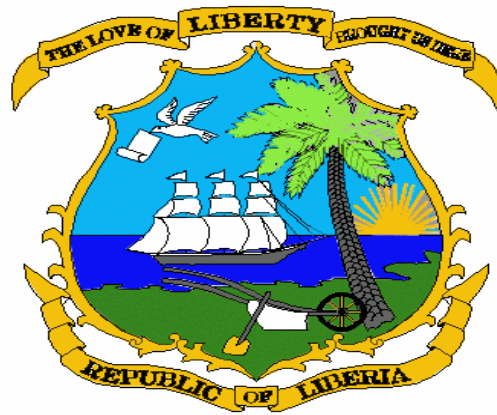


AN ACT TO REPEAL
COMMERCIAL AND BANKRUPTCY LAW, TITLE 7 OF THE
LIBERIAN CODE OF LAWS REVISED AND TO ENACT IN
LIEU THEREOF THE LIBERIAN COMMERCIAL CODE,
TITLE 7 OF THE LIBERIAN CODE OF LAWS REVISED.



THE LIBERIAN COMMERCIAL CODE OF 2010

REPUBLIC OF LIBERIA

AN ACT TO REPEAL COMMERCIAL AND BANKRUPTCY LAW, TITLE 7 OF THE LIBERIAN CODE OF LAWS REVISED AND TO ENACT IN LIEU THEREOF THE LIBERIAN COMMERCIAL CODE, TITLE 7 OF THE LIBERIAN CODE OF LAWS REVISED.

IT IS ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE REPUBLIC OF LIBERIA, IN LEGISLATURE ASSEMBLED:

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§1.1. Short Title.

This Chapter may be cited as the Liberian Commercial Code - General Provisions.

§1.2. Application of the Liberian Commercial Code Bill of 2010.

The provisions of the Liberian Commercial Code Bill of 2010 shall not govern nor apply to any transaction, contract or agreement that has been entered into prior to the effective date of this Act; nor shall this Act apply to any person who is not a Resident Legal Person, as defined herein, or to any transaction to which a person who is not a Resident Legal Person is a party; provided, however, that with the exception of section 5.51 of Chapter 5 of Title 7, a person who is not a Resident Legal Person may elect to have any or all of the provisions of Title 7 apply to such person in relation to any such transaction, contract or agreement by express written agreement by and among all parties to such transaction, contract or agreement.

Unless displaced by the particular provisions of this Commercial Code, the principles of law and equity, including the law of merchants and the laws relating to the capacity to enter into contracts; principal and agent; estoppel; fraud; misrepresentation; duress; coercion; mistake; bankruptcy; and other validating or invalidating cause shall supplement its provisions.

§1.3. Purpose, Rules of Construction, Variation by Agreement.

- (1) This Chapter applies to a transaction to the extent that the transaction is governed by the provisions of a chapter of the Commercial Code.

- (2) The Commercial Code shall be liberally construed and applied to promote its underlying purposes and policies, which are:
 - (a) to simplify, clarify, and modernize the law governing commercial transactions; and
 - (b) to permit the continued expansion of commercial practices through custom, usage, and agreement of the parties.
- (3) No part of this Commercial Code shall be deemed to be impliedly repealed by subsequent legislation if such interpretation can reasonably be avoided.
- (4) Except as otherwise provided in Subsection (5) below or elsewhere in the Commercial Code, the effect of provisions of the Commercial Code may be varied by agreement.
- (5) The obligations of good faith, diligence, reasonableness, and care prescribed by the Commercial Code may not be disclaimed by agreement.
- (6) Without prejudice to the generality of Subsection (5) the parties, by agreement, may determine the standards by which the performance of those obligations is to be measured if those standards are not manifestly unreasonable.
- (7) The presence in certain provisions of the Commercial Code of the phrase "unless otherwise agreed", or words of similar import, does not imply that the effect of other provisions may not be varied by agreement under this section.
- (8) If any provision of the Commercial Code or its application to any person or circumstance is held invalid, such invalidity does not necessarily affect other provisions or applications of the Commercial Code which can be given effect without the invalid provision or application, and to this end the provisions of the Commercial Code are severable.

§1.4. Territorial Application of the Code to Parties.

- (1) Subject to the provisions of Subsection (2) and (3), this Code shall govern all commercial transactions concluded in Liberia or intended to be performed in Liberia.
- (2) Except as otherwise provided in this section, an agreement by the parties to a domestic transaction that any or all of their rights and obligations are to be determined by the law of the Republic of Liberia or of another country is effective, whether or not the transaction bears a relation to the country designated.
- (3) In the absence of an agreement effective under Subsection (2), and except as provided in Subsections (4) and (5) hereof, the rights and obligations of the parties are determined by the law that would be selected by application of the conflict of laws principles of Liberia.
- (4) If one of the parties to a transaction is a consumer, a choice of law other than this Code is not effective unless the transaction bears a reasonable relation to the country whose law has been chosen.
- (5) Application of the law of the country determined pursuant to Subsection (2) may not deprive a consumer of the protection provided in this Code.

- (6) To the extent that the Commercial Code governs a transaction, if a provision hereof specifies the applicable law that provision governs and a contrary agreement is effective only to the extent permitted by the law so specified.

§1.5. Prima Facie Evidence by Third-Party Documents.

A document in due form purporting to be a bill of lading, letter of credit, policy or certificate of insurance, commercial invoice, or any other document authorized or required by the contract to be issued by a third party is prima facie evidence of its own authenticity and genuineness and of the facts stated therein by the third party.

§1.6. Obligation of Good Faith.

- (1) Every contract or duty within the Commercial Code imposes an obligation of good faith in its performance and enforcement.
- (2) Unless otherwise provided in the Commercial Code, "good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

§1.7. Reasonable Time for Purpose of a Commercial Transaction.

- (1) Whenever the Commercial Code requires an action to be taken within a reasonable time, a time that is not manifestly unreasonable may be fixed by agreement.
- (2) Whether a time for taking an action required by the Commercial Code is reasonable depends on the nature, purpose, and circumstances of the action.
- (3) An action is taken reasonably if it is taken at or within the time agreed or, if no time is agreed, at or within a reasonable time.

§1.8. Course of Performance, Course of Dealing and Usage of Trade.

- (1) A "course of performance" is a sequence of conduct between the parties to a particular transaction that exists if:
 - (a) the agreement of the parties with respect to the transaction involves repeated occasions for performance by a party; and
 - (b) the other party, with knowledge of the nature of the performance and opportunity for objection to it, accepts the performance or acquiesces in it without objection.
- (2) A "course of dealing" is a sequence of conduct concerning previous transactions between the parties to a particular transaction that is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.
- (3) A "usage of trade" is any practice or method of dealing having such regularity of observance in a place, vocation, or trade as to justify an expectation that it will be observed with respect to the transaction in question. The existence and scope of such a usage must be proved as facts. If it is established that such a usage is embodied in a trade code or similar record, the interpretation of the record is a question of law.

- (4) A course of performance or course of dealing between the parties or usage of trade in the vocation or trade in which they are engaged or of which they are or should be aware is relevant in ascertaining the meaning of the parties' agreement, and may give particular meaning to specific terms of the agreement, and may supplement or qualify the terms of the agreement. A usage of trade applicable in the place in which part of the performance under the agreement is to occur may be so utilized as to that part of the performance.
- (5) Except as otherwise provided in Subsection (6), the express terms of an agreement and any applicable course of performance, course of dealing, or usage of trade must be construed whenever reasonable as consistent with each other. If such a construction is unreasonable:
 - (a) express terms prevail over course of performance, course of dealing, and usage of trade;
 - (b) course of performance prevails over course of dealing and usage of trade; and
 - (c) course of dealing prevails over usage of trade.
- (6) Subject to Chapter 2 on Sales, a course of performance is relevant to show a waiver or modification of any term inconsistent with the course of performance.
- (7) Evidence of a relevant usage of trade offered by one party is not admissible unless that party has given the other party notice that the court finds sufficient to prevent unfair surprise to the other party.

§1.9. Statute of Frauds.

No agreement or transaction having a value of more than US \$ 2000 or its equivalent in Liberian Dollars is enforceable unless evidenced in writing signed or acknowledged by the person against whom enforcement is sought.

§1.10. Notice; Knowledge.

- (1) Subject to Subsection (6), a person has "notice" of a fact if the person:
 - (a) has actual knowledge of it;
 - (b) has received a notice or notification of it; or
 - (c) from all the facts and circumstances known to the person at the time in question, has reason to know that it exists.
- (2) "Knowledge" means actual knowledge. "Knows" has a corresponding meaning.
- (3) "Discover", "learn", or words of similar import refer to knowledge rather than to reason to know.

- (4) A person "notifies" or "gives" a notice or notification to another person by taking such steps as may be reasonably required to inform the other person in ordinary course, whether or not the other person actually comes to know of it.
- (5) Subject to Subsection (6), a person "receives" a notice or notification when:
 - (a) it comes to that person's attention; or
 - (b) it is duly delivered in a form reasonable under the circumstances at the place of business through which the contract was made or at another location held out by that person as the place for receipt of such communications.
- (6) Notice, knowledge, or a notice or notification received by an organization is effective for a particular transaction from the time it is brought to the attention of the individual conducting that transaction and, in any event, from the time it would have been brought to the individual's attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless the communication is part of the individual's regular duties or the individual has reason to know of the transaction and/or that the transaction would be materially affected by the information.

§1.11. Value.

- (1) Except as otherwise provided in the Commercial Code, a person gives value for rights if the person acquires them:
 - (a) in return for a binding commitment to extend credit or for the extension of immediately available credit, whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection;
 - (b) as security for, or in total or partial satisfaction of, a preexisting claim;
 - (c) by accepting delivery under a preexisting contract for purchase; or
 - (d) in return for any consideration sufficient to support a simple contract.

§1.12. Presumptions.

Whenever the Commercial Code creates a "presumption" with respect to a fact, or provides that a fact is "presumed," the trier of fact must find the existence of the fact unless and until evidence is introduced that supports a finding to the contrary.

§1.13. Remedies to be Liberally Administered.

- (1) The remedies provided by the Commercial Code must be liberally administered to the end that the aggrieved party may be put in as good a position as if the other party had fully performed but neither consequential or special damages nor penal damages may be had except as specifically provided in the Commercial Code or by other rule of law.

- (2) Any right or obligation declared by the Commercial Code is enforceable by any action unless the provision declaring it specifies a different and limited effect.

§1.14. Waiver or Renunciation of Claim or Right after Breach.

A claim or right arising out of an alleged breach may be discharged in whole or in part without consideration by written agreement of the aggrieved party.

§1.15. Performance or Acceptance under Reservation of Rights.

- (1) A party that with explicit reservation of rights performs or promises performance or assents to performance in a manner demanded or offered by the other party does not thereby prejudice the rights reserved. Such words as "without prejudice," "under protest," or the like are sufficient.
- (2) Subsection (1) does not apply to an accord and satisfaction.

§1.16. Option to Accelerate at Will.

A term providing that one party or that party's successor in interest may accelerate payment or performance or require collateral or additional collateral "at will" or when the party "deems itself insecure," or words of similar import, means that the party has power to do so only if that party in good faith believes that the prospect of payment or performance is impaired. The burden of establishing lack of good faith is on the party against which the power has been exercised.

§1.17. Subordinated Obligations.

An obligation may be issued as subordinated to performance of another obligation of the person obligated, or a creditor may subordinate its right to performance of an obligation by agreement with either the person obligated or another creditor of the person obligated. Subordination does not create a security interest as against either the common debtor or a subordinated creditor.

§1.18. General Definitions.

- (1) Unless the context otherwise requires, words or phrases defined in this section, or in the additional definitions contained in other parts of the Commercial Code that apply to particular chapter or parts thereof, have the meanings stated below:
- (a) "**Action**", in the sense of a judicial proceeding, includes recoupment, counterclaim, set-off, suit in equity, and any other proceeding in which rights are determined.
- (b) "**Aggrieved party**" means a party entitled to pursue a remedy.
- (c) "**Agreement**", as distinguished from "contract", means the bargain of the parties in fact, as found in their language or inferred from other circumstances, including course of performance, course of dealing, or usage of trade.

- (d) "**Bank**" means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, and trust company.
- (e) "**Bearer**" means a person in possession of a negotiable instrument, document of title, or certificated security that is payable to bearer or indorsed in blank.
- (f) "**Bill of lading**" means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods.
- (g) "**Buyer in ordinary course of business**" means a person that buys goods in good faith, without knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. A person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller's own usual or customary practices. A buyer in ordinary course of business may buy for cash, by exchange of other property, or on secured or unsecured credit, and may acquire goods or documents of title under a preexisting contract for sale. Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under this Code may be a buyer in ordinary course of business. "Buyer in ordinary course of business" does not include a person that acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt.
- (h) "**Consumer**" means an individual who enters into a transaction primarily for personal, family, or household purposes.
- (i) "**Contract**", as distinguished from "agreement", means the total legal obligation that results from the parties' agreement as determined by the Commercial Code as supplemented by any other applicable laws.
- (j) "**Creditor**" includes a general creditor, a secured creditor, a lien creditor, and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity, and an executor or administrator of an insolvent debtor's or assignor's estate.
- (k) "**Delivery**", with respect to an instrument, document of title, or chattel paper, means voluntary transfer of possession.
- (l) "**Document of title**" includes bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, and also any other document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold, and dispose of the document and the goods it covers. To be a document of title, a document must purport to be issued by or addressed to a bailee and purport to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass.
- (m) "**Genuine**" means free of forgery or counterfeiting.

- (n) "**Holder**" means:
- i. the person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession; or
 - ii. the person in possession of a document of title if the goods are deliverable either to bearer or to the order of the person in possession.
- (o) "**Insolvent**" means:
- i. having generally ceased to pay debts in the ordinary course of business other than as a result of bona fide dispute;
 - ii. being unable to pay debts as they become due; or
 - iii. being insolvent within the meaning of the Bankruptcy Chapter.
- (p) "**Money**" means a medium of exchange currently authorized or adopted by the Government of Liberia or a foreign government.
- (q) "**Mortgage**" means an encumbrance created on a real property or an interest therein to secure a payment of a credit;
- (r) "**Party**", as distinguished from "third party", means a person that has engaged in a transaction or made an agreement subject to the Commercial Code.
- (s) "**Permanent Establishment**" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.
- (t) "**Person**" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.
- (u) "**Present value**" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain by use of either an interest rate specified by the parties if that rate is not manifestly unreasonable at the time the transaction is entered into or, if an interest rate is not so specified, a commercially reasonable rate that takes into account the facts and circumstances at the time the transaction is entered into.
- (v) "**Purchase**" means taking by sale, lease, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift, or any other voluntary transaction creating an interest in property.
- (w) "**Purchaser**" means a person that takes by purchase.
- (x) "**Record**" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

- (y) "**Remedy**" means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.
- (z) "**Representative**" means a person empowered to act for another, including an agent, an officer of a corporation or association, and a trustee, executor, or administrator of an estate.
- (aa) "**Resident Legal Person**" means
- (1) A legal person is a resident legal person if it:
 - (a) Is incorporated or formed under the Laws of Liberia and (i) has its management and control in Liberia or (ii) undertakes the majority of its operations in Liberia; or
 - (b) Is a corporation, limited liability company, foundation, trust or limited partnership that undertakes some business activity in Liberia and has a majority of shareholders, members, beneficiaries or unit holders (by vote or value) resident in Liberia; or
 - (c) Is a general partnership or trust and a partner or trustee is a resident in Liberia.
 - (2) A permanent establishment of a non-resident person in Liberia is treated as a resident legal person with respect to the business carried out by that permanent establishment in Liberia.
 - (3) In no event shall a person be deemed to be carrying on operations in Liberia merely because such person:
 - (a) Maintains an administrative, management or statutory office in Liberia;
 - (b) Holds meetings of directors, shareholders, members or limited partners in Liberia;
 - (c) Invests in stock or securities in resident legal persons (except to the extent such person's distributive share of adjusted income consists of income derived from operations carried on in Liberia);
 - (d) Maintains bank accounts in Liberia;
 - (e) Maintains a resident agent as required by the provisions of the Associations Law or other similar provisions of the Liberian Code of Laws, as amended or revised; or
 - (f) Secures and maintains registry in Liberia of any ship or aircraft, or owns a Liberia flag vessel, or conducts other activities in Liberia solely related to income derived from the operations, chartering or disposition of any ship or aircraft, to the extent not derived from traffic solely within Liberia."

- (bb) "**Security interest**" means an interest in personal property or fixtures which secures payment or performance of an obligation. "Security interest" includes any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible, or a promissory note in a transaction that is subject to the Secured Transactions Chapter. "Security interest" does not include the special property interest of a buyer of goods on identification of those goods to a contract. The right of a seller or lessor of goods to retain or acquire possession of the goods is not a "security interest", but a seller or lessor may also acquire a "security interest" by complying with the Secured Transactions Chapter.
- (cc) "**Send**" in connection with a writing, record, or notice means:
- i. to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and, in the case of an instrument, to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances; or
 - ii. in any other way to cause to be received any record or notice within the time it would have arrived if properly sent.
- (dd) "**Signed**" includes using any symbol executed or adopted with present intention to adopt or accept a writing.
- (ee) "**Surety**" includes a guarantor or other secondary obligor.
- (ff) "**Term**" means a portion of an agreement that relates to a particular matter.
- (gg) "**Unauthorized signature**" means a signature made without actual, implied, or apparent authority. The term includes a forgery.
- (hh) "**Writing**" includes printing, typewriting, or any other intentional reduction to tangible form including, but not limited to, electronic transactions. "Written" has a corresponding meaning.

§1.19. Statute of Limitations.

The Statute of Limitations for all actions founded on a written contract and subject to this Code is seven (7) years, and shall be computed in keeping with the Civil Procedure Law of Liberia except as modified in respect of Sales in Section 2.77 of this Code.

§1.20. Effective Date.

This Act shall become effective immediately upon publication in the Official Gazette or into handbills.

**TITLE 7: CHAPTER 2 OF THE LIBERIAN CODE OF LAWS, REVISED
COMMERCIAL CODE – SALES**

Arrangement of Sections

SUBCHAPTER 1: GENERAL PROVISIONS

- §2.1. Short Title.
- §2.2. Scope of Application.
- §2.3. Conflict of Laws - Proper Law of Contract of Sale.
- §2.4. Interpretation; Definitions.

SUBCHAPTER 2: FORMATION OF CONTRACT OF SALE

- §2.5. Formal Requirements of Agreement.
- §2.6. Formation in General.
- §2.7. Offer and Acceptance.
- §2.8. Modification, Rescission and Waiver; Delegation of Performance.
- §2.9. Sale by Auction.

SUBCHAPTER 3: TERMS, CONDITIONS AND WARRANTIES

- §2.10. Terms of a Contract in General.
- §2.11. Final Expression in Record: Parol or Extrinsic Evidence.
- §2.12. Unconscionable Contract or Term.
- §2.13. Warranty of Title.
- §2.14. Express Warranties by Affirmation; Immediate Buyer.
- §2.15. Express Warranties by Affirmation; Remote Purchaser.
- §2.16. Implied Warranty of Merchantability.
- §2.17. Exclusion or Modification of Warranties.
- §2.18. Cumulation and Conflict of Warranties.

SUBCHAPTER 4: PERFORMANCE OF THE CONTRACT

- §2.19. General Obligation of the Parties.
- §2.20. Options and Cooperation Respecting Performance.
- §2.21. Right to Adequate Assurance of Performance.
- §2.22. Insurable Interest, Manner of Identification of Goods.
- §2.23. Manner of Seller's Tender of Delivery.
- §2.24. Shipment by Seller.
- §2.25. Delivery in Single Lot or Several Lots.
- §2.26. Absence of Specified Place for Delivery.
- §2.27. Effects of Seller's Tender.
- §2.28. Cure by Seller of Improper Tender or Delivery.
- §2.29. Price Payable in Money.
- §2.30. Time for Payment.
- §2.31. Payment by Letter of Credit.
- §2.32. Tender of Payment by the Buyer.
- §2.33. Payment by Buyer Before Inspection.
- §2.34. Buyer's Right to Inspection of Goods.

- §2.35. Buyer's Rights on Improper Delivery.
- §2.36. Merchant Buyer's Duties on Proper Rejection of Goods.
- §2.37. Buyer's Rights as to Salvage of Rightfully Rejected Goods.
- §2.38. Acceptance of Goods.
- §2.39. Effect of Acceptance.
- §2.40. Revocation of Acceptance.

SUBCHAPTER 5: TRANSFER OF RISK AND TITLE

- §2.41. Allocation or Division of Risk.
- §2.42. Sale on Approval and Sale or Return.
- §2.43. Risk of Loss in the Absence of Breach.
- §2.44. Effect of Breach on Risk of Loss.
- §2.45. Passage of Title.

SUBCHAPTER 6: AGENTS, CREDITORS AND GOOD FAITH PURCHASERS

- §2.46. Rights of Seller's Creditors Against Goods.
- §2.47. Power of Transfer of Good Faith Purchaser.
- §2.48. Rights of Financing Agent.

SUBCHAPTER 7: INTERNATIONAL SALE TRANSACTIONS

- §2.49. Contract of International Sale of Goods.
- §2.50. Obligations of Parties under F.O.B. Contract.
- §2.51. Obligation of Parties under C.I.F. Contract.

SUBCHAPTER 8: BREACH, REPUDIATION AND REMEDIES

- §2.52. Buyer's Right to Goods on Seller's Repudiation.
- §2.53. Anticipatory Repudiation.
- §2.54. Retraction of Anticipatory Repudiation.
- §2.55. Breach of Installment Contract.
- §2.56. Remedies for Breach of Collateral Contract not Impaired.
- §2.57. Seller's Remedies in General.
- §2.58. Seller's Remedies on Insolvency of Buyer.
- §2.59. Seller's Right to Identify Goods to the Contract Despite Breach or to Salvage Unfinished Goods.
- §2.60. Seller's Right to Stoppage in Transit.
- §2.61. Seller's Right to Resell Goods.
- §2.62. Seller's Damages for Non-Acceptance or Repudiation.
- §2.63. Action for the Price.
- §2.64. Seller's Incidental Damages.
- §2.65. Buyer's Remedies in General.
- §2.66. Buyer's Damages for Non-Delivery.
- §2.67. Buyer's Damages for Breach in Relation to Acceptance of Goods.
- §2.68. Buyer's Incidental and Consequential Damages.
- §2.69. Right to Specific Performance.
- §2.70. Deduction of Damages from Price.
- §2.71. Liquidation or Limitation of Damages.
- §2.72. Contractual Modification or Limitation of Remedy.
- §2.73. Remedies for Fraud.

SUBCHAPTER 9: SUPPLEMENTARY PROVISIONS

- §2.74. Action Against Third Parties for Injury to Goods.
- §2.75. Proof of Market Price.
- §2.76. Admissibility of Market Quotations.
- §2.77. Statute of Limitations.

SUBCHAPTER 1: GENERAL PROVISIONS

§2.1. Short Title.

This Chapter shall be known and may be cited as the Liberian Commercial Code - Sales.

§2.2. Scope of Application.

- (1) Unless the context otherwise requires, this Chapter applies to transactions involving the sale of goods.
- (2) Without prejudice to the generality of Subsection (1) this Chapter does not apply to any transaction which although in the form of an unconditional contract to sell or present sale is intended to operate only as a security transaction falling under the Secured Transactions Chapter of this Code.

§2.3. Conflict of Laws - Proper Law of Contract of Sale.

- (1) Where the proper law of a contract for the sale of goods would, apart from a term that it should be the law of some other country or a term to the like effect, be the law of Liberia, or where any such contract contains a term which purports to substitute, or has the effect of substituting, provisions of the law of some other country for all or any of the provisions of this Chapter, the provisions of this Chapter shall, notwithstanding that term but subject to Subsection (2), apply to the contract.
- (2) Nothing in Subsection (1) prevents the parties to a contract for the international sale of goods from negating or varying any right, duty or liability which would otherwise arise by implication of law under this Chapter.

§2.4. Interpretation; Definitions.

In this Chapter unless the context otherwise requires, the following words and phrases shall bear the meaning assigned hereunder and throughout this Chapter:

- (a) **"Action"** includes counterclaim and set-off;
- (b) **"Between Merchants"** means in any transaction with respect to which both parties are chargeable with the knowledge or skills of merchants;
- (c) **"Buyer"** means a person who buys or contracts to buy goods;
- (d) **"Contract of sale"** includes both a present sale of goods and a contract to sell goods at a future date;
- (e) **"Delivery"** means voluntary transfer of possession from one person to another;

- (f) **"Fault"** means wrongful act or defaults;
- (g) **"Future goods"** means goods to be manufactured or acquired by the Seller after the making of the contract of sale. A purported present sale of any future goods or any interest therein operates as a contract to sell;
- (h) **"Goods"** refers to all things (including specially manufactured chattels) which are movable at the time of identification to the contract for sale other than things in action and money. Goods include emblements, industrial growing crops, the unborn young of animals, and things attached to land which are agreed to be severed before sale or under the contract of sale;
- (i) **"Property"** means the general property in goods and not merely a special property;
- (j) **"Quality of goods"** includes their state or condition;
- (k) **"Sale"** means the passing of title from the seller to the buyer for a price. A present sale means a sale that is accomplished by the making of the contract;
- (l) **"Seller"** means a person who sells or contracts to sell goods;
- (m) **"Specific goods"** means goods identified and agreed upon at the time a contract of sale is made;
- (n) **"Warranty"** means an agreement with reference to goods which are the subject of a contract of sale, but collateral to the main purpose of such contract, the breach of which gives rise to a claim for damages, but not to a right to reject the goods and treat the contract as repudiated.

SUBCHAPTER 2: FORMATION OF CONTRACT OF SALE

§2.5. Formal Requirements of Agreement.

- (1) A contract for the sale of goods for the price of more than US \$ 2000 or its equivalent in Liberian Dollars or more is not enforceable by way of action or defense unless there is some record sufficient to indicate that a contract for sale has been made between the parties and signed by the party against which enforcement is sought or by the party's authorized agent or broker.
- (2) For the purposes of this Chapter, a record is not insufficient because it omits or incorrectly states a term agreed upon but the contract is not enforceable under this Subsection beyond the quantity of goods shown in the record.
- (3) Between merchants if within a reasonable time a record in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents, it satisfies the requirements of Subsection (1) against the recipient unless notice of objection to its contents is given in a record within ten (10) days after it is received.

- (4) A contract that does not satisfy the requirements of Subsection (1) but which is valid in other respects is enforceable:
 - (a) if the goods are to be specially manufactured for the buyer and are not suitable for sale to others in the ordinary course of the seller's business and the seller, before notice of repudiation is received and under circumstances that reasonably indicate that the goods are for the buyer, has made either a substantial beginning of their manufacture or commitments for their procurement;
 - (b) if the party against which enforcement is sought admits in the party's pleading, or in the party's testimony or otherwise under oath that a contract for sale was made, but the contract is not enforceable under this paragraph beyond the quantity of goods admitted; or
 - (c) with respect to goods for which payment has been made and accepted or which have been received and accepted.
- (5) A contract that is enforceable under this Section is not unenforceable merely because it is not capable of being performed within one year or any other period after its making.

§2.6. Formation in General.

- (1) A contract for the sale of goods may be made in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of a contract, the interaction of electronic agents, and the interaction of an electronic agent and an individual.
- (2) An agreement sufficient to constitute a contract of sale may be found even if the moment of its making is undetermined.
- (3) Even if one or more terms are left open, a contract for sale does not fail for indefiniteness if the parties have intended to make a contract and there is a reasonably certain basis for giving an appropriate remedy.
- (4) Except as otherwise provided under Title 14 of the Liberian Code of Laws, Revised Chapter 13 - Electronic Transactions Law 2002, the following rules shall apply to a contract formed by the interaction of electronic agents of the parties thereto:
 - (a) a contract may be formed by the interaction of electronic agents of the parties, even if no individual was aware of or reviewed the electronic agents' actions or the resulting terms and agreements.
 - (b) a contract may be formed by the interaction of an electronic agent and an individual acting on the individual's own behalf or for another person. A contract is formed if the individual takes actions that the individual is free to refuse to take or makes a statement, and the individual has reason to know that the actions or statement will:
 - i. cause the electronic agent to complete the transaction or performance; or
 - ii. indicate acceptance of an offer, regardless of other expressions or actions by the individual to which the electronic agent cannot react.

§2.7. Offer and Acceptance.

- (1) Unless otherwise unambiguously indicated by the language or circumstances,
 - (a) an offer to make a contract shall be construed as inviting acceptance in any manner and by any medium reasonable in the circumstances;
 - (b) an order or other offer to buy goods for prompt or current shipment shall be construed as inviting acceptance either by a prompt promise to ship or by the prompt or current shipment of conforming or nonconforming goods, but the shipment of nonconforming goods is not an acceptance if the seller promptly notifies the buyer that the shipment is offered only as an accommodation to the buyer.
- (2) If the beginning of a requested performance is a reasonable mode of acceptance, an offeror that is not notified of acceptance within a reasonable time may treat the offer as having lapsed before acceptance.
- (3) Unless otherwise unambiguously indicated by the language or circumstances,
 - (a) A definite and seasonable expression of acceptance in a record operates as an acceptance even if it contains terms additional to or different from those offered or agreed upon, unless acceptance is expressly made conditional on consent to the additional or different terms.
 - (b) The additional terms are generally to be construed as proposals for addition to the contract, except that, as between merchants, such terms become part of the contract unless
 - i. the offer expressly limits acceptance to the terms of the offer;
 - ii. they materially alter the contract; or
 - iii. notification of their rejection has been sent or given within a reasonable time after notice of them is received.

§2.8. Modification, Rescission and Waiver; Delegation of Performance.

- (1) Unless otherwise unambiguously indicated by the language or circumstances,
 - (a) an agreement modifying a contract within this Chapter needs no consideration to be binding;
 - (b) a signed agreement which excludes modification or rescission except by a signed writing cannot be otherwise modified or rescinded, but as between merchants such a requirement on a form supplied by the merchant must be separately signed by the other party;
 - (c) an agreement modifying a contract within this Chapter shall be in writing;

- (d) a party which has made a waiver affecting an executory portion of the contract may retract the waiver by reasonable notification received by the other party that strict performance will be required of any term waived, unless the retraction would be unjust in view of a material change of position in reliance on the waiver.
- (2) Unless otherwise agreed by the parties or requested by the other party, a party may perform its duty through a delegate. No delegation of performance relieves the delegating party of any duty to perform or any liability for breach, unless the other party expressly agrees to look only to the delegate for performance of all the obligations of the delegating party.

§2.9. Sale by Auction.

- (1) In a sale by auction, if goods are put up in lots each lot is the subject of a separate sale.
- (2) A sale by auction is complete when the auctioneer so announces by the fall of the hammer or in other customary manner. If a bid is made during the process of completing the sale but before a prior bid is accepted, the auctioneer has discretion to reopen the bidding or to declare the goods sold under the prior bid.
- (3) A sale by auction is subject to the seller's right to withdraw the goods unless at the time the goods are put up or during the course of the auction it is announced in express terms that the right to withdraw the goods is not reserved.
- (4) In an auction in which the right to withdraw the goods is reserved, the auctioneer may withdraw the goods at any time until completion of the sale is announced by the auctioneer. In an auction in which the right to withdraw the goods is not reserved, after the auctioneer calls for bids on an article or lot, the article or lot may not be withdrawn unless no bid is made within a reasonable time. In either case a bidder may retract a bid until the auctioneer's announcement of completion of the sale, but a bidder's retraction does not revive any previous bid.
- (5) If the auctioneer knowingly receives a bid on the seller's behalf or the seller makes or procures such a bid, and notice has not been given that liberty for such bidding is reserved, the buyer may at the buyer's option avoid the sale or take the goods at the price of the last good faith bid prior to the completion of the sale. This Subsection shall not apply to any bid at an auction required by law.

SUBCHAPTER 3: TERMS, CONDITIONS AND WARRANTIES

§2.10. Terms of a Contract in General.

Subject to Section 2.11 and 2.12, if (i) conduct by both parties recognizes the existence of a contract although their records do not otherwise establish a contract, (ii) a contract is formed by an offer and acceptance, or (iii) a contract formed in any manner is confirmed by a record that contains terms additional to or different from those in the contract being confirmed, the terms of the contract are:

- (a) terms that appear in the records of both parties;
- (b) terms, whether in a record or not, to which both parties agree; and
- (c) terms supplied or incorporated under any provision of this Chapter.

§2.11. Final Expression in Record: Parol or Extrinsic Evidence.

- (1) Terms with respect to which the confirmatory records of the parties agree or which are otherwise set forth in a record intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be supplemented by evidence of:
 - (a) course of performance, course of dealing, or usage of trade; and
 - (b) consistent additional terms unless the court finds the record to have been intended also as a complete and exclusive statement of the terms of the agreement.
- (2) Terms in a record may be explained by evidence of course of performance, course of dealing, or usage of trade without a preliminary determination by the court that the language used is ambiguous.

§2.12. Unconscionable Contract or Term.

- (1) Where the court as a matter of law finds the contract or any term of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable term, or it may so limit the application of any unconscionable term as to avoid any unconscionable result.
- (2) Where it is claimed or appears to the court that the contract or any term thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose, and effect to aid the court in making the determination.

§2.13. Warranty of Title.

- (1) Subject to Subsection (3), there is in every contract for sale a warranty by the seller that:
 - (a) the title conveyed shall be good and its transfer rightful and shall not unreasonably expose the buyer to litigation; and
 - (b) the goods shall be delivered free from any security interest or other lien or encumbrance of which the buyer at the time of contracting has no knowledge.
- (2) Unless otherwise agreed, a seller that is a merchant regularly dealing in goods of the kind warrants that the goods shall be delivered free of the rightful claim of any third person by way of infringement or the like but a buyer that furnishes specifications to the seller must hold the seller harmless against any such claim that arises out of compliance with the specifications.
- (3) A warranty under this Section may be disclaimed or modified only by specific language or by circumstances that give the buyer reason to know that the seller does not claim title, that the seller is purporting to sell only the right or title as the seller or a third person may have, or that the seller is selling subject to any claims of infringement or the like.

§2.14. Express Warranties by Affirmation; Immediate Buyer.

- (1) In this Section, immediate buyer means a buyer that enters into a contract with the seller.
- (2) Express warranties by the seller to the immediate buyer are created as follows:
 - (a) Any affirmation of fact or promise made by the seller which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise.
 - (b) Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description.
 - (c) Any sample or model that is made part of the basis of the bargain creates an express warranty that the whole of the goods shall conform to the sample or model.
- (3) It is not necessary to the creation of an express warranty that the seller use formal words such as "warranty" or "guarantee" or that the seller have a specific intention to make a warranty, but an affirmation merely of the value of the goods or a statement purporting to be merely the seller's opinion or commendation of the goods does not create a warranty.
- (4) Any remedial promise made by the seller to the immediate buyer creates an obligation that the promise will be performed upon the happening of the specified event.
- (5) If in a record packaged with or accompanying the goods the seller makes an affirmation of fact or promise that relates to the goods, provides a description that relates to the goods, or makes a remedial promise, and the seller reasonably expects the record to be, and the record is, furnished to the remote purchaser, the seller has an obligation to the remote purchaser that:
 - (a) the goods will conform to the affirmation of fact, promise, or description unless a reasonable person in the position of the remote purchaser would not believe that the affirmation of fact, promise, or description created an obligation; and
 - (b) the seller will perform the remedial promise.
- (6) It is not necessary to the creation of an obligation under this Section that the seller use formal words such as "warranty" or "guarantee" or that the seller have a specific intention to undertake an obligation, but an affirmation merely of the value of the goods or a statement purporting to be merely the seller's opinion or commendation of the goods does not create an obligation.
- (7) The following rules apply to the remedies for breach of an obligation created under this Section:
 - (a) The seller may modify or limit the remedies available to the remote purchaser if the modification or limitation is furnished to the remote purchaser no later than the time of purchase or if the modification or limitation is contained in the record that contains the affirmation of fact, promise, or description.

- (b) Subject to a modification or limitation of remedy, a seller in breach is liable for incidental or consequential damages but not for lost profits.
 - (c) The remote purchaser may recover as damages for breach of a seller's obligation arising under Subsection (3) the loss resulting in the ordinary course of events as determined in any reasonable manner.
- (8) An obligation that is not a remedial promise is breached if the goods did not conform to the affirmation of fact, promise, or description creating the obligation when the goods left the seller's control.

§2.15. Express Warranties by Affirmation; Remote Purchaser.

- (1) In this Section "immediate buyer" means a buyer that enters into a contract with the seller and "remote purchaser" means a person that buys or leases goods from an immediate buyer or other person in the normal chain of distribution.
- (2) This Section applies only to new goods and goods sold or leased as new goods in a transaction of purchase in the normal chain of distribution.
- (3) If in an advertisement or a similar communication to the public a seller makes an affirmation of fact or promise that relates to the goods, provides a description that relates to the goods, or makes a remedial promise, and the remote purchaser enters into a transaction of purchase with knowledge of and with the expectation that the goods will conform to the affirmation of fact, promise, or description, or that the seller will perform the remedial promise, the seller has an obligation to the remote purchaser that:
 - (a) the goods will conform to the affirmation of fact, promise, or description unless a reasonable person in the position of the remote purchaser would not believe that the affirmation of fact, promise, or description created an obligation; and
 - (b) the seller will perform the remedial promise.
- (4) It is not necessary to the creation of an obligation under this Section that the seller use formal words such as "warrant" or "guarantee" or that the seller have a specific intention to undertake an obligation, but an affirmation merely of the value of the goods or a statement purporting to be merely the seller's opinion or commendation of the goods does not create an obligation.
- (5) The following rules apply to the remedies for breach of an obligation created under this Section:
 - (a) the seller may modify or limit the remedies available to the remote purchaser if the modification or limitation is furnished to the remote purchaser no later than the time of purchase. The modification or limitation may be furnished as part of the communication that contains the affirmation of fact, promise, or description.
 - (b) subject to a modification or limitation of remedy, a seller in breach is liable for incidental or consequential damages but not for lost profits.

- (c) the remote purchaser may recover as damages for breach of a seller's obligation arising under Subsection (3) the loss resulting in the ordinary course of events as determined in any reasonable manner.
- (6) An obligation that is not a remedial promise is breached if the goods did not conform to the affirmation of fact, promise, or description creating the obligation when the goods left the seller's control.

§2.16. Implied Warranty of Merchantability.

- (1) Unless excluded or modified, a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this Section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale.
- (2) Goods to be merchantable must be at least such as:
 - (a) pass without objection in the trade under the contract description;
 - (b) in the case of fungible goods, are of fair average quality within the description;
 - (c) are fit for the ordinary purposes for which goods of that description are used;
 - (d) run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved;
 - (e) are adequately contained, packaged, and labeled as the agreement may require; and
 - (f) conform to the promise or affirmations of fact made on the container or label if any.
- (3) Unless excluded or modified other implied warranties may arise from course of dealing or usage of trade.

§2.17. Exclusion or Modification of Warranties.

- (1) Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit warranty shall be construed wherever reasonable as consistent with each other; but subject to Section 2.11, negation or limitation is inoperative to the extent that such construction is unreasonable.
- (2) Subject to Subsection (3), to exclude or modify the implied warranty of merchantability or any part of it in a consumer contract the language must be in a record, be conspicuous, and state "The seller undertakes no responsibility for the quality of the goods except as otherwise provided in this contract," and in any other contract the language must mention merchantability and in case of a record must be conspicuous.

- (3) Subject to Subsection (5), to exclude or modify the implied warranty of fitness, the exclusion must be in a record and be conspicuous. Language to exclude all implied warranties of fitness in a consumer contract must state "The seller assumes no responsibility that the goods will be fit for any particular purpose for which you may be buying these goods, except as otherwise provided in the contract," and in any other contract the language is sufficient if it states, for example, that "There are no warranties that extend beyond the description on the face hereof."
- (4) Language that satisfies the requirements of this Subsection for the exclusion or modification of a warranty in a consumer contract also satisfies the requirements for any other contract.
- (5) Notwithstanding Subsection (2) and (3),
 - (a) unless the circumstances indicate otherwise, all implied warranties are excluded by expressions like "as is", "with all faults" or other language that in common understanding calls the buyer's attention to the exclusion of warranties, makes plain that there is no implied warranty, and, in a consumer contract evidenced by a record, is set forth conspicuously in the record;
 - (b) if the buyer before entering into the contract has examined the goods or the sample or model as fully as desired or has refused to examine the goods after a demand by the seller there is no implied warranty with regard to defects that an examination in the circumstances should have revealed to the buyer; and
 - (c) an implied warranty may also be excluded or modified by course of dealing or course of performance or usage of trade.
- (6) Remedies for breach of warranty may be limited in accordance with Sections 2.70 and 2.71.

§2.18. Cumulation and Conflict of Warranties.

Warranties whether express or implied shall be construed as consistent with each other and as cumulative, but if such construction is unreasonable the intention of the parties shall determine which warranty is dominant. In ascertaining that intention the following rules apply:

- (a) Exact or technical specifications displace an inconsistent sample or model or general language of description.
- (b) A sample from an existing bulk displaces inconsistent general language of description.
- (c) Express warranties displace inconsistent implied warranties other than an implied warranty of fitness for a particular purpose.

SUBCHAPTER 4: PERFORMANCE OF THE CONTRACT

§2.19. General Obligation of the Parties.

The obligation of the seller is to transfer and deliver and that of the buyer is to accept and pay in accordance with the contract.

