulated in the IAS17

- It is our opinion that LICPA needs to be strengthened through technical support and personnel to be a substantive and effective regulator. Also, the business community needs to be educated on the concept and benefits of leasing;
5.0 LIBERIA – SUMMARY OF RECOMMENDATIONS

vii. **Market Potential:** The market potential for leasing is between US$31 million and US$ 88 million. We recommend that IFC in association with some banks in Liberia to jointly exploit the potential for leasing in Liberia. (See section below for rationale for using banks for leasing.)

viii. **Industry Segments and Equipment-Specific leases:** There is considerable absorptive capacity for growth in leasing in the areas of mining, timber and construction. Consequently, we recommend that leasing focuses on these industry sectors that are ready and able to pay off the leases through their operations. This will help develop thorough depth, expertise and understanding of the industry/market before exploring into other segments. We further recommend focusing on one or two equipment types initially. (earth-moving and vehicles, preferably). This could lower the equipment cost through fleet discounts and create a vibrant secondary market potential for Liberia. *Please see Appendix for a table of typical equipment categories.*

ix. **Funding:** We recommend that long-term debt funds are made available for leasing transactions. The total funding potential over the first five years is estimated to range from US$31 million to US$88 million. We recommend that financiers start from the lower end of the potential and exploit the market upwards. Experience from Ghana indicates that the actual is about 50% of the potential market size.

x. **Advisory Services:** We recommend IFC’s participation to offer advisory services to stimulate legislators and regulators to make favorable leasing laws, banks to embrace and promote leasing and the business community to consider leasing options. Human Resource Gaps for leasing exists. The concept of finance leasing is not fully understood among the banking, the legal and the accounting profession in Liberia. We recommend capacity building for leasing in the areas of marketing, tax, accounting and legal. Given the poor credit culture, we wish to caution that leasing will not be able to accommodate the same levels of bad debt provisions as the banks and will therefore recommend intensive training in the evaluation and monitoring of lessees.
xi. **Legal Refinement:** While no legal restrictions exist that prevent finance leasing, the banks have shown a total reluctance to offer it. Reasons include the lack of any clear working legal structure to operate finance leases; Laws setting out the definitions, the rights and the responsibilities of all parties to the lease must be promulgated and clarified.

xii. **Insurance:** There are no specific changes required in the present insurance policies, apart from ensuring compliance for the full comprehensive insurance condition. The insurance culture in Liberia is challenging with an estimation of 60% uninsured vehicles. We recommend that leasing companies factor in the cost of insurance in the lease rentals over the duration of the lease, and not leave lessees to do this themselves.

### 5.1 Rationale for Recommending banks for leasing

Banks and not non-banks must be encouraged to carry out finance leasing for the following reasons:

- **a. Market entry is easier for banks than for non-banks,**
- **b. Universal License:** Banks will fully utilize their universal banking licenses. The existence of a universal banking license makes the playing field uneven for independent leasing companies who do not have their own sources of funding and whose sources are normally more expensive than the banks.
- **c. Bad debt tolerance:** The bad debt tolerance level for mono-product financial institutions, such as leasing companies, is extremely low. Banks have a wider array of other income-generating products to cushion their bad debts, that leasing companies do not.
- **d. Funding:** Banks in Liberia have excess liquidity and limited sources of investments. Leasing will be a good alternate source of investment for Liberian banks.
The down side to using banks will be that leasing will only be a small fragment of the bank’s activities. Consequently, leasing activities could be easily side-lined and hampered by the bank’s general strategic and operational decisions and priorities. Therefore, the setup of the leasing divisions, must be deliberately supported with greater autonomy, higher authority and stronger leadership.
APPENDICES

1. VIEWS AND INSIGHTS FROM STAKEHOLDERS

Association of Bankers (Liberia)

The Association of Bankers is an association of banks operating in Liberia. They are of the opinion that infrastructural adjustment is vital for leasing to operate well in Liberia. They welcome the idea of leasing as most companies have eroded capital.

An interview with the managing director of Ecobank Liberia revealed that potential secondary market for leasing exists for vehicles but not for other type of equipment.

Access Bank Liberia is the first commercial microfinance bank operating in Liberia. The bank believes there is a big demand for SME finance in Liberia.

