PRIVATE ENTERPRISE PARTNERSHIP FOR AFRICA
(PEP AFRICA)

Legal, Tax, Regulatory and Market review of the leasing sector in Sierra Leone

by

THCLR GHANA LIMITED

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June 2009
EXECUTIVE SUMMARY

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’s strategy in Sierra Leone is, through its conflict initiative, to support the country’s economic recovery by helping to improve the investment climate, strengthening the domestic financial sector, supporting private participation in infrastructure and financing select private sector companies in the priority sectors indicated by government. IFC considers leasing as one of such tools to help stimulate growth in the private sector, especially, the SME segment.

IFC commissioned this survey in Sierra Leone to access the business case for leasing in the country. The study focused on the market, legislative, accounting and tax environment for leasing. Economic activity is the bedrock on which leasing is based. Consequently, the market review uses the following three approaches to determine the potential size of leasing.

- GDP
- Equipment imports and
- Net Loans

Equipment Import Approach
Leasing experience from some developed and emerging markets suggests that 20-30% of capital goods import is financed with leases, while for developing countries 10-20% of capital goods import is financed through leasing. Ghana, Kazakhstan (independence in 1991) and Russia have however recorded less than 10% leasing to equipment import between 2004 and 2006. Sierra Leone is a developing country undergoing a post-conflict transformation. We estimate leasing potential of 1% of equipment imports for Sierra Leone. Using this approach, potential size of leasing is expected to range from US$1.0million in 2009 increasing to US$ 1.77million in 2013.

Net Loans Approach
In developed countries, approximately 15-20% of the bank loans can be attributed to leasing while for developing economies 5-8% of total lending goes into leasing. We calculated a rate
of 5% of equipment loans to total net loans. At this constant rate we estimate the potential for leasing in of **US$ 5.01 million** in 2009 increasing to **US$ 9.64 million** in 2013.

**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%. 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 Sierra Leone, with a program for reconstruction, we consider a percentage of 1% of GDP to be prudent. This gives a projected estimate of leasing between **US$ 14.99 million** in 2009 and **US$19.14 million** in 2013. We have further distilled the GDP approach by deflating it by the Gross Capital Formation of 15% in order to reduce the high impact of non-capital factors on the GDP approach.

The table below summarizes the potential value of leasing from the three approaches outlined earlier.

**Summary of Potential Leasing Value (US$ million)**

The table below summarizes the potential value of leasing from the three approaches outlined earlier.

<table>
<thead>
<tr>
<th>Year</th>
<th>2008</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
<th>Total for 5years</th>
</tr>
</thead>
<tbody>
<tr>
<td>% of Imported equipment</td>
<td>0.87</td>
<td>1.00</td>
<td>1.15</td>
<td>1.33</td>
<td>1.54</td>
<td>1.77</td>
<td><strong>6.80</strong></td>
</tr>
<tr>
<td>% of Net Loans</td>
<td>4.28</td>
<td>5.04</td>
<td>5.92</td>
<td>6.97</td>
<td>8.19</td>
<td>9.64</td>
<td><strong>35.76</strong></td>
</tr>
<tr>
<td>% of GDP</td>
<td>14.10</td>
<td>14.99</td>
<td>15.93</td>
<td>16.94</td>
<td>18.00</td>
<td>19.14</td>
<td><strong>85.00</strong></td>
</tr>
<tr>
<td>Deflated by Gross Capital Formation of GDP (15%)</td>
<td>2.25</td>
<td>2.39</td>
<td>2.54</td>
<td>2.70</td>
<td>2.87</td>
<td><strong>12.75</strong></td>
<td></td>
</tr>
</tbody>
</table>

We project the potential range for leasing for Sierra Leone from 2009 to 2013 from **US$6.8million to $35 million**.
Legislative & Regulatory Framework

The Legal System in Sierra Leone is based on statutory law, common law and customary law based on unwritten customary practices. Sierra Leone’s financial sector is subject to prudential and market conduct regulation through The Banking Act 2000 and The Other Financial Services Act of 2001 (amended in 2007). This Act governs a wide range of financial services including deposit-taking and non-deposit-taking financial institutions. There is no other specific law relating to leasing outside this Act.

The Other Financial Services Act governs the granting of finance leasing licenses to non-bank financial institutions. Sierra Leone does not operate a system of universal banking license whereby commercial banks are authorized to carry out businesses generally reserved for non-bank financial institutions such as finance leasing. In other words, commercial banks in Sierra Leone are not permitted to offer finance leasing as a product. They could only do so by incorporating a subsidiary and registering it under the said Act.

The Act is silent on the minimum capital requirements to establish a leasing company. Section 16 (1) of the Act only indicates that every licensed financial institution shall at all times maintain in Sierra Leone as separate and unimpaired minimum paid-up capital and reserves such amount as the Central Bank may from time to time prescribe.

The Act states that a licensed financial institution shall not carry out any financial activity for which it is not licensed, Section 6 (5 & 6). A leasing license on its own is a non-deposit-taking license, however, by implication, sub section permits multiple licenses. Therefore for a leasing company to be deposit-taking, it may apply for a separate license to do so.

Gaps to be addressed

There is currently no specific law governing the operations of leasing. The law that exists in a civil code is the Other Financial Services Act 2001 and this only relates to the obtaining of a license to carry on licensed financial business, which includes leasing. Current legislative gaps relate to the determination of a minimum capital required, the legal definition of a lease, the rights and obligations of the parties to the lease and prudential guidelines for leasing.
operations. These constitute disincentives for investors. The single obligor limit to lessees under this act is also not defined. Section 24 (1)

**Accounting and Taxation Framework**

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

1. The Business ACT 2000
2. The Other Financial Services Act 2001 (Amended in 2007)
3. The Finance Act 2007

Leasing is defined by the International Accounting Standards (IAS 17) 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.

Corporate income tax is levied on every registered company and charged on taxable income. Currently the corporate income tax is levied at 30% and the sales tax is 15%. Regarding Capital Gains Tax, no provision is made for capital gains tax in the event of a sale and leaseback transaction where the sale proceeds exceed the original cost of the leased asset.

**Gaps in Tax and Accounting**

(i) Tax Incentives: Presently there are no tax incentives to banks and/or financial institutions to engage in leasing activities. This was noted during discussions with the banks and the National Revenue Authority.

(ii) Possible Latent Liability: There is no tax law on leasing. There needs to be clarity on potential tax liabilities for all parties that would be involved in a leasing transaction to assess the full financial implications of leasing.
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Prepared by THCLR Ghana Ltd in association with J Mills Lamptey and Michael & Michael, June 2009
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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>
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<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>
</tbody>
</table>
NPL  Non-Performing Loans
PRS  Poverty Reduction Strategy Paper
SLRA  Sierra Leone Road Authority
VAT  Value Added Tax
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 has worked on legislative enhancements in 35 countries and invested in 96 leasing companies in 50 countries, totaling over US$1.0 billion.

IFC’s strategy in Sierra Leone is, through its conflict initiative, to support the country’s economic recovery by helping to improve the investment climate, strengthening the domestic financial sector, supporting private participation in infrastructure and financing select private sector companies in the priority sectors indicated by government. IFC has partnered with KfW of Germany to support the establishment of ProCredit Sierra Leone, a microfinance institution. In 2008, IFC launched the Conflict-Affected States in Africa (CASA) initiative, a five year, US$25 million program to deliver advisory activities in fragile and conflict-affected states in Africa.

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 considers leasing as one of such tools to help stimulate growth in the private sector, especially, the SME segment. IFC commissioned this survey in Sierra Leone to access the business case for leasing in 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 Sierra Leone, 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.

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 Sierra Leone. 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 Sierra Leone.

1.2 Approach for determining Market Potential

Economic activity is the bedrock on which leasing is based. Consequently, the market review uses the following three approaches to determine the potential size of leasing.

- GDP
- Equipment imports and
- Net Loans

1.3 Limitations

Our terms of reference required that we determine the current and the potential for the leasing market. However, leasing does not exist in Sierra Leone so we could not give its current situation. We have therefore used the three approaches to determine the potential for leasing in Sierra Leone, 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 Sierra Leone. Depending on the response of the donor community, Sierra Leone 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.

The latest financial figures we could get for Sierra Leone was from the 2007 Annual Report of the Bank of Sierra Leone. We projected the potential for leasing from both the 2007 annual report figures and field investigations from the banking community. Having similar circumstances and economies, we tested for consistency by comparing the ratios obtained for Sierra Leone to that of Liberia. The exchange rate as of the time of preparing this report was

\[
1\text{US$} = 3,089 \text{ Sierra Leone Leones}
\]

This report is dated May 2009, and accordingly, it is based on the laws of the Republic of Sierra Leone and other relevant information available to THCLR Ghana Limited as of this date. 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.

1.4 Acknowledgements

We thank all of the staff in Sierra Leone; 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 SIERRA LEONE – MARKET REVIEW

2.1 Country Overview

![Map of Sierra Leone](image)

Sierra Leone covers a total area of 71,740km² and bounded by Liberia, Guinea and the Atlantic Ocean. Sierra Leone has a population estimated at 6 million with a life expectancy at birth estimated at 41.24 years. The country had its independence on 27th April, 1961 from the British and its current legal system is based on English law and customary laws indigenous to local tribes. Democracy is slowly being re-established after the civil war from 1991 to 2002, which resulted in thousands of deaths and displacement of more than 2 million people.

2.2 Snapshot of the Economy

Sierra Leone’s economy has grown rapidly over the last five years with a growth targeted at 6.5% for 2008. Growth in recent years have been propelled by remittances and investments from the Sierra Leone expatriate community, selected mining investments notably in rutile and bauxite, and by foreign aid. Much of this growth was concentrated in the informal agriculture, fishing, mining and services sectors that make up the bulk of the economy. Formal activity is confined to large-scale mining, construction, retail services, tourism and government employment.
International donor support represents about half of the government’s total revenues. It is therefore not surprising that, given the country’s heavy dependency on the mining sector and its severe lack of infrastructure, the macroeconomic situation remain very fragile. Nearly half of the working age population engages in subsistence agriculture. The country is rich in diamonds and endowed with other mineral deposits like rutile (titanium ore), bauxite, gold, platinum, iron ore and chromite. Diamond mining remains the major source of foreign hard currency earnings, which accounts for nearly half of Sierra Leone’s exports. Table 1 below summarises the economic indicators in Sierra Leone between 2005 and 2007.