§2.20. Options and Cooperation Respecting Performance.

- (1) An agreement for sale which is otherwise sufficiently definite to be a contract is not made invalid by the fact that it leaves particulars of performance to be specified by one of the parties. Any such specification must be made in good faith and within limits set by commercial reasonableness.
- (2) Unless otherwise agreed, specifications relating to assortment of the goods are at the buyer's option and specifications or arrangements relating to shipment are at the seller's option.
- (3) If the specification would materially affect the other party's performance but is not promptly made or if one party's cooperation is necessary to the agreed performance of the other but is not promptly forthcoming, the other party in addition to all other remedies:
 - (a) is excused for any resulting delay in that party's performance; and
 - (b) may also either proceed to perform in any reasonable manner or after the time for a material part of that party's performance treat the failure to specify or to cooperate as a breach by failure to deliver or accept the goods.

§2.21. Right to Adequate Assurance of Performance.

- (1) A contract for sale imposes an obligation on each party that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party the other may in writing demand adequate assurance of due performance and until he receives such assurance may if commercially reasonable suspend any performance for which he has not already received the agreed return.
- (2) Between merchants the reasonableness of grounds for insecurity and the adequacy of any assurance offered shall be determined according to commercial standards.
- (3) Acceptance of any improper delivery or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance.
- (4) After receipt of a justified demand failure to provide within a reasonable time not exceeding thirty (30) days such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of the contract.

§2.21. Insurable Interest, Manner of Identification of Goods.

- (1) The buyer obtains a special property and an insurable interest in goods by identification of existing goods as goods to which the contract refers even though the goods so identified are non-conforming and he has an option to return or reject them. Such identification can be made at any time and in any manner explicitly agreed to by the parties. In the absence of explicit agreement identification occurs,
 - (a) when the contract is made if it is for the sale of goods already existing and identified;

- (b) if the contract is for the sale of future goods other than those described in Subsection (c), when goods are shipped, marked or otherwise designated by the seller as goods to which the contract refers;
 - (c) when the crops are planted or otherwise become growing crops or the young are conceived if the contract is for the sale of unborn young to be born within twelve (12) months after contracting or for the sale of crops to be harvested within twelve (12) months or the next normal harvest reason after contracting whichever is longer.
- (2) The seller retains an insurable interest in goods so long as title to or any security interest in the goods remains in him and where the identification is by the seller alone he may until default or insolvency or notification to the buyer that the identification is final substitute other goods for those identified.
 - (3) Nothing in this Section impairs any insurable interest recognized under any other statute or rule of law.

§2.23. Manner of Seller's Tender of Delivery.

- (1) Tender of delivery requires that the seller put and hold conforming goods at the buyer's disposition and give the buyer any notification reasonably necessary to enable him to take delivery. The manner, time and place for tender are determined by the agreement and this Chapter, and in particular
 - (a) tender must be at a reasonable hour, and if it is of goods they must be kept available for the period reasonably necessary to enable the buyer to take possession; but
 - (b) unless otherwise agreed the buyer must furnish facilities reasonably suited to the receipt of the goods.
- (2) Where the case is within the next Section respecting shipment tender requires that the seller comply with its provisions.
- (3) Where the seller is required to deliver at a particular destination tender requires that he comply with Subsection (1) and also in any appropriate case tender documents as described in Subsections (4) and (5) of this Section.
- (4) Where goods are in the possession of a bailee and are to be delivered without being moved
 - (a) tender requires that the seller either tender a negotiable document of title covering such goods or procure acknowledgment by the bailee of the buyer's right to possession of the goods; but
 - (b) tender to the buyer of a non-negotiable document of title or of a record directing the bailee to deliver is sufficient tender unless the buyer promptly objects, and except as otherwise provided under the Secured Transactions Chapter, receipt by the bailee of notification of the buyer's rights fixes those rights as against the

bailee and all third persons; but risk of loss of the goods and of any failure by the bailee to honor the non-negotiable document of title or to obey the direction remains on the seller until the buyer has had a reasonable time to present the document or direction, and a refusal by the bailee to honor the document or to obey the direction defeats the tender.

- (5) Where the contract requires the seller to deliver documents,
- (a) the seller must tender all such documents in correct form, except as provided in this Section with respect to bills of lading in a set; and
 - (b) tender through customary banking channels is sufficient and dishonor of a draft accompanying or associated with the documents constitutes non-acceptance or rejection.

§2.24. Shipment by Seller.

- (1) Where the seller is required or authorized to send the goods to the buyer and the contract does not require him to deliver them at a particular destination, then unless otherwise agreed he must
- (a) put the goods in the possession of such a carrier and make such a contract for their transportation as may be reasonable having regard to the nature of the goods and other circumstances of the case; and
 - (b) obtain and promptly deliver or tender in due form any document necessary to enable the buyer to obtain possession of the goods or otherwise required by the agreement or by usage of trade; and
 - (c) promptly notify the buyer of the shipment.
- (2) Failure to notify the buyer under Subsection (1)(c) or to make a proper contract under Subsection (1)(a) is a ground for rejection only if material delay or loss ensues.

§2.25. Delivery in Single Lot or Several Lots.

Unless otherwise agreed all goods called for by a contract for sale must be tendered in a single delivery and payment is due only on such tender but where the circumstances give either party the right to make or demand delivery in lots the price if it can be apportioned may be demanded for each lot.

§2.26. Absence of Specified Place for Delivery.

Unless otherwise agreed,

- (a) the place for delivery of goods is the seller's place of business or if none, the seller's residence; but

- (b) in a contract for sale of identified goods which to the knowledge of the parties at the time of contracting are in some other place, that place is the place for their delivery; and
- (c) documents of title may be delivered through customary banking channels.

§2.27. Effects of Seller's Tender.

- (1) Tender of delivery is a condition to the buyer's duty to accept the goods and, unless otherwise agreed, to his duty to pay for them. Tender entitles the seller to acceptance of the goods and to payment according to the contract.
- (2) Where payment is due and demanded on the delivery to the buyer of goods or documents of title, his right as against the seller to retain or dispose of them is conditional upon his making the payment due.

§2.28. Cure by Seller of Improper Tender or Delivery.

- (1) Where any tender or delivery by the seller is rejected because it is non-conforming and the time for performance has not yet expired, the seller may promptly notify the buyer of his intention to cure and may then within the contract time make a conforming delivery.
- (2) Where the buyer rejects a non-conforming tender which the seller had reasonable grounds to believe would be acceptable with or without money allowance the seller may, if he promptly notifies the buyer, have a further reasonable time to substitute a conforming tender.

§2.29. Price Payable in Money.

- (1) The price may be made payable in money or otherwise. If it is payable in whole or in part in goods each party is a seller of the goods that the party is to transfer.
- (2) Even if all or part of the price is payable in an interest in real property the transfer of the goods and the seller's obligations with reference to them are subject to this Chapter, but not the transfer of the interest in real property or the transferor's obligations in connection therewith.

§2.30. Time for Payment.

Unless otherwise agreed,

- (a) payment is due at the time and place at which the buyer is to receive the goods even though the place of shipment is the place of delivery;
- (b) if the seller is required or authorized to send the goods, the seller may ship them under reservation, and may tender the documents of title, but the buyer may inspect the goods after their arrival before payment is due unless the inspection is inconsistent with the terms of the contract;

- (c) if tender of delivery is agreed to be made by way of documents of title otherwise than by Subsection (b), then payment is due regardless of where the goods are to be received (i) at the time and place at which the buyer is to receive delivery of the tangible documents, or (ii) at the time the buyer is to receive delivery of the electronic documents and at the seller's place of business or if none, the seller's residence; and
- (d) if the seller is required or authorized to ship the goods on credit the credit period runs from the time of shipment but postdating the invoice or delaying its dispatch will correspondingly delay the starting of the credit period.

§2.31. Payment by Letter of Credit.

If the parties agree that the primary method of payment will be by letter of credit, the following rules apply:

- (a) The buyer's obligation to pay is suspended by seasonable delivery to the seller of a letter of credit issued or confirmed by a financing agency of good repute in which the issuer and any confirmer undertake to pay against presentation of documents that evidence delivery of the goods.
- (b) Failure of a party to promptly furnish a letter of credit as agreed is a breach of the contract for sale.
- (c) If the letter of credit is dishonored or repudiated, the seller, on seasonable notification, may require payment directly from the buyer.

§2.32. Tender of Payment by the Buyer.

- (1) Unless otherwise agreed tender of payment is a condition to the seller's duty to tender and complete any delivery.
- (2) Tender of payment is sufficient when made by any means or in any manner current in the ordinary course of business unless the seller demands payment in legal tender and gives any extension of time reasonably necessary to procure it.
- (3) Subject to the provisions of this Chapter on the effect of an instrument on an obligation payment by check is conditional and is defeated as between the parties by dishonor of the check on due presentment.

§2.33. Payment by Buyer Before Inspection.

- (1) Where the contract requires payment before inspection non-conformity of the goods does not excuse the buyer from so making payment unless
 - (a) the non-conformity appears without inspection; or
 - (b) despite tender of the required documents the circumstances would justify injunction against honor under this Chapter.

- (2) Payment pursuant to Subsection (1) does not constitute an acceptance of goods or impair the buyer's right to inspect or any of his remedies.

§2.34. Buyer's Right to Inspection of Goods.

- (1) Unless otherwise agreed and subject to Subsection (3), where goods are tendered or delivered or identified to the contract for sale, the buyer has a right before payment or acceptance to inspect them at any reasonable place and time and in any reasonable manner. When the seller is required or authorized to send the goods to the buyer, the inspection may be after their arrival.
- (2) Expenses of inspection must be borne by the buyer but may be recovered from the seller if the goods do not conform and are rejected.
- (3) Unless otherwise agreed and subject to the provisions of this Chapter on C.I.F. contracts, the buyer is not entitled to inspect the goods before payment of the price when the contract provides
 - (a) for delivery "C.O.D." or on other like terms; or
 - (b) for payment against documents of title, except where such payment is due only after the goods are to become available for inspection.
- (4) A place or method of inspection fixed by the parties is presumed to be exclusive but unless otherwise expressly agreed it does not postpone identification or shift the place for delivery or for passing the risk of loss.
- (5) If compliance becomes impossible, inspection shall be as provided in this Section unless the place or method fixed was clearly intended as an indispensable condition failure of which avoids the contract.

§2.35. Buyer's Rights on Improper Delivery.

Subject to the provisions of this Chapter on breach in installment contracts and unless otherwise agreed under the sections on contractual limitations of remedy, if the goods or the tender of delivery fail in any respect to conform to the contract, the buyer may

- (a) reject the whole; or
- (b) accept the whole; or
- (c) accept any commercial unit or units and reject the rest.

§2.36. Merchant Buyer's Duties on Proper Rejection of Goods.

- (1) Subject to any security interest in the buyer, when the seller has no agent or place of business at the market of rejection a merchant buyer is under a duty after rejection of goods in his possession or control to follow any reasonable instructions received from the seller with respect to the goods and in the absence of such instructions to make reasonable efforts to sell them for the seller's account if they are perishable or threaten to decline in value speedily. Instructions are not reasonable if on demand indemnity for expenses is not forthcoming.

- (2) When the buyer sells goods under Subsection (1), he is entitled to reimbursement from the seller or out of the proceeds for reasonable expenses of caring for and selling them, and if the expenses include no selling commission then to such commission as is usual in the trade or if there is none to a reasonable sum not exceeding ten percent (10%) on the gross proceeds.
- (3) In complying with this section the buyer is held only to good faith and good faith conduct hereunder is neither acceptance nor conversion nor the basis of an action for damages.

§2.37. Buyer's Rights as to Salvage of Rightfully Rejected Goods.

- (1) Acceptance of goods occurs when the buyer
 - (a) after a reasonable opportunity to inspect the goods signifies to the seller that the goods are conforming or that he will take or retain them in spite of their non-conformity; or
 - (b) fails to make an effective rejection, but such acceptance does not occur until the buyer has had a reasonable opportunity to inspect them; or
 - (c) does any act inconsistent with the seller's ownership; but if such act is wrongful as against the seller it is an acceptance only if ratified by him.
- (2) Acceptance of a part of any commercial unit is acceptance of that entire unit.

§2.38. Acceptance of Goods.

- (1) Acceptance of goods occurs when the buyer
 - (a) after a reasonable opportunity to inspect the goods signifies to the seller that the goods are conforming or that he will take or retain them in spite of their non-conformity; or
 - (b) fails to make an effective rejection, but such acceptance does not occur until the buyer has had a reasonable opportunity to inspect them; or
 - (c) does any act inconsistent with the seller's ownership; but if such act is wrongful as against the seller it is an acceptance only if ratified by him.
- (2) Acceptance of a part of any commercial unit is acceptance of that entire unit.

§2.39. Effect of Acceptance.

- (1) The buyer must pay at the contract price for any goods accepted.
- (2) Acceptance of goods by the buyer precludes rejection of the goods accepted and if made with knowledge of a non-conformity cannot be revoked because of the non-conformity unless the acceptance was on the reasonable assumption that the non-conformity would be promptly cured but acceptance does not of itself impair any other remedy provided by this Chapter or the agreement for non-conformity.

- (3) Where a tender has been accepted
 - (a) the buyer must within a reasonable time after he discovers or should have discovered any breach notify the seller of breach or be barred from any remedy; and
 - (b) if the claim is one for infringement or the like and the buyer is sued as a result of such a breach he must so notify the seller within a reasonable time after he receives notice of the litigation or be barred from any remedy over for liability established by the litigation.
- (4) The burden is on the buyer to establish any breach with respect to the goods accepted.
- (5) Where the buyer is sued for breach of a warranty or other obligation for which his seller is answerable over
 - (a) he may give his seller written notice of the litigation. If the notice states that the seller may come in and defend and that if the seller does not do so he will be bound in any action against him by his buyer by any determination of fact common to the two litigations, then unless the seller after reasonable receipt of the notice does come in and defend he is so bound.
 - (b) if the claim is one for infringement or the like the original seller may demand in writing that his buyer turn over to him control of the litigation including settlement or else be barred from any remedy over and if he also agrees to bear all expense and to satisfy any adverse judgment, then unless the buyer after reasonable receipt of the demand does turn over control the buyer is so barred.
- (6) The provisions of Subsections (3), (4) and (5) apply to any obligation of a buyer to hold the seller harmless against infringement or the like.

§2.40. Revocation of Acceptance.

- (1) The buyer may revoke his acceptance of a lot or commercial unit whose non-conformity substantially impairs its value to him if he has accepted it
 - (a) on the reasonable assumption that its non-conformity would be cured and it has not been promptly cured; or
 - (b) without discovery of such non-conformity if his acceptance was reasonably induced either by the difficulty of discovery before acceptance or by the seller's assurances.
- (2) Revocation of acceptance must occur within a reasonable time after the buyer discovers or should have discovered the ground for it and before any substantial change in condition of the goods which is not caused by their own defects. It is not effective until the buyer notifies the seller of it.
- (3) A buyer who so revokes has the same rights and duties with regard to the goods involved as if he had rejected them.

- (4) If a buyer uses the goods after a rightful rejection or justifiable revocation of acceptance, the following rules apply:
- (a) Any use by the buyer that is unreasonable under the circumstances is wrongful against the seller and is an acceptance only if ratified by the seller.
 - (b) Any use of the goods that is reasonable under the circumstances is not wrongful as against the seller and is not an acceptance, but in an appropriate case the buyer is obligated to the seller for the value of the use to the buyer.

SUBCHAPTER 5: TRANSFER OF RISK AND TITLE

§2.41. Allocation or Division of Risk.

Where this Chapter allocates a risk or a burden as between the parties "unless otherwise agreed", the agreement may not only shift the allocation but may also divide the risk or burden.

§2.42. Sale on Approval and Sale or Return.

- (1) Under a sale on approval unless otherwise agreed
- (a) although the goods are identified to the contract the risk of loss and the title do not pass to the buyer until acceptance; and
 - (b) use of the goods consistent with the purpose of trial is not acceptance but failure to promptly notify the seller of election to return the goods is acceptance, and if the goods conform to the contract acceptance of any part is acceptance of the whole; and
 - (c) after due notification of election to return, the return is at the seller's risk and expense but a merchant buyer must follow any reasonable instructions.
- (2) Under a sale or return unless otherwise agreed
- (a) the option to return extends to the whole or any commercial unit of the goods while in substantially their original condition, but must be exercised promptly; and
 - (b) the return is at the buyer's risk and expense.

§2.43. Risk of Loss in the Absence of Breach.

- (1) Where the contract requires or authorizes the seller to ship the goods by carrier
- (a) if it does not require him to deliver them at a particular destination, the risk of loss passes to the buyer when the goods are duly delivered to the carrier even though the shipment is under reservation; but

- (b) if it does require him to deliver them at a particular destination and the goods are there duly tendered while in the possession of the carrier, the risk of loss passes to the buyer when the goods are there duly so tendered as to enable the buyer to take delivery.
- (2) Where the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the buyer
 - (a) on his receipt of possession or control of a negotiable document of title covering the goods; or
 - (b) on acknowledgment by the bailee of the buyer's right to possession of the goods; or
 - (c) after his receipt of possession or control of a non-negotiable document of title or other direction to deliver in a record.
- (3) In any case not within Subsection (1) or (2), the risk of loss passes to the buyer on his receipt of the goods if the seller is a merchant; otherwise the risk passes to the buyer on tender of delivery.
- (4) The provisions of this Section are subject to contrary agreement of the parties and to the provisions of this Chapter on sale on approval and on effect of breach on risk of loss.

§2.44. Effect of Breach on Risk of Loss.

- (1) Where a tender or delivery of goods so fails to conform to the contract as to give a right of rejection the risk of their loss remains on the seller until cure or acceptance.
- (2) Where the buyer rightfully revokes acceptance he may to the extent of any deficiency in his effective insurance coverage treat the risk of loss as having rested on the seller from the beginning.
- (3) Where the buyer as to conforming goods already identified to the contract for sale repudiates or is otherwise in breach before risk of their loss has passed to him, the seller may to the extent of any deficiency in his effective insurance coverage treat the risk of loss as resting on the buyer for a commercially reasonable time.

§2.45. Passage of Title.

- (1) Each provision of this Chapter with regard to the rights, obligations and remedies of the seller, the buyer, purchasers or other third parties applies irrespective of title to the goods except where the provision refers to such title. Insofar as situations are not covered by the other provisions of this Chapter and matters concerning title become material the following rules apply:
 - (a) Title to goods cannot pass under a contract for sale prior to their identification to the contract, and unless otherwise explicitly agreed the buyer acquires by their identification a special property as limited by this Chapter.

- (b) Any retention or reservation by the seller of the title (property) in goods shipped or delivered to the buyer is limited in effect to a reservation of a security interest. Subject to these provisions and to the provisions of the Secured Transactions Chapter, title to goods passes from the seller to the buyer in any manner and on any conditions explicitly agreed on by the parties.
- (2) Unless otherwise explicitly agreed title passes to the buyer at the time and place at which the seller completes performance with reference to the physical delivery of the goods, despite any reservation of a security interest and even though a document of title is to be delivered at a different time or place; and in particular and despite any reservation of a security interest by the bill of lading
 - (a) if the contract requires or authorizes the seller to send the goods to the buyer but does not require the seller to deliver them at destination, title passes to the buyer at the time and place of shipment; but
 - (b) if the contract requires delivery at destination, title passes on tender there.
- (3) Unless otherwise explicitly agreed where delivery is to be made without moving the goods,
 - (a) if the seller is to deliver a tangible document of title, title passes at the time when and the place where he delivers such documents and if the seller is to deliver an electronic document of title, title passes when the seller delivers the document; or
 - (b) if the goods are at the time of contracting already identified and no documents of title are to be delivered, title passes at the time and place of contracting.
- (4) A rejection or other refusal by the buyer to receive or retain the goods, whether or not justified, or a justified revocation of acceptance re-vests title to the goods in the seller. Such re-vesting occurs by operation of law and is not a "sale".

SUBCHAPTER 6: AGENTS, CREDITORS AND GOOD FAITH PURCHASERS

§2.46. Rights of Seller's Creditors Against Goods.

- (1) Except as provided in Subsections (2) and (3), rights of unsecured creditors of the seller with respect to goods which have been identified to a contract for sale are subject to the buyer's rights to recover the goods under this Chapter.
- (2) A creditor of the seller may treat a sale or an identification of goods to a contract for sale as void if as against him a retention of possession by the seller is fraudulent under any rule of law, except that retention of possession in good faith and current course of trade by a merchant-seller for a commercially reasonable time after a sale or identification is not fraudulent.
- (3) Nothing in this Chapter shall be deemed to impair the rights of creditors of the seller
 - (a) under the provisions of the Secured Transactions Chapter; or

- (b) where identification to the contract or delivery is made not in current course of trade but in satisfaction of or as security for a pre-existing claim for money, security or the like and is made under circumstances which under any rule of law would, apart from this Chapter, constitute the transaction a fraudulent transfer or voidable preference.

§2.47. Power of Transfer of Good Faith Purchaser.

- (1) A purchaser of goods acquires all title which his transferor had or had power to transfer except that a purchaser of a limited interest acquires rights only to the extent of the interest purchased. A person with voidable title has power to transfer a good title to a good faith purchaser for value.
- (2) When goods have been delivered under a transaction of purchase the purchaser has such power even though
 - (a) the transferor was deceived as to the identity of the purchaser; or
 - (b) the delivery was in exchange for a check which is later dishonored; or
 - (c) it was agreed that the transaction was to be a "cash sale"; or
 - (d) the delivery was procured through fraud punishable as larcenous under the criminal law.
- (3) Any entrusting of possession of goods to a merchant that deals in goods of that kind gives him power to transfer all rights of the entruster to a buyer in ordinary course of business.
- (4) "Entrusting" includes any delivery and any acquiescence in retention of possession regardless of any condition expressed between the parties to the delivery or acquiescence and regardless of whether the procurement of the entrusting or the possessor's disposition of the goods have been such as to be larcenous under the criminal law.
- (5) The rights of other purchasers of goods and of lien creditors are governed by the Secured Transactions Chapter.

§2.48. Rights of Financing Agent.

- (1) A financing agency by paying or purchasing for value a draft which relates to a shipment of goods acquires to the extent of the payment or purchase and in addition to its own rights under the draft and any document of title securing it any rights of the shipper in the goods including the right to stop delivery and the shipper's right to have the draft honored by the buyer.
- (2) The right to reimbursement of a financing agency which has in good faith honored or purchased the draft under commitment to or authority from the buyer is not impaired by subsequent discovery of defects with reference to any relevant document which was apparently regular.

SUBCHAPTER 7: INTERNATIONAL SALE TRANSACTIONS

§2.49. Contract of International Sale of Goods.

- (1) For the purposes of this Chapter, a contract for the international sale of goods means a contract of sale of goods made by parties whose places of business (or, if they have none, habitual residences) are in the territories of different countries and in the case of which one of the following conditions is satisfied:
 - (a) the contract involves the sale of goods which are at the time of the conclusion of the contract in the course of carriage or will be carried from the territory of one country to the territory of another; or
 - (b) the acts constituting the offer and acceptance have been effected in the territories of different countries; or
 - (c) delivery of the goods is to be made in the territory of a country other than that within whose territory the acts constituting the offer and the acceptance have been effected.
- (2) The provisions of Subchapters 1 to 6 of this Chapter shall, in relation to a contract for the international sale of goods, be subject to the provisions of this Subchapter.

§2.50. Obligations of Parties under F.O.B. contract.

- (1) In a f.o.b (meaning "free on board") contract for the international sale of goods, unless otherwise agreed by the parties,
 - (a) the buyer is entitled and bound to nominate a carrier to the seller calling during the agreed period, if any, at the agreed, or where the buyer has an option, one of the agreed, ports, and ready and willing to carry the goods;
 - (b) the seller is bound, at his own expense, to have the goods loaded on the carrier nominated by the buyer;
 - (c) the seller is bound to give notice to the buyer as required under this Chapter except where the buyer already has the necessary information;
 - (d) the seller is not bound to provide insurance cover for the goods;
 - (e) the seller is bound to transmit to the buyer bills of lading and other documents by which the goods are deliverable to the buyer or his order or to transfer to the buyer bills of lading or other documents by which the goods are deliverable to the seller or his order.
- (2) Where by the bill of lading or other proper shipping document the goods are deliverable to, or to the order of the seller, title in the goods passes to the buyer when the bill of lading or other document is transferred to the buyer.
- (3) Where by the bill of lading or other proper shipping document the goods are deliverable to, or to the order of the buyer, title in the goods passes to the buyer when the goods are shipped.

§2.51. Obligation of Parties under C.I.F. Contract.

- (1) In a c.i.f. (meaning that the price includes the cost of the goods and the insurance and freight to the named destination) contract for the international sale of goods, unless otherwise agreed by the parties,
 - (a) the seller is bound at his own expense, to ship the goods during the agreed period, if any, to the port agreed upon or to acquire goods afloat which have been so shipped;
 - (b) the seller is bound, at his own expense, to provide insurance cover of the type normal for goods and voyage of the kind in question;
 - (c) the seller is bound to transfer to the buyer proper shipping documents in accordance with the terms of the contract;
 - (d) the buyer is bound to take up proper shipping documents and, on doing so, to pay the price in accordance with the terms of the contract;
- (2) Upon the transfer to the buyer of bill of lading the goods are deemed to be delivered to the buyer, and title therein passes accordingly to the buyer.
- (3) The risk in the goods passes to the buyer when they are shipped or acquired afloat.

SUBCHAPTER 8: BREACH, REPUDIATION AND REMEDIES

§2.52. Buyer's Right to Goods on Seller's Repudiation.

- (1) Subject to Subsections (2) and (3) and even though the goods have not been shipped a buyer who has paid a part or all of the price of goods in which he has a special property under the provisions of the immediately preceding Section may on making and keeping good a tender of any unpaid portion of their price recover them from the seller if:
 - (a) in the case of goods bought for personal, family, or household purposes, the seller repudiates or fails to deliver as required by the contract; or
 - (b) in other cases, the seller becomes insolvent within ten (10) days after receipt of the first installment on their price.
- (2) The buyer's right to recover the goods under Subsection (1)(a) vests upon acquisition of a special property, even if the seller had not then repudiated or failed to deliver.
- (3) If the identification creating his special property has been made by the buyer he acquires the right to recover the goods only if they conform to the contract for sale.

§2.53. Anticipatory Repudiation.

When either party repudiates the contract with respect to a performance not yet due the loss of which will substantially impair the value of the contract to the other, the aggrieved party may

- (a) for a commercially reasonable time await performance by the repudiating party; or

- (b) resort to any remedy for breach even though he has notified the repudiating party that he would await the latter's performance and has urged retraction; and
- (c) in either case suspend his own performance or proceed in accordance with the provisions of this Chapter on the seller's right to identify goods to the contract notwithstanding breach or to salvage unfinished good.

§2.54. Retraction of Anticipatory Repudiation.

- (1) Until the repudiating party's next performance is due he can retract his repudiation unless the aggrieved party has since the repudiation cancelled or materially changed his position or otherwise indicated that he considers the repudiation final.
- (2) Retraction may be by any method which clearly indicates to the aggrieved party that the repudiating party intends to perform, but must include any assurance justifiably demanded under the provisions of this Chapter.
- (3) Retraction reinstates the repudiating party's rights under the contract with due excuse and allowance to the aggrieved party for any delay occasioned by the repudiation.

§2.55. Breach of Installment Contract.

- (1) Where a contract requires or authorizes the delivery of goods in separate lots to be separately accepted it is an installment contract for the purposes of this Chapter any clauses therein to the contrary notwithstanding.
- (2) The buyer may reject any installment which is non-conforming if the non-conformity substantially impairs the value of that installment and cannot be cured or if the non-conformity is a defect in the required documents but if the non-conformity falls within Subsection (3) and the seller gives adequate assurance of its cure the buyer must accept that installment.
- (3) Whenever non-conformity or default with respect to one or more installments substantially impairs the value of the whole contract there is a breach of the whole but the aggrieved party reinstates the contracts if he accepts a non-conforming installment without promptly notifying of cancellation or if he brings an action with respect to only past installments or demands performance as to future installments.

§2.56. Remedies for Breach of Collateral Contract not Impaired.

Remedies for breach of any obligation or promise collateral or ancillary to a contract for sale are not impaired by the provisions of this Chapter.

§2.57. Seller's Remedies in General.

- (1) A breach of contract by the buyer includes the buyer's wrongful rejection or wrongful attempt to revoke acceptance of goods, wrongful failure to perform a contractual obligation, failure to make a payment when due, and repudiation.

- (2) If the buyer is in breach of contract to the seller, to the extent provided for by this Chapter or other law, may:
- (a) withhold delivery of such goods;
 - (b) stop delivery of the goods under Section 2.59;
 - (c) proceed under Section 2.58 with respect to goods unidentified to the contract or unfinished;
 - (d) reclaim the goods under Section 2.57;
 - (e) require payment directly from the buyer under Section 2.31 (c);
 - (f) cancel;
 - (g) resell and recover damages under Section 2.60;
 - (h) recover damages for non-acceptance or repudiation under Section 2.60 or in a proper case the price;
 - (i) recover the price under Section 2.62;
 - (j) obtain specific performance under Section 2.68;
 - (k) recover liquidated damages;
 - (l) in other cases, recover damages in any manner that is reasonable under the circumstances.
- (3) If the buyer becomes insolvent, the seller may:
- (a) withhold delivery;
 - (b) stop delivery of the goods under Section 2.57;
 - (c) reclaim the goods under Section 2.57.

§2.58. Seller's Remedies on Insolvency of Buyer.

- (1) Where the seller discovers the buyer to be insolvent he may refuse delivery except for cash including payment for all goods theretofore delivered under the contract, and stop delivery under this Chapter.
- (2) Where the seller discovers that the buyer has received goods on credit while insolvent, the seller may reclaim the goods upon demand made within a reasonable time after the buyer's receipt of the goods. Except as provided in this Subsection, the seller may not base a right to reclaim goods on the buyer's fraudulent or innocent misrepresentation of solvency or of intent to pay.

- (3) The seller's right to reclaim under Subsection (2) is subject to the rights of a buyer in ordinary course of business or other good-faith purchaser for value under Section 2.46. Successful reclamation of goods excludes all other remedies with respect to them.

§2.59. Seller's Right to Identify Goods to the Contract Despite Breach or to Salvage Unfinished Goods.

- (1) Where the buyer is in breach of a contract of sale, an aggrieved seller may
 - (a) identify to the contract conforming goods not already identified if at the time he learned of the breach they were in his possession or control;
 - (b) treat as the subject of resale goods which have demonstrably been intended for the particular contract even though those goods are unfinished.
- (2) Where the goods are unfinished an aggrieved seller may in the exercise of reasonable commercial judgment for the purposes of avoiding loss and of effective realization either complete the manufacture and wholly identify the goods to the contract or cease the manufacture and resell the scrap or salvage value or proceed in any other reasonable manner.

§2.60. Seller's Right to Stoppage in Transit.

- (1) The seller may stop delivery of goods in the possession of a carrier or other bailee when he discovers the buyer to be insolvent or if the buyer repudiates or fails to make a payment due before delivery or if for any other reason the seller has a right to withhold or reclaim the goods.
- (2) As against such buyer the seller may stop delivery until
 - (a) receipt of the goods by the buyer; or
 - (b) acknowledgment to buyer by any bailee of the goods, except a carrier, that the bailee holds the goods for the buyer; or
 - (c) such acknowledgment to the buyer by a carrier by reshipment or as a warehouse; or
 - (d) negotiation to the buyer of any negotiable document of title covering the goods.
- (3) To stop delivery the seller must so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.
- (4) After such notification, the bailee must hold and deliver the goods according to the directions of the seller, but the seller is liable to the bailee for any ensuing charges or damages.
- (5) If a negotiable document of title has been issued for goods the bailee is not obliged to obey a notification to stop until surrender of possession or control of the document.

- (6) A carrier that has issued a non-negotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor.

§2.61. Seller's Right to Resell Goods.

- (1) Under the conditions stated in Section 2.56 on seller's remedies, the seller may resell the goods concerned or the undelivered balance thereof. Where the resale is made in good faith and in a commercially reasonable manner the seller may recover the difference between the resale price and the contract price together with any incidental damages allowed under the provisions of this Chapter, but less expenses saved in consequence of the buyer's breach.
- (2) Except as otherwise provided in Subsection (3) or unless otherwise agreed resale may be at public or private sale including sale by way of one or more contracts to sell or of identification to an existing contract of the seller. Sale may be as a unit or in parcels and at any time and place and on any terms but every aspect of the sale including the method, manner, time, place and terms must be commercially reasonable. The resale must be reasonably identified as referring to the broken contract, but it is not necessary that the goods be in existence or that any or all of them have been identified to the contract before the breach.
- (3) Where the resale is at private sale the seller must give the buyer reasonable notification of his intention to resell.
- (4) Where the resale is at public sale
 - (a) only identified goods can be sold except where there is a recognized market for a public sale of futures in goods of the kind; and
 - (b) it must be made at a usual place or market for public sale if one is reasonably available and except in the case of goods which are perishable or threaten to decline in value speedily the seller must give the seller reasonable notice of the time and place of the resale; and
 - (c) if the goods are not to be within the view of those attending the sale the notification of sale must state the place where the goods are located and provide for their reasonable inspection by prospective bidders; and
 - (d) the seller may buy.
- (5) A purchaser that buys in good faith at a resale takes the goods free of any rights of the original buyer even though the seller fails to comply with one or more of the requirements of this section.
- (6) The seller is not accountable to the buyer for any profit made on any resale. A person in the position of a seller or a buyer that has rightfully rejected or justifiably revoked acceptance must account for any excess over the amount of his security interest.

§2.62. Sellers' Damages for Non-Acceptance or Repudiation.

- (1) Subject to Subsection (2) and to Section 2.74:

- (a) the measure of damages for non-acceptance by the buyer is the difference between the contract price and the market price at the time and place for tender together with any incidental or consequential damages provided in Section 2.63, but less expenses saved in consequence of the buyer's breach; and
 - (b) the measure of damages for repudiation by the buyer is the difference between the contract price and the market price at the place for tender at the expiration of a commercially reasonable time after the seller learned of the repudiation, but no later than the time stated in paragraph (a), together with any incidental or consequential damages provided in Section 2.63, less expenses saved in consequence of the buyer's breach.
- (2) If the measure of damages provided in Subsection (1) is inadequate to put the seller in as good a position as performance would have done then the measure of damages is the profit (including reasonable overhead) which the seller would have made from full performance by the buyer, together with any incidental damages provided in this Chapter, due allowance for costs reasonably incurred and due credit for payments or proceeds of resale.

§2.63. Action for the Price.

- (1) When the buyer fails to pay the price as it becomes due the seller may recover, together with any incidental damages under the next Section, the price
- (a) of goods accepted or of conforming goods lost or damaged within a commercially reasonable time after risk of their loss has passed to the buyer; and
 - (b) of goods identified to the contract if the seller is unable after reasonable effort to resell them at a reasonable price or the circumstances reasonably indicate that such effort will be unavailing.
- (2) Where the seller sues for the price he must hold for the buyer any goods which have been identified to the contract and are still in his control except that if resale becomes possible he may resell them at any time prior to the collection of the judgment. The net proceeds of any such resale must be credited to the buyer and payment of the judgment entitles him to any goods not resold.
- (3) After the buyer has wrongfully rejected or revoked acceptance of the goods or has failed to make a payment due or has repudiated, a seller that is held not entitled to the price under this section shall nevertheless be awarded damages for non-acceptance under the preceding section.

§2.64. Seller's Incidental Damages.

- (1) Incidental damages to an aggrieved seller include any commercially reasonable charges, expenses or commissions incurred in stopping delivery, in the transportation, care and custody of goods after the buyer's breach, in connection with return or resale of the goods or otherwise resulting from the breach.

- (2) Consequential damages resulting from the buyer's breach include any loss resulting from general or particular requirements and needs of which the buyer at the time of contracting had reason to know and which could not reasonably be prevented by resale or otherwise.
- (3) In a consumer contract, a seller may not recover consequential damages from a consumer.

§2.65. Buyer's Remedies in General.

- (1) A breach of contract by the seller includes the seller's wrongful failure to deliver or to perform a contractual obligation, making of a nonconforming tender of delivery or performance, and repudiation.
- (2) If the seller is in breach of contract under Subsection (1), the buyer, to the extent provided for by this Chapter or other law, may:
 - (a) in the case of rightful cancellation, rightful rejection, or justifiable revocation of acceptance, recover so much of the price as has been paid;
 - (b) deduct damages from any part of the price still due under Section 2.69;
 - (c) cancel;
 - (d) cover and have damages as to all goods affected whether or not they have been identified to the contract;
 - (e) recover damages for non-delivery or repudiation under Section 2.65;
 - (f) recover damages for breach with regard to accepted goods or breach with regard to a remedial promise under Section 2.66;
 - (g) recover identified goods;
 - (h) obtain specific performance or obtain the goods by replevin or similar remedy under Section 2.68;
 - (i) recover liquidated damages under Section 2.70;
 - (j) in other cases, recover damages in any manner that is reasonable under the circumstances.
- (3) On rightful rejection or justifiable revocation of acceptance a buyer has a security interest in goods in his possession or control for any payments made on their price and any expenses reasonably incurred in their inspection, receipt, transportation, care and custody and may hold such goods and resell them in like manner as an aggrieved seller.

§2.66. Buyer's Damages for Non-Delivery.

- (1) Subject to Section 2.74, if the seller wrongfully fails to deliver or repudiates or the buyer rightfully rejects or justifiably revokes acceptance:
 - (a) the measure of damages in the case of wrongful failure to deliver by the seller or rightful rejection or justifiable revocation of acceptance by the buyer is the difference between the market price at the time for tender under the contract and the contract price together with any incidental or consequential damages under Section 2.67, but less expenses saved in consequence of the seller's breach; and
 - (b) the measure of damages for repudiation by the seller is the difference between the market price at the expiration of a commercially reasonable time after the buyer learned of the repudiation, but no later than the time stated in paragraph (a), and the contract price together with any incidental or consequential damages provided in this Chapter, but less expenses saved in consequence of the seller's breach.
- (2) Market price is to be determined as of the place for tender or, in cases of rejection after arrival or revocation of acceptance, as of the place of arrival.

§2.67. Buyer's Damages for Breach in Relation to Accepted Goods.

- (1) Where the buyer has accepted goods and given notification he may recover as damages for any non-conformity of tender the loss resulting in the ordinary course of events from the seller's breach as determined in any manner which is reasonable.
- (2) The measure of damages for breach of warranty is the difference at the time and place of acceptance between the value of the goods accepted and the value they would have had if they had been as warranted, unless special circumstances show proximate damages of a different amount.
- (3) In a proper case any incidental and consequential damages under the next section may also be recovered.

§2.68. Buyer's Incidental and Consequential Damages.

- (1) Incidental damages resulting from the seller's breach include expenses reasonably incurred in inspection, receipt, transportation and care and custody of goods rightfully rejected, any commercially reasonable charges, expenses or commissions in connection with effecting cover and any other reasonable expense incident to the delay or other breach.
- (2) Consequential damages resulting from the seller's breach include
 - (a) any loss resulting from general or particular requirements and needs of which the seller at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise; and
 - (b) injury to person or property proximately resulting from any breach of warranty.

§2.69. Right to Specific Performance.

- (1) Specific performance may be decreed if the goods are unique, of sentimental value, and/or if the circumstances so warrant. In a contract other than a consumer contract, specific performance may be decreed if the parties have agreed to that remedy. However, even if the parties agree to specific performance, specific performance may not be decreed if the breaching party's sole remaining contractual obligation is the payment of money.
- (2) The decree for specific performance may include such terms and conditions as to payment of the price, damages, or other relief as the court may deem just.
- (3) The buyer has a right of replevin or similar remedy for goods identified to the contract if after reasonable effort the buyer is unable to effect cover for such goods or the circumstances reasonably indicate that such effort will be unavailing or if the goods have been shipped under reservation and satisfaction of the security interest in them has been made or tendered.
- (4) The buyer's right under Subsection (3) vests upon acquisition of a special property, even if the seller had not then repudiated or failed to deliver.

§2.70. Deduction of Damages from Price.

The buyer on notifying the seller of his intention to do so may deduct all or any part of the damages resulting from any breach of the contract from any part of the price still due under the same contract.

§2.71. Liquidation or Limitation of Damages.

- (1) Damages for breach by either party may be liquidated in the agreement but only at an amount which is reasonable in the light of the anticipated or actual harm caused by the breach, the difficulties of proof of loss, and the inconvenience or non-feasibility of otherwise obtaining an adequate remedy.
- (2) If the seller justifiably withholds delivery of goods or stops performance because of the buyer's breach or insolvency, the buyer is entitled to restitution of any amount by which the sum of the buyer's payments exceeds the
 - (a) the amount to which the seller is entitled by virtue of terms liquidating the seller's damages in accordance with Subsection (1); or
 - (b) in the absence of such terms, fifteen percent (15%) of the value of the total performance for which the buyer is obligated under the contract.
- (3) The buyer's right to restitution under Subsection (2) is subject to offset to the extent that the seller establishes:
 - (a) a right to recover damages under the provisions of this Chapter other than Subsection (1); and

- (b) the amount or value of any benefits received by the buyer directly or indirectly by reason of the sale contract.
- (4) Where a seller has received payment in goods their reasonable value or the proceeds of their resale shall be treated as payments for the purposes of Subsection (2); but if the seller has notice of the buyer's breach before reselling goods received in part performance, his resale is subject to the conditions laid down in this Chapter on resale by an aggrieved seller.