National Port Authority (NPA), Liberia

The National Port Authority is the organization responsible for management of harbour facilities and port. The Authority manages four (4) ports, namely, the Freeport of Monrovia, the Port of Buchanan, the Port of Greenville, and the Port of Harper.

NPA indicates that in 2008, 1.4 million tons of Cargo were imported compared to 1.1 million tons in 2007. Due to lack of equipment, the turnaround time of ships is very slow. Equipment needed include forklifts, reachstackers and cargo trucks.

Liberia Timber Association

Liberia Timber Association is an association of timber operators in Liberia. An interview with Mr. Rudolf J. Merab, Chairperson of Liberia Timber Association, revealed that 12 timber firms are currently registered members of the association 4 of whom have been relocated their license. These firms together have about 2,4 million hectares of forestlands. He further indicated that equipment are usually obtained from Ghana through Ecotimbers and indicated an immediate need for extraction, loading and road construction equipment.
2. **BENEFITS OF LEASING**

The benefits of Leasing on a post-war economy like Liberia will be tremendous, offering numerous advantages over other financing methods:

1. **Tax treatment:** Finance charges on a finance lease are tax deductible expenses, unlike a straight loan where only the interest element is taxed. Leases are tax-deductible overhead expenses. This typically means that while income from operations are expected to increase with the acquisition of the asset, costs reduce as the tax burden is reduced because the entire financial is tax-deductible.

2. **Balance sheet management.** A Lease is not considered a long-term debt or liability, it does not appear as debt on the financial statement, thus making it more attractive to traditional lenders.

3. **Immediate write-off of the asset.** Leasing payments are treated as expenses on a company's balance sheet, therefore, equipment does not have to be depreciated over its lifespan. This lowers tax liability.

4. **Flexibility.** As a business grows, as equipment become old and obsolete, leasing allows for upgrading and at any point during the lease term. A variety of leasing products is available, allowing for customization to fit month-to-month or year-to-year cash flow needs. Leasing allows the flexibility to customize a program to address your needs and requirements - cash flow, budget, transaction structure, cyclical fluctuations, etc. There are several flexible options for disposing of equipment after the lease term ends including returning the equipment, renewing the lease or purchasing the equipment.

5. **Conservation of Working Capital:** Equipment leasing allows the business access and usage of equipment to generate income without an initial high cash outlay, thereby ensuring that there is working capital to run the business.

6. **Easier Replacement of Obsolete Equipment:** Leasing offers the opportunity to replace obsolete equipment faster. The cost of running obsolete equipment takes a large toll on the spare part and maintenance. Leasing is therefore cheaper.
3. **SOME SELECTED EQUIPMENT AND THEIR PRICES**

<table>
<thead>
<tr>
<th>EQUIPMENT</th>
<th>SECTOR</th>
<th>AVERAGE UNIT PRICE</th>
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<tr>
<td>Volvo G750 Motor Grader</td>
<td>Construction/Mining/Timber</td>
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<tr>
<td>Volvo L-180 Wheel Loader</td>
<td>Construction/Mining/Timber</td>
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<td>CAT D9R Bulldozer</td>
<td>Construction/Mining/Timber</td>
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<td>CAT D7R Bulldozer</td>
<td>Construction/Mining/Timber</td>
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<td>Services</td>
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<tr>
<td>Compressors, Generators etc</td>
<td>Construction/Mining</td>
<td>$25,000</td>
</tr>
</tbody>
</table>
4. **RELEVANT SECTIONS THE NEW FINANCIAL SERVICE ACT, 1999**

**Section 2**

In this Act, unless the context otherwise requires:

(1) “banking business” means and includes:

(i) the business of receiving funds from the general public through the acceptance of voluntary money deposits payable upon demand and subject to transfer by check, or after a fixed period or after notice or any similar operation through the frequent sale or placement of bonds, certificates, notes or other securities, or from the Government of Liberia or from any foreign or international financial institutions, and the use of such funds, either in whole or in part, for loans or investments for the account and at the risk of the person doing such business; and

(ii) any other activity or activities recognized as a customary banking practice which a financial institution engaging in the activities described in Section (a) (i) may additionally be authorized to engage in by the Central Bank.