**Table 1: Sierra Leone’s Economy**

<table>
<thead>
<tr>
<th>Sierra Leone</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
</tr>
</thead>
<tbody>
<tr>
<td>Population, total (millions)</td>
<td>5.59</td>
<td>5.74</td>
<td>5.85</td>
</tr>
<tr>
<td>Population growth (annual %)</td>
<td>3.6</td>
<td>2.8</td>
<td>1.8</td>
</tr>
<tr>
<td>Surface area (sq. km) (thousands)</td>
<td>71.7</td>
<td>71.7</td>
<td>71.7</td>
</tr>
<tr>
<td>GNI, PPP (current international $) (billions)</td>
<td>3.14</td>
<td>3.47</td>
<td>3.89</td>
</tr>
<tr>
<td>GNI per capita, PPP (current international $)</td>
<td>560</td>
<td>600</td>
<td>660</td>
</tr>
<tr>
<td>GDP (current US$) (billions)</td>
<td>1.21</td>
<td>1.42</td>
<td>1.66</td>
</tr>
<tr>
<td>GDP growth (annual %)</td>
<td>7.2</td>
<td>7.3</td>
<td>6.8</td>
</tr>
<tr>
<td>Inflation, GDP deflator (annual %)</td>
<td>12.9</td>
<td>11.8</td>
<td>10.3</td>
</tr>
<tr>
<td>Agriculture, value added (% of GDP)</td>
<td>46</td>
<td>47</td>
<td>45</td>
</tr>
<tr>
<td>Industry, value added (% of GDP)</td>
<td>25</td>
<td>25</td>
<td>24</td>
</tr>
<tr>
<td>Services, etc., value added (% of GDP)</td>
<td>30</td>
<td>27</td>
<td>31</td>
</tr>
<tr>
<td>Exports of goods and services (% of GDP)</td>
<td>24</td>
<td>25</td>
<td>21</td>
</tr>
<tr>
<td>Imports of goods and services (% of GDP)</td>
<td>37</td>
<td>33</td>
<td>28</td>
</tr>
<tr>
<td>Gross capital formation (% of GDP)</td>
<td>17</td>
<td>15</td>
<td>13</td>
</tr>
<tr>
<td>External debt stocks, total (DOD, current US$) (millions)</td>
<td>1,564</td>
<td>1,308</td>
<td>348</td>
</tr>
<tr>
<td>Total debt service (% of exports of goods, services and income)</td>
<td>5.7</td>
<td>8.6</td>
<td>2.5</td>
</tr>
<tr>
<td>Workers’ remittances and compensation of employees, received (current US$) (millions)</td>
<td>2</td>
<td>50</td>
<td>148</td>
</tr>
<tr>
<td>Foreign direct investment, net inflows (BoP, current US$) (millions)</td>
<td>83</td>
<td>59</td>
<td>94</td>
</tr>
<tr>
<td>Official development assistance and official aid (current US$) (millions)</td>
<td>350</td>
<td>344</td>
<td>535</td>
</tr>
</tbody>
</table>

Source: www.worldbank.org
Real economic growth rebounded strongly after the war, 27% in 2002, 9% in 2003 and just over 7% for 2004-07. Sierra Leone’s GDP is mainly driven by output in the agriculture, industry and services sectors. National inflation rose to 18% in July before easing to 15% in October 2008. This compares to an average annual inflation of 10.37% in 2007.

2.3 Banking Sector

The Government of Sierra Leone has initiated the Financial Sector Development Plan (FSDP) to help strengthen the financial sector. The Sierra Leone financial sector has 13 commercial banks, 4 community banks, 9 insurance companies, several foreign exchange bureaux and 2 discount houses. Source: Bank of Sierra Leone Annual Report 2007.

Banks currently operating in Sierra Leone are;

1. Sierra Leone Commercial Bank Ltd
2. Standard Chartered Bank Ltd
3. Rokel Commercial Bank Ltd
4. Guaranty Trust Bank Ltd
5. Union Trust Bank Ltd
6. First International Bank
7. International Commercial Bank
8. Pro-Credit Commercial Bank Ltd
9. Access Bank Ltd
10. Ecobank Ltd
11. Skye Bank Ltd
12. United Bank for Africa (UBA)
13. Zenith Bank Ltd

Skye Bank Ltd, United Bank for Africa (UBA) and Zenith Bank started operations in 2008. Bank branches continue to increase over the years. Total bank branches as at 31 December 2008 stood at fifty-seven (57). This is against forty-four (44) in 2007 and thirty-five (35) in 2006.

The Sierra Leone Banking Act 2000 requires banks to maintain a minimum capital adequacy ratio of 15%. The capital adequacy ratio as at December 2007 was 38.74% compared to 36.02% as at 31 December 2006. The minimum paid-up capital of commercial banks has
been increased from Le 800 million (US$ 266,000) on a graduated basis to Le 15 billion (US$5.0 million) by end December 2009. Total assets of commercial banks operating in Sierra Leone as at end-December 2007 stood at Le 1.06 trillion (US$352million) compared to Le 803.35 billion (US$ 266 million) in 2006 ([Source: Annual Report and Statement of Account for Bank of Sierra Leone, 2007]).

2. 3.1 Deposit Growth

The bank industry’s local and foreign deposits increased by 30% from Le 608.9 billion (US$ 197 million) in 2006 to Le 797.5 billion (US$ 258.1 million) in 2007. This suggests confidence in the banking sector and the availability of funds that banks can use to support public and private sector projects and investments.

2.3.2 Credit Culture

The industry’s gross loans and advances stood at Le 279.28 billion (US$ 92 million) as at 31st December 2007, compared to Le 201.28 billion (US$ 66.94 million) in 2006. The industry’s Non-Performing Loans (NPL) was 31.69% of gross advances as at December 2007 compared to 27.1% as at December 2006. This indicates deterioration in the credit culture of bank customers in Sierra Leone over the period.

A summary of the financial indicator of commercial banks operating in Sierra Leone is indicated below

**Table 2: Commercial Banks operating in Sierra Leone (US$)**

<table>
<thead>
<tr>
<th></th>
<th>31 Dec 06</th>
<th>31 Dec 07</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Assets</td>
<td>267,158.43</td>
<td>352,452.79</td>
</tr>
<tr>
<td>Loans and Advances</td>
<td>66,935.59</td>
<td>92,814.29</td>
</tr>
<tr>
<td>(Gross)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Performing Loans</td>
<td>48,965.44</td>
<td>63,402.11</td>
</tr>
<tr>
<td>Non-Performing Loans</td>
<td>17,970.82</td>
<td>29,412.17</td>
</tr>
</tbody>
</table>

Source: Central Bank of Sierra Leone
Table 3: Commercial Banks operating in Sierra Leone (percentage)

<table>
<thead>
<tr>
<th></th>
<th>31 Dec 06</th>
<th>31 Dec 07</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-Performing Loans as a % of Total Advances</td>
<td>27.10</td>
<td>31.69</td>
</tr>
<tr>
<td>Loan Loss Provisions as a % of Non-Performing</td>
<td>38.79</td>
<td>27.19</td>
</tr>
<tr>
<td>Capital Adequacy Ratio</td>
<td>36.02</td>
<td>38.74</td>
</tr>
</tbody>
</table>

Source: Central Bank of Sierra Leone

The structure of interest rates in all markets was influenced by the commencement of operations of three new banks in the money market. The savings, 1 month and 3 months time deposits rates declined by 74, 22 and 7 basis points to 6.55%, 9.11% and 9.63% respectively, over the year, while the 6 months and 9 months time deposit rates increased by 3 and 17 basis points to 10.58% and 10.42% respectively. The interest rate on the 12 months time deposit rate however remained unchanged at 12% (Source: Bank of Sierra Leone)

Table 4: average interest rates (percentage)

<table>
<thead>
<tr>
<th></th>
<th>Dec-07</th>
<th>Dec-08</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Treasury Bills (3-months)</strong></td>
<td>21.29</td>
<td>9.06</td>
</tr>
<tr>
<td><strong>Treasury Bearer Bonds (1 year)</strong></td>
<td>20.00</td>
<td>10.00</td>
</tr>
<tr>
<td><strong>Savings Deposit</strong></td>
<td>7.39</td>
<td>6.65</td>
</tr>
<tr>
<td><strong>Time Deposits</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><em>Up to 1 month</em></td>
<td>9.33</td>
<td>9.11</td>
</tr>
<tr>
<td><em>1-3 months</em></td>
<td>9.70</td>
<td>9.63</td>
</tr>
<tr>
<td><em>3-6 months</em></td>
<td>10.55</td>
<td>10.58</td>
</tr>
<tr>
<td><em>6-9 months</em></td>
<td>10.25</td>
<td>10.42</td>
</tr>
<tr>
<td><em>9-12 months</em></td>
<td>12.00</td>
<td>12.00</td>
</tr>
</tbody>
</table>

Source: Central Bank of Sierra Leone
2.4 Potential for Leasing in Sierra Leone

Actual Market Size vs. Potential Market Size

In Ghana, the percentage of actual leasing size is about 46.7% of the potential for leasing. 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 unutilized capacities in the financial sector.

2.4.1 Economic Drivers for Leasing in Sierra Leone

The sectors described in Table 10 below cover the sectors that we consider to have the highest potential for growth and need for asset replacement and/or equipment financing. There may be other sectors but we consider these as the main economic drivers for leasing in Sierra Leone.

<table>
<thead>
<tr>
<th>Sector</th>
<th>Assets / Equipment</th>
<th>Comments on Potential Asset Financing</th>
</tr>
</thead>
<tbody>
<tr>
<td>Construction</td>
<td>Trucks, compactors, brick laying equipment, excavators, etc.</td>
<td>Improving the road network is high on the government’s agenda. This calls for massive road construction. Lack of adequate equipment financing however slows this process. The Sierra Leone Road Authority (SLRA) has old and dilapidated equipment; the private contractors are cash strapped. There is some 11,000 km of roads to be constructed and leasing would be a good financial alternative to address this infrastructural development. The world bank is supporting Sierra Leone with US$55 million to rehabilitate selected priority roads, port and airport facilities.</td>
</tr>
</tbody>
</table>
Mining & Quarrying

Excavators, trucks, compressors, crushers, processing equipment etc.

The mineral sector continued to be buoyant with the production of bauxite, rutile, limonite and diamond.

Agriculture & Forestry

Trucks, tractors for agriculture and forestry related equipment

Production of timber is expected to increase with signing of trade agreements. Bank Finance is however not popular because of the perceived risk. This will help peasant farmers and micro leasing to group associations.