§2.72. Contractual Modification or Limitation of Remedy.

- (1) Subject to the provisions of Subsections (2) and (3) of this section and of the preceding section on liquidation and limitation of damages,
 - (a) the agreement may provide for remedies in addition to or in substitution for those provided in this Chapter and may limit or alter the measure of damages recoverable under this Chapter, as by limiting the buyer's remedies to return of the goods and repayment of the price or to repair and replacement of non-conforming goods or parts; and
 - (b) resort to a remedy as provided is optional unless the remedy is expressly agreed to be exclusive, in which case it is the sole remedy.
- (2) Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this Chapter.
- (3) Consequential damages may be limited or excluded unless the limitation or exclusion is unconscionable. Limitation of consequential damages for injury to the person in the case of consumer goods is prima facie unconscionable but limitation of damages where the loss is commercial is not.

§2.73. Remedies for Fraud.

- (1) Remedies for material misrepresentation or fraud include all remedies available under this Chapter for non-fraudulent breach.
- (2) Neither rescission or a claim for rescission of the contract for sale nor rejection or return of the goods shall bar or be deemed inconsistent with a claim for damages or other remedy.

SUBCHAPTER 9: SUPPLEMENTARY PROVISIONS

§2.74. Action Against Third Parties for Injury to Goods.

Where a third party so deals with goods which have been identified to a contract for sale as to cause actionable injury to a party to that contract

- (a) a right of action against the third party is in either party to the contract for sale that has title to or a security interest or a special property or an insurable interest in the goods; and if the goods have been destroyed or converted a right of action is also in the party that either bore the risk of loss under the contract for sale or has since the injury assumed that risk as against the other;

- (b) if at the time of the injury the party plaintiff did not bear the risk of loss as against the other party to the contract for sale and there is no arrangement between them for disposition of the recovery, his suit or settlement is, subject to his own interest, as a fiduciary for the other party to the contract;
- (c) either party may with the consent of the other sue for the benefit of which it may concern.

§2.75. Proof of Market Price.

- (1) If evidence of a price prevailing at the times or places described in this Chapter is not readily available the price prevailing within any reasonable time before or after the time described or at any other place which in commercial judgment or under usage of trade would serve as a reasonable substitute for the one described may be used, making any proper allowance for the cost of transporting the goods to or from such other place.
- (2) Evidence of a relevant price prevailing at a time or place other than the one described in this Chapter offered by one party is not admissible unless and until he has given the other party such notice as the court finds sufficient to prevent unfair surprise.

§2.76. Admissibility of Market Quotations.

- (1) Whenever the prevailing price or value of any goods regularly bought and sold in any established commodity market is in issue, reports in official publications or trade journals or in newspapers or periodicals of general circulation published as the reports of such market shall be admissible in evidence.
- (2) The circumstances of the preparation of such a report may be shown to affect its weight but not its admissibility.

§2.77. Statute of Limitations.

- (1) Except as otherwise provided in this section, an action for breach of any contract for sale must be commenced within seven (7) years after the right of action has accrued.
- (2) Except as otherwise provided in Subsection (3), the following rules apply:
 - (a) Except as otherwise provided in this Subsection, a right of action for breach of a contract accrues when the breach occurs, even if the aggrieved party did not have knowledge of the breach.
 - (b) For breach of a contract by repudiation, a right of action accrues at the earlier of (i) when the aggrieved party elects to treat the repudiation as a breach or (ii) when a commercially reasonable time for awaiting performance has expired.
 - (c) For breach of a remedial promise, a right of action accrues when the remedial promise is not performed when performance is due.
 - (d) In an action by a buyer against a person that is answerable over to the buyer for a claim asserted against the buyer, the buyer's right of action against the person answerable over accrues at the time the claim was originally asserted against the buyer.

- (3)** If a breach of a warranty arising under Sections 2.13, or a breach of an obligation, other than a remedial promise, arising under Section 2.15, is claimed, the following rules apply:
- (a)** Except as otherwise provided in Subsection (3)(c), a right of action for breach of a warranty arising under Sections 2.12, 2.14 or 2.15 accrues when the seller has tendered delivery to the immediate buyer and has completed performance of any agreed installation or assembly of the goods.
 - (b)** Except as otherwise provided in Subsection (3)(c), a right of action for breach of an obligation, other than a remedial promise, arising under Section 2.13 or 2.15 accrues when the remote purchaser receives the goods.
 - (c)** If a warranty arising under Section 2.13 or an obligation, other than a remedial promise, arising under Section 2.14 explicitly extends to future performance of the goods and discovery of the breach must await the time for performance, the right of action accrues when the immediate buyer or the remote purchaser discovers or should have discovered the breach.
 - (d)** A right of action for breach of warranty arising under Section 2.12 accrues when the aggrieved party discovers or should have discovered the breach. However, an action for breach of the warranty of non-infringement may not be commenced more than seven years after tender of delivery of the goods to the aggrieved party.
- (4)** Where an action commenced within the time limited by subsection (1) is so terminated as to leave available a remedy by another action for the same breach, such other action may be commenced after the expiration of the time limited and within twelve (12) months after the termination of the first action unless the termination resulted from voluntary discontinuance or from dismissal for failure or neglect to prosecute.
- (5)** This section does not alter the law on tolling of the statute of limitations nor does it apply to causes of action which have accrued before this Chapter becomes effective.

**TITLE 7: CHAPTER 3 OF THE LIBERIAN CODE OF LAWS, REVISED
COMMERCIAL CODE – LEASES**

Arrangement of Sections

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- §3.2. Scope of Application.
- §3.3. Interpretation; Definitions.
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- §3.5. Waiver or Renunciation of Claim or Right after Default.
- §3.6. Unconscionability.
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SUBCHAPTER 1: GENERAL PROVISIONS

§3.1. Short Title.

This Chapter shall be known and may be cited as the Liberian Commercial Code - Leases.

§3.2. Scope of Application.

This Chapter applies to any transaction, regardless of form, that creates a lease other than a finance lease.

§3.3. Interpretation; Definitions.

(1) In this Chapter unless the context otherwise requires:

- (a) "**Cancellation**" is the act of either party to put an end to the lease contract for default by the other party.
- (b) "**Commercial unit**" means such a unit of goods as by commercial usage is a single whole for purposes of lease and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single Chapter, as a machine, or a set of Chapters, as a suite of furniture or a line of machinery, or a quantity, as a gross or carload, or any other unit treated in use or in the relevant market as a single whole.
- (c) "**Conforming**" goods or performance under a lease contract means goods or performance that are in accordance with the obligations under the lease contract.
- (d) "**Consumer lease**" means a lease that a lessor regularly engaged in the business of leasing or selling makes to a lessee who is an individual and who takes under the lease primarily for a personal, family, or household purpose.
- (e) "**Fault**" means wrongful act, omission, breach, or default.
- (f) "**Goods**" means all things that are movable at the time of identification to the lease contract, or are fixtures under Section 3.38 but the term does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like, including oil and gas, before extraction.
- (g) "**Installment lease contract**" means a lease contract that authorizes or requires the delivery of goods in separate lots to be separately accepted, even though the lease contract contains a clause "each delivery is a separate lease" or its equivalent.
- (h) "**Lease**" means a transfer of the right to possession and use of goods for a term in return for consideration.
- (i) "**Lease agreement**" means the bargain, with respect to the lease, of the lessor and the lessee in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this Chapter. Unless the context clearly indicates otherwise, the term includes a sublease agreement.

- (j) "**Lease contract**" means the total legal obligation that results from the lease agreement as affected by this Chapter and any other applicable rules of law. Unless the context clearly indicates otherwise, the term includes a sublease contract.
- (k) "**Leasehold interest**" means the interest of the lessor or the lessee under a lease contract.
- (l) "**Lessee**" means a person, who under a lease agreement, obtains from another person, known as the lessor, the right to possession and use of an asset in return for rental payments over an agreed period of time, and includes its successors and assignees.
- (m) "**Lessee in ordinary course of business**" means a person who in good faith and without knowledge that the lease to him is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods leases in ordinary course from a person in the business of selling or leasing goods of that kind but does not include a pawnbroker. "Leasing" may be for cash or by exchange of other property or on secured or unsecured credit and includes acquiring goods or documents of title under a pre-existing lease contract, but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.
- (n) "**Lessor**" means a person or a corporate body that is registered and licensed to conduct the business of leasing by the Central Bank of Liberia and which acting under a lease agreement, conveys to another person known as the lessee for an agreed period of time, the right to possession and use of an asset in return for rental payments and includes its successors and assignees.
- (o) "**Lessor's residual interest**" means the lessor's interest in the goods after expiration, termination, or cancellation of the lease contract.
- (p) "**Lien**" means a charge against or interest in goods to secure payment of a debt or performance of an obligation, but the term does not include a security interest.
- (q) "**Lot**" means a parcel or a single article that is the subject matter of a separate lease or delivery, whether or not it is sufficient to perform the lease contract.
- (r) "**Merchant lessee**" means a lessee that is a merchant with respect to goods of the kind subject to the lease.
- (s) "**Present value**" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate was not manifestly unreasonable at the time the transaction was entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.
- (t) "**Purchase**" includes taking by sale, lease, mortgage, security interest, pledge, gift, or any other voluntary transaction creating an interest in goods.
- (u) "**Sublease**" means a lease of goods the right to possession and use of which was acquired by the lessor as a lessee under an existing lease.
- (v) "**Termination**" occurs when either party pursuant to a power created by agreement or law puts an end to the lease contract otherwise than for default.

§3.4. Power of Parties to Consumer Lease to Choose Applicable Law and Judicial Forum.

- (1) Subject to Subsection (2), the parties to a lease transaction may choose the law and forum. Such a choice will be duly enforceable.
- (2) Where the parties to a consumer lease transaction choose a law other than the Commercial Code, this choice shall be unenforceable.

§3.5. Waiver or Renunciation of Claim or Right after Default.

Any claim or right arising out of an alleged default or breach of warranty may be discharged in whole or in part without consideration by a written waiver or renunciation signed and delivered by the aggrieved party.

§3.6. Unconscionability.

- (1) If the court as a matter of law finds a lease contract or any clause of a lease contract to have been unconscionable at the time it was made the court may refuse to enforce the lease contract, or it may enforce the remainder of the lease contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.
- (2) With respect to a consumer lease, if the court as a matter of law finds that a lease contract or any clause of a lease contract has been induced by unconscionable conduct or that unconscionable conduct has occurred in the collection of a claim arising from a lease contract, the court may grant appropriate relief.
- (3) Before making a finding of unconscionability under Subsection (1) or (2), the court, on its own motion or that of a party, shall afford the parties a reasonable opportunity to present evidence as to the setting, purpose, and effect of the lease contract or clause thereof, or of the conduct.
- (4) In an action in which the lessee claims unconscionability with respect to a consumer lease:
 - (a) If the court finds unconscionability under Subsection (1) or (2), the court shall award reasonable attorney's fees to the lessee.
 - (b) If the court does not find unconscionability and the lessee claiming unconscionability has brought or maintained an action he should reasonably have known to be groundless, the party against the claim is made shall be entitled to recover reasonable attorney's fees and other expenses incurred.
 - (c) In determining attorney's fees, the amount of the recovery on behalf of the claimant under Subsections (1) and (2) is not controlling.

§3.7. Option to Accelerate at Will.

- (1) A term providing that one party or his successor in interest may accelerate payment or performance or require collateral or additional collateral "at will" or "when he deems himself insecure" or in words of similar import must be construed to mean that he has power to do so only if he in good faith believes that the prospect of payment or performance is impaired.

- (2) With respect to a consumer lease, the burden of establishing good faith under Subsection (1) is on the party who exercised the power; otherwise the burden of establishing lack of good faith is on the party against whom the power has been exercised.

SUBCHAPTER 2: FORMATION AND CONSTRUCTION OF LEASE CONTRACT

§3.8. Formal Requirements of Agreement.

- (1) A lease contract having a total annual payment of more than US \$ 2000 or its Liberian Dollar equivalent is not enforceable by way of action or defense unless there is a writing, signed by the party against whom enforcement is sought or by that party's authorized agent, sufficient to indicate that a lease contract has been made between the parties and to describe the goods leased and the lease term.
- (2) Any description of leased goods or of the lease term is sufficient and satisfies Subsection (1)(b), whether or not it is specific, if it reasonably identifies what is described.
- (3) A writing is not insufficient because it omits or incorrectly states a term agreed upon, but the lease contract is not enforceable under Subsection (1)(b) beyond the lease term and the quantity of goods shown in the writing.
- (4) A lease contract that does not satisfy the requirements of Subsection (1), but which is valid in other respects, is enforceable:
 - (a) if the goods are to be specially manufactured or obtained for the lessee and are not suitable for lease or sale to others in the ordinary course of the lessor's business, and the lessor, before notice of repudiation is received and under circumstances that reasonably indicate that the goods are for the lessee, has made either a substantial beginning of their manufacture or commitments for their procurement;
 - (b) if the party against whom enforcement is sought admits in that party's pleading, testimony or otherwise in court that a lease contract was made, but the lease contract is not enforceable under this provision beyond the quantity of goods admitted; or
 - (c) with respect to goods that have been received and accepted by the lessee.
- (5) The lease term under a lease contract referred to in Subsection (4) is:
 - (a) if there is a writing signed by the party against whom enforcement is sought or by that party's authorized agent specifying the lease term, the term so specified;
 - (b) if the party against whom enforcement is sought admits in that party's pleading, testimony, or otherwise in court, the term so admitted; or
 - (c) a reasonable lease term as determined by the totality of the circumstances.

§3.9. Final Written Expression: Parol or Extrinsic Evidence.

- (1) Terms with respect to which the confirmatory records of the parties agree or which are otherwise set forth in a record intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be supplemented with evidence of :
 - (a) course of performance, course of dealing, or usage of trade; and
 - (b) consistent additional terms unless the court finds the record to have been intended also as a complete and exclusive statement of the terms of the agreement.
- (2) Terms in a record may be explained by evidence of course of performance, course of dealing, or usage of trade without a preliminary determination by the court that the language used is ambiguous.

§3.10. Formation in General.

- (1) A lease contract may be made in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of a lease contract, the interaction of electronic agents, and the interaction of an electronic agent and an individual.
- (2) An agreement sufficient to constitute a lease contract may be found even if the moment of its making is undetermined.
- (3) Even if one or more terms are left open, a lease contract does not fail for indefiniteness if the parties have intended to make a lease contract and there is a reasonably certain basis for giving an appropriate remedy.
- (4) Except as otherwise provided under Title 14 of the Liberian Code of Laws, Revised, Electronic Transactions Law 2002, the following rules shall apply to a lease contract formed by the interaction of electronic agents of the parties thereto:
 - (a) a lease contract may be formed by the interaction of electronic agents of the parties, even if no individual was aware of or reviewed the electronic agents' actions or the resulting terms and agreements.
 - (b) a lease contract may be formed by the interaction of an electronic agent and an individual acting on the individual's own behalf or for another person. A lease contract is formed if the individual takes actions that the individual is free to refuse to take or makes a statement, and the individual has reason to know that the actions or statement will:
 - i. cause the electronic agent to complete the transaction or performance; or
 - ii. indicate acceptance of an offer, regardless of other expressions or actions by the individual to which the electronic agent cannot react.

§3.11. Firm Offers.

An offer by a merchant to lease goods to or from another person in a signed writing that by its terms gives assurance it will be held open is not revocable, for lack of consideration, during the time stated or, if no time is stated, for a reasonable time, but in no event may the period of irrevocability exceed three (3) months. Any such term of assurance on a form supplied by the offeree must be separately signed by the offeror.

§3.12. Offer and Acceptance in Formation of Lease Contract.

- (1) Unless otherwise unambiguously indicated by the language or circumstances, an offer to make a lease contract shall be construed as inviting acceptance in any manner and by any medium reasonable in the circumstances.
- (2) If the beginning of a requested performance is a reasonable mode of acceptance, an offeror who is not notified of acceptance within a reasonable time may treat the offer as having lapsed before acceptance.

§3.13. Modification, Rescission and Waiver.

- (1) Unless otherwise unambiguously indicated by the language or circumstances,
 - (a) an agreement modifying a lease contract within this Chapter needs no consideration to be binding;
 - (b) a signed lease agreement that excludes modification or rescission except by a signed writing may not be otherwise modified or rescinded, but, except as between merchants, such a requirement on a form supplied by a merchant must be separately signed by the other party;
 - (c) an agreement modifying a contract within this Chapter shall be in writing;
 - (d) even if an attempt at modification or rescission does not satisfy the requirements of Subsection (2), it may operate as a waiver;
 - (e) a party who has made a waiver affecting an executory portion of a lease contract may retract the waiver by reasonable notification received by the other party that strict performance will be required of any term waived, unless the retraction would be unjust in view of a material change of position in reliance on the waiver.

§3.14. Express Warranties.

- (1) Express warranties by the lessor are created as follows:
 - (a) Any affirmation of fact or promise made by the lessor to the lessee which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise.
 - (b) Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description.

- (c) Any sample or model that is made part of the basis of the bargain creates an express warranty that the whole of the goods shall conform to the sample or model.
- (2) It is not necessary to the creation of an express warranty that the lessor use formal words, such as "warrant" or "guarantee," or that the lessor have a specific intention to make a warranty, but an affirmation merely of the value of the goods or a statement purporting to be merely the lessor's opinion or commendation of the goods does not create a warranty.

§3.15. Warranties against Interference and against Infringement; Lessee's Obligation against Infringement.

- (1) There is in each lease contract a warranty that for the lease term no person holds a claim to or interest in the goods that arose from an act or omission of the lessor, other than a claim by way of infringement or the like, which will interfere with the lessee's enjoyment of its leasehold interest.
- (2) There is in a lease contract by a lessor who is a merchant regularly dealing in goods of the kind a warranty that the goods are delivered free of the rightful claim of any person by way of infringement or the like.
- (3) A lessee who furnishes specifications to a lessor or a supplier shall hold the lessor and the supplier harmless against any claim by way of infringement or the like that arises out of compliance with the specifications.

§3.16. Implied Warranty of Merchantability.

- (1) Unless excluded or modified, a warranty that the goods will be merchantable is implied in a lease contract if the lessor is a merchant with respect to goods of that kind.
- (2) Goods to be merchantable must be at least such as:
 - (a) pass without objection in the trade under the description in the lease agreement;
 - (b) in the case of fungible goods, are of fair average quality within the description;
 - (c) are fit for the ordinary purposes for which goods of that description are used;
 - (d) run, within the variation permitted by the lease agreement, of even kind, quality, and quantity within each unit and among all units involved;
 - (e) are adequately contained, packaged, and labeled as the lease agreement may require; and
 - (f) conform to the promises or affirmations of fact made on the container or label if any.

- (3) Unless excluded or modified other implied warranties may arise from course of dealing or usage of trade.

§3.17. Implied Warranty of Fitness for Particular Purpose.

If the lessor at the time the lease contract is made has reason to know of any particular purpose for which the goods are required and that the lessee is relying on the lessor's skill or judgment to select or furnish suitable goods, there is in the lease contract an implied warranty that the goods will be fit for that purpose.

§3.18. Exclusion or Modification of Warranties.

- (1) Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit a warranty shall be construed wherever reasonable as consistent with each other; but subject to the provisions of Section 3.9 on parol or extrinsic evidence, negation or limitation is inoperative to the extent that the construction is unreasonable.
- (2) Subject to Subsection (3), to exclude or modify the implied warranty of merchantability or any part of it the language must mention "merchantability", be in writing, and be conspicuous. Subject to Subsection (3), to exclude or modify any implied warranty of fitness the exclusion must be by a writing and be conspicuous. Language to exclude all implied warranties of fitness is sufficient if it is in writing, is conspicuous and states, for example, "There is no warranty that the goods will be fit for a particular purpose".
- (3) Notwithstanding Subsection (2), but subject to Subsection (4),
 - (a) unless the circumstances indicate otherwise, all implied warranties are excluded by expressions like "as is," or "with all faults," or by other language that in common understanding calls the lessee's attention to the exclusion of warranties and makes plain that there is no implied warranty, if in writing and conspicuous;
 - (b) if the lessee before entering into the lease contract has examined the goods or the sample or model as fully as desired or has refused to examine the goods, there is no implied warranty with regard to defects that an examination ought in the circumstances to have revealed; and
 - (c) an implied warranty may also be excluded or modified by course of dealing, course of performance, or usage of trade.
- (4) To exclude or modify a warranty against interference or against infringement or any part of it, the language must be specific, be by a writing, and be conspicuous, unless the circumstances, including course of performance, course of dealing, or usage of trade, give the lessee reason to know that the goods are being leased subject to a claim or interest of any person.

§3.19. Cumulation and Conflict of Warranties Express or Implied.

Warranties, whether express or implied, must be construed as consistent with each other and as cumulative, but if that construction is unreasonable, the intention of the parties determines which warranty is dominant. In ascertaining that intention the following rules apply:

- (a) Exact or technical specifications displace an inconsistent sample or model or general language of description.
- (b) A sample from an existing bulk displaces inconsistent general language of description.
- (c) Express warranties displace inconsistent implied warranties other than an implied warranty of fitness for a particular purpose.

§3.20. Third-Party Beneficiaries of Express and Implied Warranties.

A warranty to or for the benefit of a lessee under this Chapter, whether express or implied, extends to any natural person who is in the family or household of the lessee or who is a guest in the lessee's home if it is reasonable to expect that such person may use, consume, or be affected by the goods and who is injured in person by breach of the warranty. This section does not displace principles of law and equity that extend a warranty to or for the benefit of a lessee to other persons. The operation of this section may not be excluded, modified, or limited, but an exclusion, modification, or limitation of the warranty, including any with respect to rights and remedies, effective against the lessee is also effective against any beneficiary designated under this section.

§3.21. Identification.

Identification of goods as goods to which a lease contract refers may be made at any time and in any manner explicitly agreed to by the parties. In the absence of explicit agreement, identification occurs:

- (a) when the lease contract is made if the lease contract is for a lease of goods that are already existing and identified; or
- (b) when the goods are shipped, marked, or otherwise designated by the lessor as goods to which the lease contract refers, if the lease contract is for a lease of goods that are not existing and identified.

§3.22. Insurance and Proceeds.

- (1) A lessee obtains an insurable interest when existing goods are identified to the lease contract even though the goods identified are nonconforming and the lessee has an option to reject them.
- (2) If a lessee has an insurable interest only by reason of the lessor's identification of the goods, the lessor, until default or insolvency or notification to the lessee that identification is final, may substitute other goods for those identified.
- (3) Notwithstanding a lessee's insurable interest under Subsections (1) and (2), the lessor retains an insurable interest until an option to buy has been exercised by the lessee and risk of loss has passed to the lessee.

- (4) Nothing in this Section impairs any insurable interest recognized under any other statute or rule of law.
- (5) The parties by agreement may determine that one or more parties have an obligation to obtain and pay for insurance covering the goods and by agreement may determine the beneficiary of the proceeds of the insurance.

§3.23. Risk of Loss.

- (1) The risk of loss is retained by the lessor and does not pass to the lessee.
- (2) Subject to the provisions of this Chapter on the effect of default on risk of loss, if risk of loss is to pass to the lessee and the time of passage is not stated, the following rules apply:
 - (a) If the lease contract requires or authorizes the goods to be shipped by carrier
 - i. and it does not require delivery at a particular destination, the risk of loss passes to the lessee when the goods are duly delivered to the carrier; but
 - ii. if it does require delivery at a particular destination and the goods are there duly tendered while in the possession of the carrier, the risk of loss passes to the lessee when the goods are there duly so tendered as to enable the lessee to take delivery.
 - (b) If the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the lessee on acknowledgment by the bailee of the lessee's right to possession of the goods.
 - (c) In any case not within Subsection (a) or (b), the risk of loss passes to the lessee on the lessee's receipt of the goods if the lessor is a merchant; otherwise the risk passes to the lessee on tender of delivery.

§3.24. Effect of Default on Risk of Loss.

- (1) Where risk of loss is to pass to the lessee and the time of passage is not stated:
 - (a) If a tender or delivery of goods so fails to conform to the lease contract as to give a right of rejection, the risk of their loss remains with the lessor until cure or acceptance.
 - (b) If the lessee rightfully revokes acceptance, he, to the extent of any deficiency in his effective insurance coverage, may treat the risk of loss as having remained with the lessor from the beginning.
- (2) Whether or not risk of loss is to pass to the lessee, if the lessee as to conforming goods already identified to a lease contract repudiates or is otherwise in default under the lease contract, the lessor to the extent of any deficiency in his effective insurance coverage may treat the risk of loss as resting on the lessee for a commercially reasonable time.

§3.25. Casualty to Identified Goods.

If a lease contract requires goods identified when the lease contract is made, and the goods suffer casualty without fault of the lessee, the lessor or the supplier before delivery, or the goods suffer casualty before risk of loss passes to the lessee pursuant to the lease agreement or Section 3.23, then:

- (a) if the loss is total, the lease contract is avoided; and
- (b) if the loss is partial or the goods have so deteriorated as to no longer conform to the lease contract, the lessee may nevertheless demand inspection and at his option either treat the lease contract as avoided or accept the goods with due allowance from the rent payable for the balance of the lease term for the deterioration or the deficiency in quantity but without further right against the lessor.

SUBCHAPTER 3: EFFECT OF LEASE CONTRACT

§3.26. Enforceability of Lease Contract.

Except as otherwise provided in this Chapter, a lease contract is effective and enforceable according to its terms between the parties, against purchasers of the goods and against creditors of the parties.

§3.27. Title to and Possession of Goods.

Except as otherwise provided in this Chapter, each provision of this Chapter applies whether the lessor or a third party has title to the goods, and whether the lessor, the lessee, or a third party has possession of the goods, notwithstanding any statute or rule of law that possession or the absence of possession is fraudulent.

§3.28. Alienability of Party's Interest Under Lease Contract or of Lessor's Residual Interest in Goods; Delegation of Performance; Transfer of Rights.

- (1) As used in this section, "creation of a security interest" includes the sale of a lease contract that is subject to Chapter 5 on Secured Transactions.
- (2) Except as provided in Subsection (3) and Chapter 5 on Secured Transactions, a provision in a lease agreement which (i) prohibits the voluntary or involuntary transfer, including a transfer by sale, sublease, creation or enforcement of a security interest, or attachment, levy, or other judicial process, of an interest of a party under the lease contract or of the lessor's residual interest in the goods, or (ii) makes such a transfer an event of default, gives rise to the rights and remedies provided in Subsection (4), but a transfer that is prohibited or is an event of default under the lease agreement is otherwise effective.
- (3) A provision in a lease agreement which (i) prohibits a transfer of a right to damages for default with respect to the whole lease contract or of a right to payment arising out of the transferor's due performance of the transferor's entire obligation, or (ii) makes such a transfer an event of default, is not enforceable, and such a transfer is not a transfer that materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on, the other party to the lease contract within the purview of Subsection (4).

- (4) Subject to Subsection (3) and Chapter 5 on Secured Transactions:
- (a) if a transfer is made which is made an event of default under a lease agreement, the party to the lease contract not making the transfer, unless that party waives the default or otherwise agrees, has such rights and remedies as provided in the lease agreement and/or Subchapter 5;
 - (b) if paragraph (a) is not applicable and if a transfer is made that (i) is prohibited under a lease agreement or (ii) materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on, the other party to the lease contract, unless the party not making the transfer agrees at any time to the transfer in the lease contract or otherwise, then, except as limited by contract, (i) the transferor is liable to the party not making the transfer for damages caused by the transfer to the extent that the damages could not reasonably be prevented by the party not making the transfer and (ii) a court having jurisdiction may grant other appropriate relief, including cancellation of the lease contract or an injunction against the transfer.
- (5) A transfer of "the lease" or of "all my rights under the lease", or a transfer in similar general terms, is a transfer of rights and, unless the language or the circumstances, as in a transfer for security, indicate the contrary, the transfer is a delegation of duties by the transferor to the transferee. Acceptance by the transferee constitutes a promise by the transferee to perform those duties. The promise is enforceable by either the transferor or the other party to the lease contract.
- (6) Unless otherwise agreed by the lessor and the lessee, a delegation of performance does not relieve the transferor as against the other party of any duty to perform or of any liability for default.
- (7) The prohibition of the transfer of an interest of a party under a consumer lease contract must be in writing, specific, and conspicuous.

§3.29. Subsequent Lease of Goods by Lessor.

- (1) A subsequent lessee from a lessor of goods under an existing lease contract acquires the leasehold interest in the goods that the lessor had, had power to transfer, or transferred. Except as provided in Subsection (2) and Section 3.67 (4), a subsequent lessee takes subject to the existing lease contract. A lessor with voidable title has power to transfer a good leasehold interest to a good faith subsequent lessee for value, but only to the extent set forth in Subsection (2). If goods have been delivered under a transaction of purchase, the lessor has that power even though:
- (a) the lessor's transferor was deceived as to the identity of the lessor;
 - (b) the delivery was in exchange for a check which is later dishonored;
 - (c) it was agreed that the transaction was to be a "cash sale"; or
 - (d) the delivery was procured through fraud punishable as larcenous under the criminal law.
- (2) A subsequent lessee in the ordinary course of business from a lessor who is a merchant dealing in goods of that kind to whom the goods were entrusted by the existing lessee of that lessor before the interest of the subsequent lessee became enforceable against that lessor acquires, to the extent of the leasehold interest transferred, all of that lessor's and the existing lessee's rights to the goods, and takes free of the existing lease contract.

§3.30. Sale or Sublease of Goods by Lessee.

- (1) A buyer or sublessee from the lessee of goods under an existing lease contract acquires, to the extent of the interest transferred, the leasehold interest in the goods that the lessee had, had power to transfer, or transferred. Except as provided in Subsection (2) and Section 3.51 (4), a subsequent lessee takes subject to the existing lease contract. A lessee with a voidable leasehold interest has power to transfer a good leasehold interest to a good faith buyer for value or a good faith sublessee for value, but only to the extent set forth in Subsection (2). When goods have been delivered under a transaction of lease the lessee has that power even though:
 - (a) the lessor was deceived as to the identity of the lessee;
 - (b) the delivery was in exchange for a check which is later dishonored; or
 - (c) the delivery was procured through fraud punishable as larcenous under the criminal law.
- (2) A buyer in the ordinary course of business or a sublessee in the ordinary course of business from a lessee who is a merchant dealing in goods of that kind to whom the goods were entrusted by the lessor obtains, to the extent of the interest transferred, all of the lessor's and lessee's rights to the goods, and takes free of the existing lease contract.

§3.31. Priority of Certain Liens Arising by Operation of Law.

If a person in the ordinary course of his business furnishes services or materials with respect to goods subject to a lease contract, a lien upon those goods in the possession of that person given by statute or rule of law for those materials or services takes priority over any interest of the lessor or lessee under the lease contract or this Chapter unless the lien is created by statute and the statute provides otherwise or unless the lien is created by rule of law and the rule of law provides otherwise.

§3.32. Priority of Liens Arising by Attachment or Levy on, Security Interests in, and other Claims to Goods.

- (1) A creditor of a lessee takes subject to the lease contract and any priority lien arising by operation of law.
- (2) Except as otherwise provided in Subsection (3) and in Sections 3.31, a creditor of a lessor takes subject to the lease contract unless the creditor holds a lien that attached to the goods before the lease contract became enforceable.
- (3) Except as otherwise provided in Chapter 5 a lessee takes a leasehold interest subject to a security interest held by a creditor of the lessor.

§3.33. Special Rights of Creditors.

- (1) A creditor of a lessor in possession of goods subject to a lease contract may treat the lease contract as void if as against the creditor retention of possession by the lessor is fraudulent under any statute or rule of law, but retention of possession in good faith and current course of trade by the lessor for a commercially reasonable time after the lease contract becomes enforceable is not fraudulent.
- (2) Nothing in this Chapter impairs the rights of creditors of a lessor if the lease contract (a) becomes enforceable, not in current course of trade but in satisfaction of or as security for a pre-existing claim for money, security, or the like, and (b) is made under circumstances which under any statute or rule of law apart from this Chapter would constitute the transaction a fraudulent transfer or voidable preference.
- (3) A creditor of a seller may treat a sale or an identification of goods to a contract for sale as void if as against the creditor retention of possession by the seller is fraudulent under any statute or rule of law, but retention of possession of the goods pursuant to a lease contract entered into by the seller as lessee and the buyer as lessor in connection with the sale or identification of the goods is not fraudulent if the buyer bought for value and in good faith.

§3.34. Lessor's and Lessee's Rights when Goods become Accessions.

- (1) Goods are "accessions" when they are installed in or affixed to other goods.
- (2) The interest of a lessor or a lessee under a lease contract entered into before the goods became accessions is superior to all interests in the whole except as stated in Subsection (4).
- (3) The interest of a lessor or a lessee under a lease contract entered into at the time or after the goods became accessions is superior to all subsequently acquired interests in the whole except as stated in Subsection (4) but is subordinate to interests in the whole existing at the time the lease contract was made unless the holders of such interests in the whole have in writing consented to the lease or disclaimed an interest in the goods as part of the whole.
- (4) The interest of a lessor or a lessee under a lease contract described in Subsection (2) or (3) is subordinate to the interest of
 - (a) a buyer in the ordinary course of business or a lessee in the ordinary course of business of any interest in the whole acquired after the goods became accessions; or
 - (b) a creditor with a security interest in the whole perfected before the lease contract was made to the extent that the creditor makes subsequent advances without knowledge of the lease contract.

- (5) When under Subsections (2) or (3) and (4) a lessor or a lessee of accessions holds an interest that is superior to all interests in the whole, the lessor or the lessee may (a) on default, expiration, termination, or cancellation of the lease contract by the other party but subject to the provisions of the lease contract and this Chapter, or (b) if necessary to enforce his other rights and remedies under this Chapter, remove the goods from the whole, free and clear of all interests in the whole, but he must reimburse any holder of an interest in the whole who is not the lessee and who has not otherwise agreed for the cost of repair of any physical injury but not for any diminution in value of the whole caused by the absence of the goods removed or by any necessity for replacing them. A person entitled to reimbursement may refuse permission to remove until the party seeking removal gives adequate security for the performance of this obligation.

§3.35. Priority Subject to Subordination.

Nothing in this Chapter prevents subordination by agreement by any person entitled to priority.

SUBCHAPTER 4: PERFORMANCE OF LEASE CONTRACT: REPUDIATED, SUBSTITUTED AND EXCUSED

§3.36. Insecurity: Adequate Assurance of Performance.

- (1) A lease contract imposes an obligation on each party that the other's expectation of receiving due performance will not be impaired.
- (2) If reasonable grounds for insecurity arise with respect to the performance of either party, the insecure party may demand in writing adequate assurance of due performance. Until the insecure party receives that assurance, if commercially reasonable the insecure party may suspend any performance for which he has not already received the agreed return.
- (3) A repudiation of the lease contract occurs if assurance of due performance adequate under the circumstances of the particular case is not provided to the insecure party within a reasonable time, not to exceed thirty (30) days after receipt of a demand by the other party.
- (4) Between merchants, the reasonableness of grounds for insecurity and the adequacy of any assurance offered must be determined according to commercial standards.
- (5) Acceptance of any nonconforming delivery or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance.

§3.37. Anticipatory Repudiation.

When either party repudiates a lease contract with respect to a performance not yet due under the lease contract, the loss of which performance will substantially impair the value of the lease contract to the other, the aggrieved party may

- (a) for a commercially reasonable time await performance by the repudiating party;

- (b) make demand pursuant to Section 3.36 and await assurance of future performance adequate under the circumstances of the particular case; or
- (c) resort to any right or remedy upon default under the lease contract or this Chapter, even though he has notified the repudiating party that he would await the latter's performance and assurance and has urged retraction.
- (d) in either case suspend his own performance or, if the aggrieved party is the lessor, proceed in accordance with the provisions of this Chapter on the lessor's right to identify goods to the lease contract notwithstanding default or to salvage unfinished goods.

§3.38. Retraction of Anticipatory Repudiation.

- (1) Until the repudiating party's next performance is due he can retract the repudiation unless the aggrieved party has since the repudiation cancelled or materially changed his position or otherwise indicated that he considers the repudiation final.
- (2) Retraction may be by any method that clearly indicates to the aggrieved party that the repudiating party intends to perform under the lease contract, but must include any assurances justifiably demanded under the provisions of this Chapter.
- (3) Retraction reinstates the repudiating party's rights under a lease contract with due excuse and allowance to the aggrieved party for any delay occasioned by the repudiation.

§3.39. Substituted Performance.

- (1) If without fault of the lessee, the lessor and the supplier, the agreed berthing, loading, or unloading facilities fail or the agreed type of carrier becomes unavailable or the agreed manner of delivery otherwise becomes commercially impracticable, but a commercially reasonable substitute is available, the substitute performance must be tendered and accepted.
- (2) If the agreed means or manner of payment fails because of domestic or foreign governmental regulation:
 - (a) the lessor may withhold or stop delivery or cause the supplier to withhold or stop delivery unless the lessee provides a means or manner of payment that is commercially a substantial equivalent; and
 - (b) if delivery has already been taken, payment by the means or in the manner provided by the regulation discharges the lessee's obligation unless the regulation is discriminatory, oppressive, or predatory.

§3.40. Excused Performance.

Subject to the provisions on substituted performance, the following rules apply:

- (a) Delay in delivery or non-delivery in whole or in part by a lessor or a supplier who complies with Subsection (b) and (c) is not a default under the lease contract if performance as agreed has been made impracticable by the occurrence of a contingency the non-occurrence of which was a basic assumption on which the lease contract was made or by compliance in good faith with any applicable foreign or domestic governmental regulation or order, whether or not the regulation or order later proves to be invalid.
- (b) If the causes mentioned in Subsection (a) affect only part of the lessor's or the supplier's capacity to perform, he shall allocate production and deliveries among his customers but at his option may include regular customers not then under contract for sale or lease as well as his own requirements for further manufacture. He may so allocate in any manner that is fair and reasonable.
- (c) The lessor shall promptly notify the lessee, if known, that there will be delay or non-delivery and, if allocation is required under Subsection (b), of the estimated quota thus made available for the lessee.

§3.41. Procedure on Excused Performance.

- (1) If the lessee receives notification of a material or indefinite delay or a justified allocation, the lessee may by written notification to the lessor as to any goods involved, and with respect to all of the goods if under an installment lease contract the value of the whole lease contract is substantially impaired:
 - (a) terminate the lease contract under Section 3.46 (2); or
 - (b) modify the lease contract by accepting the available quota in substitution, with due allowance from the rent payable for the balance of the lease term for the deficiency but without further right against the lessor.
- (2) If, after receipt of a notification from the lessor, the lessee fails so to modify the lease agreement within a reasonable time not exceeding thirty (30) days, the lease contract lapses with respect to any deliveries affected.

SUBCHAPTER 5: DEFAULT IN GENERAL

§3.42. Default: Procedure.

- (1) Whether the lessor or the lessee is in default under a lease contract is determined by the lease agreement and this Chapter.
- (2) If the lessor or the lessee is in default under the lease contract, the party seeking enforcement has rights and remedies as provided in this Chapter and, except as limited by this Chapter, as provided in the lease agreement.

- (3) If the lessor or the lessee is in default under the lease contract, the party seeking enforcement may reduce the party's claim to judgment, or otherwise enforce the lease contract by self-help in a reasonable manner including with the aid of peace officers as circumstances may dictate or any available judicial procedure or non-judicial procedure, including administrative proceeding, arbitration, or the like, in accordance with this Chapter.
- (4) Except as otherwise provided in this Chapter or the lease agreement, the rights and remedies referred to in Subsections (2) and (3) are cumulative.
- (5) If the lease agreement covers both real property and goods, the party seeking enforcement may proceed under this Part as to the goods, or under other applicable law as to both the real property and the goods in accordance with that party's rights and remedies in respect of the real property, in which case this Part does not apply.

§3.43. Notice after Default.

Except as otherwise provided in this Chapter or the lease agreement, the lessor or lessee in default under the lease contract is not entitled to notice of default or notice of enforcement from the other party to the lease agreement.

§3.44. Modification or Impairment of Rights and Remedies.

- (1) Except as otherwise provided in this Chapter, a lease agreement may include rights and remedies for default in addition to or in substitution for those provided in this Chapter and may limit or alter the measure of damages recoverable under this Chapter.
- (2) Resort to a remedy provided under this Chapter or in the lease agreement is optional unless the remedy is expressly agreed to be exclusive. If circumstances cause an exclusive or limited remedy to fail of its essential purpose, or render an exclusive remedy unconscionable, remedy may be had as provided in this Chapter.
- (3) Consequential damages may be liquidated, or may otherwise be limited, altered, or excluded unless the limitation, alteration, or exclusion is unconscionable. Limitation, alteration, or exclusion of consequential damages for injury to the person in the case of consumer goods is prima facie unconscionable but limitation, alteration, or exclusion of damages where the loss is commercial is not prima facie unconscionable.
- (4) Rights and remedies on default by the lessor or the lessee with respect to any obligation or promise collateral or ancillary to the lease contract are not impaired by this Chapter.

§3.45. Liquidation of Damages.

- (1) Damages payable by either party for default, or any other act or omission, including indemnity for loss or diminution of anticipated tax benefits or loss or damage to lessor's residual interest, may be liquidated in the lease agreement but only at an amount or by a formula that is reasonable in light of the then anticipated harm caused by the default or other act or omission.