(2) “bank-financial institution” means any person engaging in financial transactions consisting in the business of banking, the acceptance of deposits payable on demand and subject to transfer by check, credit, loan making, and lending or rendering non-banking financial services: provided, that for the purpose of the Act, unless the context otherwise requires, all offices and branches of a financial institution in Liberia shall be deemed to be one financial institution;

(3) “non-bank financial institution” means any person or institution whose activities and transactions are in the form of non-bank financial services rendered without accepting from the general public deposits payable upon demand or after a fixed period;
(4) “commercial bank” means and includes any financial institution whose operations include, but are not limited to the acceptance of deposits payable on demand and subject to transfer by check;

(5) “Central Bank” means the Central Bank of Liberia established under the Central Bank of Liberia Act;

(6) “credit institution” means any financial institution or financing agency whose operation is non-deposit-based lending without accepting from the general public deposits payable on demand or after a fixed period;

(7) “foreign financial institution” means a financial, organized abroad and doing business in Liberia, whether such business be banking or other business;

(8) “Liberia” mean the Republic of Liberia;

(9) “licensed financial institution” means a financial institution authorized under the laws of Liberia to do banking business in Liberia;

Section 4
Licensing Procedures

(1) In order to obtain a license to operate as a financial institution in Liberia or to do offshore banking, a person shall apply in writing and sub it to the Central Bank the following:

(a) authenticated copies of the instrument under which the entity to operate such a business is duly organized;

(b) pay to the Central Bank a non-refundable application fee as shall be determined by the Board of Governors of the Central Bank;
(c) a statement of the address of the head office of the entity to operate such a business, the name and address of every member of its board and the name and address of its principal officers;

(d) such financial data as the Central Bank may require, including, but not limited to financial statements and projections for five years;

(e) full particulars of the business that the entity proposes to do together with detailed and clear definition of activities to be performed by the proposed financial institution;

(2) The application and every document submitted in accordance with Section 4 (1) shall be signed by the members of the board of the applicant, or by any principal legally authorized to do so.

(3) (a) In considering an applicant for license, the Central Bank shall, without limiting the generality of the requirements, conduct such investigations as may be deemed necessary to ascertain the validity of the documents submitted under Section 4 (1), the financial status and history of the applicant, the character and experience of its management, the adequacy of its capital structure, the convenience and needs of the community it intends to serve, the operations it intends to undertake, and the earning prospects afforded by the area primarily to served.

(b) A financial institutions shall be granted a license under this Section unless it also fulfills the requirements specified either in Section 14 (a) (i), if it is a commercial bank, or in Section 14 (b) (i), if it is a credit institution.

(4) Within ninety days after the receipt of an application, or, where further information has been required, after the receipt of such information, the Central Bank may grant a license or inform the applicant that it has refused to grant a license and may state the grounds upon which such refused is based; provided, that, for the purpose of this Act, licenses lawfully issued under the Financial Institutions Act of

1974 with amendments thereto shall be deemed issued as provisional licenses under this Act, which shall expire six months after this Act comes into effect.

(5) In granting a license, the Bank may impose additional conditions to be satisfied by the license in respect in respect of the matters set forth in Section 3 (2) (a). In the case of a foreign financial institution, without limiting the generality of the foregoing, the Central Bank shall require as a condition precedent for the commencement of operations that there be filed with the Central Bank

Section 8

Licensing of Non-bank Financial Institutions

In order to obtain a license to operate a non-bank financial institution in Liberia, a person shall apply in writing to the Central Bank and submit the following:

(1) In the case of Insurance Companies:

(i) the requirements under Section 4 (1) hereof; and

(ii) all of the requirements for license under Chapter (3) and (4) of the Insurance Law of Liberia (1978);

(2) In the case of all other non-bank financial institutions, all of the requirements under Section 4 (1) and, to the extent not provided for herein, prudential requirements and applicable laws shall apply.

Section 14 – 16

Minimum and Supplementary Capital Requirements

14 (1) Every financial institution shall maintain unimpaired capital, either paid-up if it is an incorporated local financial institution, or assigned if it is a foreign financial institution, at least equal to the minimum amount specified either in Section 15 (1) (a) or in Section 15 (1) (b) (i), as the case may be.
(2) (a) Every financial institution shall maintain a Statutory Reserve Account, and before any dividend is declared or any profit is transferred to the Head Office or elsewhere as the case may be, shall transfer to such account out of the net profits of each year due provision has been made for taxation, a sum equal to not less than what is specified either in Section 15 (1) (b) or in Section 15 (2) (b) as the case may be.