### 2.4.2 Leasing as a percentage of Imports of Equipment Import

Imports increased by 13.11% from US$394.83 million in 2006 to US$446.60 million in 2007. Import composition for 2007 as indicated in figure 4 shows mineral fuel and lubricant having the largest share of 46%; followed by machinery & transport equipment (21%); food (19%); crude materials (4%); beverages and tobacco (3%) and animal & vegetable oil (2%).

Figure 2: Import composition in Sierra Leone, 2007
Leasing experience from some developed and emerging markets suggests that 20-30% of capital goods import is 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, Kazakhstan (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**
Sierra Leone is a developing country undergoing a post-conflict transformation. We estimate leasing potential of 1% of equipment imports for Sierra Leone.

Table 6 below shows equipment import for Sierra Leone from 2004 to 2007.

<table>
<thead>
<tr>
<th>Year</th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
</tr>
</thead>
<tbody>
<tr>
<td>Equipment Import</td>
<td>50.86 million</td>
<td>71.83 million</td>
<td>69.11 million</td>
<td>75.11 million</td>
</tr>
<tr>
<td>Growth Trend Year-On-Year</td>
<td>41.22%</td>
<td>-3.78%</td>
<td>8.68%</td>
<td></td>
</tr>
</tbody>
</table>

Source: Bank of Sierra Leone’s Annual Report

The average annual growth rate between 2004 and 2007 is approximately 15.4% and this is used as a basis for projecting the growth of imported equipments from 2007 to 2013 (Table 7)

<table>
<thead>
<tr>
<th>Year</th>
<th>2007</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>75.11</td>
<td>86.68</td>
<td>100.03</td>
<td>115.43</td>
<td>133.21</td>
<td>153.72</td>
<td>177.39</td>
</tr>
<tr>
<td>Percentage share of leasing (1.0%)</td>
<td>1.0%</td>
<td>1.0%</td>
<td>1.0%</td>
<td>1.0%</td>
<td>1.0%</td>
<td>1.0%</td>
<td>1.0%</td>
</tr>
<tr>
<td>Estimated value of leasing</td>
<td>0.75</td>
<td>0.87</td>
<td>1.00</td>
<td>1.15</td>
<td>1.33</td>
<td>1.54</td>
<td>1.77</td>
</tr>
</tbody>
</table>

Potential size of leasing as shown in Table 7 using this approach ranges between US$1.0 million in 2009 increasing to US$ 1.77 million in 2013. This gives a total of US$ 6.80 for the first five years.

2.4.3 Leasing as a Percentage of Net Loans

Other services, import trade, and construction constituted 64% of total loans. Financial services, transport, storage & communication constituted 21%. Manufacturing, electricity, gas & water, other trade & tourism accounted for less than 15% of all loans in 31 December 2007.
From the annual reports of banks, we have estimated that over 90% of loans and advances granted by banks were in the form of overdraft and other short-term credits of up to 12 months.

In developed countries, approximately 15-20% of the bank loans can be attributed to leasing while for developing economies 5-8% of total lending goes into leasing (Source: Leasing in Ghana, a survey of the leasing market, IFC, June 2008).

A research conducted by THCLR Ghana Ltd in Liberia indicates that approximately 6.1% of net loans granted go into equipment financing. Both Liberia and Sierra Leone are post conflict economies. Taking the lowest percentage, we estimate 5% of net loans could go into equipment leasing

Table 8 below shows net loans and growth trend for Sierra Leone from 2004 to 2007

<table>
<thead>
<tr>
<th>Year</th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net Loans (US$)</td>
<td>42.07 million</td>
<td>45.88 million</td>
<td>53.25 million</td>
<td>72.80 million</td>
</tr>
<tr>
<td>Growth Trend Year-On-Year</td>
<td>0.09%</td>
<td>16.07%</td>
<td>36.71%</td>
<td></td>
</tr>
</tbody>
</table>

Source: Bank of Sierra Leone’s Annual Report
From the data outlined in Table 8, the average annual growth in net loans is 17.62% and this will be used in projecting net loans from 2007 to 2013.

Projected net loans and estimated value for leasing is shown in Table 9 below;

Table 9: Projected Net Loans and Estimated Size of Leasing

<table>
<thead>
<tr>
<th>Year</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>Projected Net Loans (US$ million)</td>
<td>72.8</td>
<td>85.63</td>
<td>100.71</td>
<td>118.46</td>
<td>139.33</td>
<td>163.88</td>
<td>192.76</td>
</tr>
<tr>
<td>Percentage share of leasing (5%)</td>
<td>5.0%</td>
<td>5.0%</td>
<td>5.0%</td>
<td>5.0%</td>
<td>5.0%</td>
<td>5.0%</td>
<td>5.0%</td>
</tr>
<tr>
<td>Estimated value for leasing (US$ million)</td>
<td>3.64</td>
<td>4.28</td>
<td>5.04</td>
<td>5.92</td>
<td>6.97</td>
<td>8.19</td>
<td>9.64</td>
</tr>
</tbody>
</table>

As per the analysis from Table 9, leasing as a percentage of Net Loans from banks is estimated at US$ 5.04 million in 2009 and increasing to US$ 9.64 million in 2013. This gives a total of US$ 35.76 for the first five years.

2.4.4 Leasing as a percentage of GDP

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. The figure below indicates the percentage of leasing to GDP in an emerging economy and developing countries.

We have presented the case for Ghana, Russia and Kazakhstan below to put the analyses in better perspective. The sharp rise in the growth rate in Ghana from 2006 to 2007 is due to the effects of more banks writing leases as a result of the passing of the Universal Banking Act.
We estimate a rate of 1%, or real GDP to be potential for Sierra Leone.

The table below shows GDP growth rate between 2004 and 2007

<table>
<thead>
<tr>
<th>Year</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
</tr>
</thead>
<tbody>
<tr>
<td>GDP Rate</td>
<td>7.5%</td>
<td>7.3%</td>
<td>6.4%</td>
</tr>
</tbody>
</table>

Source: Report on the 2007 Real Gross Domestic Product Estimates for Sierra Leone

From Table 10 above, the average annual GDP growth rate from 2005 to 2007 is 7.1%. However a report by the Economic Statistical Division of Sierra Leone (August 2008) indicate that real percentage growth rates for 2008 and 2009 is projected to be 6.1% and 6.3% respectively. In the light of this and comparing with the average growth rates between 2005 and 2007, we estimate real GDP rate to grow at 6.3 between 2009 and 2013. Real GDP for 2007 is estimated at Le 4,106,739 million (US$1,329 million). Projected GDP from 2007 to 2013 and the estimated value of leasing is shown below
Table 11: Projected GDP and estimated value of leasing in Sierra Leone (2007-2013)

<table>
<thead>
<tr>
<th>Year</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>Projected GDP (US$ million)</td>
<td>1,329</td>
<td>1,410</td>
<td>1,499</td>
<td>1,593</td>
<td>1,694</td>
<td>1,800</td>
<td>1,914</td>
</tr>
<tr>
<td>Share attributed to leasing (1.0%)</td>
<td>1%</td>
<td>1%</td>
<td>1%</td>
<td>1%</td>
<td>1%</td>
<td>1%</td>
<td>1%</td>
</tr>
<tr>
<td>Estimated value for leasing (US$ million)</td>
<td>13.29</td>
<td>14.10</td>
<td>14.99</td>
<td>15.93</td>
<td>16.94</td>
<td>18.00</td>
<td>19.14</td>
</tr>
<tr>
<td>Gross Capital Formation of GDP (Deflator 15%)</td>
<td>1.73</td>
<td>1.83</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>2.25</td>
<td>2.39</td>
<td>2.54</td>
<td>2.70</td>
<td>2.87</td>
</tr>
</tbody>
</table>

The projected size of Sierra Leone leasing industry as per the analysis above is between US$14.99 million in 2009 and US$19.14 million in 2013. This gives a total of US$ 85.0 for the first five years.

However, considering the high impact of non-capital factors on the GDP approach, we have further deflated the GDP figures for Sierra Leone by 15%. Agricultural products, for instance, contributes about 45% to Sierra Leone’s GDP. Gross capital formation consists of outlays on additions to the fixed assets of the economy plus net changes in the level of inventories. Fixed assets include land improvements (fences, ditches, drains, and so on); plant, machinery, and equipment purchases; and the construction of roads, railways, and the like, including schools, offices, hospitals, private residential dwellings, and commercial and industrial buildings. Inventories are stocks of goods held by firms to meet temporary or unexpected fluctuations in production or sales, and "work in progress." The average gross capital formation as a percentage of GDP in Sierra Leone between 2005 and 2008 was 15%. By deflating the GDP by Gross Capital Formation, we have eliminated the non-capital effects on GDP and looked exclusively at those factors that contribute to equipment formation.
2.4.5 Analysis and Summary of Approaches

The table below summarizes the potential value of leasing from the three approaches outlined earlier.

<table>
<thead>
<tr>
<th>Year</th>
<th>% of Imported equipment</th>
<th>% of Net Loans</th>
<th>% of GDP</th>
<th>Deflated by Gross Capital Formation of GDP (15%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2008</td>
<td>0.87 1.00 1.15 1.33 1.54 1.77</td>
<td>4.28 5.04 5.92 6.97 8.19 9.64</td>
<td>14.10 14.99 15.93 16.94 18.0 19.14</td>
<td>2.25 2.39 2.54 2.70 2.87</td>
</tr>
<tr>
<td>Total for 5 years</td>
<td>6.80</td>
<td>35.76</td>
<td>85.00</td>
<td>12.75</td>
</tr>
</tbody>
</table>

We project the potential range for leasing for Sierra Leone from 2009 to 2013 from **US$6.8 million to $35 million**, having distilled the GDP approach further by deflating it by the Gross Capital Formation of 15% in order to reduce the high impact of non-capital effects on it.
3.0 SIERRA LEONE: LEGISLATIVE & REGULATORY FRAMEWORK

3.1 SIERRA LEONE  Legal System

The Legal System in Sierra Leone is based on statutory law, common law and customary law based on unwritten customary practices.