- (2) The remedy provided in this Chapter will prevail if the lease agreement provides for liquidation of damages, and such provision does not comply with Subsection (1), or such provision is an exclusive or limited remedy that has become unavailable due to subsequent circumstances.
- (3) If the lessor justifiably withholds or stops delivery of goods because of the lessee's default or insolvency, the lessee is entitled to restitution of any amount by which the sum of his payments exceeds:
 - (a) the amount to which the lessor is entitled by virtue of terms liquidating the lessor's damages in accordance with Subsection (1); or
 - (b) in the absence of terms liquidating the lessor's damages, fifteen percent (15%) of the then present value of the total rent the lessee was obligated to pay for the balance of the lease term.
- (4) A lessee's right to restitution under Subsection (3) is subject to offset to the extent the lessor establishes:
 - (a) a right to recover damages under the provisions of this Chapter other than Subsection (1); and
 - (b) the amount or value of any benefits received by the lessee directly or indirectly by reason of the lease contract.

§3.46. Cancellation and Termination and Effect of Cancellation, Termination, Rescission, or Fraud on Rights and Remedies.

- (1) On cancellation of the lease contract, all obligations that are still executory on both sides are discharged, but any right based on prior default or performance survives, and the cancelling party also retains any remedy for default of the whole lease contract or any unperformed balance.
- (2) On termination of the lease contract, all obligations that are still executory on both sides are discharged but any right based on prior default or performance survives.
- (3) Unless the contrary intention clearly appears, expressions of "cancellation," "rescission," or the like of the lease contract may not be construed as a renunciation or discharge of any claim in damages for an antecedent default.
- (4) Rights and remedies for material misrepresentation or fraud include all rights and remedies available under this Chapter for default.
- (5) Neither rescission nor a claim for rescission of the lease contract nor rejection or return of the goods may bar or be deemed inconsistent with a claim for damages or other right or remedy.

§3.47. Proof of Market Rent: Time and Place.

- (1) Damages based on market rent are determined according to the rent for the use of the goods concerned for a lease term identical to the remaining lease term of the original lease agreement and prevailing at the times specified in Sections 3.59 and 3.68.
- (2) If evidence of rent for the use of the goods concerned for a lease term identical to the remaining lease term of the original lease agreement and prevailing at the times or places described in this Chapter is not readily available, the rent prevailing within any reasonable time before or after the time described or at any other place or for a different lease term which in commercial judgment or under usage of trade would serve as a reasonable substitute for the one described may be used, making any proper allowance for the difference, including the cost of transporting the goods to or from the other place.
- (3) Evidence of a relevant rent prevailing at a time or place or for a lease term other than the one described in this Chapter offered by one party is not admissible unless and until he has given the other party notice the court finds sufficient to prevent unfair surprise.
- (4) If the prevailing rent or value of any goods regularly leased in any established market is in issue, reports in official publications or trade journals or in newspapers or periodicals of general circulation published as the reports of that market are admissible in evidence. The circumstances of the preparation of the report may be shown to affect its weight but not its admissibility.

SUBCHAPTER 6: DEFAULT BY LESSOR

§3.48. Lessee's Remedies.

- (1) If a lessor fails to deliver the goods in conformity to the lease contract or repudiates the lease contract or a lessee rightfully rejects the goods or justifiably revokes acceptance of the goods, then with respect to any goods involved, and with respect to all of the goods if under an installment lease contract the value of the whole lease contract is substantially impaired, the lessor is in default under the lease contract and the lessee may:
 - (a) cancel the lease contract under Section 3.46;
 - (b) recover so much of the rent and security as has been paid and is just under the circumstances;
 - (c) cover and recover damages as to all goods affected whether or not they have been identified to the lease contract under Sections 3.58 and 3.60, or recover damages for non-delivery under Sections 3.59 and 3.60;
 - (d) exercise any other rights or pursue any other remedies provided in the lease contract.

- (2) If a lessor fails to deliver the goods in conformity to the lease contract or repudiates the lease contract, the lessee may also:
 - (a) if the goods have been identified, recover them under Section 3.62; or
 - (b) in a proper case, obtain specific performance or replevy the goods under Section 3.61.
- (3) If a lessor is otherwise in default under a lease contract, the lessee may exercise the rights and pursue the remedies provided in the lease contract, which may include a right to cancel the lease.
- (4) If a lessor has breached a warranty, whether express or implied, the lessee may recover damages.
- (5) On rightful rejection or justifiable revocation of acceptance, a lessee has a security interest in goods in the lessee's possession or control for any rent and security that has been paid and any expenses reasonably incurred in their inspection, receipt, transportation, and care and custody and may hold those goods and dispose of them in good faith and in a commercially reasonable manner, subject to the provisions of this Chapter.
- (6) Upon notice to the lessor, a lessee may deduct all or any part of the damages resulting from any default under the lease contract from any part of the rent still due under the same lease contract.

§3.49. Lessee's Rights on Improper Delivery; Rightful Rejection.

- (1) Except with respect to installment lease contracts, if the goods or the tender or delivery fail in any respect to conform to the lease contract, the lessee may reject or accept the goods or accept any commercial unit or units and reject the rest of the goods.
- (2) Rejection of goods is ineffective unless it is within a reasonable time after tender or delivery of the goods and the lessee timely notifies the lessor.

§3.50. Installment Lease Contracts: Rejection and Default.

- (1) Under an installment lease contract a lessee may reject any delivery that is nonconforming if the nonconformity substantially impairs the value of that delivery and cannot be cured or the nonconformity is a defect in the required documents; but if the nonconformity does not fall within Subsection (2) and the lessor or the supplier gives adequate assurance of its cure, the lessee must accept that delivery.
- (2) Whenever nonconformity or default with respect to one or more deliveries substantially impairs the value of the installment lease contract as a whole there is a default with respect to the whole. But, the aggrieved party reinstates the installment lease contract as a whole if the aggrieved party accepts a nonconforming delivery without timely notifying of cancellation or brings an action with respect only to past deliveries or demands performance as to future deliveries.

§3.51. Merchant Lessee's Duties as to Rightfully Rejected Goods.

- (1) Subject to any security interest of a lessee, if a lessor has no agent or place of business at the market of rejection, a merchant lessee, after rejection of goods in his possession or control, shall follow any reasonable instructions received from the lessor with respect to the goods. In the absence of those instructions, a merchant lessee shall make reasonable efforts to sell, lease, or otherwise dispose of the goods for the lessor's account if they threaten to decline in value speedily. Instructions are not reasonable if on demand indemnity for expenses is not forthcoming.
- (2) If a merchant lessee or any other lessee disposes of goods, he is entitled to reimbursement either from the lessor or out of the proceeds for reasonable expenses of caring for and disposing of the goods and, if the expenses include no disposition commission, to such commission as is usual in the trade, or if there is none, to a reasonable sum not exceeding ten percent (10%) of the gross proceeds.
- (3) In complying with this section or Section 3.52, the lessee is held only to good faith. Good faith conduct hereunder is neither acceptance or conversion nor the basis of an action for damages.
- (4) A purchaser who purchases in good faith from a lessee pursuant to this section or Section 3.52 takes the goods free of any rights of the lessor and the supplier even though the lessee fails to comply with one or more of the requirements of this Chapter.

§3.52. Lessee's Duties as to Rightfully Rejected Goods.

- (1) Except as otherwise provided with respect to goods that threaten to decline in value speedily and subject to any security interest of a lessee:
 - (a) the lessee, after rejection of goods in the lessee's possession, shall hold them with reasonable care at the lessor's or the supplier's disposition for a reasonable time after the lessee's seasonable notification of rejection;
 - (b) if the lessor or the supplier gives no instructions within a reasonable time after notification of rejection, the lessee may store the rejected goods for the lessor's or the supplier's account or ship them to the lessor or the supplier or dispose of them for the lessor's or the supplier's account with reimbursement in the manner provided in Section 3.51; but
 - (c) the lessee has no further obligations with regard to goods rightfully rejected.
- (2) Any action by the lessee pursuant to Subsection (1) is neither acceptance nor conversion.

§3.53. Cure by Lessor of Improper Tender or Delivery; Replacement.

- (1) Where any tender or delivery by the lessor is rejected because it is non-conforming and the time for performance has not yet expired, the lessor or the supplier may promptly notify the lessee of the lessor's or the supplier's intention to cure and may then within the contract time make a conforming delivery.

- (2) Where the lessee rejects a non-conforming tender that the lessor had reasonable grounds to believe would be acceptable with or without money allowance the lessor may, if he promptly notifies the lessee, have a further reasonable time to substitute a conforming tender.

§3.54. Waiver of Lessee's Objections.

- (1) In rejecting goods, a lessee's failure to state a particular defect that is ascertainable by reasonable inspection precludes the lessee from relying on the defect to justify rejection or to establish default:
 - (a) if, stated timely, the lessor or the supplier could have cured it; or
 - (b) between merchants if the lessor or the supplier after rejection has made a request in writing for a full and final written statement of all defects on which the lessee proposes to rely.
- (2) A lessee's failure to reserve rights when paying rent or other consideration against documents precludes recovery of the payment for defects apparent in the documents.

§3.55. Acceptance of Goods.

- (1) Acceptance of goods occurs when the lessee
 - (a) after a reasonable opportunity to inspect the goods signifies or acts with respect to the goods in a manner that signifies to the lessor that the goods are conforming or that he will take or retain them in spite of their nonconformity; or
 - (b) fails to make an effective rejection, but such acceptance does not occur until the buyer has had a reasonable opportunity to inspect them; or
 - (c) does any act inconsistent with the lessor's ownership; but if such act is wrongful as against the lessor it is an acceptance only if ratified by him.
- (2) Acceptance of a part of any commercial unit is acceptance of that entire unit.

§3.56. Effect of Acceptance of Goods; Notice of Default; Burden of Establishing Default after Acceptance; Notice of Claim or Litigation to Person Answerable Over.

- (1) A lessee must pay rent for any goods accepted.
- (2) Acceptance of goods by the lessee precludes rejection of the goods accepted and if made with knowledge of a non-conformity cannot be revoked because of the non-conformity unless the acceptance was on the reasonable assumption that the non-conformity would be promptly cured but acceptance does not of itself impair any other remedy provided by this Chapter or the lease agreement for non-conformity.

- (3) If a tender has been accepted
 - (a) the lessee must within a reasonable time after he discovers or should have discovered any default notify the lessor or be barred from any remedy; and
 - (b) except in the case of a consumer lease, the lessee must within a reasonable time after he receives notice of litigation for infringement or the like notify the lessor or be barred from any remedy over for liability established by the litigation; and
- (4) The burden is on the lessee to establish any default with respect to the goods accepted.
- (5) Where the lessee is sued for breach of a warranty or other obligation for which a lessor is answerable over
 - (a) he may give the lessor written notice of the litigation. If the notice states that the lessor may come in and defend and that if the lessor does not do so he will be bound in any action against him by his lessee by any determination of fact common to the two litigations, then unless the lessor after seasonable receipt of the notice does come in and defend he is so bound.
 - (b) if the claim is one for infringement or the like the lessor may demand in writing that his lessee turn over control of the litigation including settlement or else be barred from any remedy over and if he so agrees to bear all expense and to satisfy any adverse judgment, then unless the lessee after seasonable receipt of the demand does turn over control the lessee is so barred.
- (6) The provisions of Subsections (3) and (4) apply to any obligation of a lessee to hold the lessor harmless against infringement or the like.

§3.57. Revocation of Acceptance of Goods.

- (1) A lessee may revoke his acceptance of a lot or commercial unit whose non-conformity substantially impairs its value to the lessee if the lessee has accepted it
 - (a) on the reasonable assumption that its non-conformity would be cured and it has not been promptly cured; or
 - (b) without discovery of such non-conformity if his acceptance was reasonably induced either by the difficulty of discovery before acceptance or by the lessor's assurances.
- (2) A lessee may revoke acceptance of a lot or commercial unit if the lessor defaults under the lease contract and the default substantially impairs the value of that lot or commercial unit to the lessee.
- (3) If the lease agreement so provides, the lessee may revoke acceptance of a lot or commercial unit because of other defaults by the lessor.

- (4) Revocation of acceptance must occur within a reasonable time after the lessee discovers or should have discovered the ground for it and before any substantial change in condition of the goods which is not caused by their own defects. It is not effective until the lessee notifies the lessor of the present value as of the same date of the total rent for the then remaining lease term of the original lease agreement, and (ii) any incidental or consequential damages, less expenses saved in consequence of the lessor's default.

§3.58. Cover; Substitute Goods.

- (1) After a default by a lessor under the lease contract of the type described in Section 3.48 (1), or, if agreed, after other default by the lessor, the lessee may cover by making any purchase or lease or contract to purchase or lease goods in substitution for those due from the lessor.
- (2) Except as otherwise provided with respect to damages liquidated in the lease agreement or otherwise determined pursuant to agreement of the parties, if a lessee's cover is by a lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessee may recover from the lessor as damages (i) the present value, as of the date of the commencement of the term of the new lease agreement, of the rent under the new lease agreement applicable to that period of the new lease term which is comparable to the then remaining term of the original lease agreement minus the present value as of the same date of the total rent for the then remaining lease term of the original lease agreement, and (ii) any incidental or consequential damages, less expenses saved in consequence of the lessor's default.
- (3) If a lessee's cover is by lease agreement that for any reason does not qualify for treatment under Subsection (2), or is by purchase or otherwise, the lessee may recover from the lessor as if the lessee had elected not to cover and Section 3.59 governs.

§3.59. Lessee's Damages for Non-Delivery, Repudiation, Default, and Breach of Warranty in Regard to Accepted Goods.

- (1) Except as otherwise provided with respect to damages liquidated in the lease agreement or otherwise determined pursuant to agreement of the parties, if a lessee elects not to cover or a lessee elects to cover and the cover is by lease agreement that for any reason does not qualify for treatment under Section 3.58 (2), or is by purchase or otherwise, the measure of damages in the case of wrongful failure to deliver or repudiation by the lessee or rightful rejection or justifiable revocation of acceptance by the lessee is the difference between market price at the time of tender under the contract and the contract price or present value, as of the date of the default, of the then market rent minus the present value as of the same date of the original rent, computed for the remaining lease term of the original lease agreement, together with incidental and consequential damages, but less expenses saved in consequence of the lessor's default.
- (2) Market rent is to be determined as of the place for tender or, in cases of rejection after arrival or revocation of acceptance, as of the place of arrival.
- (3) Except as otherwise agreed, if the lessee has accepted goods and given notification, the measure of damages for non-conforming tender or delivery or other default by a lessor is the loss resulting in the ordinary course of events from the lessor's default as determined in any manner that is reasonable together with incidental and consequential damages, but less expenses saved in consequence of the lessor's default.

- (4) Except as otherwise agreed, the measure of damages for breach of warranty is the present value at the time and place of acceptance of the difference between the value of the use of the goods accepted and the value if they had been as warranted for the lease term, unless special circumstances show proximate damages of a different amount, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default or breach of warranty.

§3.60. Lessee's Incidental and Consequential Damages.

- (1) Incidental damages resulting from a lessor's default include any commercially reasonable charges, expenses, or commissions reasonably incurred in inspection, receipt, transportation, and care and custody of goods rightfully rejected or goods the acceptance of which is justifiably revoked, any commercially reasonable charges, expenses or commissions in connection with effecting cover, and any other reasonable expense incident to the default.
- (2) Consequential damages resulting from a lessor's default include:
 - (a) any loss resulting from general or particular requirements and needs of which the lessor at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise; and
 - (b) injury to person or property proximately resulting from any breach of warranty.

§3.61. Lessee's Right to Specific Performance or Replevin.

- (1) Specific performance may be decreed if the goods are unique, of sentimental value, and/or if the circumstances so warrant. .
- (2) The decree for specific performance may include any terms and conditions as to payment of the rent, damages, or other relief that the court may deem just.
- (3) The lessee has a right of replevin or similar remedy for goods identified to the lease contract if after reasonable effort the lessee is unable to effect cover for those goods or the circumstances reasonably indicate that the effort will be unavailing.

§3.62. Lessee's Right to Goods on Lessor's Insolvency.

- (1) Subject to Subsection (2) and even though the goods have not been shipped, a lessee who has paid a part or all of the rent and security for goods identified to a lease contract on making and keeping good a tender of any unpaid portion of the rent and security due under the lease contract may recover the goods identified from the lessor if the lessor becomes insolvent within ten (10) days after receipt of the first installment of rent and security.
- (2) A lessee acquires the right to recover goods identified to a lease contract only if they conform to the lease contract.

SUBCHAPTER 7: DEFAULT BY LESSEE

§3.63. Lessor's Remedies.

- (1) If a lessee wrongfully rejects or revokes acceptance of goods or fails to make a payment when due or repudiates with respect to a part or the whole, then, with respect to any goods involved, and with respect to all of the goods if under an installment lease contract the value of the whole lease contract is substantially impaired, the lessee is in default under the lease contract and the lessor may:
 - (a) cancel the lease contract under Section 3.46 (1);
 - (b) proceed respecting goods not identified to the lease contract under Section 3.64;
 - (c) withhold delivery of the goods and take possession of goods previously delivered under Section 3.65;
 - (d) stop delivery of the goods by any bailee under Section 3.66;
 - (e) dispose of the goods and recover damages under Section 3.67, or retain the goods and recover damages under Section 3.68, or in a proper case recover rent under Section 3.69;
 - (f) exercise any other rights or pursue any other remedies provided in the lease contract.
- (2) If a lessor does not fully exercise a right or obtain a remedy to which the lessor is entitled under Subsection (1), the lessor may recover the loss resulting in the ordinary course of events from the lessee's default as determined in any reasonable manner, together with incidental damages, less expenses saved in consequence of the lessee's default.
- (3) If a lessee is otherwise in default under a lease contract, the lessor may exercise the rights and pursue the remedies provided in the lease contract , which may include a right to cancel the lease. In addition, unless otherwise provided in the lease contract:
 - (a) if the default substantially impairs the value of the lease contract to the lessor, the lessor may exercise the rights and pursue the remedies provided in Subsections (1) or (2); or
 - (b) if the default does not substantially impair the value of the lease contract to the lessor, the lessor may recover as provided in Subsection (2).

§3.64. Lessor's Right to Identify Goods to Lease Contract.

- (1) Where the lessee under the lease contract is in default, the lessor may
 - (a) identify to the lease contract conforming goods not already identified if at the time he learned of the default they were in his possession or control; and

- (b) dispose of goods which demonstrably have been intended for the particular lease contract even though those goods are unfinished.
- (2) Where the goods are unfinished an aggrieved lessor may in the exercise of reasonable commercial judgment for the purposes of avoiding loss and of effective realization either complete manufacture and wholly identify the goods to the lease contract or cease the manufacture and lease, sell, or otherwise dispose of the scrap or salvage value or proceed in any other reasonable manner.

§3.65. Lessor's Right to Possession of Goods.

- (1) If a lessor discovers the lessee to be insolvent, the lessor may refuse to deliver the goods.
- (2) After a default by the lessee under the lease contract of the type described in Section 3.63 or, if agreed, after other default by the lessee, the lessor has the right to take possession of the goods. If the lease contract so provides, the lessor may require the lessee to assemble the goods and make them available to the lessor at a place to be designated by the lessor which is reasonably convenient to both parties. Without removal, the lessor may render unusable any goods employed in trade or business, and may dispose of goods on the lessee's premises.
- (3) The lessor may proceed under Subsection (2) without judicial process if it can be done without breach of the peace or the lessor may proceed by action.

§3.66. Lessor's Stoppage of Delivery in Transit or Otherwise.

- (1) The lessor may stop delivery of goods in the possession of a carrier or other bailee when he discovers the lessee to be insolvent and may stop delivery of carload, truckload, planeload, or larger shipments of express or freight if the lessee repudiates or fails to make a payment due before delivery, whether for rent, security or otherwise under the lease contract, or for any other reason the lessor has a right to withhold or take possession of the goods.
- (2) As against such the lessor may stop delivery until
 - (a) receipt of the goods by the lessee; or
 - (b) acknowledgment to the lessee by any bailee of the goods, except a carrier, that the bailee holds the goods for the lessee; or
 - (c) such an acknowledgment to the lessee by a carrier by reshipment or as warehouse.
- (3) To stop delivery a lessor must so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.

- (4) After such notification, the bailee must hold and deliver the goods according to the directions of the lessor, but the lessor is liable to the bailee for any ensuing charges or damages.
- (5) A carrier that has issued a non-negotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor.

§3.67. Lessor's Rights to Dispose of Goods.

- (1) Under the conditions stated in Section 3.63 on lessee's remedies, the lessor may dispose of the goods concerned or the undelivered balance thereof by lease, sale, or otherwise.
- (2) Except as otherwise provided with respect to damages liquidated in the lease agreement or otherwise determined pursuant to agreement of the parties, if the disposition is by lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessor may recover from the lessee as damages (i) accrued and unpaid rent as of the date of the commencement of the term of the new lease agreement, (ii) the present value, as of the same date, of the total rent for the then remaining lease term of the original lease agreement minus the present value, as of the same date, of the rent under the new lease agreement applicable to that period of the new lease term which is comparable to the then remaining term of the original lease agreement, and (iii) any incidental damages allowed under Section 3.70, less expenses saved in consequence of the lessee's default.
- (3) If the lessor's disposition is by lease agreement that for any reason does not qualify for treatment under Subsection (2), or is by sale or otherwise, the lessor may recover from the lessee as if the lessor had elected not to dispose of the goods and Section 3.68 governs.
- (4) A subsequent buyer or lessee who buys or leases from the lessor in good faith for value as a result of a disposition under this section takes the goods free of the original lease contract and any rights of the original lessee even though the lessor fails to comply with one or more of the requirements of this Chapter.
- (5) The lessor is not accountable to the lessee for any profit made on any disposition. A lessee who has rightfully rejected or justifiably revoked acceptance shall account to the lessor for any excess over the amount of the lessee's security interest.

§3.68. Lessor's Damages for Non-Acceptance, Failure to Pay, Repudiation, or other Default.

- (1) Unless otherwise provided in this Chapter if a lessor elects to retain the goods or a lessor elects to dispose of the goods and the disposition is by lease agreement that for any reason does not qualify for treatment under Section 3.67 (2), or is by sale or otherwise, the lessor may recover from the lessee as damages for a default of the type described in Section 3.63, or, if agreed, for other default of the lessee, (i) accrued and unpaid rent as of the date of default if the lessee has never taken possession of the goods, or, if the lessee has taken possession of the goods, as of the date the lessor repossesses the goods or an earlier date on which the lessee makes a tender of the goods to the lessor, (ii) the present value as of the date determined under clause (i) of the total rent for the then remaining lease term of the original lease agreement minus the present value as of the same date of the market rent at the place where the goods are located computed for the same lease term, and (iii) any incidental damages allowed under Section 3.70, less expenses saved in consequence of the lessee's default.

- (2) If the measure of damages provided in Subsection (1) is inadequate to put a lessor in as good a position as performance would have, the measure of damages is the present value of the profit, including reasonable overhead, the lessor would have made from full performance by the lessee, together with any incidental damages allowed under Section 3.70, due allowance for costs reasonably incurred and due credit for payments or proceeds of disposition.

§3.69. Lessor's Action for the Rent.

- (1) Where the lessee defaults under the lease contract, if agreed, after other default by the lessee, if the lessor complies with Subsection (2), the lessor may recover from the lessee as damages the price
 - (a) of goods accepted by the lessee and not repossessed by or tendered to the lessor, and for conforming goods lost or damaged within a commercially reasonable time after risk of loss passes to the lessee, (i) accrued and unpaid rent as of the date of entry of judgment in favor of the lessor, (ii) the present value as of the same date of the rent for the then remaining lease term of the lease agreement, and (iii) any incidental damages allowed under Section 3.70, less expenses saved in consequence of the lessee's default; and
 - (b) of goods identified to the lease contract if the lessor is unable after reasonable effort to dispose of them at a reasonable price or the circumstances reasonably indicate that effort will be unavailing, (i) accrued and unpaid rent as of the date of entry of judgment in favor of the lessor, (ii) the present value as of the same date of the rent for the then remaining lease term of the lease agreement, and (iii) any incidental damages allowed under Section 3.70, less expenses saved in consequence of the lessee's default.
- (2) Except as provided in Subsection (3), the lessor shall hold for the lessee for the remaining lease term of the lease agreement any goods that have been identified to the lease contract and are in the lessor's control.
- (3) The lessor may dispose of the goods at any time before collection of the judgment for damages obtained pursuant to Subsection (1). If the disposition is before the end of the remaining lease term of the lease agreement, the lessor's recovery against the lessee for damages is governed by Section 3.67 or Section 3.68, and the lessor will cause an appropriate credit to be provided against a judgment for damages to the extent that the amount of the judgment exceeds the recovery available pursuant to Section 3.67 or 3.68.
- (4) Payment of the judgment for damages obtained pursuant to Subsection (1) entitles the lessee to the use and possession of the goods not then disposed of for the remaining lease term of and in accordance with the lease agreement.
- (5) After default by the lessee under the lease contract of the type described in Section 3.63 or, if agreed, after other default by the lessee, a lessor who is held not entitled to rent under this section must nevertheless be awarded damages for non-acceptance under Section 3.67 or Section 3.68.

§3.70. Lessor's Incidental Damages.

Incidental damages to an aggrieved lessor include any commercially reasonable charges, expenses, or commissions incurred in stopping delivery, in the transportation, care and custody of goods after the lessee's default, in connection with return or disposition of the goods, or otherwise resulting from the default.

§3.71. Standing to Sue Third Parties for Injury to Goods.

- (1) If a third party so deals with goods that have been identified to a lease contract as to cause actionable injury to a party to the lease contract (a) the lessor has a right of action against the third party, and (b) the lessee also has a right of action against the third party if the lessee:
 - i. has a security interest in the goods;
 - ii. has an insurable interest in the goods; or
 - iii. bears the risk of loss under the lease contract or has since the injury assumed that risk as against the lessor and the goods have been converted or destroyed.
- (2) If at the time of the injury the party plaintiff did not bear the risk of loss as against the other party to the lease contract and there is no arrangement between them for disposition of the recovery, his suit or settlement, subject to his own interest, is as a fiduciary for the other party to the lease contract.
- (3) Either party with the consent of the other may sue for the benefit of whom it may concern.

§3.72. Lessor's Rights to Residual Interest.

In addition to any other recovery permitted by this Chapter or any other law, the lessor may recover from the lessee an amount that will fully compensate the lessor for any loss of or damage to the lessor's residual interest in the goods caused by the default of the lessee.

**TITLE 7: CHAPTER 3A OF THE LIBERIAN CODE OF LAWS, REVISED
COMMERCIAL CODE – FINANCE LEASES**

Arrangement of Sections

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- §3A.19. Abrogating Provision.

SUBCHAPTER 1: GENERAL PROVISIONS

§3A.1. Short Title.

This Chapter shall be known and may be cited as the Liberian Commercial Code – Finance Leases.

§3A.2. Scope of Application.

- (1) This Chapter applies to any finance lease of an asset if
 - (a) the asset covered by the lease is within Liberia;
 - (b) the lessees' centre of main business is within Liberia; or
 - (c) the leasing agreement provides that Liberian law governs the transaction.
- (2) The asset that forms the subject matter of a lease may be either existing goods, owned or possessed by the lessor, or goods to be manufactured or acquired by the lessor from a supplier for the purpose of making the agreement of lease with the lessee.

§3A.3. Interpretation; Definitions.

In this Chapter, unless the context requires otherwise

- (a) **"Asset"** means all property that is non-consumable and includes:
 - i. personal property that can be legally sold or imported into the Liberia that becomes the subject matter of a lease agreement, whether or not the property has become a fixture to or incorporated in land,
 - ii. immovable property,
 - iii. trademarks and copyrights or other rights under intellectual property,
 - iv. software,

but does not include shares, investment securities, any financial instrument, government bonds and securities, or any other moveable asset whose free circulation in Liberia is restricted by law.
- (b) **"Assignment"** means the transfer of rights and obligations, including transfer of legal title and ownership rights to assets under a lease agreement by a lessor (known as the "Assignor") to a third party (known as the "Assignee") including assignment of rights on rental payments.
- (c) **"Central Bank"** means the Central Bank of Liberia which was established by the ... Act of October 18, 1999 and which became operational in 2000 to oversee monetary policy of, and license and regulate financial institutions in the Republic of Liberia;
- (d) **"Centre of main business"** means in relation to Section 2, the place where a person conducts the administration of its interests on a regular basis, or, in the absence of proof to the contrary, the person's registered office or habitual residence.

- (e) **"Finance lease"** means a lease with respect to which:
- i. the lessor does not select, manufacture, or supply the goods;
 - ii. the lessor acquires the goods or the right to possession and use of the goods in connection with the lease; and
 - iii. one of the following occurs:
 - 1. the lessee's approval of the contract by which the lessor acquired the goods or the right to possession and use of the goods is a condition to effectiveness of the lease contract;
 - (b) the lessee, before signing the lease contract, receives an accurate and complete statement designating the promises and warranties, and any disclaimers of warranties, limitations or modifications of remedies, or liquidated damages, including those of a third party, such as the manufacturer of the goods, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods; or
 - (c) if the lease is not a consumer lease, the lessor, before the lessee signs the lease contract, informs the lessee in writing (a) of the identity of the person supplying the goods to the lessor, unless the lessee has selected that person and directed the lessor to acquire the goods or the right to possession and use of the goods from that person, (b) that the lessee is entitled under this Chapter to the promises and warranties, including those of any third party, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods, and (c) that the lessee may communicate with the person supplying the goods to the lessor and receive an accurate and complete statement of those promises and warranties, including any disclaimers and limitations of them or of remedies.
- (f) **"Finance lease agreement"** means, an agreement made in conformity with Section 4 of this Chapter.
- (g) **"Lease"** for purposes of this Chapter is defined as Finance Lease.
- (h) **"Lessee"** means a person, who under a lease agreement, obtains from another person, known as the lessor, the right to possession and use of an asset in return for rental payments over an agreed period of time, and includes its successors and assignees.
- (i) **"Lessor"** means a person or a corporate body that is registered and licensed to conduct the business of leasing by the Central Bank of Liberia and which acting under a lease agreement, conveys to another person known as the lessee for an agreed period of time, the right to possession and use of an asset in return for rental payments and includes its successors and assignees.
- (j) **"Non-cancelable lease"** means a lease that is cancelable only:
- i. by mutual agreement; or
 - ii. by operation of law.

- (k) **"Person"** means natural persons and legal persons.
- (l) **"Residual value"** means the actual value of the asset at the expiry of the lease term, which shall be agreed upon by the lessor and the lessee at the inception of a lease..
- (m) **"Option to purchase"**, in respect of a Finance Leases only, shall mean the option, at an agreed price, for the lessee to purchase the asset from the lessor at the expiry of the agreed lease period. It is the basis for transferring the title at the end of the lease term from the lessor to the lessee.
- (n) **"Secondary lease"** means an agreement pursuant to which a leased asset is transferred to a new lessee upon early termination of a first lease agreement. The lessor assumes the obligations of the supplier in relation to the subsequent lessee.
- (o) **"Sublease"** means an agreement pursuant to which a lessee under a finance lease agreement leases a leased asset to a sub-lessee for the term and under the conditions set forth in the principal lease agreement subject to obtaining the consent of the lessor to sub lease.
- (p) **"Supplier"** means a person from whom a lessor acquires an asset to be leased under a lease agreement. The leased asset may be delivered directly to the lessee, but provided always that title to the asset shall be transferred to the lessor.
- (q) **"Supply agreement"** means an agreement under which a lessor acquires an asset and its legal title for lease.

SUBCHAPTER 2: FORMATION OF A FINANCE LEASE AGREEMENT

§3A.4. Finance Lease Agreement.

- (1) A finance lease agreement is a credit agreement made between two parties, whereby one of the parties known as the lessor, in exchange for periodic payments as consideration, leases an asset to another party known as the lessee.
- (2) The lessee shall identify and choose a supplier of an asset for the purpose of enabling the lessor to acquire such asset from a supplier for leasing to the lessee.
- (3) The lessor shall after acquiring an asset under Subsection (2) shall retain full title of such asset during the period of the lease.
- (4) The supplier of a leased asst shall transfer title to the leased asset to the lessor for the purpose of delivery of such asset into the possession and for the use of the lessee.
- (5) Notwithstanding Subsection (4) above, the lessor and supplier may agree that the supplier shall deliver the asset directly to the lessee.
- (6) At the expiry of the period of the finance lease agreement and subject to the lessor's consent, the lessee may exercise an option to purchase the asset at a price to be agreed upon by the parties, return the asset to the lessor or request renewal of the lease agreement, provided that the purchase price to be agreed by the parties for purchase of the asset at the end of the finance lease term shall be based on the residual value of the asset at the expiry of the lease.

§3A.5. Parties to a Finance Lease Transaction.

The parties to a lease transaction shall be the lessor, the lessee and the supplier.

§3A.6. Elements of a Finance Lease.

- (1) A finance lease agreement shall be distinguished by the following elements:
 - (a) the lessee specifies the asset without relying primarily on the skill and judgment of the lessor;
 - (b) the lessor acquires the asset or the right to possess and use the asset in connection with the lease or a previous lease, and the supplier is so notified; and
 - (c) the supplier of an asset for finance lease shall have knowledge that the asset is being acquired for the purpose of a finance lease.
- (2) For the avoidance of doubt, a finance lease is an agreement for financing the acquisition or use of an asset, including a capital good that is to be used by a lessee whereby the lessor makes an investment in the asset or capital good. A finance lease is a special contract that constitutes neither a rental, a sale, a rental-sale, a hire-purchase, a sale with preservation of property rights, nor a credit sale or sale by payment in installments.

§3A.7. Regulation of Finance Lease.

- (1) The Central Bank shall stipulate, through regulations, the conditions for the licensing of finance leasing operations in Liberia.
- (2) The Central Bank shall promulgate and enforce rules and guidelines for the regulation of licensed finance lease institutions in Liberia. The rules and guidelines to be issued by the Central Bank shall not be inconsistent with the Commercial Code.

§3A.8. Formalities of a Finance Lease Agreement.

- (1) A lease agreement shall be made in writing and shall be subject to the Statute of Frauds provision of the Commercial Code.
- (2) Elements of a contract including capacity, offer and acceptance shall be regulated by the general law of contract of Liberia.
- (3) A lease agreement shall at least include each of the following key elements:
 - (a) identities of the lessor and the lessee;
 - (b) a description of the asset to be acquired under the lease, the estimated price of the asset, and the total lease rentals payable by the prospective lessee;
 - (c) the duration of the lease agreement, residual value or the option to purchase to transfer ownership from lessor to lessee; and

- (d) conditions for termination of the Lease agreement including damages due in case of termination before the lease term.
 - (e) a statement to the effect that the parties have agreed to enter into a finance lease agreement;
 - (f) a description of the asset to be acquired under the lease, the estimated price of the asset and the total number of lease installments payable by the prospective lessee;
 - (g) a statement that the asset is being acquired by the prospective lessor from the supplier in connection with the finance lease agreement, which, to the knowledge of the supplier, is to be made between the prospective lessor and lessee; and
 - (h) a statement as to whether or not the prospective lessee has selected the asset and selected the supplier without relying on the skill and judgment of the prospective lessor.
- (4) The asset that forms the subject matter of a finance lease agreement may be either existing goods, owned by the lessor or goods to be manufactured or acquired by the lessor from a supplier for the purpose of making agreement with the lessee.

SUBCHAPTER 3: RIGHTS AND OBLIGATIONS OF PARTIES TO A LEASE TRANSACTION

§3A.9. Rights of the Lessor.

- (1) A lessor shall retain ownership rights to the property for the duration of the lease term.
- (2) The lessor has the right to be paid according to the lease agreement.
- (3) Where there is default on the part of the lessee, the lessor retains the right to demand payments due from the lessee under the lease agreement so long as the lessor acted in good faith and payment was made by the lessor for purchase of the asset at the request of the lessee.
- (4) Except as provided in this law or in the lease agreement, the lessor shall not incur any liability in respect of defects in or fitness of the leased asset for any particular purpose.
- (5) The lessor shall not be liable to the lessee for damage except for willful infringement or unlawful acts of the lessor which result:
 - (a) in damage to or defects in the leased asset; or
 - (b) in curtailment of the lessee's rights in relation to a third party; or
 - (c) in infringement of the lessee's peaceful and lawful use of the leased asset.
- (6) The lessor, shall not, in his capacity as lessor, be liable to third party claims, including but not limited to death, personal injury and any taxes resulting from the use of the asset or any damage to property caused by the use of the asset by the lessee.

§3A.10. Obligations of the Lessor.

- (1) The lessor shall grant the lessee quiet possession of the leased asset free from interference from any third party having or claiming a right in the leased asset, where such claim or right of the third party is derived from a negligent or intentional act or omission of the lessor.
- (2) The liability of the lessor for defects in legal title to the leased asset shall not be limited by the agreement.
- (3) The lessor shall take reasonable steps to assist the lessee enforce any claims against the supplier where the lessee is unable and as shall be agreed upon.

§3A.11. Rights of the Lessee.

- (1) The lessee shall have and shall enjoy quiet possession of the leased asset during the entire period of the lease as provided for in the lease agreement.
- (2) Without prejudice to the lessors' rights against the supplier, the lessee shall have the right to take direct action against the supplier in order to hold the supplier to the satisfactory performance of the supplier's contractual obligations and to obtain from the supplier compensation for damages resulting from his default.
- (3) The lessee may sublease the leased asset to a sub-lessee only where the lessee has obtained the lessor's consent to sublease the leased asset and provided the terms are consistent with the term and conditions set forth in the principal lease.
- (4) Where the leased asset is not delivered to the lessee:
 - (a) as a result of failure by the lessor to enter into a supply agreement with the supplier within the time mutually agreed between the two parties; or
 - (b) as a result of failure by the lessor to make payment to the supplier within the timeframe agreed between the two parties;

the lessee's obligations shall be suspended but the lessee may give the lessor an appropriate extension of time during which the lessor may comply with its contractual obligations.

- (5) The lessor shall not be liable to the lessee for damage caused to a leased asset.
- (6) Notwithstanding Subsection (5) of this section, the lessor may be liable to the lessee for damage caused by willful infringement of the finance lease agreement by, or unlawful acts of the lessor which result in
 - (a) damage to or defects in the leased asset;
 - (b) curtailment of the lessee's rights in relation to a third party; or
 - (c) infringement of the lessee's right to peaceful use of the leased asset.

§3A.12. Obligations of the Lessee.

- (1) The lessee shall settle the rental charges agreed upon under the lease agreement according to the dates and time set forth under the same.
- (2) The lessee shall use the asset according to the terms and conditions of the lease agreement.
- (3) The lessee's obligation to the lessor shall be irrevocable once the agreement is concluded.
- (4) The lessee shall be responsible for proper maintenance and such adequate insurance cover of the asset as may be mutually agreed upon between the parties. Insurance shall be payable by the lessee in respect of the Lease agreement but the indemnity benefits shall be paid to the lessor as the owner of the leased asset which, is the object of the insurance.
- (5) The lessee shall take proper care of the asset, use it in a reasonable manner consistent with that of normal use and keep it in the condition in which it was delivered, subject to fair wear and tear and any modification of the asset agreed upon by the parties.
- (6) The lease agreement shall not be terminated unilaterally by the lessee, even if the lessor is declared bankrupt.
- (7) The lessee shall at the expiration of the lease agreement, exercise its purchase option or return the asset to the lessor.
- (8) Where the lessee is under a duty to keep the asset in his possession or control, the lessee shall on receipt of a request from the lessor, inform the lessor where the asset is at the time when the request is made. Such request may be made by any normally accepted means of communication and shall include, but not be limited to a verbal request, facsimile transmission, e-mail and letter.

§3.13. Obligations of the Supplier.

- (1) Delivery of the asset to the lessee as per the agreed terms.
- (2) The supplier of an asset to a lessor in a finance lease shall owe the lessee the same obligations as regards quality and fitness of the asset that he owes to the lessor under the supply agreement and shall be liable to the lessee for material defects of the leased asset.
- (3) The benefit of a suppliers' obligations to the lessor under the supply agreement and of any warranties, whether express or implied, including those of any third party provided in connection with or as part of the supply agreement, extends to the lessee to the extent of the lessee's interest in the supply agreement, and the supplier shall be liable to the lessee for material defects of the leased asset.
- (4) The lessee may take legal action directly against a supplier in respect of material defects of the asset which is the subject of a finance lease but the supplier shall not be liable to both the lessor and the lessee in respect of the same damage.

- (5) Where the lessee fails to enforce the supplier's promises or warranties against the supplier as a result of the absence of privity of contract between the lessee and the supplier, the lessor shall be obliged to take reasonable steps to assist the lessee by making claim against the supplier.
- (6) Nothing in this section shall be taken as permitting the lessee to terminate or rescind the supply agreement without the consent of the lessor.

§3A.14. Default: Recovery of Unpaid Rental and Repossession.

