

ACT

Supplement to the Sierra Leone Gazette Extraordinary Vol. CXLV, No. 72
dated 30th December, 2014

THE BORROWERS AND LENDERS ACT, 2014

ARRANGEMENT OF SECTIONS

Section.

PART I-PRELIMINARY

1. Interpretation.
2. Application of Act.
3. Non application of Act.

PART II-SUPERVISION AND ENFORCEMENT

4. Functions of the Bank.
5. Investigations.
6. Confidentiality.
7. Order for search of premises.
8. Annual report.

PART III-EFFECTIVENESS OF SECURITY INTERESTS

9. Execution of credit agreement.
10. Registration of security interests.
11. Description of collateral.
12. Archiving third-party effectiveness.
13. Continuity of third party effectiveness.
14. Third party effectiveness in proceeds.
15. Collateral registry.
16. Registration of security interest.
17. Effectiveness of registration.
18. Refusal to register.
19. Voluntary amendment of registration.
20. Compulsory amendment and registration of satisfaction of obligation.

ii

PART IV-GENENRAL PRIORITY RULES

21. Priority between security interests.
22. Priority of a security interest in proceeds.
23. Subordination of priority.
24. Priority of future advances.
25. Priority of purchase money security interest.
26. Priority of security interest in accession and commingled goods.
27. Priority with respect to transferred collateral.

PART V- PRIORITY OF TRANSFEREE OF MONEY ETC.

28. Priority of transferees of money.
29. Priority of buyers.
30. Possessory lien arising by operation of law with respect to movable property.
31. Judgment liens.

PART VI-BORROWER'S RIGHTS, OBLIGATIONS AND DISCLOSURE OF INFORMATION

32. Protection against discrimination.
33. Delivery of documents.
34. Protection of borrower credit right.
35. Confidentiality.
36. Pre-agreement disclosure.
37. Marketing information.
38. Borrower's or guarantor's obligations.

PART VII-ENFORCEMENT

39. Default in payment.
40. Remedies of lender on default.
41. Lender's right to possession.
42. Application of collateral in satisfaction of obligation.
43. Disposition of collateral after default by sale.
44. Discharge of security interests.
45. Accounting of sale.
46. Distribution of proceeds of sale.
47. Retention collateral after default.
48. Retention of collateral.
49. Debt settlement and redemption of collateral.
50. Appointment of receiver or manager.

PART VIII-MISCELLANEOUS

51. Security interest in other Registers.
52. Transitional provision.
53. Priority rules for prior security interests.
54. Regulations.

(2) The priority of a security interest shall be determined by the prior law if the security interest and any competing claims to the collateral arose before the effective date of this Act.

(3) The priority between prior security interests and competing claims shall be determined by the prior law during the transitional period.

Regulation.

54. The Governor may, by statutory instrument, make Regulations as he considers necessary or expedient for giving effect to the provisions of this Act.

Passed in Parliament this *18th* day of *November*, in the year of our Lord two thousand and fourteen.

IBRAHIM S. SESAY,
Clerk of Parliament.

THIS PRINTED IMPRESSION has been carefully compared by me with the Bill which has passed Parliament and found by me to be a true and correct printed copy of the said Bill.

IBRAHIM S. SESAY,
Clerk of Parliament.

SIGNED this *22nd day of December, 2014.*

DR. ERNEST BAI KOROMA,
President.



No. 13



Sierra Leone

2014

The Borrowers and Lenders Act, 2014.

Short title.

Being an Act to provide the legal framework for credit agreements, to improve standards of disclosure of information in credit agreements, to prohibit certain practices, and promote consistency in the enforcement of credit agreements and to provide for other related matters.

[] Date of commencement.

ENACTED by the President and Members of Parliament in this present Parliament assembled.

PART I—PRELIMINARY

Interpretation. 1. In this Act, unless the context otherwise requires—

“Bank” means the Bank of Sierra Leone ; enacted under section 4 of the Bank of Sierra Leone Act 2011 (Act No. 15 of 2011)

“borrower” means a person who is a party to a credit agreement and who has concluded a credit agreement with a lender and provided some property as collateral to secure obligations specified in the credit agreement and includes—

- (a) a person who buys goods on credit;
- (b) a person who receives services on credit; and
- (c) a financial lessee;

“cash proceeds” includes money, cheques and deposit accounts;