Sources of Law in Sierra Leone

The Laws of Sierra Leone comprise:

- The Constitution of Sierra Leone 1991
- Laws made by or under the authority of Parliament as established by the 1991 Constitution
- Any orders, rules, regulations and other statutory instruments made by any person or authority pursuant to a power conferred in that behalf by the 1991 Constitution or any other law
- The existing Law which comprises of the written and unwritten laws of Sierra Leone as they existed before the coming into effect of the 1991 Constitution
- Common Law which comprises of rules of law generally known as the common law, the rules of law generally known as the doctrine of equity and rules of customary law (the rules of law which by custom are applicable to particular communities in Sierra Leone) including those determined by the Superior Court of Judicature

The Constitution

The Constitution is the supreme law of the Republic of Sierra Leone. Section 4 2 of the Constitution provides that all authorities and persons exercising legislative executive or judicial powers shall conform to, observe and apply the provisions of the Constitution. Section 108 of the Constitution provides for the alteration of the Constitution by Parliament on a two third majority on both the second and third readings but such power is subject to several exceptions. Section 108 creates entrenched clauses, which can only be amended through a referendum.

Legislation

The only legislator in the Republic of Sierra Leone is the House of Parliament.
Delegated Legislation

Delegated legislation is a power conferred on any person or authority by the 1991 Constitution or by any other law to make any order rules regulations or other statutory instrument and they have force of law.

Statutes

The Laws of Sierra Leone 1960 Volumes 1 to 8 contain the laws of Sierra Leone of both Civil and Criminal Law until 1960 but that the legislations enacted by Parliament since then have not been codified in to volumes.

Doctrine of Binding Precedents

Case law can serve as a source of common law or it can interpret legislations or provisions of statues. The Superior Courts of Judicature as established by Section 120 of the 1991 Constitution has the sole power to interpret the laws of Sierra Leone and its interpretation shall be binding on all persons and authorities. Sierra Leone operates a system of binding precedent in that judgments of the Supreme Court are binding on all lower courts, and shall not be subject to appeal or review by any other branch of government. The Supreme Court whilst treating its own previous decisions as normally binding may depart from a previous decision when it appears right to do so. The Supreme Court has original jurisdiction to the exclusion of all other courts in all matters relating to the enforcement and interpretation of the Supreme Court. The Court of Appeal is bound by its own previous decisions and all lower courts are bound by the decisions of the Court of Appeal on law.

3.2 Legal Overview of Leasing in Sierra Leone

The Other Financial Services Act 2001 \(^1\) (Amended in 2007) governs the granting of finance leasing licenses to non-bank financial institutions. Sierra Leone does not operate a system of universal banking license whereby commercial banks are authorized to carry out businesses generally reserved for non-bank financial institutions such as finance leasing. In other words, commercial banks in Sierra Leone are not permitted to offer finance leasing as a product. They could only do by incorporating a subsidiary and registering it under the said Act. None of the banks so far has considered opening a subsidiary company to obtain a license.

\(^1\) Section 2 of the Other Financial Services Act 2001 defines financial activity to include leasing
Beyond this Act, 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 Sierra Leone have jurisdiction to determine such a breach by any of the parties to a lease.

3. 2.1 Legal and Regulatory Framework governing Market Entry

Section 5 of the Other Financial Services Act (Amended 2007) provides “…that no person shall be eligible to apply for a license under this Act unless that person is a body corporate, a society registered under the Co-operative Societies Act 1977 or a statutory body.” Section 6 provides inter alia “that in determining the application the Central Bank shall take into account the character and fitness of the promoters, Directors and officers or proposed directors and officers of the applicant, the feasibility and viability of the applicant’s business plan, the adequacy of the applicant’s capital structure in relation to the nature and scale of the proposed business, the financial position and financial history of the applicant and the public interest.”

The law that exists in a civil code is the Other Financial Services Act 2001 and this only relates to the obtaining of a license to carry on licensed financial business, which includes leasing. The common law governs the leasing where a breach occurs and the courts of Sierra Leone would have jurisdiction to determine such a breach by any of the parties to a lease.

The criteria for the granting of a banking license, licensed financial institutions and non-bank financial institution is therefore the same in terms of the application for a license to operate.

3.2.2 Legal definition of a Lease

Section 2 of The Other Financial Services Act 2001 (Amended 2007) defines leasing as ‘includes letting or sub-letting moveable assets on hire for agricultural, industrial or commercial use, where the Lessor is the owner of the property, regardless whether the letting

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2 Sections 10,11,12,13, of The Banking Act 2000 sets out legal procedure for obtaining a banking license
is with or without an option to purchase the property but does not include the business of hire purchase’

The above definition by using the word ‘includes’ presupposes additional definition of leasing and any such common law definition would apply. This definition can also be applicable to leasing in Sierra Leone: ‘a contract between two parties where one party provides equipment for use by another party for a determined period for an agreed or specified payment.’

The definition found in the Other Financial Services Act 2001 includes a provision that upon the determination of the lease period the Lessee may exercise an option to purchase the asset at an agreed price. This definition makes it clear that the Lessor holds title to leased asset.

A lease agreement may involve two or three parties. It may involve only a Lessor and a Lessee. It may also involve a Lessor, Lessee and a supplier. In the second scenario the lessor usually at the request of the Lessee enters in to an agreement with a third party (the supplier) under which the Lessor acquires the capital goods on terms and conditions agreed to by the Lessee and then leases the capital goods to the Lessee.

In such a scenario, the third party can only have a claim on the leased asset if the Lessor does not purchase outright but does so in installments. The third party would clearly have a lien on the asset until payment is complete.

A third party can also have claims on leased assets if the Lessor unilaterally decides to assign the lease agreement to a third party having given due notice to the Lessee.

Under the above definition, the parties to the lease are the Lessor and the Lessee though in some instances it may include a third party, for example a supplier of the goods needed by the Lessee. The asset in a lease is the goods leased out to the Lessee by the Lessor for use by the Lessee and it must be capable of being owned. The goods must also be moveable.

The rental is the agreed rent or fixed payment that the Lessee will pay to the Lessor on a weekly, monthly basis for use of the leased asset. This will usually amount to the sum paid for the asset plus interest.
However, the definition found in Section 2 is silent on the issue of rental but the use of the word ‘letting’ indicates payment of rent. Under Landlord and Tenancy relationship property let out is subject to payment of rent. The legislation has simply adopted the word letting to indicate that payment of rent is a pre requisite of every lease. In other words, like in every contract consideration is a key element.

The lease period is the period covering the commencement of the lease to the end of the lease. It is the period during which the Lessee shall use the leased goods and the period during which the Lessor will receive rental payment from the Lessee. It is the period during which the lease shall be operational. Again, this is not specifically set out but the common law interpretation of letting would also include the period of the lease.

Some leases contain an option for purchase of the Leased asset by the Lessee at the end of the lease at an agreed price. This is specifically set out in the Sierra Leone definition of a lease.

The legislation clearly excludes hire purchase as a form of leasing and under the same section defines Hire Purchase as follows:

‘HIRE PURCHASE’ includes bailment of moveable assets to another person with the understanding that the bailee becomes the absolute owner on completing payments.’

From the above definitions it can be concluded that Title in the asset in hire purchase remains in the owner until final payment is made whereas title in a leased asset remains in the Lessor even after final payment for the lease is made. Title only passes if the lessee decides to exercise the option to purchase and pays the agreed price then title is passed to the Lessee

3.2.3 Eligibility

The Other Financial Services Act states that a licensed financial institution shall not carry out any financial activity for which it is not licensed, Section 6 (5 & 6). A leasing license on its own is a non-deposit-taking license, however, by implication, sub section permits multiple licenses. Therefore for a leasing company to be deposit-taking, it may apply for a separate license to do so.
The Act is silent on the minimum capital requirements to establish a leasing company. Section 16 (1) of the Act only indicates that every licensed financial institution shall at all times maintain in Sierra Leone as separate and unimpaired minimum paid-up capital and reserves such amount as the Central Bank may from time to time prescribe.

Under Sierra Leone Law, non-bank financial institutions are authorized to carry on leasing business. A lessee and/or the supplier in the three-party structure, can be legal entities, sole proprietors or natural persons. The law as it is only allows licensed non-bank financial institutions to carry on leasing business. This limits the ability of suppliers of capital goods to enter into finance leasing arrangements with potential Lessees.

3.2.4 Rights and Obligations

There is nothing in the laws of Sierra Leone be it coded or common which restricts the terms and conditions entered into by two or three persons who have the legal capacity to enter into a contract. Rights of the lessor include the right to demand payment of the agreed lease payment and failing which to institute legal action to recover the leased asset and all outstanding payments as well as termination of the lease agreement.

Obligations on the Lessor would include paying in full for the leased asset. It would also include an obligation to allow the Lessee quiet enjoyment of the leased asset and not to cause any willful damage to the asset.

Rights of the Lessee would include inter alia undisturbed use of the leased asset so long as rent is paid on time and in accordance with the lease agreement, prevention of termination of the lease as long as it continues to perform its obligations, right to sue the supplier for defective goods, right to sue the Lessor for loss suffered as a result of non-performance of its obligations.

Obligations of the Lessee would include payment of rent on time, proper maintenance of the leased asset and return of the asset upon completion of the lease agreement.
3.3 Review of Bank of the prudential guidelines affecting leasing companies

The Banking Act and the Other Financial Services contains certain regulations for commercial banks and non-bank financial institutions to carry on leasing business. The applicable prudential requirements include:

- Restriction on use of names
- Display of license in a conspicuous public place or places in the head office, other offices and branches and any other place
- Effect change of its authorized share capital without consent of the central bank
- 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
- Undertake banking operations other than those in its license without consent of the central bank
- 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
- Maintain a reserve statutory account
- Observes a single exposure limit of 25% of the aggregate amount of the financial institution’s unimpaired net worth and 10% on unsecured loans for banks only. The single obligor limit for Other Financial Services, of which leasing is part of is not defined.
- 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 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; and
- The Annual on-site comprehensive inspection of each financial institution.

3.4 Gaps to be addressed

Banks indicated that they find it very difficult to enforce against a defaulter. Foreclosure on immoveable property can end up in lengthy legal battles lasting upwards of ten years in the courts. Equitable principles of law allows a defaulter to plead the right of redemption in respect of mortgaged property used to secure a loan and legal arguments can go on for years.
The laws relating to court procedure are relatively new in Sierra Leone, and provisions relating to discovery, interrogatories and directions for summons were included to make civil litigation less burdensome and relatively short. Furthermore, divisions of the High Court were created to include a Commercial Decision. Despite the best efforts of the Rules of Court Committee, Justice is slow. The absence of a legislation governing leasing was cited as one major obstacle preventing banks from doing leasing. Legislation is required to protect and provide redress for all the parties involved in leasing, namely: investors, lessors, lessees and suppliers:

Sierra Leone banks have high bad debts ratios and will only enter leasing with a clear legislative compass, detailing out how their risks will be mitigated.