- (1) Where the lessee is in breach of any of the provisions of the lease agreement, not limited to defaults in the payment of rentals or any other dues in accordance with the lease agreement, the lessor may recover accrued unpaid rentals together with any interest, penalties, damages and any future rentals as agreed upon in the lease agreement
- (2) In the event of:
 - (a) death, bankruptcy, liquidation or dissolution of the lessee; or
 - (b) expiry of the lease agreement; or
 - (c) breach of any terms of the lease agreement by the lessee, not remedied within such period as may be stipulated in the lease agreement;the lessor has the right to repossess the leased asset at any time.
- (3) The leased asset shall not be included in the assets of any receivership or pool of assets to be disposed of by the creditors of the lessee.
- (4) Subject to subsection 2(c) the lessor may terminate the lease agreement by giving fifteen (15) days notice, and after termination as agreed in the lease agreement may:
 - (a) recover possession of the asset, and
 - (b) recover such damages as may place the lessor in the position in which he would have been had the lessee performed the lease agreement in accordance with its terms.
- (5) Where the lessor becomes entitled to repossess the asset by reason of breach of agreement by the lessee or otherwise through operation of law, and the lessee does not deliver the asset after having been given due notice to surrender the asset to the lessor, the lessor may:
 - (a) Apply to a judge of a competent court for a repossession order upon presentation of proof of default. Such an order shall be granted within fifteen (15) days and shall be final and binding.
 - (b) Upon repossession, alienate the asset in any manner that he may deem appropriate.

- (6) The right of the lessor to repossess shall in no way prejudice other remedies available to the lessor under any other law, including but not limited to, the right to recover damages for losses caused by non-compliance with the terms of the lease agreement by the lessee.
- (7) A leasing agreement that provides for the manner in which damages are to be computed is enforceable between the parties.
- (8) The parties may, by the lease agreement determine what constitutes a default or otherwise gives rise to the rights and remedies of the parties specified in this law.

SUBCHAPTER 4: THIRD PARTY CLAIMS AND INTERESTS IN LEASE TRANSACTIONS

§3A.15. Assignment of Lease Agreement.

- (1) Unless otherwise stipulated, a lease agreement may be assigned by the lessor after he has informed the lessee of his intention in writing. The lessor shall always have the right to assign its rights on the rental payments under the lease without requiring prior approval of the lessee.
- (2) The lessor's right to assign the lease agreement to a third party, is subject to the lessee's right to the quiet enjoyment of the asset leased.
- (3) The assignee shall have the same rights and obligations that are specified for the Lessor in the lease agreement or by law. The lessee shall continue to have the right to quiet enjoyment of the asset provided the lessee performs his obligations under the lease agreement.
- (4) The lessee may transfer the right to the use of the asset or any other rights under the agreement, only with the written consent of the lessor which may not be unreasonably withheld.

§3A.16. Third Party Claims and Insolvency.

- (1) Except as otherwise provided in this law, a lease agreement is effective and enforceable against purchasers of the assets and against creditors of the parties.
- (2) The title of the lessor or his assignees to the asset leased shall prevail at all times over claims by third parties including creditors of the lessee.
- (3) Any action by a third party claiming any right to the asset shall be brought against the lessor and/or supplier, but not against the lessee.
- (4) The lessee shall inform the lessor of any impediment or disturbances by third parties to his quiet enjoyment of the asset.
- (5) In the event of the lessee's failure or delay to inform the lessor as provided under Subsection (4) the lessee shall be responsible for any charges or damages incurred by the lessor.

- (6) The lessee shall be responsible for repairing damage caused by third parties during the time the asset is in his possession.
- (7) The lessee has the right to take legal action against the third parties to recover any expenses incurred as a result of his obligations to restore the condition of the asset or to pay any damages to the lessor.
- (8) The lessee shall not create any charge or encumbrance over the leased asset during the term of the lease, and if so created, the charge or encumbrance shall be void and the creditors of the lessee shall not be entitled to enforce the charge or encumbrance of the asset leased.
- (9) In case of lessee insolvency whether voluntary or involuntary the leased asset will not be a subject of the liquidation process and shall not be treated as part of the assets of the debtor (lessee). The rights of the lessor over the leased Asset supersede those of any creditors.

§3A.17. Priority of Liens.

Where an asset which is a subject of a lease becomes attached to immovable property; the creditor(s) of the lessee and the holders of the interest in land to which the leased asset becomes affixed may not attach the leased asset.

SUBCHAPTER 5: REGISTRATION OF INTERESTS

§3A.18. Finance Lease Registry.

- (1) A registration system, including a central registry, shall be maintained for the purposes of this Chapter and any other law that provides for registration of finance leases.
- (2) There shall be a registrar of security interests who shall be responsible for the effective and efficient operation of the system of registration of finance leases established under this Chapter.
- (3) Until such time as the registration system becomes operational, all finance leases shall be filed with the Central Bank which shall maintain a register of finance leases on its premises and/or on the premises of any third party authorised by the Central Bank.
- (4) All finance leases shall be filed in the order of time they are received.
- (5) The finance lease registry shall be open to the public.
- (6) Notice of a registered asset shall constitute notice to third party purchasers of the leased asset, of existing interests in the leased asset.
- (7) The entire finance lease agreement shall not be required to be kept in the lease registry but shall be produced before the registration of a lease interest.

- (8) The Lease Register shall contain the following information about each registered finance lease:
- (a) A description of the asset leased;
 - (b) The lease term;
 - (c) The parties to the lease;
 - (d) Any extensions to the lease.
- (9) The Lease Registry shall from time to time prescribe forms and fees for the filing of any notices and lease extracts.

SUBCHAPTER 5: FINAL PROVISIONS

§3A.19. Abrogating Provision.

In the event of any provision of this Finance Lease Chapter contradicting a provision from any other existing laws related to domestic or foreign private investment, the provisions of this Chapter shall prevail.

**TITLE 7: CHAPTER 4 OF THE LIBERIAN CODE OF LAWS, REVISED
COMMERCIAL CODE – NEGOTIABLE INSTRUMENTS**

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SUBCHAPTER 1: APPLICATION, CONSTRUCTION AND DEFINITIONS

§4.1. Short Title.

This Chapter shall be known and may be cited as the Liberian Commercial Code - Negotiable Instruments.

§4.2. Scope of Application.

- (1) This Chapter applies to negotiable instruments as hereafter defined and does not apply to money, payment orders or securities.
- (2) Where there is a conflict between this Chapter and any provision of the Secured Transactions Chapter of this Code, the provision of the Secured Transaction Chapter shall prevail.
- (3) Regulations and directives issued by the Central Bank of Liberia supersede any inconsistent provision of this Chapter to the extent of the inconsistency.

§4.3. General Construction.

This Chapter shall be construed in line with the principles of construction of Chapter 1 of this Code.

§4.4. Interpretations; Definitions.

In this Chapter, unless the context otherwise requires, the following words and phrases shall bear the meanings assigned under this Chapter:

- (a) **"Acceptor"** means a drawee who has accepted a draft.

- (b) **"Acceptance"** means the drawee's signed agreement to pay a draft as presented.
- (c) **"Accommodated party"** means a party to an instrument for whose benefit the instrument has been issued for value.
- (d) **"Accommodation party"** means a party who signs an instrument for the purpose of incurring liability on it without being a direct beneficiary of the value given under the instrument.
- (e) **"Alteration"** means (a) an unauthorized change in an instrument that purports to modify in any respect the obligation of a party, or (b) an unauthorized addition of words or numbers or other change to an incomplete instrument relating to the obligation of a party.
- (f) **"Bill of Lading"** means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods.
- (g) **"Cashier's check"** means a draft with respect to which the drawer and drawee are the same bank or branches of the same bank.
- (h) **"Certificate of deposit"** means an instrument containing an acknowledgement by a bank that a sum of money has been received by the bank and a promise by the bank to repay the sum of money. A certificate of deposit is a note of the bank.
- (i) **"Check"** means (a) a draft other than a documentary draft, drawn on a banker and payable on demand or (b) a cashier's check or teller's check. An instrument may be a check even if it is described on its face by another term.
- (j) **"Claimant"** means a person who claims the right to receive the amount of a check that was lost, destroyed or stolen.
- (k) **"Drawee"** means a person ordered on a draft to make payment.
- (l) **"Drawer"** means a person who signs or is identified in a draft as a person ordering payment.
- (m) **"Indorser"** means a person who makes an indorsement.
- (n) **"Indorsement"** means a signature other than that of a person who signs as maker, drawer or acceptor, that alone or together with words is made on an instrument for the purpose of (a) negotiating the instrument, (b) restricting payment of the instrument, or (c) incurring indorser's liability on the instrument. Regardless of the intent of the signer, a signature and its accompanying words is an indorsement unless the accompanying, terms of the instrument, place of the signature, or other circumstances clearly indicate that the signature was made for a purpose other than the indorsement.
- (o) **"Issue"** means the first delivery of an instrument by the maker or drawer, whether to a holder or non-holder, for the purpose of giving rights on the instrument to any person.
- (p) **"Issuer"** means a maker or drawer of an instrument and applies to issued and unissued instruments.
- (q) **"Maker"** means a person who signs or is identified in a note as a person undertaking to pay.

- (r) **“Order”** means a written instruction to pay money signed by the person giving the instruction. An authorization to pay is not an order unless the person so authorized is also instructed to pay.
- (s) **“Ordinary care”** in the case of a person engaged in business means the observance of reasonable commercial standards, prevailing in the area in which the person is located, with respect to the business in which the person is engaged. In the case of a bank that takes an instrument for processing for collection or payment by automated means, reasonable commercial standards do not require the bank to examine the instrument if the failure to examine does not violate the bank’s prescribed procedures, if any, and the bank’s procedures do not vary unreasonably from general banking usage.
- (t) **“Party”** means a party to an instrument.
- (u) **“Principal obligor”** with respect to an instrument means the accommodated party or any other party to the instrument against whom a secondary obligor has recourse under this Chapter.
- (v) **“Secondary obligor”** with respect to an instrument means
 - i. an indorser or an accommodation party,
 - ii. a drawer having the obligation to pay a draft according to its terms, or
 - iii. any other party to the instrument that has recourse against another party to the instrument in accordance with Section 4.17 of this Chapter.
- (w) **“Special indorsement”** means an indorsement made by a holder of an instrument which identifies a person whom it makes the instrument payable.
- (x) **“Teller’s check”** means a draft drawn by a bank on another bank or payable at or through a bank.

SUBCHAPTER 2: GENERAL RULES

§4.5. Negotiable Instrument.

- (1) Except as provided in Subsections (2) and (3), a negotiable instrument is an unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order, if it:
 - (a) is payable to bearer or to order at the time it is issued or first comes into possession of a holder;
 - (b) it is payable on demand or at a definite time; and
 - (c) does not state any other undertaking or instruction by the person promising or ordering payment to any act in addition to the payment of money, but the promise or order may contain,
 - i. an undertaking or power to give, maintain, or protect collateral to secure payment;

- ii. an authorization or power to the holder to confess judgment or realize on or dispose of collateral; or
 - iii. a waiver of the benefit of any law intended for the advantage or protection of an obligor.
- (2) An order that satisfies all the requirements of Subsection (1), except Subsection (1)(a) and otherwise falls within the definition of a check in Subsection (5) is a negotiable instrument and a check.
- (3) A promise or order other than a check is not an instrument if, at the time it is issued or first comes into possession of a holder, it contains a statement, however expressed, to the effect that the promise or order is not negotiable or is not an instrument governed by this Chapter.
- (4) For the purposes of this Chapter, an instrument is a note if it is a promise and a draft if it is an order but where an instrument satisfies both the definition of a note and a draft, any person entitled to enforce the instrument may treat it as either.

§4.6. Issue of Instrument.

- (1) An instrument is issued when it is delivered by the maker or drawer to a holder or nonholder for the purpose of giving rights on the instrument to any person.
- (2) An unissued instrument, or an unissued incomplete instrument that is completed, is binding on the maker or drawer, but the fact that the instrument has not been issued is a defense available to the maker or drawer.
- (3) An instrument that is conditionally issued or is issued for a special purpose is binding on the maker or drawer but failure of the condition or special purpose to be fulfilled is a defense available to the maker or drawer.

§4.7. Unconditional Promise or Order.

- (1) Except as otherwise provided in this Section, for the purpose of Section 4.5 (1), a promise or order is unconditional, unless:
 - (a) it states an express condition to payment; or
 - (b) states that the promise or order is subject to or governed by another record; or
 - (c) that rights or obligations with respect to the promise or order are stated in another record.
- (2) For purposes of Subsection (1), reference to another record does not of itself render the promise or order conditional.
- (3) A promise or order is not made conditional under Subsection (1) by a reference to another record for a statement of rights with respect to collateral, prepayment, or acceleration or because payment is limited to resort to a particular fund or source of funding.
- (4) Where a promise or order requires as a condition to payment a countersignature by a person whose specimen signature appears on the promise or order, the condition does not make the promise or order conditional for the purposes of Section 4.5 (1).

- (5) Where the person whose specimen signature appears on an instrument fails to countersign the instrument, the failure to countersign the instrument is a defense to the obligation of the issuer, but the failure does not prevent a transferee of the instrument from becoming a holder of the instrument.

§4.8. Certainty Required as to Payee Instrument Payable in Foreign Money.

- (1) An instrument may state that the sum of money payable pursuant to a promise or an order be paid in foreign currency.
- (2) Where an instrument provides that the sum of money payable be paid in foreign currency, the sum of money may be paid in the foreign currency specified in the instrument or in an equivalent amount in Liberian dollars at the prevailing rate of exchange on the date of payment.

§4.9. What Bills are Negotiable, Payable on Demand or at a Definite Time.

- (1) A promise or order is payable on demand if it:
 - (a) states that it is payable on demand or at sight or otherwise indicates that it is payable at the will of the holder; or
 - (b) does not state any time of payment.
- (2) A promise or order is payable at a definite time if it is payable on the expiration of a definite period of time after sight or acceptance or at a fixed date or at a determinable period of time at the time the promise or order is made or issued.
- (3) The obligation to pay at a definite time is subject to the rights of
 - (a) prepayment;
 - (b) acceleration;
 - (c) extension at the option of the holder; or
 - (d) extension to a further definite time at the option of the maker or acceptor or automatically upon or after a specified act or event.
- (4) Where an instrument which is payable at a fixed date is also payable on demand made before the fixed date, the instrument is payable on demand until the fixed date and if demand for payment is not made before that date, the instrument becomes payable at a definite time on the fixed date.

§4.10. Payable to Bearer or to Order.

- (1) A promise or order is payable to bearer if it:
 - (a) states that it is payable to bearer or to the order of bearer or otherwise indicates the person in possession of the promise or order is entitled to payment;
 - (b) does not state a payee; or
 - (c) states that it is payable to or to the order of case or otherwise indicates that it is not payable to an identified person.

- (2) A promise or order that is not payable to bearer is payable to order if it is payable to the order of an identified person or to an identified person or order.
- (3) An instrument payable to bearer may become payable to an identified person if it is specially indorsed in accordance with Section 4.25 of this Chapter.
- (4) An instrument payable to an identified person may become payable to bearer if it is indorsed in blank in accordance with Section 4.25 of this Chapter.

§4.11. Identification of Person to Whom Instrument is Payable.

- (1) The person to whom an instrument is initially payable is determined by the intent of the person, whether or not authorized, signing as, on in the name or on behalf of, the issuer of the instrument.
- (2) The instrument is payable to the person intended by the signer even if that person is identified in the instrument by a name or other identification that is not that of the intended person.
- (3) Where one or more persons sign in the name or on behalf of the issuer of an instrument and all the signers do not intend the same person as payee, the instrument is payable to any person intended by or more of the signers.
- (4) Where the signature of the issuer of an instrument is made by automated means, the payee of the instrument is determined by the intent of the person who supplied the name or identification of the payee, whether or not authorised to do so.
- (5) A person to whom an instrument is payable may be identified in any way, including, but not limited to, by name, identifying number, office, or account number.
- (6) The determination of the identity of the holder of an instrument shall be made in accordance with the following rules:
 - (a) Where an instrument is payable to an account and the account is identified only by a number, the instrument is payable to the person to whom the account is payable but if the instrument is payable to an account identified by number and by the name of a person, the instrument is payable to the named person, whether or not the person is the owner of the account identified by number;
 - (b) Where an instrument is payable to a trust, an estate or a person described as trustee or representative of a trust or estate, the instrument is payable to the trustee, the representative, or a successor of either, whether or not the beneficiary or estate is also named;
 - (c) Where the instrument is payable to an agent or similar representative of a named or identified person, the instrument is payable to the represented person, the representative, or a successor of the representative;
 - (d) Where the instrument is payable to a fund or organization that is not a legal entity, the instrument is payable to a representative of the members of the fund or organization; or
 - (e) Where the instrument is payable to an office or to a person described as holding an office, the instrument is payable to the named person, the incumbent of the office, or a successor to the incumbent.

- (7) Where an instrument is payable to two or more persons alternatively, it is payable to any of them and may be negotiated, discharged, or enforced by any or all of them in possession of the instrument.
- (8) Where an instrument is payable to two or more persons but not alternatively, it is payable to all of them and may be negotiated, discharged, or enforced by all of them.
- (9) Where an instrument payable to two or more persons is ambiguous as to whether it is payable to the person alternatively, the instrument is payable to them alternatively.

§4.12. Place of Payment.

- (1) An instrument is payable at the place of payment stated in the instrument and if no place of payment is stated, an instrument is payable at the address of the drawee or maker stated in the instrument.
- (2) Where an instrument does not state the address of the drawee or maker, the place of payment is the place of business of the drawee or maker but where the drawee or maker has more than one place of business, the place of payment is any place of business of the drawee or maker selected by the person entitled to enforce the instrument.
- (3) Where the drawee or maker has no place of business, the place of payment is the residence of the drawee or maker.

§4.13. Interest.

- (1) Unless otherwise stated in the instrument interest is not to be paid on an instrument but interest on an interest-bearing instrument is payable from the date of the instrument.
- (2) Where interest is payable on an instrument, the interest may be a fixed or variable amount of money or may be expressed as a fixed or variable rate of interest and may be stated or described in the instrument in any manner or may require reference to information not contained in the instrument.
- (3) Where an instrument provides for payment of interest but the interest payable cannot be determined from the description in the instrument is payable at the prevailing Central Bank of Liberia rate of interest or where the instrument is payable at a place other than Liberia the interest rate in effect at the place of payment of the instrument and at the time the interest first accrues.

§4.14. Date of Instrument.

- (1) An instrument may be antedated or postdated and the date stated in the instrument determines the time of its payment if it is payable at a fixed period after date.
- (2) Except as otherwise provided in this Chapter, an instrument payable on demand is not payable before the date of the instrument.
- (3) Where an instrument is not dated, its date is the date of its issue or, in the case of an unissued instrument, the date it first comes into possession of a holder.
- (4) An instrument is not invalid by reason of not having been dated.

§4.15. Contradictory Terms of Instrument.

Where an instrument contains contradictory terms

- (a) typewritten terms prevail over printed terms; and
- (b) handwritten terms prevail over both; and
- (c) words prevail over numbers.

§4.16. Incomplete Instrument.

- (1) An incomplete instrument is a signed writing, whether or not issued by the signer, the contents of which show at the time of signing that it is incomplete but that the signer intended it to be completed by the addition of words or numbers.
- (2) Subject to Subsection (3), where an incomplete instrument qualifies as an instrument under this Chapter, it may be enforced according to its terms if it is not completed or according to its terms as augmented by completion.
- (3) Where an incomplete instrument does not qualify as an instrument under this Chapter but after completion the requirements of Section 4.5 of this Chapter are met, the instrument may be enforced according to its terms as augmented by completion.
- (4) Where words or numbers are added to an incomplete instrument without the authority of the signer, there is an alteration of the incomplete instrument under Section 4.46 of this Chapter and the burden of establishing the absence of authority is on the person asserting the lack of authority.

§4.17. Joint and Several Liability.

- (1) Except as otherwise provided in the instrument, two or more person who have the same liability on an instrument as makers, drawers, acceptors, indorsers who indorse as joint payees, or anomalous indorsers are jointly and severally liable in the capacity in which they sign.
- (2) Except as provided for under Section 4.58 of this Chapter or by agreement of the parties to an instrument, a party having joint and several liability who pays the instrument is entitled to receive from any party having the same joint and several liability contribution in accordance with applicable law.

§4.18. Other Agreements Affecting Instrument.

- (1) Subject to the applicable law on proof of contemporaneous or prior agreements, the obligation of a party to an instrument to pay the instrument may be modified, supplemented or nullified by a separate agreement of the obligor and a person entitled to enforce the instrument if,
 - (a) the instrument is issued or the obligation is incurred in reliance on the agreement; or
 - (b) the instrument is issued or the obligation is incurred as part of the same transaction giving rise to the agreement.

- (2) To the extent an obligation of a party to an instrument is modified, supplemented, or nullified by an agreement under this Section, the agreement is a defense to the obligation.

§4.19. Statute of Limitations.

An action to enforce the obligation of a party to pay a note payable at a definite time must be commenced in accordance with the provisions of Section 1.19 of this Code.

§4.20. Notice of Right to Defend Action.

- (1) In an action for breach of an obligation for which a third person is answerable over pursuant to this Chapter, the defendant may give the third person notice of the litigation in a record, and the person notified may then give similar notice to any other person who is answerable over.
- (2) If the notice states that the person notified may come in and defend and that failure to do so will bind the person notified in an action later brought by the person giving the notice as to any determination of fact common to the two litigations, the person notified is so bound unless after reasonable receipt of the notice the person notified does come in and defend.

SUBCHAPTER 3: NEGOTIATION, TRANSFER AND INDORSEMENT

§4.21. Negotiation.

- (1) Negotiations means a transfer of possession, whether voluntary or involuntary, of an instrument by a person other than the issuer to a person who thereby becomes its holder.
- (2) Where an instrument is payable to an identified person, negotiation requires transfer of possession of the instrument and its indorsement by the holder.
- (3) Where an instrument is payable to bearer, it may be negotiated by transfer of possession alone.

§4.22. Negotiation Subject to Rescission.

- (1) Negotiation is effective even if obtained from an infant, a corporation exceeding its powers, or a person without capacity or by fraud, duress, or mistake, or in breach of duty or as part of an illegal transaction.
- (2) To the extent permitted by other law, negotiation may be rescinded or may be subject to other remedies, but those remedies may not be asserted against a subsequent holder in due course or a person paying the instrument in good faith and without knowledge of facts that are a basis for rescission or other remedy.

§4.23. Transfer of Instrument.

- (1) For the purposes of this Chapter, an instrument is transferred when it is delivered by a person other than its issuer for the purpose of giving to the person receiving delivery the right to enforce the instrument.

- (2) Transfer of an instrument, whether or not the transfer is a negotiation, vests in the transferee any right of the transferor to enforce the instrument, including any right as a holder in due course, but the transferee cannot acquire rights of a holder in due course by a transfer, directly or indirectly, from a holder in due course if the transferee engaged in fraud or illegality affecting the instrument.
- (3) Unless otherwise agreed, if an instrument is transferred for value and the transferee does not become a holder because of lack of indorsement by the transferor, the transferee has a specifically enforceable right to the unqualified indorsement of the transferor, but negotiation of the instrument does not occur until the indorsement is made.
- (4) Where a transferor purports to transfer less than the entire instrument, negotiation of the instrument does not occur and the transferee obtains no rights under this Chapter except the rights of a partial assignee.

§4.24. Indorsement.

- (1) For the purposes of this Chapter, an indorsement of an instrument means a signature, other than that of a signer as maker, drawer, or acceptor, that alone or accompanied by other words is made on an instrument for the purpose of
 - (a) negotiating the instrument;
 - (b) restricting payment of the instrument; or
 - (c) incurring indorser's liability on the instrument.
- (2) The intent of the signer of an instrument notwithstanding, a signature and its accompanying words is an indorsement unless the accompanying words, terms of the instrument, place of the signature, or other circumstances unambiguously indicate that the signature was made for a purpose other than indorsement.
- (3) For the purpose of determining whether the transferee of an instrument is a holder, an indorsement that transfers a security interest in the instrument is effective as an unqualified indorsement of the instrument.
- (4) Where an instrument is payable to a holder under a name that is not the name of the holder, indorsement may be made by the holder in the name stated in the instrument or in the holder's name or both, but signature in both names may be required by a person paying or taking the instrument for value or collection.

§4.25. Special Indorsement.

- (1) Where an indorsement is made by the holder of an instrument, whether payable to an identified person or payable to bearer, and the indorsement identifies a person to whom it makes the instrument payable, it is a special indorsement.
- (2) Where an instrument has been specially indorsed it becomes payable to the identified person and may be negotiated only by the indorsement of that person.
- (3) Where an indorsement is made by the holder of an instrument and it is not a special indorsement, it is a blank indorsement.

- (4) Where an instrument has been indorsed in blank the instrument becomes payable to bearer and may be negotiated by transfer of possession alone until specially indorsed.
- (5) The holder may convert a blank indorsement that consists only of a signature into a special indorsement by writing, above the signature of the indorser, words identifying the person to whom the instrument is made payable.
- (6) Anomalous indorsement means an indorsement made by a person who is not the holder of the instrument. An anomalous indorsement does not affect the manner in which the instrument may be negotiated.

§4.26. Restrictive Indorsement.

- (1) An indorsement limiting payment to a particular person or otherwise prohibiting further transfer or negotiation of the instrument is not effective to prevent further transfer or negotiation of the instrument.
- (2) An indorsement stating a condition to the right of the indorsee to receive payment does not affect the right of the indorsee to enforce the instrument and a person paying the instrument or taking it for value or collection may disregard the condition, and the rights and liabilities of that person are not affected by whether the condition has been fulfilled.
- (3) If an instrument bears an indorsement in blank or to a particular bank using the words "for deposit," "for collection," or other words indicating a purpose of having the instrument collected by a bank for the indorser or for a particular account, the following rules apply:
 - (a) A person, other than a bank, who purchases the instrument when so indorsed, converts the instrument unless the amount paid for the instrument is received by the indorser or applied consistently with the indorsement.
 - (b) A depositary bank that purchases the instrument or takes it for collection when so indorsed converts the instrument unless the amount paid by the bank with respect to the instrument is received by the indorser or applied consistently with the indorsement.
 - (c) A payor bank that is also the depositary bank or that takes the instrument for immediate payment over the counter from a person other than a collecting bank converts the instrument unless the proceeds of the instrument are received by the indorser or applied consistently with the indorsement.
 - (d) Except as otherwise provided in Subsection (3)(c), a payor bank or intermediary bank may disregard the indorsement and is not liable if the proceeds of the instrument are not received by the indorser or applied consistently with the indorsement.
- (4) Except for an indorsement covered by Subsection (3), if an instrument bears an indorsement using words to the effect that payment is to be made to the indorsee as agent, trustee, or other fiduciary for the benefit of the indorser or another person, the following rules apply:

- (a) Unless there is notice of breach of the fiduciary duty as provided in Section 4.34, a person who purchases the instrument from the indorsee or takes the instrument from the indorsee for collection or payment may pay the proceeds of payment or the value given for the instrument to the indorsee without regard to whether the indorsee violates a fiduciary duty to the indorser.
 - (b) A subsequent transferee of the instrument or person who pays the instrument is neither given notice nor otherwise affected by the restriction in the indorsement unless the transferee or payor knows that the fiduciary dealt with the instrument or its proceeds in breach of fiduciary duty.
- (5) The presence on an instrument of an instrument to which this Section applies does not prevent a purchaser of the instrument from becoming a holder in due course of the instrument unless the purchaser is a converter under Subsection (3) or has notice or knowledge of breach of a fiduciary duty as stated in Subsection (4).
- (6) In an action to enforce the obligation of a party to pay the instrument, the obligor has a defense if payment would violate an indorsement to which this Section applies and the payment is not permitted by this Section.

§4.27. Reacquisition.

- (1) Reacquisition of an instrument occurs if it is transferred to a former holder by negotiation or otherwise.
- (2) A former holder who reacquires the instrument may cancel indorsements made after the reacquirer first became a holder of the instrument.
- (3) Where the cancellation causes the instrument to be payable to the reacquirer or to bearer, the reacquirer may negotiate the instrument.
- (4) An indorser whose indorsement is canceled is discharged, and the discharge is effective against any subsequent holder.

SUBCHAPTER 4: ENFORCEMENT OF INSTRUMENTS

§4.28. Right to Enforce Instrument.

- (1) For the purposes of this Chapter, person entitled to enforce an instrument means:
 - (a) the holder of the instrument;
 - (b) a nonholder in possession of the instrument who has the rights of a holder; or
 - (c) a person not in possession of the instrument who is entitled to enforce the instrument pursuant to Section 4.36 or 4.57 (4).
- (2) A person may be entitled to enforce the instrument even though the person is not the owner of the instrument or is in wrongful possession of the instrument.

§4.29. Holder in Due Course.

- (1)** Subject to Subsection (3) "holder in due course" means the holder of an instrument if:
 - (a)** the instrument when issued or negotiated to the holder does not bear such apparent evidence of forgery or alteration or is not otherwise so irregular or incomplete as to call into question its authenticity; and
 - (b)** the holder took the instrument
 - i.** for value;
 - ii.** In good faith;
 - iii.** without notice that the instrument is overdue or has been dishonored or that there is an uncured default with respect to payment of another instrument issued as part of the same series;
 - iv.** without notice that the instrument contains an unauthorized signature or has been altered;
 - v.** without notice of any claim to the instrument described in Section 4.33; and
 - vi.** without notice that any party has a defense or claim in recoupment described in Section 4.32 of this Chapter.
- (2)** Notice of discharge of a party other than discharge in an insolvency proceeding, is not notice of a defense under Subsection (1), but discharge is effective against a person who became a holder in due course with notice of the discharge.
- (3)** Except to the extent a transferor or predecessor in interest has rights as a holder in due course, a person does not acquire rights of a holder in due course of an instrument taken
 - (a)** by legal process or by purchase in an execution, bankruptcy, or creditor's sale or similar proceeding;
 - (b)** by purchase as part of a bulk transaction not in ordinary course of business of the transferor; or
 - (c)** as the successor in interest to an estate or other organization.
- (4)** If, under Section 4.30 (1)(a), the promise of performance that is the consideration for an instrument has been partially performed, the holder may assert rights as a holder in due course of the instrument only to the fraction of the amount payable under the instrument equal to the value of the partial performance divided by the value of the promised performance.

- (5) If the person entitled to enforce an instrument has only a security interest in the instrument and the person obliged to pay the instrument has a defense, claim in recoupment, or claim to the instrument that may be asserted against the person who granted the security interest, the person entitled to enforce the instrument may assert rights as a holder in due course only to an amount payable under the instrument which, at the time of enforcement of the instrument, does not exceed the amount of the unpaid obligation secured.
- (6) To be effective, notice must be received at a time and in a manner that gives a reasonable opportunity to act on it.
- (7) This Section is subject to any law limiting status as a holder in due course in particular classes of transactions.

§4.30. Value and Consideration.

- (1) An instrument is issued or transferred for value if:
 - (a) the instrument is issued or transferred for a promise of performance, to the extent the promise has been performed;
 - (b) the transferee acquires a security interest or other lien in the instrument other than a lien obtained by judicial proceeding;
 - (c) the instrument is issued or transferred as payment of, or as security for, an antecedent claim against any person, whether or not the claim is due;
 - (d) the instrument is issued or transferred in exchange for a negotiable instrument; or
 - (e) the instrument is issued or transferred in exchange for the incurring of an irrevocable obligation to a third party by the person taking the instrument.
- (2) For the purposes of this Section "consideration" means any consideration sufficient to support a simple contract.
- (3) The drawer or maker of an instrument has a defense if the instrument is issued without consideration. If an instrument is issued for a promise of performance, the issuer has a defense to the extent performance of the promise is due and the promise has not been performed.
- (4) Where an instrument is issued for value as stated in Subsection (1), the instrument is also issued for consideration.

§4.31. Overdue Instrument.

- (1) An instrument payable on demand becomes overdue at the earliest of the following times:
 - (a) on the day after the day demand for payment is duly made;

- (b) if the instrument is a check, 180 days after its date; or
 - (c) if the instrument is not a check, when the instrument has been outstanding for a period of time after its date which is unreasonably long under the circumstances of the particular case in light of the nature of the instrument and usage of the trade.
- (2) With respect to an instrument payable at a definite time the following rules apply:
 - (a) If the principal is payable in installments and a due date has not been accelerated, the instrument becomes overdue upon default under the instrument for nonpayment of an installment, and the instrument remains overdue until the default is cured.
 - (b) If the principal is not payable in installments and the due date has not been accelerated, the instrument becomes overdue on the day after the due date.
 - (c) If a due date with respect to principal has been accelerated, the instrument becomes overdue on the day after the accelerated due date.
- (3) Unless the due date of principal has been accelerated, an instrument does not become overdue if there is default in payment of interest but no default in payment of principal.

§4.32. Defenses.

- (1) Except as otherwise provided in this Section, the right to enforce the obligation of a party to pay an instrument is subject to the following:
 - (a) a defense of the obligor based on (i) infancy of the obligor to the extent it is a defense to a simple contract, (ii) duress, lack of legal capacity, or illegality of the transaction which, under other law, nullifies the obligation of the obligor, (iii) fraud that induced the obligor to sign the instrument with neither knowledge nor reasonable opportunity to learn of its character or its essential terms, or (iv) discharge of the obligor in insolvency proceedings;
 - (b) a defense of the obligor stated in another Chapter or a defense of the obligor that would be available if the person entitled to enforce the instrument were enforcing a right to payment under a simple contract; and
 - (c) a claim in recoupment of the obligor against the original payee of the instrument if the claim arose from the transaction that gave rise to the instrument; but the claim of the obligor may be asserted against a transferee of the instrument only to reduce the amount owing on the instrument at the time the action is brought.
- (2) The right of a holder in due course to enforce the obligation of a party to pay the instrument is subject to defenses of the obligor stated in Subsection (1)(a), but is not subject to defenses of the obligor stated in Subsection (1)(b) or claims in recoupment stated in Subsection (1)(c) against a person other than the holder.

- (3) Except as stated in Subsection (4), in an action to enforce the obligation of a party to pay the instrument, the obligor may not assert against the person entitled to enforce the instrument a defense, claim in recoupment, or claim to the instrument of another person, but the other person's claim to the instrument may be asserted by the obligor if the other person is joined in the action and personally asserts the claim against the person entitled to enforce the instrument.
- (4) An obligor is not obliged to pay the instrument if the person seeking enforcement of the instrument does not have rights of a holder in due course and the obligor proves that the instrument is a lost or stolen instrument.
- (5) In an action to enforce the obligation of an accommodation party to pay an instrument, the accommodation party may assert against the person entitled to enforce the instrument any defense or claim in recoupment under Subsection (1) that the accommodated party could assert against the person entitled to enforce the instrument, except the defenses of discharge in insolvency proceedings, infancy, and lack of legal capacity.

§4.33. Claims to Instrument.

- (1) A person taking an instrument other than a person having rights of a holder in due course is subject to a claim of a property or possessory right in the instrument or its proceeds, including a claim to rescind a negotiation and to recover the instrument or its proceeds.
- (2) A person having rights of a holder in due course takes free of the claim to the instrument.

§4.34. Notice of Breach of Fiduciary Duty.

- (1) For the purposes of this Section, a fiduciary means an agent, trustee, partner, corporate officer or director, or other representative owing a fiduciary duty with respect to an instrument and a represented person means the principal, beneficiary, partnership, corporation, or other person to whom the fiduciary duty is owed.
- (2) Where an instrument is taken from a fiduciary for payment or collection or for value, the taker has knowledge of the fiduciary status of the fiduciary, and the represented person makes a claim to the instrument or its proceeds on the basis that the transaction of the fiduciary is a breach of fiduciary duty, the following rules apply:
 - (a) Notice of breach of fiduciary duty by the fiduciary is notice of the claim of the represented person;
 - (b) In the case of an instrument payable to the represented person or the fiduciary as such, the taker has notice of the breach of fiduciary duty if the instrument is
 - i. taken in payment of or as security for a debt known by the taker to be the personal debt of the fiduciary;
 - ii. taken in a transaction known by the taker to be for the personal benefit of the fiduciary; or

- iii. deposited to an account other than an account of the fiduciary, as such, or an account of the represented person.
- (c) If an instrument is issued by the represented person or the fiduciary as such, and made payable to the fiduciary personally, the taker does not have notice of the breach of fiduciary duty unless the taker knows of the breach of fiduciary duty.
- (d) If an instrument is issued by the represented person or the fiduciary as such, to the taker as payee, the taker has notice of the breach of fiduciary duty if the instrument is
 - i. taken in payment of or as security for a debt known by the taker to be the personal debt of the fiduciary;
 - ii. taken in a transaction known by the taker to be for the personal benefit of the fiduciary; or
 - iii. deposited to an account other than an account of the fiduciary, as such, or an account of the represented person.

§4.35. Proof of Signatures and Status as Holder in Due Course.

- (1) In an action with respect to an instrument, the authenticity of, and authority to make, each signature on the instrument is admitted unless specifically denied in the pleadings.
- (2) If the validity of a signature is denied in the pleadings, the burden of establishing validity is on the person claiming validity, but the signature is presumed to be authentic and authorized unless the action is to enforce the liability of the purported signer and the signer is dead or incompetent at the time of trial of the issue of validity of the signature.
- (3) If an action to enforce the instrument is brought against a person as the undisclosed principal of a person who signed the instrument as a party to the instrument, the plaintiff has the burden of establishing that the defendant is liable on the instrument as a represented person under Section 4.41.
- (4) If the validity of signatures is admitted or proved and there is compliance with Subsection (1), a plaintiff producing the instrument is entitled to payment if the plaintiff proves entitlement to enforce the instrument under Section 4.28 (1), unless the defendant proves a defense or claim in recoupment.
- (5) If a defense or claim in recoupment is proved, the right to payment of the plaintiff is subject to the defense or claim, except to the extent the plaintiff proves that the plaintiff has rights of a holder in due course which are not subject to the defense or claim.

§4.36. Enforcement of Lost, Destroyed or Stolen Instrument.

- (1) A person not in possession of an instrument is entitled to enforce the instrument if:
 - (a) the person seeking to enforce the instrument was entitled to enforce it when loss of possession occurred, or has directly or indirectly acquired ownership of the instrument from a person who was entitled to enforce the instrument when loss of possession occurred;

- (b) the loss of possession was not the result of a transfer by the person or a lawful seizure; and
 - (c) the person cannot reasonably obtain possession of the instrument because the instrument was destroyed, its whereabouts cannot be determined, or it is in the wrongful possession of an unknown person or a person that cannot be found or is not amenable to service of process.
- (2) A person seeking enforcement of an instrument under Subsection (1) must prove the terms of the instrument and the person's right to enforce the instrument. If that proof is made, Section 4.35 applies to the case as if the person seeking enforcement had produced the instrument.
- (3) The court may not enter judgment in favor of the person seeking enforcement unless it finds that the person required to pay the instrument is adequately protected against loss that might occur by reason of a claim by another person to enforce the instrument.

§4.37. Effect of Instrument on Obligation for Which Taken.

- (1) Unless otherwise agreed, if certified check, cashier's check or teller's check is taken for an obligation, the obligation is discharged to the same extent discharge would result if an amount of money equal to the amount of the instrument were taken in payment of the obligation but discharge of the obligation does not affect any liability that the obligor may have as an indorser of the instrument.
- (2) Unless otherwise agreed and except as provided in Subsection (1), if a note or an uncertified check is taken for an obligation, the obligation is suspended to the same extent the obligation would be discharged if an amount of money equal to the amount of the instrument were taken, and the following rules apply:
 - (a) In the case of an uncertified check, suspension of the obligation continues until dishonor of the check or until it is paid or certified. Payment or certification of the check results in discharge of the obligation to the extent of the amount of the check.
 - (b) In the case of a note, suspension of the obligation continues until dishonor of the note or until it is paid. Payment of the note results in discharge of the obligation to the extent of the payment.
 - (c) Except as provided in Subsection (2)(d), if the check or note is dishonored and the obligee of the obligation for which the instrument was taken is the person entitled to enforce the instrument, the obligee may enforce either the instrument or the obligation. In the case of an instrument of a third person which is negotiated to the obligee by the obligor, discharge of the obligor on the instrument also discharges the obligation.
 - (d) If the person entitled to enforce the instrument taken for an obligation is a person other than the obligee, the obligee may not enforce the obligation to the extent the obligation is suspended.

- (e) If the obligee is the person entitled to enforce the instrument but no longer has possession of it because it was lost, stolen, or destroyed, the obligation may not be enforced to the extent of the amount payable on the instrument, and to that extent the obligee's rights against the obligor are limited to enforcement of the instrument.
- (3) If an instrument other than one described in Subsection (1) or (2) is taken for an obligation, the effect is that stated in Subsection (1)(a) if the instrument is one on which a bank is liable as maker or acceptor or that stated in Subsection (2) in any other case.

§4.38. Accord and Satisfaction by Use of Instrument.

- (1) If a person against whom a claim is asserted proves that that person in good faith tendered an instrument to the claimant as full satisfaction of the claim, the amount of the claim was unliquidated or subject to a bona fide dispute, and the claimant obtained payment of the instrument, the following rules apply.
- (2) Unless Subsection (3) applies, the claim is discharged if the person against whom the claim is asserted proves that the instrument or an accompanying written communication contained an express statement to the effect that the instrument was tendered as full satisfaction of the claim.
- (3) Subject to Subsection (4), a claim is not discharged under Subsection (2) if either of the following applies:
 - (a) The claimant, if an organization, proves that within a reasonable time before the tender, the claimant sent a conspicuous statement to the person against whom the claim is asserted that communications concerning disputed debts, including an instrument tendered as full satisfaction of a debt, are to be sent to a designated person, office, or place, and the instrument or accompanying communication was not received by that designated person, office, or place.
 - (b) The claimant, whether or not an organization, proves that within ninety (90) days after payment of the instrument, the claimant tendered repayment of the amount of the instrument to the person against whom the claim is asserted. This paragraph does not apply if the claimant is an organization that that sent a statement complying with Subsection (3)(a).
- (4) A claim is discharged if the person against whom the claim is asserted proves that within a reasonable time before collection of the instrument was initiated, the claimant, or an agent of the claimant having direct responsibility with respect to the disputed obligation, knew that the instrument was tendered in full satisfaction of the claim.