(b) The Central Bank shall from time to time, prescribe by rules and regulations the method of computing the amount and form of the Statutory Reserve Account and of computing liabilities when these are used to determine the amount of transfer to the Statutory Reserve Account. The Central Bank shall, from time to time, prescribe the method of asset classification, provisioning of bad and doubtful debts and other uncollectibles, income recognition, the calculation of profits or loss, and limits on open foreign exchange positions.

(c) The Statutory Reserve Account shall neither be reduced nor be impaired provided, however, that the Central Bank may permit a limited reduction not exceeding five percent of the Statutory Reserve when a transfer is being made for the purpose of increasing the capital or when liabilities are being used to compute transfer to the Statutory Reserve Account if the aggregate of the paid-up or assigned capital and the Statutory Reserve Account exceeds twice the amount of five percent of the liabilities to the general public in Liberia in terms of the most recent balance sheet by the extent of such excess amount.

(d) Financial institution may establish such other reserve accounts which they may deem to be prudent. However, reserve accounts so established shall not be considered in connection with Section 20 (2) (a) of this Act, except on specific approval of the Central Bank.

Financial institutions shall observe, as herein contained or when prescribed by regulation of the Central Bank the maximum ratios and exposures to be maintained by a financial institution concerning its assets, risk-weighted assets, and off-balance sheet items and various categories of capital and reserves.
(1) Operating as a bank:

(a) The minimum required capital for a bank-financial institution shall be not less than Eighty Million (L$80,000,000) Liberian Dollars unless the assets size of such financial institution is above Billion Six Hundred Million (L$1,600,000,000) Liberia Dollars; then and in that case, a minimum of 15% of the total assets or whichever is greater;

(b) There shall be transferred at the end of each financial year to its Statutory Reserve Account a sum equal to:

(i) not less than twenty-five (25%) percent of its net profit until the aggregate of the actual paid-up or assigned capital and Statutory Reserve Account is equal to one and one half times the greater of the minimum required capital or five (5%) percent of its liabilities to the general public in Liberia in terms of its most recent annual balance sheet, or

(ii) not less than fifteen (15)% percent of such net profit whenever the aggregate of the actual paid-up or assigned capital and Statutory Reserve Account is more than one and one half times but less than twice the greater of the minimum required capital or five (5%) percent of its liabilities to the public in Liberia in terms of its most recent annual balance sheet.

(c) The Central Bank may, from time to time, prescribe by rules and regulations the minimum ration which a bank shall maintain between its capital and its loans and advances.

(d) Any transaction of a bank with related parties must be on a non-preferential basis.

(e) Each bank-financial institution shall have a credit committee, an asset and liability committee and an audit committee of its board; these committees shall be responsible for ensuring that the policies of the financial institution relating to credit, asset and liability management and audit are implemented correctly and legally and for calling the attention of the full board to any such matter that requires its full attention.
(2) Operating as a credit institution:

(a) The minimum required capital of a credit institution shall be not less than Forty Million (L$40,000,000) Liberian Dollars, the Central Bank shall, from time to time, prescribe by rules and regulations the minimum capital required as operational capital.

(b) There shall be transferred each year to its Statutory Reserve Account a sum equal to not less than twenty-five percent of its net profits, or such lesser amount as the Central Bank may prescribed by rules and regulations with respect to the appropriate class of financial institution, until the balance in such Statutory Reserve Account is equal to the whole amount of the minimum required capital.

In making the calculations necessary to ascertain that the financial institution has complied with the requirements of Section 15, allowance shall be make to the satisfaction of the Central Bank and of the external auditor of such financial institution for the following items:

(1) depreciation of assets and provision for bad or doubtful debts (to be calculated at least once in each financial year);

(2) operating and accumulated losses, including accumulated depreciation and bad debts not yet written off;

(3) preliminary expenses, representing expenses relating to organization or extension or the purchase of business or goodwill, and including underwriting commission; and

(4) such other items as the Central Bank may prescribe regulation.