A key concern by banks was the absence of a right of repossession in case of default and the non-judicial repossession mechanisms. Repossession of leased asset without a court order may make a person liable for larceny under the Larceny Act as one of the elements of larceny is not ownership per se but possession and therefore subject to criminal proceedings.

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.

3.5 Recommendations

It is recommended that:

a. For leasing to commence in Sierra Leone 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

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3 Established by the Courts Act 1965
4 All Banks interviewed
provision must be made for that person to institute action to recover damages for wrongful repossession.

c. An amendment to the Other Financial Services Act 2001 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; minimum capital requirements; the lease period; liens by third parties and restriction on operations.

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

e. To speed up universal banking licensing so that both banks and non-banks can undertake leasing.

f. The Sierra Leone Investment and Export Promotion Agency ACT, 2007 should contain some Inducements for investors in finance leasing business.
4.0 SIERRA LEONE: ACCOUNTING AND TAXATION FRAMEWORK

4.1 Laws governing preparation of financial statements for leasing companies

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

(i) The Business ACT 2000

This is the applicable tax law for all registered companies. All registered companies must conform to this ACT. A company becomes eligible to operate when it is issued with a certificate of incorporation and one to commence business. A registered company is governed by its regulations and is obliged to prepare annual audited financial statements and file an annual return with the tax authorities no later than three (3) months after its financial year end.

Post 2007, there is no restriction of foreign investor with respect to acquiring shares in local companies. The foreign investor can set-up a new company on its own and the condition that technical transfer is made at the end of an investment is no longer required.

(ii) The Other Financial Services Act 2001 (Amended in 2007)

This Act applies to the Republic of Sierra Leone and overseas operations of financial institutions licensed under the ACT. Section 4 of the ACT defines financial activity to mean engaging in any of the following:

- Deposit taking
- Provision of credit services;
- Leasing: (Independent leasing companies need a separate deposit-taking license in order to take deposits. A leasing license alone does not make them deposit-taking.
- Supplying of goods by way of hire-purchase
- Factoring or debt administration;
- Dealing in, acceptance or discounting of bills of exchange or promissory notes;
- Purchase of government or other securities;
- Development banking;
- Buying and selling of foreign currencies; and
• Any other type of financial intermediation

This section also defines “leasing” to include letting or sub-letting moveable assets on hire for agricultural, industrial or commercial use, where the lessor is the owner of the property, regardless whether the letting is with or without an option to purchase the property but does not include the business of hire-purchase.

The Central Bank is responsible for the approval and issuance of a financial institution license.

(iii) The Finance Act 2007

This Act amended the Income Tax ACT of 2000. It requires businesses to make an estimate of turnover for the year of assessment on or before 31st January. The taxpayer could however use a substituted year of assessment, but this must be done before the end of the first month of the substituted year of assessment.

The Act provides for a withholding tax of 10%. It requires the Commissioner-General to determine the amount of tax payable and then make an assessment when in his opinion the assessment does not correctly disclose the amount that should have been withheld.

(iv) Composite Financial Reporting Standards (CS)

These are the accounting standards the Institute of Chartered Accountants of Sierra Leone would expect all registered companies to comply with in the preparation of their financial statements.

4.2 Accounting Principles and Standards of lease transactions

Definitions

International Accounting Standard

Leasing is defined by the International Accounting Standards (IAS 17) 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.

**Sierra Leone Accounting Standard**

Although the Sierra Leone Composite Financial Reporting Accounting Standards (CS1, CS2 & CS3) is presently being revised (an Exposure Draft has been circulated) it substantively provides the same definition of finance and operating leases as stated in IAS 17. This definition is not expected to change when the revision exercise is completed no later than April 2009. The Exposure Draft is based upon a standard endorsed for the commercial sector by the Accounting Standards Board of the United Kingdom.

**Hire Purchase**

Hire purchase transactions, which are of a financing nature, shall be accounted for on a basis similar to that of a finance lease. Any other shall be treated as an operating lease.

**Manufacturer/Dealer Lessor**

A manufacturer or dealer lessor shall not recognize a selling profit under an operating lease.

The selling profit under a finance lease shall be restricted to the excess of the fair value of the asset over the manufacturer’s or dealer’s cost less any grants receivable by the manufacturer or dealer towards the purchase, construction or use of the asset.

**The VAT Office**

The criteria and eligibility to be registered as a vatable entity is yet to be determined. The establishment of a VAT office in Sierra Leone is underway and given the adoption IAS 17 by the Institute of Chartered Accountant and the National Revenue Agency it is our considered opinion that the Vat office when established would conform to generally accepted treatment of VAT on finance and operating leases.

A finance lease is generally classified as a financial product, finance lease transactions would therefore not be expected to attract VAT. Although operating leases can also be described in a way as a financial product, VAT law usually excludes operating leases from the exemption. Operating lease rentals are therefore subject to VAT. Where the lessee uses the leased asset to
generate income, the lessee offsets the input tax incurred against the output tax that the lessee charges.

Most VAT laws generally define a taxable supply of goods under a hire purchase agreement or finance lease is as the open market value of the goods or services at the time the supply is made, excluding, in the case of a hire purchase agreement or finance lease, any interest or finance charges. It is our understanding that this definition would be adopted when the VAT Law is enacted.

Accounting Treatment of Leases

Lessee’s Financial Statements

Records:

- a fixed asset in his books
- depreciates the leased asset
- a liability of the outstanding lease payment
- annual interest expense

Accounting

i. A finance lease shall be recorded in the balance sheet of a lessee as an asset and as an obligation to pay future rentals. At the inception of the lease, the sum to be recorded both as an asset and as a liability shall normally be the fair value to the asset.

ii. In those cases where the fair value of the asset does not give a realistic estimate of the cost to the lessee of the asset and of the obligation entered into, a better estimate shall be used. In principle, this shall approximate to the present value of the minimum lease payments, derived by discounting them at the interest rate implicit in the lease. An example of where this might be used would be where the lessee has benefited from grants and capital allowances that enable the minimum lease payments under a finance lease to be adjusted to a total that is less than the fair value of the asset. A negative finance charge shall not be shown.
ii. The total finance charge under a finance lease shall be allocated to accounting periods during the lease term to produce a constant periodic rate of charge on the remaining balance of the obligation for each accounting period, or a reasonable approximation thereto. The straight-line method may provide such a reasonable approximation.

iv. The rental under an operating lease shall be charged on a straight-line basis over the lease term even if the payments are not made on such a basis, unless another systematic and rational basis is more appropriate.

v. Incentives to sign a lease, in whatever form they may take, shall be spread by the lessee on a straight-line basis over the lease term or, if shorter than the full lease term, over the period to the review date on which the rent is first expected to be adjusted to the prevailing market rate.

vi. An asset leased under a finance lease shall be depreciated over the shorter of the lease term or its useful life. However, in the case of a hire purchase contract that has the characteristics of a finance lease the asset shall be depreciated over its useful life.

Operating Leases

The charge to the income statement 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.

Lessor’s Financial Statements

Records:
- a receivable and not a fixed asset
- the receivable recorded is equal to the net investment of the lease.
This is computed as the PV (Present Value) of the MLP (Minimum Lease Payment) plus any unguaranteed residual value accruing to the lessor.

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 after making provisions for items such as bad and doubtful rentals receivable. This is because the substantial part of ownership and risk is deemed to have been transferred to the lessee.

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
- Rental income from an operating lease shall be recognized on a straight-line basis over the period of the lease, even if the payments are not made on such a basis, unless another systematic and rational basis is more representative of the time pattern in which the benefit from the leased asset is receivable.

- An asset held for use in operating leases by a lessor shall be recorded as a fixed asset and depreciated over its useful life.

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.
Accounting for Sale and Leaseback Transaction

Accounting by the Seller/Lessee

- In a sale and leaseback transaction that results in a finance lease, any apparent profit or loss (i.e. the difference between the sale price and the previous carrying value) shall be deferred and amortized in the financial statements of the seller/lessee over the shorter of the lease term and the useful life of the asset.

- If the leaseback is an operating lease:
  - Any profit or loss shall be recognized immediately, provided it is clear that the transaction is established at fair value.
  - If the sale price is below fair value any profit or loss shall be recognized immediately, except that if the apparent loss is compensated for by future rentals at below market price it shall to that extent be deferred and amortized over the remainder of the lease term (or, if shorter, the period during which the reduced rentals are chargeable); or
  - If the sale price is above fair value, the excess over fair value shall be deferred and amortized over the shorter of the remainder of the lease term and the period to the next rent review (if any)

Sale and Leaseback Transactions – Accounting by the Buyer/Lessor

A buyer/lessor shall account for a sale and leaseback in the same way as other leases are accounted for, i.e. using the methods elsewhere in the report.

Disclosure by Lessees
Disclosure shall be made of:

i. The gross amounts of assets that are held under finance leases together with the related accumulated depreciation for (1) land and buildings and (2) other fixed assets in aggregate; or

ii. Alternatively to being shown separately from that in respect of owned fixed assets, the information in (i) above may be integrated with it, such that the totals of gross amount, accumulated depreciation, net amount and depreciation allocated for the period for (1) land and buildings and (2) other fixed assets in aggregate for assets held under finance leases are included with similar amounts for owned fixed assets. Where this alternative treatment is adopted, the net amount of assets held under finance leases and the amount of depreciation allocated for the period in respect of assets under finance leases included in the overall total shall be disclosed separately.

iii. The amounts of obligations related to finance leases (net of finance charges allocated to future periods). These shall be disclosed separately from other obligations and liabilities, either on the face of the balance sheet or in the notes to the accounts.

iv. The amount of any commitments existing at the balance sheet date in respect of finance leases that have been entered into but whose inception occurs after the year-end.

v. In respect of operating leases, the lessee shall disclose the payments that it is committed to make during the next year, analyzed into those in which the commitment expires within that year, those expiring in the second to fifth years inclusive, and those expiring over five years from the balance sheet date.

**Disclosure by lessors**

Disclosure shall be made of:

a) The gross amounts of assets held for use in operating leases and the related accumulated depreciation
b) The cost of assets acquired, whether by purchase or finance lease, for the purpose of letting under finance leases; and

c) The net investment in (i) finance leases and (ii) hire purchase contracts at each balance sheet date.