§4.39. Lost, Destroyed or Stolen Checks.

- (1) In this Section, unless the context otherwise indicates, the following words and phrases shall have the meanings hereunder assigned to them:
 - (a) "**Check**" means a cashier's check, teller's check, or certified check.

- (b) "**Claimant**" means a person who claims the right to receive the amount of a cashier's check, teller's check, or certified check that was lost, destroyed, or stolen.
 - (c) "**Declaration of loss**" means a statement, made in a record under penalty of perjury, to the effect that
 - i. the declarer lost possession of a check,
 - ii. the declarer is the drawer or payee of the check, in the case of a certified check, or the remitter or payee of the check, in the case of a cashier's check or teller's check,
 - iii. the loss of possession was not the result of a transfer by the declarer or a lawful seizure, and
 - iv. the declarer cannot reasonably obtain possession of the check because the check was destroyed, its whereabouts cannot be determined, or it is in the wrongful possession of an unknown person or a person that cannot be found or is not amenable to service of process.
 - (d) "**Obligated bank**" means the issuer of a cashier's check or teller's check or the acceptor of a certified check.
- (2) A claimant may assert a claim to the amount of a check by a communication to the obligated bank describing the check with reasonable certainty and requesting payment of the amount of the check, if,
- (a) the claimant is the drawer or payee of a certified check or the remitter or payee of a cashier's check or teller's check;
 - (b) the communication contains or is accompanied by a declaration of loss of the claimant with respect to the check;
 - (c) the communication is received at a time and in a manner affording the bank a reasonable time to act on it before the check is paid; and
 - (d) the claimant provides reasonable identification if requested by the obligated bank.
- (3) Delivery of a declaration of loss is a warranty of the truth of the statements made in the declaration.
- (4) If a claim is asserted in compliance with this Subsection, the following rules apply:
- (a) The claim becomes enforceable at the later of
 - i. the time the claim is asserted; or

- ii. the 90th day following the date of the check, in the case of a cashier's check or teller's check; or
 - iii. the 90th day following the date of the acceptance, in the case of a certified check.
- (b) Until the claim becomes enforceable, it has no legal effect and the obligated bank may pay the check or, in the case of a teller's check, may permit the drawee to pay the check. Payment to a person entitled to enforce the check discharges all liability of the obligated bank with respect to the check.
- (c) If the claim becomes enforceable before the check is presented for payment, the obligated bank is not obliged to pay the check.
- (d) When the claim becomes enforceable, the obligated bank becomes obliged to pay the amount of the check to the claimant if payment of the check has not been made to a person entitled to enforce the check. Payment to the claimant discharges all liability of the obligated bank with respect to the check.
- (5) If the obligated bank pays the amount of a check to a claimant under Subsection (2)(d) and the check is presented for payment by a person having rights of a holder in due course, the claimant is obliged to refund the payment to the obligated bank if the check is paid, or pay the amount of the check to the person having rights of a holder in due course if the check is dishonored.
- (6) If a claimant has the right to assert a claim under Subsection (2) and is also a person entitled to enforce a cashier's check, teller's check, or certified check which is lost, destroyed, or stolen, the claimant may assert rights with respect to the check either under this Section or Section 4.36.

SUBCHAPTER 5: LIABILITY OF PARTIES

§4.40. Signature.

- (1) A person is not liable on an instrument unless (i) the person signed the instrument, or (ii) the person is represented by an agent or representative who signed the instrument and the signature is binding on the represented person under Section 4.41.
- (2) A signature may be made (i) manually or by means of a device or machine, and (ii) by the use of any name, including a trade or assumed name, or by a word, mark, or symbol executed or adopted by a person with present intention to authenticate a writing.

§4.41. Signature by Representative.

- (1) If a person acting, or purporting to act, as a representative signs an instrument by signing either the name of the represented person or the name of the signer, the represented person is bound by the signature to the same extent the represented person would be bound if the signature were on a simple contract. If the represented person is bound, the signature of the representative is the "authorized signature of the represented person" and the represented person is liable on the instrument, whether or not identified in the instrument.

- (2) If a representative signs the name of the representative to an instrument and the signature is an authorized signature of the represented person, the following rules apply:
 - (a) If the form of the signature shows unambiguously that the signature is made on behalf of the represented person who is identified in the instrument, the representative is not liable on the instrument.
 - (b) Subject to Subsection (3), if (i) the form of the signature does not show unambiguously that the signature is made in a representative capacity or (ii) the represented person is not identified in the instrument, the representative is liable on the instrument to a holder in due course that took the instrument without notice that the representative was not intended to be liable on the instrument.
 - (c) With respect to any other person, the representative is liable on the instrument unless the representative proves that the original parties did not intend the representative to be liable on the instrument.
- (3) If a representative signs the name of the representative as drawer of a check without indication of the representative status and the check is payable from an account of the represented person who is identified on the check, the signer is not liable on the check if the signature is an authorized signature of the represented person.

§4.42. Unauthorized Signature.

- (1) Unless otherwise provided in this Chapter, an unauthorized signature is ineffective except as the signature of the unauthorized signer in favor of a person who in good faith pays the instrument or takes it for value. An unauthorized signature may be ratified for all purposes of this Chapter.
- (2) If the signature of more than one person is required to constitute the authorized signature of an organization, the signature of the organization is unauthorized if one of the required signatures is lacking.
- (3) The civil or criminal liability of a person who makes an unauthorized signature is not affected by any provision of this Chapter which makes the unauthorized signature effective for the purposes of this Chapter.

§4.43. Imposters and Fictitious Payees.

- (1) If an impostor induces the issuer of an instrument to issue the instrument to the impostor, or to a person acting in concert with the impostor, by impersonating the payee of the instrument or a person authorized to act for the payee, an endorsement of the instrument by any person in the name of the payee is effective as the indorsement of the payee in favor of a person who, in good faith, pays the instrument or takes it for value or for collection.
- (2) If (i) a person whose intent determines to whom an instrument is payable does not intend the person identified as payee to have any interest in the instrument, or (ii) the person identified as payee of an instrument is a fictitious person, the following rules apply until the instrument is negotiated by special indorsement:

- (a) Any person in possession of the instrument is its holder.
 - (b) An indorsement by any person in the name of the payee stated in the instrument is effective as the indorsement of the payee in favor of a person who, in good faith, pays the instrument or takes it for value or for collection.
- (3) Under Subsection (1) or (2), an indorsement is made in the name of a payee if it is made in a name substantially similar to that of the payee or the instrument, whether or not indorsed, is deposited in a depository bank to an account in a name substantially similar to that of the payee.
- (4) With respect to an instrument to which Subsection (1) or (2) applies, if a person paying the instrument or taking it for value or for collection fails to exercise ordinary care in paying or taking the instrument and that failure substantially contributes to loss resulting from payment of the instrument, the person bearing the loss may recover from the person failing to exercise ordinary care to the extent the failure to exercise ordinary care contributed to the loss.

§4.44. Fraudulent Indorsement by Employees.

- (1) In this Section:
- (a) "**Employee**" includes an independent contractor and employee of an independent contractor retained by the employer.
 - (b) "**Fraudulent indorsement**" means (i) in the case of an instrument payable to the employer, a forged indorsement purporting to be that of the employer, or (ii) in the case of an instrument with respect to which the employer is the issuer, a forged indorsement purporting to be that of the person identified as payee.
 - (c) "**Responsibility**" with respect to instrument means authority (i) to sign or indorse instruments on behalf of the employer, (ii) to process instruments received by the employer for bookkeeping purposes, for deposit to an account, or for other disposition, (iii) to prepare or process instruments for issue in the name of the employer, (iv) to supply information determining the names or addresses of payees of instruments to be issued in the name of the employer, (v) to control the disposition of instruments to be issued in the name of the employer, or (vi) to act otherwise with respect to instruments in a responsible capacity. "Responsibility" does not include authority that merely allows an employee to have access to instruments or blank or incomplete instrument forms that are being stored or transported or are part of incoming or outgoing mail, or similar access.
- (2) For the purpose of determining the rights and liabilities of a person who, in good faith, pays an instrument or takes it for value or for collection, if an employer entrusted an employee with responsibility with respect to the instrument and the employee or a person acting in concert with the employee makes a fraudulent indorsement of the instrument, the indorsement is effective as the indorsement of the person to whom the instrument is payable if it is made in the name of that person.
- (3) If the person paying the instrument or taking it for value or for collection fails to exercise ordinary care in paying or taking the instrument and that failure substantially contributes to loss resulting from the fraud, the person bearing the loss may recover from the person failing to exercise ordinary care to the extent the failure to exercise ordinary care contributed to the loss.

- (4) Under Subsection (2), an indorsement is made in the name of the person to whom an instrument is payable if it is made in a name substantially similar to the name of that person or the instrument, whether or not indorsed, is deposited in a depository bank to an account in a name substantially similar to the name of that person.

§4.45. Negligence Contributing to Forged Signature or Alteration of Instrument.

- (1) A person whose failure to exercise ordinary care substantially contributes to an alteration of an instrument or to the making of a forged signature on an instrument is precluded from asserting the alteration or the forgery against a person who, in good faith, pays the instrument or takes it for value or for collection.
- (2) Under Subsection (1), if the person asserting the preclusion fails to exercise ordinary care in paying or taking the instrument and that failure substantially contributes to loss, the loss is allocated between the person precluded and the person asserting the preclusion according to the extent to which the failure of each to exercise ordinary care contributed to the loss.
- (3) Under Subsection (1), the burden of proving failure to exercise ordinary care is on the person asserting the preclusion and under Subsection (2), the burden of proving failure to exercise ordinary care is on the person precluded.

§4.46. Alteration.

- (1) Except as provided in Subsection (2), an alteration fraudulently made discharges a party whose obligation is affected by the alteration unless that party assents or is precluded from asserting the alteration. No other alteration discharges a party, and the instrument may be enforced according to its original terms.
- (2) A payor bank or drawee paying a fraudulently altered instrument or a person taking it for value, in good faith and without notice of the alteration, may enforce rights with respect to the instrument (i) according to its original terms, or (ii) in the case of an incomplete instrument altered by unauthorized completion, according to its terms as completed.

§4.47. Drawee not Liable on Unaccepted Draft.

A check or other draft does not of itself operate as an assignment of funds in the hands of the drawee available for its payment, and the drawee is not liable on the instrument until the drawee accepts it.

§4.48. Acceptance of Draft.

- (1) For the purposes of this Chapter, an acceptance must be written on the draft and may consist of the drawee's signature alone.
- (2) Acceptance may be made at any time and becomes effective when notification pursuant to instructions is given or the accepted draft is delivered for the purpose of giving rights on the acceptance to any person.

- (3) A draft may be accepted although it has not been signed by the drawer, is otherwise incomplete, is overdue, or has been dishonored.
- (4) If a draft is payable at a fixed period after sight and the acceptor fails to date the acceptance, the holder may complete the acceptance by supplying a date in good faith.
- (5) "Certified check" means a check accepted by the bank on which it is drawn. Acceptance may be made as stated in Subsection (a) or by a writing on the check which indicates that the check is certified.
- (6) The drawee of a check has no obligation to certify the check, and refusal to certify is not dishonor of the check.

§4.49. Acceptance Varying Draft.

- (1) If the terms of a drawee's acceptance vary from the terms of the draft as presented, the holder may refuse the acceptance and treat the draft as dishonored and in that case, the drawee may cancel the acceptance.
- (2) The terms of a draft are not varied by an acceptance to pay at a particular bank or place in Liberia, unless the acceptance states that the draft is to be paid only at that bank or place.
- (3) If the holder assents to an acceptance varying the terms of a draft, the obligation of each drawer and indorser that does not expressly assent to the acceptance is discharged.

§4.50. Refusal to Pay Checks.

- (1) In this Section, "obligated bank" means the acceptor of a certified check or the issuer of a cashier's check or teller's check bought from the issuer.
- (2) If the obligated bank wrongfully (i) refuses to pay a cashier's check or certified check, (ii) stops payment of a teller's check, or (iii) refuses to pay a dishonored teller's check, the person asserting the right to enforce the check is entitled to compensation for expenses and loss of interest resulting from the nonpayment and may recover consequential damages if the obligated bank refuses to pay after receiving notice of particular circumstances giving rise to the damages.
- (3) Expenses or consequential damages under Subsection (2) are not recoverable if the refusal of the obligated bank to pay occurs because (i) the bank suspends payments, (ii) the obligated bank asserts a claim or defense of the bank that it has reasonable grounds to believe is available against the person entitled to enforce the instrument, (iii) the obligated bank has a reasonable doubt whether the person demanding payment is the person entitled to enforce the instrument, or (iv) payment is prohibited by law.

§4.51. Obligation of Issuer of Note or Check.

- (1) The issuer of a note or cashier's check or other draft drawn on the drawer is obliged to pay the instrument (i) according to its terms at the time it was issued or, if not issued, at the time it first came into possession of a holder, or (ii) if the issuer signed an incomplete instrument, according to its terms when completed, to the extent stated in Sections 4.16 and 4.46.

- (2) The obligation is owed to a person entitled to enforce the instrument or to an indorser who paid the instrument under Section 4.54.

§4.52. Obligation of Acceptor.

- (1) The acceptor of a draft is obliged to pay the draft (i) according to its terms at the time it was accepted, even though the acceptance states that the draft is payable as originally drawn or equivalent terms, (ii) if the acceptance varies the terms of the draft, according to the terms of the draft as varied, or (iii) if the acceptance is of a draft that is an incomplete instrument, according to its terms when completed, to the extent stated in Sections 4.16 and 4.46.
- (2) The obligation is owed to a person entitled to enforce the draft or to the drawer or an indorser who paid the draft under Section 4.53 and 4.54.
- (3) If the certification of a check or other acceptance of a draft states the amount certified or accepted, the obligation of the acceptor is that amount.
- (4) If (i) the certification or acceptance does not state an amount, (ii) the amount of the instrument is subsequently raised, and (iii) the instrument is then negotiated to a holder in due course, the obligation of the acceptor is the amount of the instrument at the time it was taken by the holder in due course.

§4.53. Obligation of Drawer.

- (1) This Section does not apply to cashier's checks or other drafts drawn on the drawer.
- (2) If an unaccepted draft is dishonored, the drawer is obliged to pay the draft (i) according to its terms at the time it was issued or, if not issued, at the time it first came into possession of a holder, or (ii) if the drawer signed an incomplete instrument, according to its terms when completed, to the extent stated in Sections 4.16 and 4.46. The obligation is owed to a person entitled to enforce the draft or to an indorser who paid the draft under Section 4.54.
- (3) If a draft is accepted by a bank, the drawer is discharged, regardless of when or by whom acceptance was obtained.
- (4) If a draft is accepted and the acceptor is not a bank, the obligation of the drawer to pay the draft if the draft is dishonored by the acceptor is the same as the obligation of an indorser under Section 4.54.
- (5) If a draft states that it is drawn without recourse or otherwise disclaims liability of the drawer to pay the draft, the drawer is not liable under Subsection (2) to pay the draft if the draft is not a check. A disclaimer of the liability stated in Subsection (2) is not effective if the draft is a check.
- (6) If (i) a check is not presented for payment or given to a depository bank for collection within thirty (30) days after its date, (ii) the drawee suspends payments after expiration of the 30-day period without paying the check, and (iii) because of the suspension of payments, the drawer is deprived of funds maintained with the drawee to cover payment of the check, the drawer to the extent deprived of funds may discharge its obligation to pay the check by assigning to the person entitled to enforce the check the rights of the drawer against the drawee with respect to the funds.

§4.54. Obligation of Indorser.

- (1) Subject to Subsections (2), (3), and (4) and to Section 4.58, if an instrument is dishonored, an indorser is obliged to pay the amount due on the instrument (i) according to the terms of the instrument at the time it was indorsed, or (ii) if the indorser indorsed an incomplete instrument, according to its terms when completed, to the extent stated in Sections 4.16 and 4.46. The obligation of the indorser is owed to a person entitled to enforce the instrument or to a subsequent indorser who paid the instrument under this Section.
- (2) If an indorsement states that it is made without recourse or otherwise disclaims liability of the indorser, the indorser is not liable under Subsection (1) to pay the instrument.
- (3) If notice of dishonor of an instrument is required by Section 4.62 and notice of dishonor complying with that Section is not given to an indorser, the liability of the indorser under Subsection (1) is discharged.
- (4) If a draft is accepted by a bank after an indorsement is made, the liability of the indorser under Subsection (1) is discharged.
- (5) If an indorser of a check is liable under Subsection (1) and the check is not presented for payment, or given to a depository bank for collection, within thirty (30) days after the day the indorsement was made, the liability of the indorser under Subsection (1) is discharged.

§4.55. Transfer Warranties.

- (1) A person who transfers an instrument for consideration warrants to the transferee and, if the transfer is by indorsement, to any subsequent transferee that:
 - (a) the warrantor is a person entitled to enforce the instrument;
 - (b) all signatures on the instrument are authentic and authorized;
 - (c) the instrument has not been altered;
 - (d) the instrument is not subject to a defense or claim in recoupment of any party which can be asserted against the warrantor; and
 - (e) the warrantor has no knowledge of any insolvency proceeding commenced with respect to the maker or acceptor or, in the case of an unaccepted draft, the drawer.
- (2) A person to whom the warranties under Subsection (1) are made and who took the instrument in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, but not more than the amount of the instrument plus expenses and loss of interest incurred as a result of the breach.

- (3) The warranties stated in Subsection (1) cannot be disclaimed with respect to checks, unless notice of a claim for breach of warranty is given to the warrantor within thirty (30) days after the claimant has reason to know of the breach and the identity of the warrantor, the liability of the warrantor under Subsection (2) is discharged to the extent of any loss caused by the delay in giving notice of the claim.
- (4) A cause of action for breach of warranty under this Section accrues when the claimant has reason to know of the breach.

§4.56. Presentment Warranties.

- (1) If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft, (i) the person obtaining payment or acceptance, at the time of presentment, and (ii) a previous transferor of the draft, at the time of transfer, warrant to the drawee making payment or accepting the draft in good faith that:
 - (a) the warrantor is, or was, at the time the warrantor transferred the draft, a person entitled to enforce the draft or authorized to obtain payment or acceptance of the draft on behalf of a person entitled to enforce the draft;
 - (b) the draft has not been altered;
 - (c) the warrantor has no knowledge that the signature of the drawer of the draft is unauthorized.
- (2) A drawee making payment may recover from any warrantor damages for breach of warranty equal to the amount paid by the drawee less the amount the drawee received or is entitled to receive from the drawer because of the payment plus compensation for expenses and loss of interest resulting from the breach.
- (3) The right of the drawee to recover damages under this Subsection (2) is not affected by any failure of the drawee to exercise ordinary care in making payment.
- (4) If the drawee accepts the draft, breach of warranty is a defense to the obligation of the acceptor. If the acceptor makes payment with respect to the draft, the acceptor is entitled to recover from any warrantor for breach of warranty the amounts stated in Subsection (2).
- (5) If a drawee asserts a claim for breach of warranty under Subsection (1) based on an unauthorized indorsement of the draft or an alteration of the draft, the warrantor may defend by proving that the indorsement is effective under Section 4.43 or the drawer is precluded under Section 4.45 from asserting against the drawee the unauthorized indorsement or alteration.
- (6) If (i) a dishonored draft is presented for payment to the drawer or an indorser or (ii) any other instrument is presented for payment to a party obliged to pay the instrument, and (iii) payment is received, the following rules apply:
 - (a) The person obtaining payment and a prior transferor of the instrument warrant to the person making payment in good faith that the warrantor is, or was, at the time the warrantor transferred the instrument, a person entitled to enforce the instrument or authorized to obtain payment on behalf of a person entitled to enforce the instrument.

- (b) The person making payment may recover from any warrantor for breach of warranty an amount equal to the amount paid plus expenses and loss of interest resulting from the breach.
- (7) The warranties stated in Subsections (1) and (6) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within thirty (30) days after the claimant has reason to know of the breach and the identity of the warrantor, the liability of the warrantor under Subsection (2) or (6)(b) is discharged to the extent of any loss caused by the delay in giving notice of the claim.
- (8) A cause of action for breach of warranty under this Section accrues when the claimant has reason to know of the breach.

§4.57. Payment or Acceptance by Mistake.

- (1) Except as provided in Subsection (3), if the drawee of a draft pays or accepts the draft and the drawee acted on the mistaken belief that (i) payment of the draft had not been stopped or (ii) the signature of the drawer of the draft was authorized, the drawee may recover the amount of the draft from the person to whom or for whose benefit payment was made or, in the case of acceptance, may revoke the acceptance. Rights of the drawee under this Subsection are not affected by failure of the drawee to exercise ordinary care in paying or accepting the draft.
- (2) Except as provided in Subsection (3), if an instrument has been paid or accepted by mistake and the case is not covered by Subsection (1), the person paying or accepting may, to the extent permitted by the law governing mistake and restitution, (1) recover the payment from the person to whom or for whose benefit payment was made or (ii) in the case of acceptance, may revoke the acceptance.
- (3) The remedies provided by Subsection (1) or (2) may not be asserted against a person who took the instrument in good faith and for value or who in good faith changed position in reliance on the payment or acceptance. This Subsection does not limit remedies provided by Section 4.56.
- (4) If an instrument is paid or accepted by mistake and the payor or acceptor recovers payment or revokes acceptance under Subsection (1) or (2), the instrument is deemed not to have been paid or accepted and is treated as dishonored, and the person from whom payment is recovered has rights as a person entitled to enforce the dishonored instrument.

§4.58. Instrument Signed for Accommodation.

- (1) If an instrument is issued for value given for the benefit of a party to the instrument ("accommodated party") and another party to the instrument ("accommodation party") signs the instrument for the purpose of incurring liability on the instrument without being a direct beneficiary of the value given for the instrument, the instrument is signed by the accommodation party "for accommodation".
- (2) An accommodation party may sign the instrument as maker, drawer, acceptor, or indorser and, subject to Subsection (4), is obliged to pay the instrument in the capacity in which the accommodation party signs. The obligation of an accommodation party may be enforced notwithstanding any statute of frauds and whether or not the accommodation party receives consideration for the accommodation.

- (3) A person signing an instrument is presumed to be an accommodation party and there is notice that the instrument is signed for accommodation if the signature is an anomalous indorsement or is accompanied by words indicating that the signer is acting as surety or guarantor with respect to the obligation of another party to the instrument.
- (4) Except as provided in Section 4.69, the obligation of an accommodation party to pay the instrument is not affected by the fact that the person enforcing the obligation had notice when the instrument was taken by that person that the accommodation party signed the instrument for accommodation.
- (5) If the signature of a party to an instrument is accompanied by words indicating unambiguously that the party is guaranteeing collection rather than payment of the obligation of another party to the instrument, the signer is obliged to pay the amount due on the instrument to a person entitled to enforce the instrument only if (i) execution of judgment against the other party has been returned unsatisfied, (ii) the other party is insolvent or in an insolvency proceeding, (iii) the other party cannot be served with process, or (iv) it is otherwise apparent that payment cannot be obtained from the other party.
- (6) If the signature of a party to an instrument is accompanied by words indicating that the party guarantees payment or the signer signs the instrument as an accommodation party in some other manner that does not unambiguously indicate an intention to guarantee collection rather than payment, the signer is obliged to pay the amount due on the instrument to a person entitled to enforce the instrument in the same circumstances as the accommodated party would be obliged, without prior resort to the accommodated party by the person entitled to enforce the instrument.
- (7) An accommodation party who pays the instrument is entitled to reimbursement from the accommodated party and is entitled to enforce the instrument against the accommodated party. An accommodation party may obtain relief that requires the accommodated party to perform its obligations on the instrument.
- (8) An accommodated party that pays the instrument has no right of recourse against, and is not entitled to contribution from, an accommodation party.

§4.59. Conversion of Instrument.

- (1) An instrument is also converted if it is taken by transfer, other than a negotiation, from a person not entitled to enforce the instrument or a bank makes or obtains payment with respect to the instrument for a person not entitled to enforce the instrument or receive payment. An action for conversion of an instrument may not be brought by (i) the issuer or acceptor of the instrument or (ii) a payee or indorsee who did not receive delivery of the instrument either directly or through delivery to an agent or a co-payee.
- (2) In an action under Subsection (a), the measure of liability is presumed to be the amount payable on the instrument, but recovery may not exceed the amount of the plaintiff's interest in the instrument.
- (3) A representative, other than a depository bank, who has in good faith dealt with an instrument or its proceeds on behalf of one who was not the person entitled to enforce the instrument is not liable in conversion to that person beyond the amount of any proceeds that it has not paid out.

- (4) Without prejudice to the provisions in Subsection (1), (2) and (3), the law applicable to conversation of personal property applies to instruments.

SUBCHAPTER 6: DISHONOR

§4.60. Presentment.

- (1) "Presentment" means a demand made by or on behalf of a person entitled to enforce an instrument (i) to pay the instrument made to the drawee or a party obliged to pay the instrument or, in the case of a note or accepted draft payable at a bank, to the bank, or (ii) to accept a draft made to the drawee.
- (2) The following rules on presentment are subject to agreement of the parties:
- (a) Presentment may be made at the place of payment of the instrument and must be made at the place of payment if the instrument is payable at a bank in the Liberia may be made by any commercially reasonable means, including an oral, written, or electronic communication; is effective when the demand for payment or acceptance is received by the person to whom presentment is made; and is effective if made to any one of two or more makers, acceptors, drawees, or other payors.
- (b) Upon demand of the person to whom presentment is made, the person making presentment must (i) exhibit the instrument, (ii) give reasonable identification and, if presentment is made on behalf of another person, reasonable evidence of authority to do so, and (iii) sign a receipt on the instrument for any payment made or surrender the instrument if full payment is made.
- (c) Without dishonoring the instrument, the party to whom presentment is made may (i) return the instrument for lack of a necessary indorsement, or (ii) refuse payment or acceptance for failure of the presentment to comply with the terms of the instrument, an agreement of the parties, or other applicable law or rule.
- (d) The party to whom presentment is made may treat presentment as occurring on the next business day after the day of presentment if the party to whom presentment is made has established a cut-off hour for the receipt and processing of instrument presented for payment or acceptance and presentment is made after the cut-off hour.

§4.61. Dishonor.

- (1) Dishonor of a note is governed by the following rules:
- (a) If the note is payable on demand, the note is dishonored if presentment is duly made to the maker and the note is not paid on the day of presentment.
- (b) If the note is not payable on demand and is payable at or through a bank or the terms of the note require presentment, the note is dishonored if presentment is duly made and the note is not paid on the day it becomes payable or the day of presentment, whichever is later.

- (c) If the note is not payable on demand and Subsection (1)(b) does not apply, the note is dishonored if it is not paid on the day it becomes payable.
- (2) Dishonor of an unaccepted draft other than a documentary draft is governed by the following rules:

 - (a) If a check is duly presented for payment to the payor bank otherwise than for immediate payment over the counter, the check is dishonored if the payor bank makes timely return of the check or sends timely notice of dishonor or nonpayment or becomes accountable for the amount of the check.
 - (b) If a draft is payable on demand and Subsection (2)(a) does not apply, the draft is dishonored if presentment for payment is duly made to the drawee and the draft is not paid on the day of presentment.
 - (c) If a draft is payable on a date stated in the draft, the draft is dishonored if (i) presentment for payment is duly made to the drawee and payment is not made on the day the draft becomes payable or the day of presentment, whichever is later, or (ii) presentment for acceptance is duly made before the day the draft becomes payable and the draft is not accepted on the day of presentment.
 - (d) If a draft is payable on the expiration of a period of time after sight or acceptance, the draft is dishonored if presentment for acceptance is duly made and the draft is not accepted on the day of presentment.
- (3) Dishonor of an unaccepted documentary draft occurs according to the rules stated in Subsection (2)(b), (c), and (d), except that payment or acceptance may be delayed without dishonor until no later than the close of the third business day of the drawee following the day on which payment or acceptance is required.
- (4) Dishonor of an accepted draft is governed by the following rules:

 - (a) If the draft is payable on demand, the draft is dishonored if presentment for payment is duly made to the acceptor and the draft is not paid on the day of presentment.
 - (b) If the draft is not payable on demand, the draft is dishonored if presentment for payment is duly made to the acceptor and payment is not made on the day it becomes payable or the day of presentment, whichever is later.
- (5) In any case in which presentment is otherwise required for dishonor under this Section and presentment is excused under Section 4.63 dishonor occurs without presentment if the instrument is not duly accepted or paid.
- (6) If a draft is dishonored because timely acceptance of the draft was not made and the person entitled to demand acceptance consents to a late acceptance, from the time of acceptance the draft is treated as never having been dishonored.

§4.62. Notice of Dishonor.

- (1) The obligation of an indorser stated in Section 4.54 and the obligation of a drawer stated in Section 4.53 may not be enforced unless (i) the indorser or drawer is given notice of dishonor of the instrument complying with this section or (ii) notice of dishonor is excused under Section 4.63.
- (2) Notice of dishonor may be given by any person; may be given by any commercially reasonable means, including an oral, written, or electronic communication; and is sufficient if it reasonably identifies the instrument and indicates that the instrument has been dishonored or has not been paid or accepted. Return of an instrument given to a bank for collection is sufficient notice of dishonor.
- (3) Subject to Section 4.63 with respect to an instrument taken for collection by a collecting bank, notice of dishonor must be given (i) by the bank before midnight of the next banking day following the banking day on which the bank receives notice of dishonor of the instrument, or (ii) by any other person within thirty (30) days following the day on which the person receives notice of dishonor.
- (4) With respect to any other instrument, notice of dishonor must be given within thirty (30) days following the day on which dishonor occurs.

§4.63. Excused Presentment and Notice of Dishonor.

- (1) Presentment for payment or acceptance of an instrument is excused if (i) the person entitled to present the instrument cannot with reasonable diligence make presentment, (ii) the maker or acceptor has repudiated an obligation to pay the instrument or is dead or in insolvency proceedings, (iii) by the terms of the instrument presentment is not necessary to enforce the obligation of indorsers or the drawer, (iv) the drawer or indorser whose obligation is being enforced has waived presentment or otherwise has no reason to expect or right to require that the instrument be paid or accepted, or (v) the drawer instructed the drawee not to pay or accept the draft or the drawee was not obligated to the drawer to pay the draft.
- (2) Notice of dishonor is excused if (i) by the terms of the instrument notice of dishonor is not necessary to enforce the obligation of a party to pay the instrument, or (ii) the party whose obligation is being enforced waived notice of dishonor. A waiver of presentment is also a waiver of notice of dishonor.
- (3) Delay in giving notice of dishonor is excused if the delay was caused by circumstances beyond the control of the person giving the notice and the person giving the notice exercised reasonable diligence after the cause of the delay ceased to operate.

§4.64. Evidence of Dishonor.

- (1) The following are admissible as evidence and create a presumption of dishonor and of any notice of dishonor stated:
 - (a) a document regular in form as provided in Subsection (2) which purports to be a protest;

- (b) a purported stamp or writing of the drawee, payor bank, or presenting bank on or accompanying the instrument stating that acceptance or payment has been refused unless reasons for the refusal are stated and the reasons are not consistent with dishonor;
 - (c) a book or record of the drawee, payor bank, or collecting bank, kept in the usual course of business which shows dishonor, even if there is no evidence of who made the entry.
- (2) A protest is a certificate of dishonor made by a notary public or other person authorized to administer oaths by the law of the place where dishonor occurs and may be made upon information satisfactory to that person.
 - (3) The protest must identify the instrument and certify either that presentment has been made or, if not made, the reason why it was not made, and that the instrument has been dishonored by nonacceptance or nonpayment. The protest may also certify that notice of dishonor has been given to some or all parties.

SUBCHAPTER 7: DISCHARGE AND PAYMENT

§4.65. Discharge and Effect of Discharge.

- (1) The obligation of a party to pay the instrument is discharged as stated in this Chapter or agreement with the party which would discharge an obligation to pay money under a simple contract.
- (2) Discharge of the obligation of a party is not effective against a person acquiring rights of a holder in due course of the instrument without notice of the discharge.

§4.66. Payment.

- (1) Subject to Subsection (2), an instrument is paid to the extent payment is made (i) by or on behalf of a party obliged to pay the instrument, and (ii) to a person entitled to enforce the instrument. To the extent of the payment, the obligation of the party obliged to pay the instrument is discharged even though payment is made with knowledge of a claim to the instrument under Section 4.33 by another person.
- (2) Subject to Subsection (5) a note is paid to the extent payment is made by or on behalf of a party obliged to pay the note to a person that formerly was entitled to enforce the note only if at the time of the payment the party obliged to pay has not received adequate notification that the note has been transferred and that payment is to be made to the transferee.
- (3) For the purposes of Subsection (2) a notification is adequate only if it is signed by the transferor or the transferee; reasonably identifies the transferred note; and provides an address at which payments subsequently can be made. Upon request, a transferee shall promptly furnish reasonable proof that the note has been transferred. Unless the transferee complies with the request, a payment to the person that formerly was entitled to enforce the note is effective for purposes of Subsection (4) even if the party obliged to pay the note has received a notification under this paragraph.

- (4) Subject to Subsection (7), to the extent of a payment under Subsections (a) and (b), the obligation of the party obliged to pay the instrument is discharged even though payment is made with knowledge of a claim to the instrument under Section 4.33 by another person.
- (5) Subject to Subsection (6), a transferee, or any party that has acquired rights in the instrument directly or indirectly from a transferee, including any such party that has rights as a holder in due course, is deemed to have notice of any payment that is made under Subsection (2) after the date that the note is transferred to the transferee but before the party obliged to pay the note receives adequate notification of the transfer.
- (6) The obligation of a party to pay the instrument is not discharged under Subsections (1) through (4) if:
 - (a) a claim to the instrument under Section 4.33 is enforceable against the party receiving payment and (i) payment is made with knowledge by the payor that payment is prohibited by injunction or similar process of a court of competent jurisdiction, or (ii) in the case of an instrument other than a cashier's check, teller's check, or certified check, the party making payment accepted, from the person having a claim to the instrument, indemnity against loss resulting from refusal to pay the person entitled to enforce the instrument; or
 - (b) the person making payment knows that the instrument is a stolen instrument and pays a person it knows is in wrongful possession of the instrument.

§4.67. Tender of Payment.

- (1) If tender of payment of an obligation to pay an instrument is made to a person entitled to enforce the instrument, the effect of tender is governed by principles of law applicable to tender of payment under a simple contract.
- (2) If tender of payment of an obligation to pay an instrument is made to a person entitled to enforce the instrument and the tender is refused, there is discharge, to the extent of the amount of the tender, of the obligation of an indorser or accommodation party having a right of recourse with respect to the obligation to which the tender relates.
- (3) If tender of payment of an amount due on an instrument is made to a person entitled to enforce the instrument, the obligation of the obligor to pay interest after the due date on the amount tendered is discharged.
- (4) If presentation is required with respect to an instrument and the obligor is able and ready to pay on the due date at every place of payment stated in the instrument, the obligor is deemed to have made tender of payment on the due date to the person entitled to enforce the instrument.

§4.68. Discharge by Cancellation or Renunciation.

- (1) A person entitled to enforce an instrument, with or without consideration, may discharge the obligation of a party to pay the instrument (i) by an intentional voluntary act, such as surrender of the instrument to the party, destruction, mutilation, or cancellation of the instrument, cancellation or striking out of the party's signature, or the addition of words to the instrument indicating discharge, or (ii) by agreeing not to sue or otherwise renouncing rights against the party by a signed record.

- (2) Cancellation or striking out of an indorsement pursuant to Subsection (1) does not affect the status and rights of a party derived from the indorsement.

§4.69. Discharge of Secondary Obligors.

- (1) If a person entitled to enforce an instrument releases the obligation of a principal obligor in whole or in part, and another party to the instrument is a secondary obligor with respect to the obligation of that principal obligor, the following rules apply:
 - (a) Any obligations of the principal obligor to the secondary obligor with respect to any previous payment by the secondary obligor are not affected. Unless the terms of the release preserve the secondary obligor's recourse, the principal obligor is discharged, to the extent of the release, from any other duties to the secondary obligor under this Chapter.
 - (b) Unless the terms of the release provide that the person entitled to enforce the instrument retains the right to enforce the instrument against the secondary obligor, the secondary obligor is discharged to the same extent as the principal obligor from any unperformed portion of its obligation on the instrument. If the instrument is a check and the obligation of the secondary obligor is based on an indorsement of the check, the secondary obligor is discharged without regard to the language or circumstances of the discharge or other release.
 - (c) If the secondary obligor is not discharged Subsection (1)(b), the secondary obligor is discharged to the extent of the value of the consideration for the release, and to the extent that the release would otherwise cause the secondary obligor a loss.
- (2) If a person entitled to enforce an instrument grants a principal obligor an extension of the time at which one or more payments are due on the instrument and another party to the instrument is a secondary obligor with respect to the obligation of that principal obligor, the following rules apply:
 - (a) Any obligations of the principal obligor to the secondary obligor with respect to any previous payment by the secondary obligor are not affected. Unless the terms of the extension preserve the secondary obligor's recourse, the extension correspondingly extends the time for performance of any other duties owed to the secondary obligor by the principal obligor under this Chapter.
 - (b) The secondary obligor is discharged to the extent that the extension would otherwise cause the secondary obligor a loss.
 - (c) To the extent that the secondary obligor is not discharged Subsection (2)(b), the secondary obligor may perform its obligations to a person entitled to enforce the instrument as if the time for payment had not been extended or, unless the terms of the extension provide that the person entitled to enforce the instrument retains the right to enforce the instrument against the secondary obligor as if the time for payment had not been extended, treat the time for performance of its obligations as having been extended correspondingly.

- (3)** If a person entitled to enforce an instrument agrees, with or without consideration, to a modification of the obligation of a principal obligor other than a complete or partial release or an extension of the due date and another party to the instrument is a secondary obligor with respect to the obligation of that principal obligor, the following rules apply:
- (a)** Any obligations of the principal obligor to the secondary obligor with respect to any previous payment by the secondary obligor are not affected. The modification correspondingly modifies any other duties owed to the secondary obligor by the principal obligor under this Chapter.
 - (b)** The secondary obligor is discharged from any unperformed portion of its obligation to the extent that the modification would otherwise cause the secondary obligor a loss.
 - (c)** To the extent that the secondary obligor is not discharged Subsection (3)(b), the secondary obligor may satisfy its obligation on the instrument as if the modification had not occurred, or treat its obligation on the instrument as having been modified correspondingly.
- (4)** If the obligation of a principal obligor is secured by an interest in collateral, another party to the instrument is a secondary obligor with respect to that obligation, and a person entitled to enforce the instrument impairs the value of the interest in collateral, the obligation of the secondary obligor is discharged to the extent of the impairment.
- (5)** The value of an interest in collateral is impaired to the extent the value of the interest is reduced to an amount less than the amount of the recourse of the secondary obligor, or the reduction in value of the interest causes an increase in the amount by which the amount of the recourse exceeds the value of the interest.
- (6)** For purposes of this Subsection, impairing the value of an interest in collateral includes failure to obtain or maintain perfection or recordation of the interest in collateral, release of collateral without substitution of collateral of equal value or equivalent reduction of the underlying obligation, failure to perform a duty to preserve the value of collateral owed, to a debtor or other person secondarily liable, and failure to comply with applicable law in disposing of or otherwise enforcing the interest in collateral.
- (7)** A secondary obligor is not discharged under Subsection (1)(c), (2), (3), or (4) unless the person entitled to enforce the instrument knows that the person is a secondary obligor or has notice under Section 4.58 that the instrument was signed for accommodation.
- (8)** A secondary obligor is not discharged under this section if the secondary obligor consents to the event or conduct that is the basis of the discharge, or the instrument or a separate agreement of the party provides for waiver of discharge under this section specifically or by general language indicating that parties waive defenses based on suretyship or impairment of collateral.
- (9)** Unless the circumstances indicate otherwise, consent by the principal obligor to an act that would lead to a discharge under this Section constitutes consent to that act by the secondary obligor if the secondary obligor controls the principal obligor or deals with the person entitled to enforce the instrument on behalf of the principal obligor.

- (10) A release or extension preserves a secondary obligor's recourse if the terms of the release or extension provide that the person entitled to enforce the instrument retains the right to enforce the instrument against the secondary obligor; and the recourse of the secondary obligor continues as though the release or extension had not been granted.
- (11) Except as otherwise provided in Subsection (12), a secondary obligor asserting discharge under this Section has the burden of persuasion both with respect to the occurrence of the acts alleged to harm the secondary obligor and loss or prejudice caused by those acts.
- (12) If the secondary obligor demonstrates prejudice caused by an impairment of its recourse, and the circumstances of the case indicate that the amount of loss is not reasonably susceptible of calculation or requires proof of facts that are not ascertainable, it is presumed that the act impairing recourse caused a loss or impairment equal to the liability of the secondary obligor on the instrument. In that event, the burden of persuasion as to any lesser amount of the loss is on the person entitled to enforce the instrument.

SUBCHAPTER 8: BILLS OF LADING

§4.70. Negotiation - Form of Negotiation and Requirements of Due Negotiation.