Section 17, 18

Liquidity Requirements and Penalty

17 (1) (a) Any commercial bank or any other financial institution subject to the regulations of the Central Bank and doing or engaging in banking business in
Liberia shall maintain not less than an amount of liquid assets as may from time to time be prescribed by the Central Bank by and through publication in the Gazette and written notice to each financial institution.

(b) The amount of the assets prescribed shall be expressed as a percentage of the aggregate demand and time deposits and other liabilities of each financial institution as may be specified for this purpose by the Central Bank, provided, however, that:

(i) this percentage shall not be less than five nor more than twenty-five percent, and

(ii) the Central Bank may specify a period during which surpluses and deficiencies in liquid assets may be averaged.

(c) For the purpose of this Section, advances granted to a financial institution by any other financial institution or by an overseas branch or office of the same institution may be excluded for the computation of that institution’s demand and time deposits and other liabilities by the rules and regulations of the Central Bank.

(2) Notices issued under this Section shall apply uniformly in Liberia and shall come into effect on such date as specified, but not earlier than twenty-one days after the issue date: provided, however, that the Central Bank in its notices may differentiate between classes of commercial banks and credit institutions. The distribution of amounts between the classes of liquid assets enumerated in section 17 (3) shall be made at the discretion of each financial institution, provided, however, that the Central Bank may prescribe that up to two percent of the demand and time deposits and other liabilities of each financial institution shall be held in the form of assets set forth in section 17 (3) (d).

(3) For the purpose of this Section, “liquid asset” shall consist of freely transferable assets from any charge or lien whatsoever consisting of the following:

(a) banknotes and coins which are legal tender in Liberia;
(b) balances at the Central Bank except the required reserve and 
marginal required reserve established under Section 34 (1) of 
the Central Bank of Liberia Act;

(c) net balances at financial institutions in Liberia and money at call in 
Liberia: provided, that if such balances are negative they will 
be subtracted from liquid assets;

(d) treasury bills and other securities issued by the Government and 
maturing within 180 days;

(e) bills of exchange and promissory notes eligible for re-discount by 
the Central Bank and warehouse warrants or their equivalent 
securing possession of goods against which the Central Bank 
may grant advances, within the limits fixed by the Central Bank 
and in accordance with its evaluation;

(f) net balances at financial institutions, including the offices and 
branches of a financial institution in such monetary areas as the 
Central Bank may approve for the purpose of this Section: 
provided, that the treatment to be accorded the balances or any 
portion thereof in respect of the head of a financial institution 
or any other financial organized abroad; and provided further, 
that if such balance

(g) money at call in monetary areas approved by the Central Bank 
under sub Section (f), bills of exchange bearing at least two 
good signatures drawn on and payable at any place in the 
approved monetary areas and maturing within 180 days.

(4) A financial institution shall be held to be in violation of this Section if:
(a) it fails to furnish within a reasonable time any information required by the Central Bank to satisfy itself that the financial institution is observing the requirements of this Section; or

(b) it allows its holding of liquid assets to be less than the amount which is from time to time prescribed by the Central Bank; or

(c) during the period of any such deficiency of liquid assets the financial institution grants or permits increases in its outstanding advances, whether by loans or overdrafts, or investment portfolio.

(5) Any financial institution which allows its holding of liquid assets to be less than the amount which is from time to time prescribed by the Central Bank under this Section may be ordered by the Central Bank to pay a charge at an annual rate not exceeding ten percentage points above the highest rate fixed at the time by the Central Bank, pursuant to Section 33 of the Central Bank of Liberia Act for any of its operations on the amount of the deficiency for so long as the failure continues. Such charge shall be payable to the Central Bank on such date as may be prescribed by the Central Bank and may be recovered by deduction from any balance of the financial institution with the Central Bank.

The assets in Liberia of every bank financial institution shall:

(1) not be less in value than an amount representing such ratio in respect of its average demand and time deposits and other liabilities specified by the Central Bank, payable in Liberia, as may be prescribed by regulation of the Central Bank from time to time. The average demand and time deposit liabilities shall be determined on a weekly basis.

(2) Non-bank financial institutions may be subject also to prudential requirements and regulations where, to the extent not provided herein, appropriate and applicable company laws respecting financial disclosure, consumer protection,
market forces imposition and the use of civil and criminal penalties may govern.