**Example of disclosure in the Lessors books for a sale and leaseback**

This is recorded as a receivable and the accounting entries would be:

<table>
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<tr>
<th>Dr.</th>
<th>Cr.</th>
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<tbody>
<tr>
<td>Receivables (principal + interest x Bank)</td>
<td>x (principal amount)</td>
</tr>
<tr>
<td>Suspense account</td>
<td>x (interest)</td>
</tr>
<tr>
<td>(unearned finance charge)</td>
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</table>

The amount realized each period is transferred from the suspense account into the income statement.

### 4.3 Applicable Taxes on Leasing Operations

**Corporate Income 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 NRA ACT, 2002. Currently the corporate income tax is levied at 30% and the sales tax is 15%.

**Capital Gains tax**

No provision is made for capital gains tax in the event of a sale and leaseback transaction where the sale proceeds exceed the original cost of the leased asset.

### 4.4 Gaps in Tax and Accounting

(iii) Tax Incentives

Presently there are no tax incentives to banks and/or financial institutions to engage in leasing activities. This was noted during discussions with the banks and the National Revenue Authority.
(iv) Possible Latent Liability
There is no tax law on leasing. Would it be the case that prospective lessors and/or lessees may be faced with latent tax liabilities? This needs to be addressed to provide clarity to all parties that would be involved in a leasing transaction. Who would be entitled to claim capital allowance, the lessor or lessee? The leased asset essentially belongs to the lessee but until the lease rentals are fully paid, title remains with the lessor. For example, when leasing business started in Ghana, there was confusion as to whether the lessor or the lessee had the right to capital allowances, because the lessor claimed capital allowance on the leased assets whilst the lessee treated the lease rentals as a deductible expense. Both parties had a tax relief until one day the tax authority thought otherwise. The tax authority objected to the lessors’s claim after several years of operating and wanted to retrospectively tax the reliefs the lessors had made over the years (latent liability). After several interventions from the industry, the tax authority agreed to a cut-off date and thereafter lessors no longer claims capital allowance on the leased assets.

A lease rental consists of the principal and interest income. Would the lease income be vatable or not? If yes, it would need to be separated and a vat invoice issued. This will make the lease transaction relatively more expensive. The lessor needs to know whether it is vatable or not to enable him know is tax obligation and plan his pricing accordingly. Therefore clarity on the tax regime is very important.

(v) Institutional Support
For leasing to succeed it would require the acceptance and commitment from the various stakeholders. It was noted during our survey that the business community would need some capacity building on the subject but indication from Government agencies and financial institutions on leasing is encouraging.

4.5 Recommendations for Taxation and Accounting
Sierra Leone has adequate tax and accounting structures to support finance-leasing businesses but before the tax law on leases is promulgated, we would urge the tax authorities to consider the following:
i. That the lessees are made beneficiaries of the capital allowances on whichever type of lease;

ii. A tax rebate is given to banks and/or financial institutions for lending money to leasing companies. The rate of rebate should not be less than the corporate tax rate; should it be attractive for this to be an incentive;

iii. To grant an exemption of import duty on equipment imported for lease transactions. This would make the total cost of leasing relatively cheaper and help promote, develop and grow the financial sector and leasing businesses. This may be for a specific period and strict controls would need to be in place to minimize abuse;

iv. In the event that VAT is introduced in Sierra Leone, VAT should be exempted on imported equipment meant for leasing; if not such taxation could stifle the development and progress of leasing in the country as the cost of leasing would be expensive by the additional VAT rate.

v. Financial services are generally exempted from VAT and if the tax authorities, responsible for the establishment of a VAT office would follow general practice, then with respect to finance lease, which is classified as a financial product the finance lease rentals would not attract VAT. Operating lease rentals is subject to VAT. The effect therefore of VAT on lease transactions is that it makes operating leases relatively more expensive. This distinction is not mandatory and for a small economy like Sierra Leone where the financial sector is being developed and leasing as an alternative source of funding is yet to be fully embraced, we would recommend that the treatment of VAT on operating leases should also enjoy VAT exemption just as that for a finance lease.
5.0 SIERRA LEONE: SUMMARY OF RECOMMENDATIONS

i. **Market Potential:** The market potential for leasing is between US$6.8 and $35 million. We recommend the participation and collaboration of IFC with independent leasing companies. We further recommend IFC to further encourage and assist banks to form leasing subsidiaries to provide micro leases for the SME sector. Banks currently will need a special leasing license to engage in leasing activities.

ii. **Funding:** We recommend that medium to long-term funds are made available for leasing transactions. The total funding potential over the first five years we estimated to range from US$6.8 million to US$ 35 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.

iii. **Industry Segments and Equipment-Specific Leases:** Focusing on specific industry segments initially, will develop thorough depth, expertise and appreciation of the industry before exploring into other segments. We consequently recommend focusing on one or two equipment types as this could lower the equipment cost through fleet discounts and even create a secondary market opportunity for Sierra Leone. The Mechanical Service Unit (MSU) of the SLRA is one industry segment that the IFC can focus on. This is a plant pool that provides equipment for road construction in the country. Unfortunately, the newest equipment it has is about 20 years old and therefore they have high maintenance and downtime costs. Meanwhile, the Government has some 11,000 km of road to construct. The MSU is potentially a good partner for the IFC to consider or work with as a lessee. The SME sector for agricultural produce could be another important area of focus, where tractors and other farming implements are leased to individuals or group associations.

iv. **Legal Refinement:** Even though the Other Financial Services Act 2001 has leasing as one of its activities, leasing has not taken off due to a number of reasons, including the lack of any clear working legal structure to operate finance leases; laws setting out the definitions, rights and responsibilities of all parties to a lease transaction(s) must be clarified. We therefore recommend that amendment to the Other Financial Services Act 2001 takes account of these issues;
v. **Technical Assistance**: Technical assistance, training and capacity building for leasing in the areas of marketing, management, tax, accounting and legal is recommended. 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 therefore recommend a comprehensive approach to credit evaluation and monitoring of leased assets.

vi. **Insurance**: Full comprehensive insurance is generally a condition for leasing. The insurance companies will have to offer competitive pricing to attract lessees. We further recommend that leasing companies factor in the insurance premiums in the lease rentals over the duration of the lease, and not leave lessees to do this themselves.

vii. **Insurance Premiums**: The high premiums of comprehensive insurance will make leasing unattractive to potential lessees. We recommend governmental assistance in the downward adjustments of insurance premiums for leases. The increase in the volume of insurance business that leasing will bring with it should make a reduction in the insurance premiums feasible for insurance companies.

viii. **Tax Concessions**: We recommend that tax concessions, be it in the form of increased capital allowances and/or reduction in corporate taxes be given to leasing operations to serve as incentives to investors.

**Using Independent Leasing Companies or Banks**

For leasing operations to be successful in Sierra Leone, it needs to be hosted by institutions with strong financial muscle and human resources. Sierra Leone intends to adopt the universal banking license, to make banks eligible to carry out the business of leasing, however, as of now, only licensed non-bank institutions may carry out the business of leasing.
(i) **Legislation:** Presently, the law only permits a non-bank financial institution to carry out leasing business, but in the absence of a specific leasing law, there remains a lot of gaps which are disincentives for potential lessors.

(ii) **Interest in Leasing by banks:** Currently Sierra Leonean banks have not considered leasing as part of their corporate plan for the next few years. This situation is likely to change when the universal banking license, which is under consideration becomes operational. The advantage of using bank lessors over independent leasing companies are that they have lower operational costs and cheaper funding. The downside is that, their leasing operations may receive very little attention as they will compete with the other bank products.

(iii) The MSU (an operating lease company) for example could be privatized; partnered as a joint venture and engage in both finance and operating leasing activities. It already has a ready market and knowledge of a plant pool industry; and

(iv) **Liquidity** is a major issue for independent leasing companies; access to competitively priced funds however could be a challenge. Independent leasing companies can be generally better focused and more responsive to the demand of the leasing market than banks. Therefore, it is our recommendation that DFIs consider providing medium to long term funds at competitive rates or equity and support one or two private leasing companies in Sierra Leone.
## APPENDICES

### MEETINGS & APPOINTMENTS

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<th>Contact</th>
<th>Subject</th>
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<td>Tax laws relating to Leasing</td>
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<td><strong>Association of Chartered Accountants</strong></td>
<td>Mr. Nelson-Okarfor</td>
<td>Accounting treatment of Leasing transactions</td>
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<td>Mrs. Cummings</td>
<td>Government’s vision and Bilateral and Multilateral Programmes</td>
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<td><strong>Sierra Leone Insurance Commission</strong></td>
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<td><strong>Maintenance Service Unit</strong></td>
<td>Mr. Miligame</td>
<td>Leasing activities of the SLRA</td>
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<td>Jan. 29</td>
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<td>Mr. Saltson – managing director</td>
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<td><strong>Ecobank</strong></td>
<td>Mrs. Akuwumi-Tandoh – Managing Director; Mr. Brandful – Operations Manager &amp; Mr. King – Financial Controller</td>
<td>Lending Portfolio and leasing as an alternative to financing</td>
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<td><strong>Ministry of Finance</strong></td>
<td>Mrs. A. Cummings- principal deputy financial secretary Mr. P kamara – deputy financial secretary Mr. Alimany Banguru – director of economic policy and research Mr. Tasima Jah – deputy director of budget</td>
<td>Government’s vision and Bilateral and Multilateral Programmes</td>
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<td><strong>Allianz Equipment Leasing Co.</strong></td>
<td>Mr. R. Owiredu</td>
<td>Challenges of leasing</td>
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<td></td>
<td><strong>Commission for Privatisation</strong></td>
<td>Mr. Abu Banguru – commissioner</td>
<td>Prospect of leasing in the country</td>
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Accounting and Taxation – A Snapshot from Some Stakeholders

In carrying out the assignment on the prospects of leasing business in Sierra Leone, we had discussions with stakeholders, circulated and received completed questionnaires on accounting treatment and taxations matters on leasing and also undertook some research on the subject. This section summarises our findings and research results.

The Institute of Chartered Accountants of Sierra Leone

This is the professional body of chartered accountants in the country with a membership of 99 professionals, which is expected to increase by up to 10% by the end of year 2009.

They confirmed that the accounting treatment of leasing transactions conforms to the International Financial Reporting Standards (IFRS) and International Accounting Standards (IAS). Also the current revisions being made on the Sierra Leone Accounting Standards would not deviate from the international standards with respect to leasing.