“credit agreement” means an agreement in the nature of a credit facility, a credit transaction, a secured credit guarantee, any combination of these or any other agreement that relates to a transaction, regardless of its form that creates a security interest in movable property to secure all types of obligations, present or future, determined or determinable;

“collateral” means movable property that is subject to a security interest;

“deposited security” includes a security standing to the credit of a security account which is transferable by way of book-entry in the record of depositors and a security in a securities account that is in suspense;

“Governor” means the Governor of the Bank of Sierra Leone;

“inventory” means goods that are—

- (a) held by a person for sale or lease;
- (b) to be provided under a contract for services;
- (d) raw materials or work in progress ; or
- (d) materials used or consumed in a business;

“lender” means a commercial bank or other financial institution licensed by the Bank of Sierra Leone and who, as part of business enters into a credit agreement by advancing loans and other credit facilities including –

- (a) micro credit facilities;
- (b) selling goods on credit;
- (c) providing services on credit; and
- (d) a financial lessor;

“lien by operation of law” include interests in property created by orders, decrees, judgments and other

statutory liens in respect to, movable property;

“Minister” means the Minister responsible for finance;

“person” includes an individual, a company, a partnership, an association and any other group of persons acting in concert, whether incorporated or not;

“proceeds” means identifiable or traceable property received as a result of sale or other disposition, collection, lease or license of collateral, including proceeds of proceeds, civil and natural fruits, dividends, distributions, insurance proceeds and claims arising from defects in, damage to or loss of collateral;

“property” includes movable property and choses in action;

“purchase money security interest” means-

- (a) a security interest in collateral retained by a seller that secures the obligation to pay any unpaid portion of the purchase price of the collateral;
- (b) a security interest taken by a person who gives value for the purpose of enabling a debtor to acquire rights in the collateral, to the extent that the value is applied to acquire those rights; or
- (c) an interest of a financial lessor; but does not include a transaction of sale and lease back to the seller;

“receiver” means a person appointed as receiver in accordance with this Act;

“Registrar” means the Registrar of the Collateral Registry appointed under this Act;

“Registry” means the Collateral Registry established under section 15;

“security interest” includes fixed and floating charge, chattel mortgage, lien, pledge, outright or security assignment of receivables, reservation of title, finance lease, trust, or any other encumbrance of any nature created by an agreement other than liens arising by operation of law;

“significant shareholding” means a direct or indirect holding in a non-bank financial institution which -

- (a) represents ten per cent or more of the capital or of the voting right, or;
- (b) makes it possible to exercise a significant influence over the management of the institution in which a holding subsists;

“value” means consideration that is sufficient to support a simple contract, and includes an antecedent debt or liability, and a binding commitment to provide future value;

2. (1) This Act shall apply to –

- (a) security interests –

Application
of Act .

- (i) in movable property created by a credit agreement, regardless of the form of the transaction, the type of movable property or the nature of the secured obligation;
- (ii) against third parties in tangible property if the property is located in Sierra Leone;
- (iii) in intangible property if the borrower is located in Sierra Leone;
- (iv) in a deposit account, if a bank or other financial institution that maintains the relevant deposit account has a place of business in Sierra Leone; and
- (vi) in proceeds of the original collateral; and
- (b) issues relating to the enforcement of a security interest in tangible property if –
 - (i) the enforcement takes place in Sierra Leone; and
 - (ii) the borrower is located in Sierra Leone.

(2) Nothing in this Act shall prevent a court from invalidating, as fraudulent, a credit agreement where parties are not dealing at arm's length and intend to defraud a third party including–

- (a) a shareholder loan or other credit agreement between a corporate body as borrower and a person acting as a lender who has a significant shareholding in that corporate body;

- (b) a loan to a shareholder, or other credit agreement between a corporate body, as lender, and a person who has a controlling interest in that corporate body, as borrower;
- (c) a credit agreement between persons who are in a familial relationship; or
- (d) any other arrangement that is of a type that has been held in law to be between parties who are not dealing at arm's length.

3. (1) This Act shall not apply to security interest in–

Non-application of Act.

- (a) ships and aircrafts;
- (b) payment rights arising under or from financial contracts;
- (c) assignment of wages, pension, health and similar benefits as provided in the National Social Security and Insurance Trust Act, 2001 and other applicable legislation;
- (d) contracts of annuity or life policy of insurance; and
- (e) transfers of right to damages in tort not related to commercial activity.

(2) This Act shall not apply to any matter that is the subject of a court, administrative or alternative dispute resolution proceedings that had commenced before the coming into operation of this Act.