19  **Restriction on Dividend and Other Payments from Profits**

(1) No financial institution shall declare, credit or pay any dividends or make any other transfer whenever such payment or transfer would result in an impairment of the capital of the minimum requirement balance in the Statutory Reserve Account.

(2) Any financial institution that violates Section 19 (1) shall be liable to pay a fine of not less than two hundred thousand Liberia dollars (L$200,000) or be closed by the Central Bank. If the closure continues for three days or more because the financial institution fails or refuses to pay the fine, the Central Bank may revoke its license, which may then subject the institution to compulsory reorganization or liquidation.

20  **Credit and Other Restrictions**

(1) The total liabilities of any borrowing individual, partnership, corporation or any other from of business organization to any bank-financial institution resulting from one or more extensions of credit by that depository institution shall at no time exceed fifteen percent (15%) of the net worth of the institution. The amount of the purchase of equity securities of a borrower by the financial institution in question shall be deemed an extension of credit.

(2) No financial institution, shall, directly or indirectly, except with the approval of the Central Bank on such terms and conditions as the Central Bank may prescribe:

(a) grant to any person any advances or credit facilities or make any guarantee so that the total value of the advances, credit facilities or guarantees in respect of such a person is at any time more than fifteen percent (15%) of the aggregate amount of the financial institution’s unimpaired net worth:
Provided, however that the limitation imposed herein shall not apply to transactions pertaining to the following:

(i) discounts or payments of drafts secured by readily marketable goods in transit in which the depository institution retains a security interest in and control over the goods;

(ii) loans secured by readily marketable goods remaining under the control of the depository institution and in which the depository institution retains a security interest;

(iii) loans secured by deposits in the depository institution with a value of at least one hundred and twenty-five (125%) percent of the loan;

(iv) repurchase agreements covering readily marketable government securities; and

(v) government-guaranteed securities;

(b) grant any advance against the security of its own shares;

(c) grant or permit to be outstanding unsecured advances unless such have been unanimously approved by all of the members of its board and the institution has notified the Central Bank in advance:

(i) to the members of its board, whether such advances are obtained by them jointly or severally;

(ii) to any person in whom it or any one or more of the members of its board has any interest as a director, partner, manager, agent or member or otherwise;

(d) grant or permit to be outstanding secured or unsecured advances or credit to the members of its board unless such advances or credit are, in addition to the securities that may be required, guaranteed by all members of the board, jointly and severally; provided that the aggregate amount of such advances
and credit made to all members of the board shall at no time exceed thirty (30%) percent of the net worth of the financial institution.

(e) grant or permit to be outstanding to its officers and employees unsecured advances, which in aggregate amount for any one officer or employee exceed, the annual remuneration of such officer or employee;

(f) engage in trade, except insofar as may be temporarily necessary in the conduct of its business or in the course of the satisfaction of debts due to it;

(g) purchase, acquire or lease real property except as may be necessary for the purpose of conducting its business as a financial institution, including provision for future expansion and housing its officers or employees: provided, that:

(i) in respect of any real property held or leased by financial institution prior to the commencement of this Act for purposes other than these referred to herein, a financial institution shall be allowed a period of up to five years in which to comply with this paragraph; and

(ii) a financial institution may secure a debt on any real or other property and in default of repayment may acquire such property for resale as soon as possible thereafter.

(h) remit, either in whole or in part, the debts owed to it by any of the financial institution’s related party or person.

(3) In the application of the limitation of Section 20 (2) (a) and (c); if the Central Bank shall determine that the interests of group of two or more persons are so interrelated that they should be considered as a unit, the total indebtedness and contingent indebtedness of that group shall be combined and deemed in respect of a single person; provided, that a financial institution shall not be deemed to have violated Section 20 (2) (a) or (c) solely by reason of the fact of limitation at the time of the determination; but the financial institution shall dispose of the indebtedness and
contingent indebtedness of the group on the amount in excess of the limitation within such reasonable time as shall be determined by the Central Bank.

(4) Any financial institution which, prior to the effective date of this Act, entered into any transactions incompatible with the provisions of Section 20 (a) through (f) shall, within (6) six months after the coming into operation of this provision, submit a statement thereof to the Central Bank and shall liquidate all such transactions within such reasonable time as shall be determined by the Central Bank.