In furtherance of better governance and monitoring, the association in December 2008 established a company limited by guarantee with eight (8) directors to oversee the operational matters of the accountancy profession in Sierra Leone. The company is called the Sierra Leone Accountability Foundation Limited. Two of the directors are from the government agencies, one from an NGO, one from the audit firms, one from commerce and the rest representatives from the association.

The Sierra Leone Accounting Standards are referred to as the Composite Financial Reporting Standards (CS) and are in three parts; namely CS1 (public benefit entities), CS2 (commercial sector) and CS3 (auditing & assurance). These revised accounting standards are expected to be enforced not later than the end of the second quarter. Meanwhile, the legal process is also underway at parliament and the revisions have the support of the ministries of finance and justices.

The institute refers a lease as – those hire purchase contracts which are of a financing nature shall be accounted for on a basis similar to that set out below for finance leases. Conversely, other hire purchase contracts shall be accounted for on a basis similar to that set out below for operating leases.
The Institute of Chartered Accountants of Sierra Leone is of the view that leasing is a good alternative to financing and that the accountancy professionals were in a position to record and report on such transactions within the ambit of the IFRS and IAS. Both local and foreign entities and prospective investors would be familiar with the international standards on the treatment of leasing businesses and would therefore have confidence in the financial statements that would be prepared on leasing activities in the country.

It is our opinion that Sierra Leone has the professional accounting capacity to record and report on the financial performance of leasing businesses as would be required within the international business community.

**Ministry of Finance**

It is the ministry’s view that presently leasing as a commercial activity is virtually absent but considers the concept of leasing exciting and a challenge. In their opinion it would help local entrepreneurs expand their businesses and generate more income that would in turn translate into more tax revenues for the government. They commented that the banks do not support the agricultural sector as approximately 2% of bank loans are given to the agricultural sector and can see leasing as a viable alternative to boost this sector. When given the opportunity to rank the various sectors of the economy that leasing could assist develop and have a positive impact; they listed the agriculture, mining and road sectors.

It is comforting to note the ministry’s potential political will to support a leasing programme should the IFC consider implementing one.

**National Revenue Agency (NRA)**

This is the central body for the assessment and collection of national revenue. They administer and enforce laws relating to government revenue. The NRA is governed by the National Revenue Authority Act 2002.

They confirmed the absence of a tax law on Leasing. The prevailing corporate tax rate is 35% and sales tax is 15%. The NRA’s position on leasing in the country is that it would be a
good alternative to traditional loans and is confident it would help develop and grow local entrepreneurs.

The NRA recommended these sectors good for leasing business:
Agriculture (tractors and equipment)
Construction
Mines and
Harbour

It is our expectation that the NRA would support amendments to the Income Tax Act 2000 to provide for leasing activities. When this is done in conjunction with legislators then the legal, taxation and accounting framework would be complete in ensuring that leasing activities are duly recorded, administered and recognised by all the relevant statutory authorities.

**Accounting Treatment of Leasing Transactions by Financial Institutions**

Our field research revealed that out of the fifteen (15) banks operating in Sierra Leone, only Ecobank and Aureol Insurance offered limited products similar to leasing to the business community.

These two financial institutions account for lease transactions in accordance to international accounting practice. Lease income is recognized on an accrual basis over the period of the lease. However, they differ on how to apportion lease income. Whiles Ecobank states higher amount to be charged at the beginning, Aureol reports a fixed income installment over the lease period.

Our research also showed that the two banks and the insurance company offered not more than two leasing products each. Ecobank focuses on equipment and vehicle leasing whereas Aureol offers construction leasing. Both companies also differed on how lease income is determined, however with respect to accounting for unearned lease income, determination of lease rental and late payment of lease income they adopted the same treatment.

Our research noted that the banking and insurance institutions were satisfied with the Sierra Leone Accounting Standards.
Rokel Commercial Bank, the largest local bank, currently does not offer any leasing products but expressed its readiness to embrace leasing as an alternative source of funding for its customers.

**Taxation**

Our research team observed that leasing products are currently vat exclusive and financial institutions offering similar leasing facilities expressed their wish to see the capital allowance rate increased and more tax concessions given so that their investments in the leasing products could be realized earlier. In addition, they commented that in the event of a reduction in the corporate tax rate, investors would be more willing to invest in Sierra Leone.

It was noted that the financial institutions interviewed had so far not breached any statutory requirement (including taxation) regarding their operations.

The banks have no problem with withholding tax. However, the insurance companies contended that it poses a cash problem since corporation tax on turnover was paid each quarter.

**Meeting with suppliers**

**Sierra Leone Road Authority (SLRA)**

Sierra Leone Road Authority (SLRA) is in charge of administrative control, planning, development and maintenance of all roads and related structures in Sierra Leone. SLRA has transformed its equipment holdings in the Department of Equipment and Supplies into a semi-autonomous Mechanical Services Unit (MSU). MSU is a commercially viable plant pool within the Authority. It facilitates the development of indigenous contractors by hiring out equipment to them for road construction and maintenance works.

MSU does some level of operating lease to its contractors. Contractors make an initial down payment of 30% of cost of equipment. MSU’s quarterly progress report from October to December 2008, indicates the need to upgrade the operational reliability of a number of
equipment and vehicles and a need to secure an advance payment or loan of about Le 700 million (US$ 230,776) from SLRA to enable it repair most of its aged and worn-out equipment. Both SLRA and MSU indicated the need for medium term financing to complement their activities with contractors.

**Caterpillar**
Caterpillar is the world’s leading manufacturer of construction and mining equipment, diesel and natural gas engines. Discussions with the General Manager, revealed a total turnover of $4.0 million in 2008, out of which, 35% of sales are from spare parts and maintenance, 40% from generators (both used and new) and 25% from other equipment. The General Manager indicated that the major bottleneck in their operation is the frequent changes in regulations. With respect to leasing, he saw potential and growth for the next five years if implemented as it would complement their operations.

**Yazbeck**
Yazbeck sells trucks, earth-moving equipment and vehicles (Volvo, Mercedes and jeep). The Managing Director is of the opinion that leasing is a good option for equipment financing. He however complained that business was slow. In 2008, only three vehicles and no trucks were sold compared with 8 trucks and 15 vehicles in 2007. He indicated that their major clients are the oil and telecommunication companies.

**Regulator**
**Sierra Leone Insurance Commission**
The duty of Sierra Leone Insurance Commission is to develop an effective system of prudential regulation that would ensure the solvency of insurance companies, provide for a sound, fair, an effective environment for insurance companies to operate.

The commissioner was of the opinion that insurance does well when the economy is doing well. According to him current indications of the economy shows good signs for insurance companies in the new future. He also indicated that there are no re-insurance companies operating in Sierra Leone, making insurance companies to seek reinsurance from neighboring countries.
The Commission is convinced leasing activity would boost the growth of insurance business since insurance cover on assets to be leased is a prerequisite to all lease transactions. Comprehensive insurance is 10% of the asset value.
2. **BENEFITS OF LEASING**

The benefits of Leasing on a post-war economy like Sierra Leone 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. The Banking Act 2000

Section 10,11,12,13

10. (1) No person shall be eligible to apply for a licence under this Act unless that person is a registered company, a registered cooperative society or a statutory body.

(2) For the purposes of this Act, “registered company” means a company incorporated or registered under the Companies Act and whose name has not been struck off the company’s register; and “registered cooperative society” means a cooperative society registered under the Cooperative Societies Act, 1977 and whose name has not been struck off the Register of Cooperative Societies.

11. (1) Any registered company or registered cooperative society or statutory body wishing to carry on deposit-taking business in Sierra Leone shall apply to the Central Bank for a licence.

(2) An application shall be—

(a) in such form and manner as the Central Bank may determine:

(b) accompanied by—

(i) a statement on the nature and scale of the deposit-taking business which the applicant intends to carry on, development plans for the business and particulars of the applicant’s arrangements for the management of that business; and

(ii) such other information or documents as the Central Bank may require for determination of the application.
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*Banking Act*  

2000  

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(3) The Central Bank may, prior to the determination of an application, by notice in writing require the applicant to provide additional information or documents.

(4) Any information or documents required under subsection (3) shall be in such form as the Central Bank may direct.

(5) An application may be withdrawn by notice in writing by the applicant at any time before its determination.

12. (1) The Central Bank may, within ninety days of receipt of an application for a licence including any relevant information or documents that may have been requested from the applicant and after consultation with the Minister, grant or refuse to grant a licence.

(2) In determining an application, the Central Bank shall take into account *inter alia*, matters relating to—

(a) the character and fitness of the directors and officers or proposed directors and officers of the applicant;

(b) the adequacy of the applicant’s capital structure in relation to the nature and scale of the proposed deposit-taking business;

(c) the financial position and financial history of the applicant;

(d) the conduct of the affairs of the applicant in relation to the interests of depositors,

as set out in the Schedule.

(3) The Central Bank shall not grant a licence where—

(a) it is satisfied that the grant will not be in the public interest; or

(b) in the case of an applicant whose principal place of business is in a country or territory outside Sierra Leone and unless in addition to subsections (1) and (2)—
(i) the relevant supervisory authority in that
country or territory issues a statement to
the Central Bank that it is satisfied with
the prudential and overall financial
management of the applicant; and

(ii) the Central Bank is satisfied as to the
nature and scope of the supervision
exercised by that authority.

(4) Any licence granted under this Act shall be subject to
such terms and conditions as the Central Bank may specify.

(5) Every licensed institution shall at all times conspicu-
ously display its licence at its place of business.

(6) No person shall be granted or continue to hold a licence
under a name which so closely resembles the name of the holder of an
existing licence as would likely, in the opinion of the Central Bank,
mislead the public.

13. (1) Where the Central Bank grants an application for a
licence it shall give written notice of that fact to the applicant.

(2) Where the Central Bank refuses to grant a licence it
shall issue a written statement to the applicant giving reasons for its
decision.

(3) Any applicant aggrieved by a refusal to grant a licence
may appeal against the decision to a tribunal established under
section 40.

14. (1) The Central Bank shall revoke the license of a licensed
institution if it appears to the Central Bank that—

(a) the licensed institution has failed to comply
with any obligation imposed on it by or under
this Act;
4. The Other Financial Service Act 2001

Sections 2, 5, 17, 24, 25, 27
Part I—Preliminary

Application. 1. This Act shall apply to the whole of the Republic of Sierra Leone and the overseas operations of financial institutions licensed under this Act.