- (1) The following rules apply to a negotiable tangible document of title, including bill of lading and warehouse receipts:
 - (a) If the document's original terms run to the order of a named person, the document is negotiated by the named person's indorsement and delivery. After the named person's indorsement in blank or to bearer, any person may negotiate the document by delivery alone;
 - (b) If the document's original terms run to bearer, it is negotiated by delivery alone;
 - (c) If the document's original terms run to the order of a named person and it is delivered to the named person, the effect is the same as if the document had been negotiated.
- (2) Negotiation of the document after it has been indorsed to a named person requires indorsement by the named person as well as delivery.
- (3) A document is duly negotiated if it is negotiated in the manner stated in this Subsection to a holder that purchases it in good faith, without notice of any defense against or claim to it on the part of any person, and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves receiving the document in settlement or payment of a monetary obligation.
- (4) The following rules apply to a negotiable electronic document of title:
 - (a) If the document's original terms run to the order of a named person or to bearer, the document is negotiated by delivery of the document to another person. Indorsement by the named person is not required to negotiate the document.

- (b) If the document's original terms run to the order of a named person and the named person has control of the document, the effect is the same as if the document had been negotiated.
- (5) A document is duly negotiated if it is negotiated in the manner stated in this Subsection to a holder that purchases it in good faith, without notice of any defense against or claim to it on the part of any person, and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves taking delivery of the document in settlement or payment of a monetary obligation.
- (6) Indorsement of a nonnegotiable document of title neither makes it negotiable nor adds to the transferee's rights.
- (7) The naming in a negotiable bill of lading of a person to be notified of the arrival of the goods does not limit the negotiability of the bill or constitute notice to a purchaser of the bill of any interest of that person in the goods.

§4.71. Rights Acquired by Due Negotiation.

- (1) A holder to which a negotiable document of title has been duly negotiated acquires thereby:
 - (a) title to the document;
 - (b) title to the goods;
 - (c) all rights accruing under the law of agency or estoppel, including rights to goods delivered to the bailee after the document was issued; and
 - (d) the direct obligation of the issuer to hold or deliver the goods according to the terms of the document free of any defense or claim by the issuer except those arising under the terms of the document or under this article. In the case of a delivery order, the bailee's obligation accrues only upon the bailee's acceptance of the delivery order and the obligation acquired by the holder is that the issuer and any indorser will procure the acceptance of the bailee.
- (2) Subject to this Chapter, title and rights acquired by due negotiation are not defeated by any stoppage of the goods represented by the document of title or by surrender of the goods by the bailee and are not impaired even if:
 - (a) the due negotiation or any prior due negotiation constituted a breach of duty;
 - (b) any person has been deprived of possession of a negotiable tangible document or control of a negotiable electronic document by misrepresentation, fraud, accident, mistake, duress, loss, theft, or conversion; or
 - (c) a previous sale or other transfer of the goods or document has been made to a third person.

§4.72. Document of Title to Goods Defeated in Certain Cases.

- (1) A document of title confers no right in goods against a person that before issuance of the document had a legal interest or a perfected security interest in the goods and that did not:

- (a) deliver or entrust the goods or any document covering the goods to the bailor or the bailor's nominee with actual or apparent authority to ship, store, or sell; with power to obtain delivery or with power of disposition or other statute or rule of law; or
 - (b) acquiesce in the procurement by the bailor or its nominee of any document.
- (2) Title to goods based upon an unaccepted delivery order is subject to the rights of any person to which a negotiable warehouse receipt or bill of lading covering the goods has been duly negotiated. That title may be defeated under this Chapter to the same extent as the rights of the issuer or a transferee from the issuer.
- (3) Title to goods based upon a bill of lading issued to a freight forwarder is subject to the rights of any person to which a bill issued by the freight forwarder is duly negotiated. However, delivery by the carrier in accordance with the law on carriage of goods pursuant to its own bill of lading discharges the carrier's obligation to deliver.

§4.73. Rights Acquired in the Absence of Due Negotiation; Effect of Diversion; Stoppage of Delivery.

- (1) A transferee of a document of title, whether negotiable or nonnegotiable, to which the document has been delivered but not duly negotiated, acquires the title and rights that its transferor had or had actual authority to convey.
- (2) In the case of a nonnegotiable document of title, until but not after the bailee receives notice of the transfer, the rights of the transferee may be defeated:
- (a) by those creditors of the transferor that could treat the transfer as void under Section 2.45 of the Sales Chapter;
 - (b) by a buyer from the transferor in ordinary course of business if the bailee has delivered the goods to the buyer or received notification of the buyer's rights;
 - (c) by a lessee from the transferor in ordinary course of business if the bailee has delivered the goods to the lessee or received notification of the lessee's rights; or
 - (d) as against the bailee, by good faith dealings of the bailee with the transferor.
- (3) A diversion or other change of shipping instructions by the consignor in a nonnegotiable bill of lading which causes the bailee not to deliver the goods to the consignee defeats the consignee's title to the goods if the goods have been delivered to a buyer in ordinary course of business or a lessee in ordinary course of business and in any event defeats the consignee's rights against the bailee.

§4.74. Indorser not a Guarantor for other Parties.

The indorsement of a tangible document of title issued by a bailee does not make the indorser liable for any default by the bailee or previous indorsers.

§4.75. Delivery Without Indorsement: Right to Compel Indorsement.

The transferee of a negotiable tangible document of title has a specifically enforceable right to have its transferor supply any necessary indorsement, but the transfer becomes a negotiation only as of the time the indorsement is supplied.

§4.76. Warranties on Negotiation or Transfer of Document of Title.

If a person negotiates or delivers a document of title for value, otherwise than as a mere intermediary unless otherwise agreed, the transferor warrants to its immediate purchaser only in addition to any warranty made in selling or leasing the goods that:

- (a) the document is genuine;
- (b) the transferor does not have knowledge of any fact that would impair the document's validity or worth; and
- (c) the negotiation or delivery is rightful and fully effective with respect to the title to the document and the goods it represents.

§4.77. Warranties of Collecting Bank as to Documents of Title.

A collecting bank or other intermediary known to be entrusted with documents of title on behalf of another or with collection of a draft or other claim against delivery of documents warrants by the delivery of the documents only its own good faith and authority even if the collecting bank or other intermediary has purchased or made advances against the claim or draft to be collected.

§4.78. Adequate Compliance with Commercial Contract.

Whether a document of title is adequate to fulfil the obligations of a contract for sale, a contract for lease, or the conditions of a letter of credit is determined by the Sales Chapter and the Leasing Chapter of this Code.

§4.79. Lost, Stolen, or Destroyed Documents of Title.

- (1) If a document of title is lost, stolen, or destroyed, a court may order delivery of the goods or issuance of a substitute document and the bailee may without liability to any person comply with the order. If the document was negotiable, a court may not order delivery of the goods or issuance of a substitute document without the claimant's posting security unless it finds that any person that may suffer loss as a result of nonsurrender of possession or control of the document is adequately protected against the loss. If the document was nonnegotiable, the court may require security. The court may also order payment of the bailee's reasonable costs and attorney's fees in any action under this Subsection.
- (2) A bailee that without court order delivers goods to a person claiming under a missing negotiable document of title is liable to any person injured thereby. If the delivery is not in good faith, the bailee is liable for conversion.
- (3) Delivery in good faith is not conversion if the claimant posts security with the bailee in an amount at least double the value of the goods at the time of posting to indemnify any person injured by the delivery which files a notice of claim within one year after the delivery.

§4.80. Attachment of Goods Covered by a Negotiable Document.

- (1) Unless a document of title was originally issued upon delivery of the goods by a person that did not have power to dispose of them, a lien does not attach by virtue of any judicial process to goods in the possession of a bailee for which a negotiable document of title is outstanding unless possession or control of the document is first surrendered to the bailee or the document's negotiation is enjoined.
- (2) The bailee may not be compelled to deliver the goods pursuant to process until possession or control of the document is surrendered to the bailee or to the court.
- (3) A purchaser of the document for value without notice of the process or injunction takes free of the lien imposed by judicial process.

§4.81. Conflicting Claims; Interpleader.

- (1) If more than one person claims title to or possession of the goods, the bailee is excused from delivery until the bailee has a reasonable time to ascertain the validity of the adverse claims or to commence an action for interpleader.
- (2) The bailee may assert an interpleader either in defending an action for nondelivery of the goods or by original action.

SUBCHAPTER 9: BANK DEPOSITS

§4.82. Status of Collecting Bank as Agent.

- (1) Unless a contrary intent clearly appears and before the time that a settlement given by a collecting bank for an instrument is or becomes final, the bank, with respect to the instrument, is an agent or sub-agent of the owner of the instrument and any settlement given for the instrument is provisional. This provision applies regardless of the form of indorsement or lack of indorsement and even though credit given for the item is subject to immediate withdrawal as of right or is in fact withdrawn; but the continuance of ownership of an item by its owner and any rights of the owner to proceeds of the item are subject to rights of a collecting bank, such as those resulting from outstanding advances on the item and rights of recoupment or setoff. If an item is handled by banks for purposes of presentment, payment, collection, or return, the relevant provisions of this Article apply even though action of the parties clearly establishes that a particular bank has purchased the item and is the owner of it.
- (2) After an instrument has been indorsed with the words "pay any bank" or the like, only a bank may acquire the rights of a holder until the item has been:
 - (a) returned to the customer initiating collection; or
 - (b) specially indorsed by a bank to a person who is not a bank.

§4.83. Responsibility for Collection or Return.

- (1) A collecting bank must exercise ordinary care in:
 - (a) presenting an instrument or sending it for presentment;

- (b) sending notice of dishonor or non-payment or returning an instrument other than a documentary draft to the bank's transferor after learning that the item has not been paid or accepted, as the case may be;
 - (c) settling for an instrument when the bank receives final settlement; and
 - (d) notifying its transferor of any loss or delay in transit within a reasonable time after discovery thereof.
- (2) A collecting bank exercises ordinary care under Subsection (1)(a) by taking proper action before its deadline following receipt of an instrument, notice, or settlement. Taking proper action within a reasonably longer time may constitute the exercise of ordinary care, but the bank has the burden of establishing timeliness.
- (3) Subject to Subsection (1)(a), a bank is not liable for the insolvency, neglect, misconduct, mistake, or default of another bank or person or for loss or destruction of an instrument in the possession of others or in transit .

§4.84. Effect of Instructions.

Subject to this Chapter only a collecting bank's transferor can give instructions that affect the bank or constitute notice to it, and a collecting bank is not liable to prior parties for any action taken pursuant to the instructions or in accordance with any agreement with its transferor.

§4.85. Methods of Sending and Presenting.

- (1) A collecting bank shall send instruments by a reasonably prompt method, taking into consideration relevant instructions, the nature of the item, the number of those items on hand, the cost of collection involved, and the method generally used by it or others to present those items.
- (2) A collecting bank may send:
- (a) an instrument directly to the payor bank;
 - (b) an instrument to a nonbank payor if authorized by its transferor; and
 - (c) an instrument other than documentary draft to a nonbank payor subject to existing clearing house rules .
- (3) Presentment may be made by a presenting bank at a place where the payor bank or other payor has requested that presentment be made.

§4.86. Depository Bank as Holder of Unindorsed Instrument.

If a customer delivers an instrument to a depository bank for collection:

- (a) the depository bank becomes a holder of the instrument at the time it receives the item for collection if the customer at the time of delivery was a holder of the item, whether or not the customer indorses the item, and, if the bank satisfies the other requirements of this Chapter relating to a holder in due course; and

- (b) the depositary bank warrants to collecting bank, the payor bank or other payor, and the drawer that the amount of the instrument was paid to the customer or deposited to the customer's account.

§4.87. Inter-Bank Transfers.

Any agreed method that identifies the transferor bank is sufficient for the instrument's further transfer to another bank.

§4.88. Transfer Warranties.

- (1) A customer or collecting bank that transfers an instrument and receives a settlement or other consideration warrants to the transferee and to any subsequent collecting bank that:
 - (a) the warrantor is a person entitled to enforce the instrument;
 - (b) all signatures on the instrument are authentic and authorized;
 - (c) the instrument has not been altered;
 - (d) the instrument is not subject to a defense or claim in recoupment of any party that can be asserted against the warrantor; and
 - (e) the warrantor has no knowledge of any insolvency proceeding commenced with respect to the maker or acceptor or, in the case of an unaccepted draft, the drawer; and
 - (f) with respect to any remotely-created consumer instrument, that the person on whose account the item is drawn authorized the issuance of the instrument in the amount for which the instrument is drawn.
- (2) If an instrument is dishonored, a customer or collecting bank transferring the item and receiving settlement or other consideration is obliged to pay the amount due on the item (i) according to the terms of the instrument at the time it was transferred, or (ii) if the transfer was of an incomplete item, according to its terms when completed.
- (3) The obligation of a transferor is owed to the transferee and to any subsequent collecting bank that takes the instrument in good faith. A transferor cannot disclaim its obligation under this Subsection by an indorsement stating that it is made "without recourse" or otherwise disclaiming liability.
- (4) A person to whom the warranties under Subsection (1) are made and who took the instrument in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, but not more than the amount of the instrument plus expenses and loss of interest incurred as a result of the breach.
- (5) The warranties stated in Subsection (1) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within thirty (30) days after the claimant has reason to know of the breach and the identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.

- (6) A cause of action for breach of warranty under this Section accrues when the claimant has reason to know of the breach.

§4.89. Presentment Warranties.

- (1) If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft, (i) the person obtaining payment or acceptance, at the time of presentment, and (ii) a previous transferor of the draft, at the time of transfer, warrant to the drawee that pays or accepts the draft in good faith that:
 - (a) the warrantor is, or was, at the time the warrantor transferred the draft, a person entitled to enforce the draft or authorized to obtain payment or acceptance of the draft on behalf of a person entitled to enforce the draft;
 - (b) the draft has not been altered; and the warrantor has no knowledge that the signature of the purported drawer of the draft is unauthorized; and
 - (c) with respect to any remotely-created consumer item, that the person on whose account the item is drawn authorized the issuance of the item in the amount for which the item is drawn.
- (2) A drawee making payment may recover from a warrantor damages for breach of warranty equal to the amount paid by the drawee less the amount the drawee received or is entitled to receive from the drawer because of the payment. In addition, the drawee is entitled to compensation for expenses and loss of interest resulting from the breach. The right of the drawee to recover damages under this Subsection is not affected by any failure of the drawee to exercise ordinary care in making payment. If the drawee accepts the draft (i) breach of warranty is a defense to the obligation of the acceptor, and (ii) if the acceptor makes payment with respect to the draft, the acceptor is entitled to recover from a warrantor for breach of warranty the amounts stated in this Subsection.
- (3) If a drawee asserts a claim for breach of warranty under Subsection (1) based on an unauthorized indorsement of the draft or an alteration of the draft, the warrantor may defend by proving that the indorsement is effective or the drawer is precluded from asserting against the drawee the unauthorized indorsement or alteration.
- (4) If (i) a dishonored draft is presented for payment to the drawer or an indorser or (ii) any other instrument is presented for payment to a party obliged to pay the item, and the item is paid, the person obtaining payment and a prior transferor of the item warrant to the person making payment in good faith that the warrantor is, or was, at the time the warrantor transferred the item, a person entitled to enforce the item or authorized to obtain payment on behalf of a person entitled to enforce the item. The person making payment may recover from any warrantor for breach of warranty an amount equal to the amount paid plus expenses and loss of interest resulting from the breach.
- (5) The warranties stated in Subsections (1)(a) and (1)(d) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within thirty (30) days after the claimant has reason to know of the breach and the identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.
- (6) A cause of action for breach of warranty under this Section accrues when the claimant has reason to know of the breach.

§4.90. Security Interest of a Collecting Bank in Instrument and Proceeds.

- (1) A collecting bank has a security interest in an instrument and any accompanying documents or the proceeds of either:
 - (a) in case of an instrument deposited in an account, to the extent to which credit given for the item has been withdrawn or applied;
 - (b) in case of an instrument for which it has given credit available for withdrawal as of right, to the extent of the credit given, whether or not the credit is drawn upon or there is a right of charge-back; or
 - (c) if it makes an advance on or against the instrument.
- (2) If credit given for several instrument received at one time or pursuant to a single agreement is withdrawn or applied in part, the security interest remains upon all the items, any accompanying documents or the proceeds of either. For the purpose of this Section, credits first given are first withdrawn.
- (3) Receipt by a collecting of a final settlement for an instrument is a realization on its security interest in the item, accompanying documents, and proceeds. So long as the bank does not receive final settlement for the item or give up possession of the item or possession or control of the accompanying documents for purposes other than collection, the security interest continues to that extent and is subject to Secured Transactions Chapter, but:
 - (a) no security agreement is necessary to make the security interest enforceable;
 - (b) no filing is required to perfect the security interest; and
 - (c) the security interest has priority over conflicting perfected security interests in the instrument, accompanying documents, or proceeds.

§4.91. When Bank Gives Value for Purposes of Holder in Due Course.

For purposes of determining its status as a holder in due course, a bank has given value to the extent it has a security interest in an instrument, if the bank otherwise complies with the requirements of this Chapter on what constitutes a holder in due course.

§4.92. Presentment by Notice of Instrument Payable by, or through, or at Bank - Liability of Drawer or Indorser.

- (1) Unless otherwise instructed, a collecting bank may present an instrument not payable by, through, or at a bank by sending to the party to accept or pay a record providing notice that the bank holds the item for acceptance or payment. The notice must be sent in time to be received on or before the day when presentment is due and the bank must meet any requirement of the party to accept or pay by the close of the bank's next banking day after it knows of the requirement.
- (2) If presentment is made by notice and payment, acceptance, or request for compliance is not received by the close of business on the day after maturity or, in the case of demand instrument, by the close of business on the third banking day after notice was sent, the presenting bank may treat the instrument as dishonored and charge any drawer or indorser by sending it notice of the facts.

§4.93. Relationship Between Payor Bank and its customers - When Bank May Charge Customer's Account.

- (1) A bank may charge against the account of a customer an instrument that is properly payable from that account even though the charge creates an overdraft. An item is properly payable if it is authorized by the customer and is in accordance with any agreement between the customer and bank.
- (2) A customer is not liable for the amount of an overdraft if the customer neither signed the instrument nor benefited from the proceeds of the instrument.
- (3) A bank may charge against the account of a customer a check that is otherwise properly payable from the account, even though payment was made before the date of the check, unless the customer has given notice to the bank of the postdating describing the check with reasonable certainty. The notice is effective for the period required under this Chapter for stop-payment orders, and must be received at such time and in such manner as to afford the bank a reasonable opportunity to act on it before the bank takes any action with respect to the check. If a bank charges against the account of a customer a check before the date stated in the notice of postdating, the bank is liable for damages for the loss resulting from its act. The loss may include damages for dishonor of subsequent instruments.
- (4) A bank that in good faith makes payment to a holder may charge the indicated account of its customer according to:
 - (a) the original terms of the altered instrument; or
 - (b) the terms of the completed instrument, even though the bank knows the item has been completed unless the bank has notice that the completion was improper.

§4.94. Liability of Bank for Wrongful Dishonour.

- (1) Except as otherwise provided in this Chapter, a payor bank wrongfully dishonors an instrument if it dishonors an instrument that is properly payable, but a bank may dishonor an item that would create an overdraft unless it has agreed to pay the overdraft.
- (2) A payor bank is liable to its customer for damages proximately caused by the wrongful dishonor of an instrument. Liability is limited to actual damages proved and may include damages for an arrest or prosecution of the customer or other consequential damages. Whether any consequential damages are proximately caused by the wrongful dishonor is a question of fact to be determined in each case.
- (3) A payor bank's determination of the customer's account balance on which a decision to dishonor for insufficiency of available funds is based may be made at any time between the time the instrument is received by the payor bank and the time that the payor bank returns the item or gives notice in lieu of return, and no more than one determination need be made. If, at the election of the payor bank, a subsequent balance determination is made for the purpose of reevaluating the bank's decision to dishonor the item, the account balance at that time is determinative of whether a dishonor for insufficiency of available funds is wrongful.

§4.95. Customer's Right to Stop Payment.

- (1) A customer or any person authorized to draw on the account if there is more than one person may stop payment of any item drawn on the customer's account or close the account by an order to the bank describing the item or account with reasonable certainty received at a time and in a manner that affords the bank a reasonable opportunity to act on it before any action by the bank with respect to the instrument described in Section 4.5. If the signature of more than one person is required to draw on an account, any of these persons may stop payment or close the account.
- (2) A stop-payment order is effective for six months, but it lapses after fourteen (14) days if the original order was oral and was not confirmed in a record within that period. A stop-payment order may be renewed for additional six-month periods by a record given to the bank within a period during which the stop-payment order is effective.
- (3) The burden of establishing the fact and amount of loss resulting from the payment of an instrument contrary to a stop-payment order or order to close an account is on the customer. The loss from payment of an item contrary to a stop-payment order may include damages for dishonor of subsequent instruments under this Chapter.

§4.96. Death or Incompetence of Customer.

- (1) A payor or collecting bank's authority to accept, pay, or collect an instrument or to account for proceeds of its collection, if otherwise effective, is not rendered ineffective by incompetence of a customer of either bank existing at the time the item is issued or its collection is undertaken if the bank does not know of an adjudication of incompetence. Neither death nor incompetence of a customer revokes the authority to accept, pay, collect, or account until the bank knows of the fact of death or of an adjudication of incompetence and has reasonable opportunity to act on it.
- (2) Even with knowledge, a bank may for ten (10) days after the date of death pay or certify checks drawn on or before that date unless ordered to stop payment by a person claiming an interest in the account.

§4.97. Duty of Customer to Discover and Report Unauthorised Signature or Alteration.

- (1) A bank that sends or makes available to a customer a statement of account showing payment of instrument for the account shall either return or make available to the customer the instrument paid or provide information in the statement of account sufficient to allow the customer reasonably to identify the items paid. The statement of account provides sufficient information if the instrument is described by its number, amount, and date of payment.
- (2) If the instruments are not returned to the customer, the person retaining the instruments shall either retain the instrument or, if the instruments are destroyed, maintain the capacity to furnish legible copies of the instruments until the expiration of seven years after receipt of the instruments. A customer may request an instrument from the bank that paid the instrument, and that bank must provide in a reasonable time either the instrument or, if the instrument has been destroyed or is not otherwise obtainable, a legible copy of the instrument.
- (3) If a bank sends or makes available a statement of account or instruments pursuant to Subsection (1), the customer must exercise reasonable promptness in examining the statement or the instruments to determine whether any payment was not authorized because of an alteration of an instrument or because a purported signature by or on

behalf of the customer was not authorized. If, based on the statement or instruments provided, the customer should reasonably have discovered the unauthorized payment, the customer must promptly notify the bank of the relevant facts.

- (4) If the bank proves that the customer failed, with respect to an instrument, to comply with the duties imposed on the customer by Subsection (3), the customer is precluded from asserting against the bank:
 - (a) the customer's unauthorized signature or any alteration on the instrument, if the bank also proves that it suffered a loss by reason of the failure; and
 - (b) the customer's unauthorized signature or alteration by the same wrongdoer on any other instrument paid in good faith by the bank if the payment was made before the bank received notice from the customer of the unauthorized signature or alteration and after the customer had been afforded a reasonable period of time, not exceeding thirty (30) days, in which to examine the item or statement of account and notify the bank.
- (5) If Subsection (4) applies and the customer proves that the bank failed to exercise ordinary care in paying the instrument and that the failure substantially contributed to loss, the loss is allocated between the customer precluded and the bank asserting the preclusion according to the extent to which the failure of the customer to comply with Subsection (3) and the failure of the bank to exercise ordinary care contributed to the loss. If the customer proves that the bank did not pay the instrument in good faith, the preclusion under Subsection (4) does not apply.
- (6) Without regard to care or lack of care of either the customer or the bank, a customer who does not within one year after the statement or instruments are made available to the customer discover and report the customer's unauthorized signature on or any alteration on the instrument is precluded from asserting against the bank the unauthorized signature or alteration. If there is a preclusion under this Subsection, the payor bank may not recover for breach of warranty with respect to the unauthorized signature or alteration to which the preclusion applies.

§4.98. Payor Bank's Right to Subrogation on Improper Payment.

If a payor bank has paid an instrument over the order of the drawer or maker to stop payment, or after an account has been closed, or otherwise under circumstances giving a basis for objection by the drawer or maker, to prevent unjust enrichment and only to the extent necessary to prevent loss to the bank by reason of its payment of the item, the payor bank is subrogated to the rights

- (a) of any holder in due course on the instrument against the drawer or maker;
- (b) of the payee or any other holder of the item against the drawer or maker either on the item or under the transaction out of which the item arose; and
- (c) of the drawer or maker against the payee or any other holder of the item with respect to the transaction out of which the instrument arose.

**TITLE 7, CHAPTER 5 OF THE LIBERIAN CODE OF LAWS, REVISED
COMMERCIAL CODE – SECURED TRANSACTIONS**

Arrangement of Sections

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SUBCHAPTER 1: GENERAL PROVISIONS

§5.1. Short Title.

This Chapter shall be known and may be cited as the Liberian Commercial Code – Secured Transactions.

§5.2. Scope of Application.

Subject to Section 5.2 of this Chapter, this Chapter applies to every transaction without regard to its form and without regard to the person who has title to the collateral that in substance creates a security interest in personal property, including without limiting the foregoing, fixtures, goods, documents, instruments, general intangibles, chattel paper, or accounts and any sale of chattel paper or accounts.

§5.3. Non-Application of Chapter.

Except as otherwise provided under this Chapter, this Chapter does not apply

- (a) to a lien given by statute or rule of law, except as provided in Sections 5.27 and 5.45 of this Chapter;
- (b) to a transfer of an interest or claim in or under any policy of insurance;
- (c) to an assignment for the general benefit of creditors;
- (d) to a sale of accounts or chattel paper;
- (e) to an assignment of accounts made solely to facilitate the collection of accounts for the assignor; or
- (f) to an assignment of an unearned right to payment to an assignee who is to perform the assignor's obligations under the contract.

§5.4. Conflict of Laws - Location of Collateral.

- (1) Except as otherwise provided in this Chapter, the validity, perfection and effect of perfection or non-perfection shall be governed by the law of the jurisdiction where the collateral is situated at the time the security interest attaches.
- (2) A security interest in goods perfected under the law of the jurisdiction in which the goods are situated at the time the security interest attaches but before the goods are brought into Liberia continues perfected in Liberia if a financing statement is registered in Liberia before the goods are brought in or if it is perfected in Liberia,
 - (a) within sixty (60) days after the goods are brought in; or
 - (b) within fifteen (15) days after the day the secured party receives notice that the goods have been brought in; or
 - (c) before the date that perfection ceases under the law of the jurisdiction in which the goods were situated at the time the security interest attached,
 whichever is earliest.

- (3) But the security interest perfected in accordance with Subsection (2) is subordinate to the interest of a buyer or lessee of those goods who acquires the goods from the debtor as consumer goods in good faith and without knowledge of the security interest and before the security interest is perfected in Liberia.
- (4) Subsection (2) does not apply so as to prevent the perfection of a security interest after the expiry of the time limit set out in that Subsection.
- (5) The validity, perfection, effect of perfection or non-perfection and the priority of a security interest shall be governed by the law of the jurisdiction where the debtor is located at the time the security interest attaches if the security interest is in respect of:
 - (a) an intangible;
 - (b) goods that are of a type that are normally used in more than one jurisdiction, if the goods are equipment leased or held for lease by a debtor to others; and
 - (c) a non-possessory interest in an instrument, a negotiable document of title, money and chattel paper.

§5.5. Conflict of Laws - Location of Debtor.

- (1) For the purposes of this Chapter, a debtor is located,
 - (a) in the jurisdiction where the debtor's principal residence is located, if the debtor is an individual;
 - (b) in Liberia, if the debtor is partnership, other than a limited partnership and the partnership agreement governing the partnership states that the agreement is governed by the laws of Liberia;
 - (c) in the jurisdiction where the registered office or head office of the debtor is located, if the debtor is a corporation, a limited partnership or an organization incorporated, continued amalgamated or otherwise organized under a law in Liberia,
 - i. as set out in the constitutive instrument under which the debtor was incorporated, continued or amalgamated, or
 - ii. as set out in the debtor's by-laws, if Subsection (1)(i) does not apply.
- (2) If a debtor relocates to another jurisdiction, a security interest perfected in accordance with the applicable law as provided in Subsection (1) continues perfected until the earliest of,
 - (a) Sixty (60) days after the day the debtor relocates to another jurisdiction;
 - (b) Fifteen (15) days after the day the secured party receives notice that the debtor has relocated to another jurisdiction; and
 - (c) the day that perfection ceases under the previously applicable law.

- (3) For the purposes of this Section a debtor shall be deemed to be located at the debtor's place of business if there is one, at the debtor's chief executive office if there is more than one place of business, and otherwise at the debtor's principal place of residence.

§5.6. Procedural and Substantive Issues.

Despite Sections 5.3 and 5.4,

- (a) procedural issues involved in the enforcement of the rights of a secured party against collateral are governed by the law of the jurisdiction in which the enforcement rights are exercised; and
- (b) substantive issues involved in the enforcement of the rights of a secured party against collateral are governed by the proper law of the contract between the secured party and the debtor.

§5.7. Deemed Perfection.

For the purposes of this Chapter, a security interest shall be deemed to be perfected under the law of a jurisdiction if the secured party has complied with the law of the jurisdiction with respect to the creation and continuance of a security interest that is enforceable against the debtor and third parties.

§5.8. Interpretation – Law of Jurisdiction.

For the purposes of Section 5.3 and 5.4, a reference to the law of a jurisdiction is a reference to the internal law of that jurisdiction, excluding its conflict of law rules.

§5.9. Interpretation in General.

In this Chapter, unless the context otherwise indicates, the following words and phrases shall bear the meaning hereunder assigned to them:

- (a) "**Accessions**" means goods that are installed in or affixed to other goods
- (b) "**Account**" means a monetary obligation not evidenced by chattel paper or an instrument, whether or not it has been earned by performance, but does not include investment property;
- (c) "**Account debtor**" means a person obligated on an account or on chattel paper,
- (d) "**Chattel paper**" means one or more than one writing that evidences both a monetary obligation and a security interest in or a lease of specific goods;
- (e) "**Collateral**" means personal property that is subject to a security interest;
- (f) "**Consumer goods**" means goods that are used or acquired for use primarily for personal, family or household purposes;

- (g) **"Court"** means a court of competent jurisdiction;
- (h) **"Debtor"** means:
- i. A person who,
 - 1. owes payment or other performance of the obligation secured, and
 - 2. owns or has rights in the collateral, including a transferee of or successor to a debtor's interest in collateral,
 - ii. If the person who owes payment or other performance of the obligation secured and the person who owns or has rights in the collateral are not the same person,
 - 1. in a provision dealing with the obligation secured, the person who owes payment or other performance of the obligation secured,
 - 2. in a provision dealing with collateral, the person who owns or has rights in the collateral, including a transferee of or successor to a debtor's interest in collateral, or
 - 3. If the context permits, both the person who owes payment or other performance of the obligation secured and the person who owns or has rights in the collateral, including a transferee of or successor to debtor's interest in collateral;
 - iii. A lessee of goods under a lease for a term of more than one year, or
 - iv. A transferor of an account or chattel paper;
- (i) **"Default"** means the failure to pay or otherwise perform the obligation secured when due or the occurrence of any event whereupon under the terms of the security agreement the security becomes enforceable;
- (j) **"Document of title"** means any writing that purports to be issued by or addressed to a bailee and purports to cover such goods in the bailee's possession as are identified or fungible portions of an identified mass, and that in the ordinary course of business is treated as establishing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers;
- (k) **"Equipment"** means goods that are not inventory or consumer goods;
- (l) **"Financing charge statement"** means the information required for a financing charge statement presented in a required format;
- (m) **"Financing statement"** a record or records composed of an initial financing statement and any filed record relating to the initial financing statement;

- (n) **"Future advance"** means the advance of money, credit or other value secured by a security agreement whether or not such advance is given pursuant to commitment;
- (o) **"Goods"** means tangible personal property, fixtures, growing crops and the unborn young of animals, but does not include a document of title, chattel paper, a security, an instrument, money or trees other than crops, until they are severed or minerals until they are extracted;
- (p) **"Instrument"** means,
- i. a bill, note or cheque within the meaning of the Negotiable Instruments Chapter, Chapter 3 of this Commercial Code or any other writing that evidences a right to the payment of money and is of a type that in the ordinary course of business is transferred by delivery with any necessary endorsement or assignment, or
 - ii. a letter of credit and an advice of credit if the letter or advice states that it must be surrendered upon claiming payment thereunder.

It does not include a writing that constitutes part of chattel paper, a document of title or investment property;

- (q) **"Intangible"** means all personal property, including choses in action, that is not goods, chattel paper, documents of title, instruments, money or investment property;
- (r) **"Inventory"** means goods that are held by a person for sale or lease or that have been leased or that are to be furnished or have been furnished under a contract of service, or that are raw materials, work in process or materials used or consumed in a business or profession;
- (s) **"Lease for a term of more than one year"** includes
- i. a lease for an indefinite term, even if the lease is determinable by one of the parties or by agreement of two or more of the parties within one year from the date of its execution;
 - ii. a lease for a term of one year or less if the lessee, with the consent of the lessor, retains uninterrupted or substantially uninterrupted possession of the leased goods for a continuous period of more than one year, but a lease described in this Subsection is not a lease for a term of more than one year, during the period before the day the lessee's possession of the lease goods exceeds one year.
 - iii. a lease for a term of one year or less if,
 - 1. the lease provides that it is renewable for one or more terms at the option of one of the parties or by agreement of all of the parties;
 - 2. it is possible for the total of the original term and the renewed terms to exceed one year,

but does not include,

- i. a lease by a lessor who is not regularly engaged in the business of leasing goods, or
 - ii. a lease of household furnishings or appliances as part of a lease of land, if the use and enjoyment of the household furnishings or appliances is incidental to the use and enjoyment of land;
- (t) **"Money"** means a medium of exchange authorized or adopted by the Legislature of the Republic of Liberia or by a foreign government as part of its currency;
- (u) **"Obligation secured"** for the purposes of determining the amount payable under a lease, means the amount contracted to be paid as rent under the lease and all other amounts that have or may become payable under the lease, including the amount, if any, required to be paid by the lessee to obtain full ownership of the collateral, as of the relevant date, less any amounts paid;
- (v) **"Option"** means an agreement that provides the holder with the right, but not the obligation, to do one or more of the following on terms or at a price established by or determinable by reference to the agreement or by a term established by the agreement:
 - i. Receive an amount of cash determinable by reference to a specified quantity of the underlying interest of the option;
 - ii. Purchase a specified quantity of the underlying interest of the option; or
 - iii. Sell a specified quantity of the underlying interest of the option.
- (w) **"Personal property"** means chattel paper, documents of title, goods, instruments, intangibles, money and investment property, and includes fixtures but does not include building materials that have been affixed to real property,
- (x) **"Prescribed"** means prescribed by regulations made under this Chapter;
- (y) **"Proceeds"** means identifiable or traceable personal property in any form derived directly or indirectly from any dealing with collateral or proceeds therefrom, and includes,
 - i. any payment representing indemnity or compensation for loss of or damage to the collateral or proceeds therefrom,
 - ii. any payment made in total or partial discharge or redemption of an intangible, chattle paper, an instrument or investment property, and
 - iii. rights arising out of, or property collected on, or distributed on account of, collateral that is investment property;
- (z) **"Purchase"** includes taking by sale, lease, negotiation, mortgage, pledge, lien, gift or any other consensual transaction creating an interest in personal property;

(aa) "Purchase-money security interest" means

- i. a security interest taken or reserved in collateral to ensure payment of all or part of its price,
- ii. a security interest taken in collateral by a person who gives value for the purpose of enabling the debtor to acquire rights in or to the collateral, to the extent that the value is applied to acquire the rights,
- iii. the interest of a lessor of goods under lease for a term of more than one year,

but does not include a transaction of sale by and lease back to the seller.

(bb) "Purchaser" means a person who takes by purchase;

(cc) "Registrar" means the person or agency responsible for the registration of security interests under this Chapter;

(dd) "Regulation" means the regulations made under this Chapter;

(ee) "Secured party" means a person who holds a security interest for the person's own benefit or for the benefit of any other person and includes a trustee where the holders of obligations issued, guaranteed or provided for under a security agreement are represented by a trustee as the holder of the security interest and for the purposes of this Chapter includes a receiver or receiver and manager;

(ff) "Security agreement" means an agreement that creates or provides for a security interest and includes a document evidencing a security interest;

(gg) "Security interest" means an interest in personal property that secures payment or performance of an obligation, and includes

- i. the interest of a transferee of an account or chattel paper, and
- ii. the interest of a lessor of goods under a lease for a term of more than one, whether or not the interest secures payment or performance of an obligation.

(hh) "Value" means any consideration sufficient to support a simple contract and includes an antecedent debt or liability.

SUBCHAPTER 2: CREATION AND VALIDITY OF SECURITY AGREEMENTS

§5.10. Creation of Security Interest.

Unless otherwise provided under this Chapter, a security interest to which this Chapter applies is created by agreement between the parties thereto.

§5.11. Delivery of Copy of Agreement.

Where a security agreement is in writing, the secured party shall deliver a copy of the security agreement to the debtor within ten (10) days after the execution thereof, and if the secured party fails to do so after a request by the debtor, the Court on the application of the debtor, may order the delivery of such a copy to the debtor.

§5.12. Attachment Required for Enforcement of Security Interest.

- (1) A security interest is not enforceable against a third party unless it has attached.
- (2) Subject to Subsection (1) a security interest, including a security interest in the nature of a floating charge, attaches to collateral only when value is given, the debtor has rights in collateral or the power to transfer rights in the collateral to a secured party and the debtor has signed a security agreement that contains a description of the collateral sufficient to enable it to be identified.

§5.13. After – Acquired Property.

- (1) A security agreement may cover after – acquired property.
- (2) No security interest attaches under an after-acquired property clause in a security agreement,
 - (a) to crops that become such more than one year after the security agreement has been executed, except that a security interest in crops that is given in conjunction with a lease, purchase or mortgage of land may, if so agreed, attach to crops to be grown on the land concerned during the term of such lease, purchase or mortgage; or
 - (b) to consumer goods or other accessions, unless the debtor acquires rights in them within ten (10) days after the secured party gives value.

§5.14. Future Advances.

A security agreement may secure a future advance.

§5.15. Agreement not to Assert Defence Against Assignee.

An agreement by a debtor not to assert against an assignee any claim or defence that the debtor has against the debtor's seller or lessor is enforceable by the assignee who takes the assignment for value, in good faith and without notice, except as to such defences as may be asserted against a holder in due course of a negotiable instrument under the Negotiable Instruments Chapter.

§5.16. Seller's Warranties.

- (1) Where a seller retains a purchase-money security interest in goods, the law relating to the contract of sale governs the sale and any disclaimer, limitation or modification of the seller's conditions and warranties.

- (2) Except as provided in Section 5.15, the conditions and warranties in a sale agreement shall not be affected by any security agreement.

§5.17. Acceleration Payment or Performance.

Where a security agreement provides that the secured party may accelerate payment or performance if the secured party considers that the collateral is in jeopardy or that the secured party is insecure, the agreement shall be construed to mean that the secured party may accelerate payment or performance only if the secured party in good faith believes and has commercially reasonable grounds to believe that the prospect of payment or performance is or is about to be impaired or that the collateral is or is about to be placed in jeopardy.

§5.18. Care of Collateral.

- (1) A secured party shall use reasonable care in the custody and preservation of collateral in the secured party's possession, and, unless otherwise agreed, in the case of an instrument or chattel paper, reasonable care includes taking necessary steps to preserve rights against prior parties.
- (2) Unless otherwise agreed, where collateral is in the secured party's possession,
 - (a) reasonable expenses, including the cost of insurance and payment of taxes and other charges incurred in obtaining and maintaining possession of the collateral and in its preservation are chargeable to the debtor and are secured by the collateral;
 - (b) the risk of loss or damage, except where caused by the negligence of the secured party, is on the debtor to the extent of any deficiency in any insurance coverage;
 - (c) the secured party may hold as additional security any increase or profits, except money received from the collateral, and money so received, unless remitted to the debtor, shall be applied forthwith upon its receipt in reduction of the obligation secured;
 - (d) the secured party shall keep the collateral identifiable but fungible collateral may be commingled; and
 - (e) the secured party may create a security interest in the collateral upon terms that do not impair the debtor's right to redeem it.
- (3) A secured party is liable for any loss or damage caused by the secured party's failure to meet any obligations imposed by Subsection (1) or (2), but does not lose the security interest in the collateral.
- (4) A secured party may use the collateral,
 - (a) in the manner and to the extent provided in the security agreement;
 - (b) for the purpose of preserving the collateral or its value; or
 - (c) pursuant to an order of the Court before which a question relating thereto is being heard.

- (5) A secured party is liable for any loss or damage caused by the secured party's use of the collateral otherwise than as authorized by Subsection (4) and is subject to being ordered or restrained as provided in Subsection 5.70.

§5.19. Statements of Account.

A person who is a debtor or judgement creditor or who has an interest in the collateral or who is the authorized representative of such a person, by a notice in writing given to the secured party and containing an address for reply may require the secured party to furnish to the person any one or more of,

- (a) a statement in writing of the amount of the indebtedness and the terms of payment thereof as of the date specified in the notice;
- (b) a statement in writing approving or correcting as of the date specified in the notice a statement of the collateral or a part thereof as specified in a list attached to the notice;
- (c) a statement in writing approving or correcting as of the date specified in the notice a statement of the amount of the indebtedness and of the terms of payment thereof;
- (d) a true copy of the security agreement; or
- (e) sufficient information as to the location of the security agreement or a true copy thereof so as to enable inspection of the security agreement or copy thereof.