(5) Extensions of credit to more than one borrower in the following categories or borrowers shall be combined and subject to the credit limit to one borrower:
   
   (a) a corporation and its majority-owned or controlled subsidiaries and sub-subsidiaries;
   
   (b) a partnership and its members;
   
   (c) a common enterprise and participants in the enterprise who borrow for that enterprise;
   
   (d) government entities, unless:
      
      (i) the borrower has its own revenue sources to service debt; and
      (ii) the credit extension is for the borrower’s own activities; and enterprises where one is economically dependent on the other to a substantial degree.

(6) Any board members, officers, or employees of a financial institution acting in contravention of any of the provisions of Section 20 is guilty of a felony and shall be liable to imprisonment for a term of not less than three years and to a fine of not less than One Million (L.$1,000,000) Liberian Dollars. Each such individual shall make restitution of the amount of money lost as a result of the violation and he shall be removed from office, and the provisions of Section 76 hereof shall be applicable.
(7) Debt Provisioning and Rescheduling

(a) Indebtedness of and to, and owing by or to, a financial institution in the course of its business may be renegotiated to grant permissive delay of repayment for reasons of existing general debt repayment and servicing difficulties.

(b) The Central Bank shall perform the role of intermediary and may, for supervisory purposes, set out, by regulations, a framework within which appropriate levels of risk exposure may be assessed. The stages of the process for deciding appropriate levels of provisioning may include:

(i) identification of debtors with current or potential repayment difficulties;

(ii) identification of the nature of those difficulties, and extent to which they affect the debtor;

(iii) determination of the proportion of the exposure that is unlikely to be paid in full:

(iv) consideration of factors which may:

(1) evidence a borrower’s inability to meet his obligation at the due date, due to extraneous circumstances;

(2) evidence a borrower’s current difficulties in meeting his obligations;

(3) evidence the likelihood of persistence in repayment.

Section 21
Appointment of Auditors by Financial Institutions

(1) Every financial institution shall appoint an external auditor annually, who shall be a professionally qualified person satisfactory to the Central Bank, whose duties shall be:

(a) to make a report to the shareholders of each such financial institution incorporated under the Associations Law of Liberia, to the owners of each such other local financial institutions, and to the head office abroad of each foreign financial institution, on the annual balance sheet, and income statement. In every such report the auditor shall state whether, in his opinion, the balance sheet and income statement are properly drawn up, and represent a true and fair view of the state of affairs of the business of the financial
institution, and whether or not the auditor was given satisfactory explanations or information from the officers or agents of the institution.

(b) to review the adequacy of internal audit, control, practices and procedures to make recommendations for remedy and to inform the Central Bank about any fraudulent act by any employee, director or subsidiary of the financial institution, or any irregularity, or deficiency in its administration or operation, or any breach of any provision of this Act.

(2) The report of the auditor shall also be read together with the report of the board of directors of the financial institution at the annual meeting of shareholders or other owners of each local financial institution and shall be transmitted to the head office of each foreign financial institution. A copy of the audit report shall be sent to the Central Bank not later than four months from the end of the financial year of the financial institution and thereafter an abridged financial statement shall be published in a form to be determined by the Central Bank. Such published financial institution report shall disclose penalties by the Central Bank.

(3) If a financial institution fails to appoint an auditor satisfactory to the Central Bank, the Central Bank shall have the power to appoint such auditor. The remuneration of the auditor, appointed by the institution or by the Central Bank, shall be paid by the financial institution and, in the case of an auditor appointed by the Central Bank, shall be determined by the Central Bank, in accordance with prevailing rates for such Liberia.

(4) No person having an interest in any financial institution otherwise than as a depositor and no director, officer, employee, or agent of a financial institution shall be eligible for appointment as auditor for such institution. Any person appointed as auditor who shall, after such appointment, acquire any interest or become a director, officer, employee or agent of such institution shall forthwith cease to be such auditor.
Section 22

Examination of Financial Institutions by the Central Bank

(1) The Central Bank shall carry out a comprehensive on-site inspection/examination of each financial institution at least once every year.

(2) The Central Bank, from time to time, shall cause an examination or special inspection or other inspection to be made of each financial institution whenever in its judgment such examination is necessary or expedient in order to determine whether the institution is in a sound financial condition and whether the requirements of law have been complied with in the conduct of its business.