Interpretation. 2. In this Act, unless the context otherwise requires—

   “acceptance” means confirming or assenting to liability under a bill of exchange or other negotiable instrument;

   “affiliate” means a firm associated with another generally as its subsidiary;

   “Central Bank” means the Bank of Sierra Leone;

   “close relation” has the meaning assigned to it in the Banking Act, 2000;

   “company” has the meaning assigned to it in the Companies Act;

   “credit services” includes—

   (a) the giving of any advance, loan or any other facility, such as discounting of bills with or without security and whether in connection with the sale of goods or not whereby the person to whom the same is given has access directly or indirectly to the funds of the person giving the same;

   (b) the giving of a guarantee in relation to the obligations of any person; and

   (c) the giving of an underwriting commitment or indemnity to the effect that upon the happening of an event in relation to a person a certain sum of money would be paid or certain obligations would arise;
"factoring" means the business of acquiring debts due to any person;

"financial activity" means engaging in any of the following—

(a) deposit taking;
(b) provision of credit services;
(c) leasing;
(d) supplying of goods by way of hire-purchase;
(e) factoring or debt administration;
(f) dealing in, acceptance or discounting of, bills of exchange or promissory notes;
(g) purchase of government or other securities;
(h) development banking;
(i) buying and selling of foreign currencies;
(j) any other type of financial intermediation.

"financial intermediation" includes the receipt of deposits for the purpose of lending money or discounting negotiable instruments or acquisition of assets for leasing or on hire purchase basis;

"Governor" means the Governor of the Central Bank;

"group" in relation to a body corporate, means that body corporate, any other body corporate which is its holding company or subsidiary and any other body corporate which is a subsidiary of that holding company;

"hire-purchase" includes bailment of moveable assets to another person with the understanding that the bailee becomes the absolute owner on completing the payments;
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Other Financial Services Act 2001

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(c) accompanied by such additional information as the Central Bank may reasonably require for the determination of the application.

5. No person shall be eligible to apply for a licence under this Act unless that person is—

Eligibility for licences.

(a) a company whose name has not been struck off the register of companies under the Companies Act;

Cap. 249.

(b) a society registered under the Co-operative Societies Act, 1977 and whose name has not been struck off the Register of Co-operative Societies:

Act No. 6 of 1977.

(c) a statutory body.

6. (1) The Central Bank shall, within ninety days of receipt of an application for a licence and all other relevant information and after consultation with the Minister, grant or refuse to grant a licence.

Grant or refusal of licences.

(2) In determining an application, the Central Bank shall take into account—

(a) the character and fitness of the promoters, directors and officers or proposed directors and officers of the applicant as stipulated in the Schedule;

(b) the feasibility and viability of the applicant's business plan;

(c) the adequacy of the applicant's capital structure in relation to the nature and scale of the proposed business;

(d) the financial position and financial history of the applicant; and

(e) the public interest.
(4) The Central Bank may, after consultation with the Minister, allow a licensed financial institution such time or extension of time to comply with requirements of minimum paid-up capital as the Central Bank may consider appropriate.

17. (1) Every licensed financial institution shall at all times maintain a minimum capital adequacy ratio as the Central Bank may from time to time prescribe.

(2) The capital adequacy ratio shall be measured as a percentage of the capital base of the licensed financial institution to its risk weighted assets in accordance with regulations issued from time to time by the Central Bank.

(3) The Central Bank may prescribe a higher capital adequacy ratio for any licensed financial institution as the Central Bank may think fit.

(4) Any licensed financial institution which fails to maintain the level of capital adequacy prescribed under this section shall be liable to pay to the Central Bank on each day that the deficiency continues a penalty of one half per mille of the difference between the capital adequacy that the institution should have maintained and the level of capital adequacy actually maintained by the institution, and unless such deficiency is remedied within ninety days after it has occurred, the Central Bank may prohibit the institution concerned from engaging in any form of financial activity.

18. No individual shall—

(a) own more than 10 percent of the shares of any licensed financial institution without prior approval of the Central Bank; or

(b) own more than 5 percent of the shares of any licensed financial institution without prior notification to the Central Bank.
(6) Any licensed financial institution which fails to comply with the requirements of this section shall be liable to pay to the Central Bank a penalty of not less than three million leones.

24. (1) No licensed financial institution shall undertake any exposure to a single person or a group of related persons or to any industry which exceeds such percentage of its net worth as may be prescribed by the Central Bank.

(2) In the case of transactions between licensed financial institutions, an aggregate of credit exposures and other financial guarantees or intermediates to any single licensed financial institution or group of licensed financial institutions shall not, otherwise than with the written approval of the Central Bank, exceed 30 percent of the net-worth of the institution undertaking such exposures or 30 percent of the net-worth of the institution to or in respect of which such facilities are extended, whichever of the two amounts is lesser.

(3) A licensed financial institution shall not—

(a) grant any loan, advance or credit facility against the security of its own shares;

(b) grant or permit to be granted—

(i) unsecured advances or unsecured credit facilities to any of its directors or their close relations whether such advances or credit facilities are obtained by its directors or their close relations jointly or severally;

(ii) any advances or credit facilities in excess of two percent of the institution’s net-worth to any firm or company or group of firms or companies in which any of that institution’s directors or other
officials is interested as a partner or guarantor or is one of the principal shareholders; and in the case of any unsecured loan or credit facility any amount which in the aggregate exceeds two thirds of one percent of the institution’s net-worth;

(c) grant or permit to be outstanding to its officials, employees or their close relations unsecured advances or unsecured credit facilities which in the aggregate for any one official, employee or close relation exceed one year’s emoluments of such official or employee;

(d) engage, whether on its own account or on a commission basis, in the wholesale or retail trade, including the import or export trade except in so far as may exceptionally be necessary in the course of the deposit-taking operations and services of that institution or in the course of the satisfaction of debts due to it.

(e) grant any loan, advances or credit facility to its holding company, subsidiary or affiliate without prior approval of the Central Bank unless such loan, advance or credit facility—

(i) is fully secured;

(ii) is subject to loan criteria or terms and conditions not more favourable than those ordinarily applicable for granting such facilities to the public; or

(iii) has been approved by the Board of Directors of the institution or a committee of the Board of Directors.
25. (1) Every licensed financial institution shall maintain at all times such amount of liquid assets as may from time to time be determined by the Central Bank and published in the Gazette.

(2) The amount so determined shall be expressed as a percentage which such assets shall bear to the deposit liabilities of each licensed financial institution.

(3) The Central Bank may prescribe different liquidity ratios for different categories of licensed financial institutions as the Bank may from time to time think fit.

(4) For the purposes of this section, "liquid assets" shall consist of freely transferable assets, free from any charge or lien, and of all or any of the following classes—

(a) notes and coins which are legal tender in Sierra Leone;

(b) balance in current account with the Central Bank;

(c) Government securities maturing within ninety-one days;

(d) inland bills of exchange and promissory notes which are eligible for rediscount at the Central Bank, subject to such limitations in amount as the Central Bank may determine;

(e) such other assets as may be specified by the Central Bank.

(5) Any licensed financial institution which fails to hold the minimum liquid assets as determined by the Central Bank shall be liable, in addition to any other penalty, to pay to the Central Bank such interest as the Bank may specify, subject to a ceiling limit of ten percent on the deficiency which exists.

(6) The Central Bank may further direct that during a period of any deficiency the licensed financial institution shall discontinue or limit in a manner specified in the direction, the granting of credit or the making of investments and shall not distribute dividends to its shareholders.
(4) In the application of the limitation of subsection (1), if the Central Bank determines that the interests of a group of more than one individual, partnership, private company as defined in section 27 of the Companies Act or other association of persons corporate or unincorporated, are so interrelated that they should be considered as a unit, the total indebtedness of that group shall be combined and deemed to be in respect of a single person.

(5) A licensed financial institution shall not be deemed to have contravened subsection (1) solely by reason of the fact that the combined indebtedness exceeds that limitation at the time of the determination; but the licensed financial institution shall dispose of the indebtedness of the group in the amount in excess of the limitation within such reasonable time as shall be allowed by the Central Bank.

(6) For the purposes of paragraphs (b) and (c) of subsection (3), the expressions "unsecured advances or unsecured credit facilities" mean, advances or credit facilities made without security, or in respect of security, any part thereof which at any time exceeds the market value of the assets constituting that security or where the Central Bank is satisfied that there is no established market value, the unsecured value as established on the basis of a valuation approved by the Central Bank.

(7) Any licensed financial institution which has, before the commencement of this Act, entered into any transactions incompatible with the provisions of subsection (4) or (5) shall, so soon as may be after the commencement of this Act, submit a statement thereof to the Central Bank and shall, within one year from that date, finally liquidate all such transactions.

(8) The Central Bank may by regulations modify the limitations in this section with respect to a particular licensed financial institution or category of licensed financial institutions as the Central Bank may think fit.
26. (1) No licensed financial institution shall engage in the sale or transfer of its shares having a paid-up value of 5 per cent or more of its total paid-up share capital without the prior approval of the Central Bank.

(2) A licensed financial institution shall submit to the Central Bank for approval any arrangement or agreement which that institution intends to enter into for the sale of its assets and liabilities or its business.

27. (1) No licensed financial institution shall pay any dividend on its shares out of its net profits until it has completely recovered all its capitalised expenditure and accumulated or unprovided-for losses.

(2) For the purposes of subsection (1), “capitalised expenditure” includes preliminary expenses, share-selling commissions, brokerage losses incurred by the licensed financial institution and any other items of expenditure not represented by tangible assets.

(3) No licensed financial institution shall declare or pay any dividend on its shares in any year if the level of capital adequacy of the institution is less than that provided for in section 17.

(4) Where a licensed financial institution declares or pays any dividend in contravention of subsection (1) or (3) the institution and every director of that institution shall be liable to pay to the Central Bank a penalty of not less than three million leones and one million leones, respectively.

(5) No director shall be liable to pay the penalty if he proves to the satisfaction of the Central Bank that the contravention was committed without his consent or connivance by a person other than himself and that he exercised all due diligence to prevent the commission of the contravention having regard to all the circumstances.

28. (1) Every licensed financial institution shall, within 28 days of the date of approval by its shareholders or Board of Directors as the case may be, of any alteration in its Memorandum of Association or in any other document representing its constitution, furnish to the Central Bank the particulars of such alteration for approval by the Central Bank.