(3) For the purpose of determining the condition of a financial institution and its compliance with this Act, the Central Bank may at any time cause an examination to be made of any of its affiliates in Liberia to the same extent that an examination may be made of the institution.

(4) For the purpose of Section 22 (2) and (3), the Central Bank may appoint one or more qualified persons other than officers of the Central Bank to conduct special inspections or other inspections.

(5) Expenses of and incidental to an examination may be paid by the Central Bank; provided however that the Central Bank may require the inspected financial institution to bear a portion of the costs as determined by the Central Bank pertaining to any special inspection or other inspection caused by the failure of the financial institution in question to abide by prudential regulations.

Section 23

Right of Central Bank to Inspect Books and Records of Financial Institutions

(1) Every financial institution shall produce for the inspection of any examiner appointed by the Central Bank at such time as the examiner specifies, all books, minutes, accounts, cash, securities, documents, and vouchers relating to its business in Liberia and shall supply all information concerning its business in Liberia as may reasonably be required by the examiner within such time as the examiner specifies.
Section 24
Delivery of Returns to the Central Bank and Record Keeping

(1) Every bank shall submit to the Central Bank - not later than five (5) banking days after the last day of each reporting period, a schedule or regular reports in a form and at intervals as may be prescribed by the Central Bank.

(2) If any return or regular report required pursuant to Section 24 (1) is not forwarded to the Central Bank within the time limit specified by the Central Bank the defaulting institution or affiliate or both shall be liable to a fine of not less than One Hundred Thousand (L$100,000) Liberian Dollars in respect of every day during which the default continues. If any information supplied or item produced is false in any material particular, the institution or affiliate or both shall be in violation of law and shall pay a fine of a minimum of Two Hundred Thousand (L$200,000) Liberian Dollars in respect of every day the violation continues. The Central Bank may close down and revoke the license of the institution and/or the affiliate, if it refuses to correct the default and/or fails to pay the fine.

(3) Every financial institution shall- keep its business records and books in accordance with internationally accepted accounting principles and practices as well as the requirements of the legal provisions on accounting in Liberia, and in a manner which is suitable for effective internal control as may be prescribed by the Central Bank within the general parameters of internationally accepted accounting standards.
concerning asset classification, loan and income provisioning, aid limits on open foreign exchange position of a financial institution.

(4) Failure to keep proper books and records in accordance with Section 24 (3) as a result of negligence or incompetence shall cause the directors and officers responsible therefor to be fined up to Two Hundred and Fifty Thousand (L$250,000) Liberian Dollars and removed from office. Failure to keep proper books and records in accordance with Section 24 (3) with intent to conceal, deceive or defraud shall be considered an offense, and the directors or officers responsible therefor shall be jointly or severally liable and may be fined up to Five Hundred Thousand (L$500,000) Liberian Dollars or liable to imprisonment for a minimum of two 12 years or both.

**Section 25**

**Intervention by the Central Bank in Financial Institutions**

If in the opinion of the Central Bank examination authorized under Section 22 reveals that a financial institution concerned is conducting its business in an unlawful or unsound manner or that its capital is impaired or that it is otherwise in an unsound condition, the Central Bank may:

(1) require the external auditor appointed by the financial institution to undertake a special audit covering the unlawful act or irregularity and/or the impairment of capital and to make a written report within thirty (30) days of such request to the Central Bank and to the financial institution stating the result or conclusions of its audit.

(2) appoint a person who in the opinion of the Central Bank, has had proper training and experience to advise the financial institution on the steps to be taken to rectify the matter, and shall fix his remuneration which shall be paid by the institution.

(3) without prejudice to the authority of the Central Bank, require that such institution signs, obligates and commits itself to a written agreement entered by and between it and the Central Bank to forthwith take such measures as the Central Bank may consider necessary to rectify the matter, including but not limited to remedial measures of suspension and dismissal of the institution’s officers and directors,
limitation of its operations and the appointment of provisional administration to manage the institution to compliance with regulations.

(4) If a financial institution is an object of such intervention, it shall submit a semi-annual report in writing to the Central Bank on the following:-
   (i) the increase or decrease or otherwise of its registered capital;
   (ii) any loss on and of its adjusted capital or cessation of its payments;
   (iii) any change in ownership and structure.