§5.20. Inspection of Security Agreement.

- (1) The secured party, on the reasonable request of a person entitled to receive a true copy of the security agreement under Subsection 5.19 (d) shall permit the person or the person's authorized representative to inspect the security agreement or a true copy thereof during normal business hours at the location disclosed under Subsection 5.19 (2)(e).
- (2) If the secured party claims a security interest in all of the collateral or in all of a particular type of collateral owned by the debtor, the secured party may so indicate in lieu of approving or correcting the list of such collateral under Subsection 5.19 (b).
- (3) Subject to the payment of any charge required under Section 5.21, the secured party shall answer a notice given under Section 5.19 within fifteen (15) days after receiving it, and, if without reasonable excuse,
 - (a) the secured party does not answer within such fifteen-day period, the secured party is liable for any loss or damage caused thereby to any person who is entitled to receive information under this Section; or
 - (b) the answer is incomplete or incorrect, the secured party is liable for any loss or damage caused thereby to any person who reasonably may be expected to rely on the answer.

- (4) Where the person receiving a notice under Section 5.19 no longer has a security interest in the collateral, the person shall, within fifteen (15) days after receiving the notice disclose the name and address of the latest successor in interest known to the person, and if without reasonable excuse the person fails to do so or the answer is incomplete or incorrect, the person is liable for any loss or damage caused thereby to any person entitled to receive information under this Section.

§5.21. Charges.

The secured party may require payment in advance of the charge prescribed for each statement or copy of the security agreement but the debtor is entitled to a statement without charge once in every six months.

§5.22. Court Orders Relating to Notices.

- (1) On an application to the court the court may by order
- (a) exempt, in whole or in part, the secured party from complying with a notice or a request given under Section 5.19 if the person giving the notice, not being the debtor, does not establish to the satisfaction of the court that the person has an interest in the collateral or that the person is a judgment creditor;
 - (b) extend the time for complying with the notice given under Section 5.19;
 - (c) require the secured party to comply with a notice or request given under Section 5.19; or
 - (d) make such other order as it considers just and equitable in the circumstances.
- (2) An order made under Subsection (1)(b) or (1)(c) does not affect the liability of the secured party under Subsection 5.18 (3).
- (3) Notwithstanding, Subsection (2) where the secured party applies to the court for an extension of time under Subsection (1)(b) within fifteen (15) days of receiving a notice under Section 5.19 and the court makes an order extending the time for compliance, the secured party shall answer the notice within the time as extended and not within the time as required by Subsection 5.18 (3) and, if without reasonable excuse,
- (a) the secured party fails to answer the notice within the time as extended, the secured party is liable for any loss or damage caused thereby to any person entitled to receive information under this Section; or
 - (b) the answer is incomplete or incorrect, the secured party is liable for any loss or damage caused thereby to any person who reasonably may be expected to rely on the answer.

SUBCHAPTER 3: PERFECTION OF SECURITY INTERESTS

§5.23. Perfection.

A security interest is perfected when it has attached and all steps required for perfection under any provision of this Chapter have been completed, regardless of the order of occurrence.

§5.24. Unperfected Security Interests.

- (1) A security interest,
 - (a) in collateral is subordinate to the interest of,
 - i. a person who has a perfected security interest in the same collateral or who has a lien given under any other Chapter or by a rule of law or who has a priority under any other Chapter, or
 - ii. a person who causes the collateral to be seized through execution, attachment, garnishment, charging order, equitable execution or other legal process, or
 - iii. all persons entitled to participate in the distribution of the property over which a person described in Subsection (a)(ii) has caused seizure of the collateral, or the proceeds of such property;
 - (b) in collateral is not effective against a person who represents the creditors of the debtor, including an assignee for the benefit of creditors and a trustee in bankruptcy;
 - (c) in chattel paper, documents of title, instruments or goods is not effective against a transferee thereof who takes under a transaction that does not secure payment or performance of an obligation and who gives value and receives delivery thereof without knowledge of the security interest;
 - (d) in intangibles other than accounts is not effective against a transferee thereof who takes under a transaction that does not secure payment or performance of an obligation and who gives value without knowledge of the security interest.
- (2) The rights of a person
 - (a) who has a statutory lien referred to in Subsection (1)(a)(i) arise,
 - i. in the case of the bankruptcy of the debtor, on the effective date of the bankruptcy, or
 - ii. in any other case, when the lienholder has taken possession or otherwise done everything necessary to make the lien enforceable in accordance with the provisions of the Chapter creating the lien;
 - (b) under Subsection (1)(b) in respect of the collateral are to be determined as of the date from which the person's representative status takes effect.

§5.25. Perfection of Purchase-Money Security Interest.

A purchase-money security interest in collateral, other than an intangible, that is perfected by registration before or within ten (10) days after the debtor obtains possession of the collateral or after a third party, at the request of the debtor, obtains possession of the collateral, whichever is earlier or in an intangible that is perfected by registration before or within ten (10) days after the attachment of the security interest in the intangible, has priority over an interest set out in Section 5.24 (1)(a)(ii) and is effective against a person described in Section 5.24 (1)(b).

§5.26. Continuity of Perfection.

If a security interest is originally perfected in any way permitted under this Chapter and is again perfected in some way under this Chapter without an intermediate period when it was unperfected, the security interest shall be deemed to be perfected continuously for the purposes of this Chapter.

§5.27. Assignees.

An assignee of a security interest succeeds in so far as its perfection is concerned to the position of the assignor at the time of the assignment.

§5.28. Perfection by Possession or Repossession.

Possession or repossession of the collateral by the secured party, or on the secured party's behalf by a person other than the debtor or the debtor's agent, perfects a security interest in chattel paper, goods, instruments, negotiable documents of title and money but only while it is actually held as collateral.

§5.29. Perfection by Registration.

Registration perfects a security interest in any type of collateral.

§5.30. Temporary Perfection.

- (1) A security interest perfected by possession in,
- (a) an instrument that a secured party delivers to the debtor for ultimate sale or exchange, presentation, collection or renewal, or registration of transfer; or
 - (b) a negotiable document of title or goods held by a bailee that are not covered by a negotiable document of title, which document of title or goods the secured party makes available to the debtor for the purpose of ultimate sale or exchange, loading, unloading, storing, shipping or trans-shipping, or manufacturing, processing, packaging or otherwise dealing with the goods in a manner preliminary to their sale or exchange,

remains perfected for the first ten (10) days after the collateral comes under the control of the debtor.

- (2) Beyond the period of ten (10) days referred to in Subsection (1) a security interest under this Section becomes subject to the provision of this Chapter for perfecting a security interest.

§5.31. Perfecting as to Proceeds.

- (1) Where collateral gives rise to proceeds, the security interest therein

- (a) continues as to the collateral, unless the secured party expressly or impliedly authorised the dealing with the collateral free of the security interest; and
 - (b) extends to the proceeds.
- (2) Where the security interest was perfected by registration when the proceeds arose, the security interest in the proceeds remains continuously perfected so long as the registration remains effective or where the security interest is perfected with respect to the proceeds by any other method permitted under this Chapter, for so long as the conditions of such perfection are satisfied.
- (3) If a security interest in collateral was perfected otherwise than by registration, the security interest in the proceeds becomes unperfected ten (10) days after the debtor acquires an interest in the proceeds unless the security interest in the proceeds is perfected under this Chapter.
- (4) A security interest in proceeds is a continuously perfected security interest if the interest in the collateral was perfected when the proceeds arose.

§5.32. Perfecting as to Goods Held by a Bailee.

- (1) A security interest in goods in the possession of a bailee who has issued a negotiable document of title covering them is perfected by perfecting a security interest in the document, and any security interest in them otherwise perfected while they are so covered is subject thereto.
- (2) A security interest in collateral in the possession of a person other than the debtor, the debtor's agent or a bailee mentioned in Subsection(1) is perfected by,
- (a) issuance of a document of title in the name of the secured party; or
 - (b) possession on behalf of the secured party; or
 - (c) registration.

§5.33. Goods Returned or Repossessed.

- (1) Where a debtor sells or leases goods that are subject to a security interest, the security interest in the goods reattaches to the goods, if,
- (a) the buyer or lessee has taken free of the security interest under Section 5.33 of this Chapter;
 - (b) the goods are returned to or repossessed by the debtor; and
 - (c) the obligation secured remains unpaid or unperformed.
- (2) Where a security interest in goods reattaches under Subsection (1), then any question as to whether or not the security interest in the goods is perfected and the time of its perfection or registration shall be determined as if the goods had not been sold or leased.

- (3) Where a sale or lease creates an account or chattel paper, the account or chattel paper is transferred to a secured party and the goods are returned to or repossessed by the seller or lessor, the transferee has a security interest in the goods.
- (4) A security interest in goods arising under Subsection (3) is perfected if the security interest in the account or chattel paper was also perfected but becomes unperfected on the expiration of ten (10) days after return or repossession of the goods unless the transferee registers a financing statement in respect of the security interest in, or takes possession of, the goods before the expiry of that period.
- (5) Where a transferee of an account has a perfected security interest in good under Subsections (3) and (4), for the purpose of determining the transferee's priority as to the goods, the transferee shall be deemed to have perfected a security interest in the goods at the time the transferee's security interest in the account was perfected.

§5.34. Transactions in Ordinary Course of Business.

- (1) A buyer of goods from a seller who sells the goods in the ordinary course of business takes them free from any security interest therein given by the seller even though it is perfected and the buyer knows of it, unless the buyer also knew that the sale constituted a breach of the security agreement.
- (2) Subsection (1) applies whether or not,
 - (a) the buyer took possession of the goods;
 - (b) the seller was in possession of the goods at any time;
 - (c) title to the goods passed to the buyer; or
 - (d) the seller took a security interest in the goods.
- (3) Despite Subsection (2), Subsection (1) does not apply if the goods were not identified to the contract of sale.
- (4) For the purposes of Subsection (3) goods are identified to the contract of sale when they are identified and agreed upon by the parties at the time the contract is made or marked or designated to the contract by the seller or by the buyer with the consent or authorisation of the seller.
- (5) A lessee of goods from a lessor who leases the goods in the ordinary course of business holds the goods, to the extent of the lessee's rights under the lease, free from any security interest therein given by the lessor even though it is perfected and the lessee knows of it, unless the lessee also knew that the lease constituted a breach of the security agreement.
- (6) Subsection (5) applies whether or not the lessee took possession of the goods or the lessor was in possession of the goods at any time.

- (7) Despite Subsection (6) Subsection (5) does not apply if the goods were not identified to the contract of lease.
- (8) For the purpose of Subsection (5) goods are identified to the contract of lease when the are identified and agreed upon by the parties a the time the contract is made or marked or designated to the contract by the lessor or by the lessee with the lessor's consent or authorisation.

§5.35. Purchaser of Chattel Paper.

- (1) A purchaser of chattel paper who takes possession of it in the ordinary course of business and gives new value has priority over any security interest in it,
 - (a) that was perfected by registration if the purchaser did not know at the time of taking possession that the chattel paper was subject to a security interest; or
 - (b) that has attached to proceeds of inventory whatever the extent of the purchaser's knowledge.
- (2) A purchaser of collateral that is an instrument or negotiable document of title has priority over any security interest therein perfected by registration or temporarily perfected under Section 5.29 if the purchaser
 - (a) gave value for the interest purchased;
 - (b) purchased the collateral without knowledge that it was subject to a security interest; and
 - (c) has taken possession of the collateral.

§5.36. Negotiable Instruments.

The rights of

- (a) a person who is a holder in due course of a draft, note or other instrument under the Negotiable Instrument Chapter; or
- (b) a transferee from the debtor of money, are to be determined without regard to this Chapter.

SUBCHAPTER 4: PRIORITY OF SECURITY INTERESTS

§5.37. General Principles as to Priority of Interests.

- (1) If no other provision of this Chapter is applicable, the following priority rules apply to security interests in the same collateral:

- (a) Where priority is to be determined between security interests perfected by registration, priority shall be determined by the order of registration regardless of the order of perfection;
 - (b) Where priority is to be determined between a security interest perfected by registration and a security interest perfected otherwise than by registration,
 - i. the security interest perfected by registration has priority over the other security interest if registration occurred before the perfection of the other security interest, and
 - ii. the security interest perfected otherwise than by registration has priority over the other security interest, if the security interest perfected otherwise than by registration was perfected before the registration of a financing statement related to the other security interest.
 - (c) Where priority is to be determined between security interests perfected otherwise than by registration, priority shall be determined by the order of perfection.
 - (d) Where priority is to be determined between unperfected security interests, priority shall be determined by the order of attachment.
- (2) For the purpose of Subsection (1) , a continuously perfected security interest shall be treated at all times as if perfected by registration, if it was originally so perfected, and it shall be treated at all times as if perfected otherwise than by registration if it was originally perfected otherwise than by registration.
- (3) Subject to Subsection (4) where future advances are made while a security interest is perfected, the security interest has the same priority with respect to each future advance as it has with respect to the first advance.
- (4) A future advance under a perfected security interest is subordinate to the rights of persons mentioned in Section 5.23 and if the advance was made after the secured party received written notification of the interest of any such person unless,
- (a) the secured party makes the advance for the purpose of paying reasonable expense, including the cost of insurance and payment of taxes or other charges incurred in obtaining and maintaining possession of the collateral and its preservation; or
 - (b) the secured party is bound to make the advance, whether or not a subsequent event of default or other event not within the secured party's control has relieved or may relieve the secured party from the obligation.

§5.38. Date of Registration or Perfection of Proceeds.

For the purpose of Section 5.37 (1), the date for registration or perfection as to collateral is also the date for registration or perfection as to proceeds.

§5.39. Reperfected Security Interests.

Where a security interest that is perfected by registration becomes unperfected and is again perfected by registration, the security interest shall be deemed to have been continuously perfected from the time of first perfection except that if a person acquired rights in all or part of the collateral during the period when the security interest was unperfected, the registration shall not be effective as against the person who acquired the rights during such period.

§5.40. Liens for Material and Services.

Where a person in the ordinary course of business furnishes materials or services with respect to goods that are subject to a security interest, any lien that the person has in respect of the materials or services has priority over a perfected security interest unless the lien is given by an Chapter that provides that the lien does not have such priority.

§5.41. Crops.

- (1) A perfected security interest in crops or their proceeds, given not more than six months before the crops become growing crops by planting or otherwise, to enable the debtor to produce the crops during the production season, has priority over an earlier perfected security interest in the same collateral to the extent that the earlier perfected security interest secures obligations that were due more than six months before the crops become growing crops by planting or otherwise, even though the person giving value has notice of the earlier security interest.
- (2) Where more than one perfected security interest is given priority by Subsection (1), each ranks equally according to the ratio that the amount advanced with respect to each bears to the total amount advanced.

§5.42. Purchase-Money Security Interests.

- (1) A purchase-money security interest in inventory or its proceeds has priority over any other security interest in the same collateral given by the same debtor, if, the purchase-money security interest was perfected at the time the debtor obtained possession of the inventory, or a third party, at the request of the debtor, obtained or held possession of the inventory.
- (2) Without prejudice to Subsection (1) a purchase-money security interest in inventory or its proceeds has priority over any other security interest if before the debtor receives possession of the inventory, the purchase-money secured party gives notice in writing to every other secured party who has, before the date of registration by the purchase-money secured party, registered a financing statement that describes the collateral as, or as including,
 - (a) items or types of inventory, all or some of which are the same as the items or types of inventory that will be subject to the purchase money security interest,
 - (b) inventory, or
 - (c) accounts; and
 - (d) the notice states that the person giving it has or expects to acquire a purchase-money security in inventory of the debtor.

§5.43. Purchase-Money Security other Than Inventory.

- (1) Except where the collateral or its proceeds is inventory or its proceeds, a purchase-money security interest in collateral or its proceeds has priority over any other security interest in the same collateral given by the same debtor if the purchase-money security interest,
 - (a) in the case of collateral, other than an intangible, was perfected before or within ten (10) days after,
 - ii. the debtor obtained possession of the collateral as a debtor, or
 - iii. a third party, at the request of the debtor, obtained or held possession of the collateral, whichever is earlier; or
 - (b) in the case of an intangible, was perfected before or within ten (10) days after the attachment of the purchase-money security interest in the intangible.
- (2) Where more than one purchase-money security interest is given priority under Subsection (1) the purchase-money security interest, if any, of the seller has priority over any other purchase-money security interest given by the same debtor.

§5.44. Fixtures.

- (1) A security interest in goods that attached,
 - (a) before the goods became a fixture, has priority as to the fixture over the claim of any person who has an interest in the real property; or
 - (b) after the goods became a fixture, has priority as to fixture over the claim of any person who subsequently acquired an interest in the real property but not over any person who has a registered interest in the real property at the time the security interest in the goods attached and who has not consented in writing to the security interest or disclaimed an interest in the fixture.
- (2) A security interest mentioned in Subsection (1) is subordinate to the interest of a subsequent purchaser for value of an interest in the real property or a creditor with a prior encumbrance of record on the real property to the extent that the creditor makes subsequent advances if the subsequent purchase or subsequent advance under a prior encumbrance of record is made or contracted for without knowledge of the security interest and before notice of it is registered in accordance with this Chapter.
- (3) If a secured party has an interest in a fixture that has priority over the claim of a person having an interest in the real property, the secured party may, on default and subject to the provision of this Chapter respecting default, remove the fixture from the real property if, unless otherwise agreed, the secured party reimburses any encumbrancer or owner of the real property who is not the debtor for the cost of repairing any physical injury but excluding the diminution in the value of the real property caused by the absence of the fixture or by the necessity for replacement.

- (4) A person entitled to reimbursement under Subsection (3) may refuse permission to remove the fixture until the secured party has given adequate security for the reimbursement.
- (5) A secured party who has the right to remove a fixture from real property shall serve, on each person who appears by the records of the proper land registry office to have an interest in the real property, notice in writing of the secured party's intention to remove the fixture containing,
 - (a) the name and address of the secured party;
 - (b) a description of the fixture to be removed sufficient to enable it to be identified;
 - (c) the amount required to satisfy the obligation secured by the security interest of the secured party;
 - (d) a description of the real property to which the fixtures is affixed sufficient to enable the real property to be identified; and
 - (e) a statement of intention to remove the fixture unless the amount secured is paid on or before a specified day that is not less than ten (10) days after service of the notice.
- (6) A notice required to be served under this Section shall comply with the procedures for service of notice under Section 5.72 of this Chapter.
- (7) A person having an interest in real property that is subordinate to a security interest in a fixture may, before the fixture has been removed from the real property by the secured party in accordance with Subsection (3), retain the fixture upon payment to the secured party of the amount owing in respect of the security interest having priority over the person's interest.

§5.45. Accessions.

- (1) Subject to Subsections (2) and (3) of this Section a security interest in goods that attached before the goods became an accession has priority as to the accession over the claim of any person in respect of the whole.
- (2) A security interest in goods that attached after the goods became an accession has priority as to the accession over the claim of any person who subsequently acquired an interest in the whole, but not over the claim of any person who had an interest in the whole at the date the security interest attached to the accession and who has not consented in writing to the security interest in the accession or disclaimed an interest in the accession as part of the whole.
- (3) A security interest referred to in Subsection (1) is subordinate to the interest of a subsequent buyer of an interest in the whole and a creditor with a prior perfected security interest in the whole to the extent that the creditor makes subsequent advance.

- (4) Without prejudice to the generality of Subsection (3), if the subsequent sale or subsequent advance under the prior perfected security interest is made or contracted for before the security interest is perfected such security interest is subordinate to the security interest of a creditor of the debtor who assumes control of the whole through execution, attachment, garnishment, charging order, equitable execution or other legal process, if control is assumed before the security interest is perfected.
- (5) Despite Subsection (4) a purchase-money security interest in an accession that is perfected before or within ten (10) days after the debtor obtains possession of the accession has priority over the interest of a creditor referred to in that Subsection.
- (6) If a secured party has an interest in an accession that has priority over the claim of any person having an interest in the whole, the secured party may, on default and subject to the provisions of this Chapter respecting default, remove the accession from the whole if, unless otherwise agreed, the secured party reimburses any encumbrancer or owner of the whole who is not the debtor for the cost of repairing any physical injury excluding diminution in value of the whole caused by the absence of the accession or by the necessity for replacement.
- (7) A person entitled to reimbursement under Subsection (6) may refuse permission to remove the accession until the secured party has given adequate security for the reimbursement.
- (8) The secured party who has the right to remove an accession from the whole shall serve, on each person known to the secured party as having an interest in the other goods and on any person with a security interest in such other goods perfected by registration against the name of the debtor a notice in writing of the secured party's intention to remove the accession containing,
- (a) the name and address of the secured party;
 - (b) a description of the accession to be removed sufficient to enable it to be identified;
 - (c) the amount required to satisfy the obligations secured by the security interest of the secured party;
 - (d) a description of the other goods sufficient to enable them to be identified; and
 - (e) a statement of intention to remove the accession from the whole unless the amount secured is paid on or before a specified day that is not less than ten (10) days after service of the notice.
- (9) The notice mentioned in Subsection (6) shall be served in accordance with Section 5.72 at least ten (10) days before the accession is removed.
- (10) A person having an interest in the whole that is subordinate to a security interest in the accession may, before the accession has been removed by the secured party in accordance with Subsection (6) retain the accession upon payment to the secured party of the amount owing in respect of the security interest having priority over the person's interest.

§5.46. Real Property Payment.

- (1) A security interest in a right to payment under a lease of real property to which this Chapter applies, is subordinate to the interest of a person who acquires for value the lessor's interest in the lease or in the real property thereby demised if the interest, or notice thereof, of the person is registered in the proper land registry office before the interest, or notice thereof, of the secured party is registered in the proper land registry office.
- (2) A security interest in a right to payment under a mortgage or charge of real property, to which this Chapter applies, is subordinate to the interest of a person who acquires for value the mortgagee's or chargee's interest in the mortgage or charge if the interest of the person is registered in the proper land registry office before a notice of the security interest is registered in the proper land registry office.

§5.47. Commingled Goods.

A perfected security interest in goods that subsequently become part of a product or mass continues in the product or mass if the goods are so manufactured, processed, assembled or commingled that their identity is lost in the product or mass, and if more than one security interest attaches to the product or mass, the security interests rank equally according to the ratio that the cost of the goods to which each interest originally attached bears to the cost of the total product or mass.

§5.48. Subordination.

A secured party may, in the security agreement or otherwise, subordinate the secured party's security interest to any other security interest and such subordination is effective according to its terms.

§5.49. Alienation of Rights of a Debtor.

The rights of a debtor in collateral may be transferred voluntarily or involuntarily despite a provision in the security agreement prohibiting transfer or declaring a transfer to be a default, but no transfer prejudices the rights of the secured party under the security agreement or otherwise.

§5.50. Account Debtor – Defences Available Against Assignee.

- (1) An account debtor who has not made an enforceable agreement not to assert defences arising out of the contract between the account debtor and the assignor may set up by way of defence against the assignee,
 - (a) all defences available to the account debtor against the assignor arising out of the terms of the contract or a related contract, including equitable set-off and misrepresentation; and
 - (b) the right to set off any debt owing to the account debtor by the assignor that was payable to the account debtor before the account debtor received notice of the assignment.

- (2) An account debtor may pay the assignor until the account debtor receives notice reasonably identifying the relevant rights, that the account or chattel paper has been assigned, and if requested by the account debtor, the assignee shall furnish proof within a reasonable time that the assignment has been made, and if the assignee does not do so, the account debtor may pay the assignor.
- (3) To the extent that the right to payment or part payment under an assigned contract has not been earned by performance, and despite notice of the assignment, any modification of or substitution for contract, made in good faith and in accordance with reasonable commercial standards and without material adverse effects is effective against an assignee unless the account debtor has otherwise agreed, but the assignee acquires corresponding rights under the modified or substituted contract.
- (4) A term in the contract between the account debtor and the assignor that prohibits or restricts the assignment of, or the giving of a security interest in, the whole of the account or chattel paper for money due or to become due or that requires the account debtor's consent to such assignment or such giving of a security interest,
 - (a) is binding on the assignor only to the extent of making the assignor liable to the account debtor for breach of their contract; and
 - (b) is unenforceable against third parties.

SUBCHAPTER 5: REGISTRATION OF SECURITY INTERESTS

§5.51. Registration System.

- (1) A registration system, including a central registry, shall be maintained for the purposes of this Chapter and any other law that provides for registration of security interests.
- (2) There shall be a registrar of security interests who shall be responsible for the effective and efficient operation of the system of registration of security interests established under this Chapter.
- (3) Until such time as the registration system becomes operational, all security interests shall be filed with the Central Bank which shall maintain a register of such security interests on its premises and/or on the premises of any third party authorised by the Central Bank.
- (4) Without prejudice to the generality of the foregoing, the registrar shall,
 - (a) ensure the integrity of the secured transactions registry;
 - (b) accept and file notices of security interests and liens; and
 - (c) provide information from the records of the registry to any person who requests such information.

§5.52. Certificate of Registrar.

- (1) Upon the request of any person for a search of the individual debtor name index, or business debtor name index and upon payment of the required fee, the registrar shall issue a certificate stating:
 - (a) whether, at the time mentioned in the certificate, there is registered a financing statement or a financing change statement the registration of which is recorded in the register in which the name or number with respect to which the inquiry is made is shown in the designated place on the financing statement or financing change statement as a debtor and, if there is, the registration number of it and any other recorded information;
 - (b) whether at the time mentioned in the certificate, there is registered a claim for lien and if there is, the registration number of it and any other recorded information.
- (2) A certificate issued under Subsection (1) is proof, in the absence of evidence to the contrary, of the contents thereof.
- (3) A certificate issued under Subsection (1) may include information relating to a registered financing statement recorded in the register which sets out in the designated place a debtor's name which is similar, in the opinion of the registrar, to the name with respect to which the inquiry is made.
- (4) No action or other proceeding for damages shall be instituted against the registrar or any person acting on his behalf for any act done in good faith in the execution or intended execution of the person's duty under this Chapter or any alleged neglect or default in the execution in good faith of the person's duty there under.

§5.53. Registration of Financing Statement.

- (1) In order to perfect a security interest by registration under this Chapter a financing statement shall be registered.
- (2) Where the collateral is consumer goods, the financing statement referred to in Subsection (1) shall not be registered before the security agreement is signed by the debtor and, where a financing statement is registered in contravention of this Subsection, the registration of the financing statement does not constitute registration or perfection under this Chapter.
- (3) Where the collateral is not consumer goods, the financing statement referred to in Subsection (1) may be registered before or after the security agreement is signed by the debtor.
- (4) Except where the collateral is consumer goods, one financing statement may perfect one or more security interests created or provided for in one or more security agreements between the parties whether or not,
 - (a) the security interests or security agreements are part of the same transaction or related transaction; or

- (b) the security agreements are signed by the debtor before the financing statement is registered.

§5.54. Registration Requirements.

- (1) A financing statement or financing change statement that is to be registered shall contain the required information presented in a required format.
- (2) The registration of a financing statement or financing change statement,
 - (a) does not constitute constructive notice or knowledge to or by third parties of the existence of the financing statement or financing change statement or of the contents thereof; and
 - (b) does not create a presumption that this Chapter applies to the transaction to which the registration relates.
- (3) Within thirty (30) days after the date of registration of a financing statement or financing change statement, the secured party shall deliver a copy of a verification statement to the debtor.
- (4) A financing statement may be registered for a perpetual period or for such period of years as is set out in the financing statement.
- (5) The registration period of a financing statement may be reduced by the registration of a financing change statement or extended by the registration of a financing change statement.
- (6) The registration period for a financing statement begins with the time assigned to its registration by the registrar and ends on the earlier of
 - (a) the time the registration is discharged; or
 - (b) at the end of the registration period as set out in the financing statement or as changed by subsequent financing changed statements.
- (7) Despite Subsection (6) if the collateral described in a financing statement is or includes consumer goods, the financing statement shall be deemed to have a registration period of five years unless a shorter registration period is indicated on the financing statement or unless the registration period is extended by the registration of a financing change statement. Every financing change statement extending the registration period of a financing statement shall extend the registration period for the five year period that begins at the time of its registration unless a shorter extension is indicated on the financing change statement.
- (8) Where a security interest has been perfected by registration, the registration may be extended before the registration ceases to be effective by the registration of a financing change statement.

- (9) Where a security interest has been perfected by registration and the registration has ceased to be effective, the security interest may be perfected again by the registration of a financing statement.
- (10) The registration of a financing change statement is effective from the time assigned to its registration by the registrar and is effective so long as the registration of the financing statement to which it relates is effective.

§5.55. Assignment of Security Interest.

- (1) A financing change statement may be registered where a security interest is perfected by registration and the secured party has assigned the secured party's interest in all or part of the collateral.
- (2) Where a security interest has not been perfected by registration and the secured party has assigned the secured party's interest, a financing statement referred to in Section 5.53 may be registered,
 - (a) naming the assignor as the secured party and Subsection (1) applies; or
 - (b) naming the assignee as the secured party and Subsection (1) does not apply.

§5.56. Transfer of Collateral.

- (1) Where a security interest is perfected by registration and the debtor with the prior consent of the secured party transfers the debtor's interest in all or part of the collateral, the security interest in the collateral transferred becomes unperfected fifteen (15) days after the transfer is made unless the secured party registers a financing change statement within such fifteen days.
- (2) Where a security interest is perfected by registration and the debtor, without the prior consent of the secured party, transfers the debtor's interest in all or part of the collateral, the security interest in the collateral transferred becomes unperfected thirty (30) days after the later of,
 - (a) the transfer, if the secured party had prior knowledge of the transfer and if the secured party had, at the time of the transfer, the information required to register a financing change statement; and
 - (b) the day the secured party learns the information required to register a financing change statement, unless the secured party registers a financing change statement or takes possession of the collateral within such thirty (30) days.
- (3) Where a security interest is perfected by registration and the secured party learns that the name of the debtor has changed, the security interest in the collateral becomes unperfected thirty (30) days after the secured party learns of the change of name and the new name of the debtor unless the secured party registers a financing change statement or takes possession of the collateral within such thirty (30) days.

- (4) Where the debtor's interest in all or part of the collateral is transferred by the debtor without the consent of the secured party and there is one or more subsequent transfers of the collateral without the consent of the secured party before the secured party learns of the name of the transferee who has possession of the collateral, the secured party shall be deemed to have complied with Subsection(3) if the secured party registers a financing change statement within thirty (30) days of learning of the name of the transferee who has possession of the collateral and the information required to register a financing change statement and the secured party need not register a financing change statement with respect to any intermediate transferee.
- (5) A security interest that becomes unperfected under Subsections (1), (2), or (3) may be perfected again by registering a financing change statement at any time during the remainder of the unexpired registration period of the financing statement or any renewal thereof.
- (6) Where the registrar has information to the effect that a debtor has changed his or her name and the information includes particulars of a registration under this Chapter in which the debtor's former name appears as debtor, the registrar shall amend the debtor's name as shown in the register related to the registration.
- (7) If the registrar, under Subsection (6) amends the register more than thirty (30) days after the day the secured party learns of the new name of the debtor, the registrar's amendment shall be deemed to be a financing change statement registered by the secured party at the time the amendment was made.

§5.57. Amendment of Financing Change Statement.

A financing change statement may be registered at any time during the registration period of a financing statement,

- (a) to correct an error or omission in the registered financing statement or any financing change statement related thereto; or
- (b) to amend the registered financing statement or any financing change statement related thereto where the amendment is not otherwise provided for in this Chapter.

§5.58. Registration of Subordinated Security Interest.

Where a security interest is perfected by registration and the interest of the secured party has been subordinated by the secured party to any other security interest in the collateral, a financing change statement may be registered at any time during the period that the registration of the subordinated interest is effective.

§5.59. Discharge or Partial Discharge of Registration.

- (1) A registration may be discharged or partially discharged by the registration of a financing change statement.
- (2) Where a financing statement or notice of security interest is registered under this Chapter and all the obligations under a security agreement to which it relates have been performed or it is agreed to release part of the collateral covered by a security

agreement to which it relates upon payment or performance of certain of the obligations under the security agreement, then upon payment or performance of such obligations, any person having an interest in the collateral covered by the security agreement may deliver a written notice to the secured party demanding registration of a financing change statement or a certificate of discharge or partial discharge or both and the secured party shall register the financing change statement or the certificate of discharge or partial discharge, or both as the case may be.

- (3) Where a financing statement or notice of security interest is registered under this Chapter and the person named in the financing statement or notice as the secured party has not acquired a security interest in the property to which the financing statement or notice relates, any person having an interest in the property may deliver a written notice to the person named as the secured party demanding registration of a financing change statement or a certificate of discharge, or both, and the person registered as the secured party shall register the financing change statement or the certificate of discharge, or both, as the case may be.
- (4) If a financing statement is registered under this Chapter and the collateral description or collateral classification in the financing statement includes personal property that is not collateral under the security agreement, the person named in the financing statement as the debtor may deliver a written notice to the person named as the secured party demanding registration of a financing change statement to provide an accurate collateral description and the person named as the secured party shall register the financing change statement.
- (5) Where the secured party, without reasonable excuse, fails to register the financing change statement, or certificate of discharge or partial discharge, or all of them, as the case may be within ten (10) days after receiving a demand for it, the secured party shall pay to the person making the demand any damages resulting from the failure; and the damages shall be recoverable in any court of competent jurisdiction.
- (6) Upon application to the court the court may allow security for or payment into court of the amount claimed by the secured party and such costs as the court may fix, and thereupon order the secured party to discharge or partially discharge, as the case may be, the registration of the financing statement or notice of security interest.
- (7) Where the person receiving a notice under Subsection (4) did not have a security interest in the collateral immediately before all the obligations under the security agreement to which it relates were performed, the person shall, within fifteen (15) days after receiving the notice, disclose the name and address of the latest successor in interest known to the person and if without reasonable excuse, the person fails to do so or the answer is incomplete or incorrect, the person shall pay to the person making the demand any damages resulting from the failure, which sum and damages are recoverable in any court of competent jurisdiction.

§5.60. Consumer Goods; Duty of Secured Party to Register or Provide Discharge.

- (1) Within thirty (30) days after all the obligations under a security agreement that creates a security interest in consumer goods have been performed or forgiven, the secured party shall register,
 - (a) a financing change statement discharging the registration if the security interest has been perfected by registration; and

- (b) a certificate of discharge, if a notice of security interest has been registered under this Chapter.
- (2) Where a secured party fails to comply with Subsection (1), the secured party shall, on a written notice from the debtor, pay the debtor any damages resulting from the failure, which sum and damages are recoverable in any court of competent jurisdiction.
- (3) Subsections (1) and (2) do not affect any rights of the debtor relating to discharge or partial discharge or of any other person having an interest in the collateral.

SUBCHAPTER 6: RIGHTS AND REMEDIES IN CASE OF DEFAULT

§5.61. Application.

Unless otherwise provided in this Chapter, this Subchapter applies to a security interest only if it secures payment or performance of an obligation.

§5.62. Rights and Remedies.

- (1) Where the debtor is in default under a security agreement, the secured party has the rights and remedies provided in the security agreement and the rights and remedies provided in this Subchapter.
- (2) The secured party may enforce a security interest by any method permitted by law and, if the collateral is or includes document of title, the secured party may proceed either as to the documents of title or as to the goods covered thereby and any method of enforcement that is permitted with respect to the documents of title is also permitted, with necessary modifications, with respect to the goods covered thereby.
- (3) Where the debtor is in default under a security agreement, the debtor has the rights and remedies provided in the security agreement and the rights and remedies provided in this Subchapter.
- (4) Subject to Subsection (5) a security agreement may set out the standards by which the rights of the debtor and the duties of the secured party are to be measured, so long as those standards are not manifestly unreasonable having regard to the nature of the rights and duties.
- (5) Notwithstanding Subsection (4) the provisions of Sections 5.17 to 5.20 to the extent that they give rights to the debtor and impose duties upon the secured party, shall not be waived or varied except as provided by this Chapter.
- (6) Where a security agreement covers both real and personal property, the secured party may proceed under this Chapter as to the personal property or may proceed as to both the real and the personal property in accordance with the secured party's rights, remedies and duties in respect of the real property with all necessary modifications, as if the personal property were real property in which case this Subchapter does not apply.

§5.63. Receiver; Receiver and Manager.

- (1) Nothing in this Chapter prevents,
 - (a) the parties to a security agreement from agreeing that the secured party may appoint a receiver or receiver and manager and, except as provided by this Chapter, determining the rights and duties of the receiver or receiver and manager by agreement; or
 - (b) a court of competent jurisdiction from appointing a receiver or receiver and manager and determining rights and duties of the receiver or receiver and manager by order.
- (2) Upon application of the secured party, the debtor or any other person with an interest in the collateral, and after notice to any other person that the court directs, the court, with respect to a receiver or receiver and manager however appointed, may,
 - (a) remove, replace or discharge the receiver or receiver and manager;
 - (b) give directions on any matter relating to the duties of the receiver or receiver and manager;
 - (c) approve the accounts and fix the remuneration of the receiver or receiver and manager; and
 - (d) make any order with respect to the receiver or receiver and manager that it thinks fit in the exercise of its general jurisdiction over a receiver or receiver and manager.

§5.64. Collection Rights of Secured Party.

- (1) Where so agreed and in any event upon default under a security agreement, a secured party is entitled to notify any person obligated on an account or on chattel paper or any obligor on an instrument to make payment to the secured party whether or not the assignor was theretofore making collections on the collateral and to take control of any proceeds to which the secured party is entitled under this Chapter.
- (2) A secured party who by agreement is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor and who undertakes to collect from a person obligated on an account or on chattel paper or an obligor on an instrument shall proceed in a commercially reasonable manner and the secured party may deduct the reasonable expenses of realization from the collections.

§5.65. Possession upon Default.

- (1) Upon default under a security agreement:
 - (a) the secured party has, unless otherwise agreed, the right to take possession of the collateral by any method permitted by law;

- (b) if the collateral is a vehicle, equipment or a plant and the security interest has been perfected by registration, the secured party may, upon ex parte application to the court and with the aid of the sheriff, render such equipment unusable for purposes of taking possession without removal thereof from the debtor's premises, and the secured party shall thereupon be deemed to have taken possession of such equipment; and
 - (c) where the collateral is capable of immediate possession, the secured party may, upon ex parte application to the court and with the aid of the sheriff, take possession of the collateral, and the certificate or returns of a sheriff as to the content or condition of the collateral shall be conclusive.
- (2) If any of the collateral in which the secured party has security interest under the security agreement, other than a purchase-money security interest or a possessory security interest, is property that would be exempt from seizure under a writ issued out of a court, that property is exempt from the rights of the secured party under this Chapter.

§5.66. Disposal of Collateral.

- (1) Upon default under a security agreement, the secured party may dispose of any of the collateral in its condition either before or after any commercially reasonable repair, processing or preparation for disposition, and proceeds of the disposition shall be applied consecutively to,
- (a) the reasonable expenses of the secured party, including the cost of insurance and payment of taxes and other charges incurred in retaking, holding, repairing, processing and preparing for disposition and disposing of the collateral and, to the extent provided for in the security agreement, any other reasonable expenses incurred by the secured party; and
 - (b) the satisfaction of obligation secured by the security interest of the party making the disposition and the surplus, if any, shall be dealt with in accordance with Section 5.72.
- (2) Collateral may be disposed of in whole or in part, and any such disposition may be by public sale, private sale, lease or otherwise and, subject to Subsection (4) may be made at any time and place and on any terms so long as every aspect of the disposition is commercially reasonable.
- (3) Subject to Subsection (4) the secured party may delay disposition of all or part of the collateral for such period of time as is commercially reasonable.
- (4) Subject to Subsection (3) the secured party shall give not less than fifteen (15) days notice in writing of the matters described in Subsection (2) to,
- (a) the debtor who owes payment or performance of the obligation secured;
 - (b) every person who is known by the secured party, before the date that the notice is served on the debtor, to be an owner of the collateral or an obligor who may owe payment or performance of the obligation secured, including any person who is contingently liable as a guarantor or otherwise of the obligation secured;

- (c) every person who has a security interest in the collateral and whose interest,

 - i. was perfected by possession, the continuance of which was prevented by the secured party who has taken possession of the collateral, or
 - ii. is perfected by registration before the date the notice is served on the debtor;
 - (d) every person with an interest in the collateral who has delivered a written notice to the secured party of the interest in the collateral before the date that the notice is served on the debtor.
- (5) The notice mentioned in Subsection (4) shall set out,
- (a) a brief description of the collateral;
 - (b) the amount required to satisfy the obligation secured by the security interest;
 - (c) the amount of the applicable expenses referred to in Subsection (1)(a) or, in a case where the amount of such expenses has not been determined, a reasonable estimate thereof;
 - (d) a statement that upon receipt of payment the payor will be credited with any rebates or allowances to which the debtor is entitled by law or under the agreement;
 - (e) a statement that upon payment of the amounts due under Subsections (5)(b) and (5)(c), any person entitled to receive notice may redeem the collateral;
 - (f) a statement that unless the amounts due are paid the collateral will be disposed of and the debtor may be liable for any deficiency; and
 - (g) the date, time and place of any public sale or the date after which any private disposition of the collateral is to be made.
- (6) If the notice to the debtor under Subsection (5) is mailed, sent by courier or by any other transmission provided for under this Chapter then the relevant date for the purpose of Subsection (5)(g) shall be the date of mailing, the date that the notice was sent by courier or the date of transmission, as the case may be, and not the date of the service.
- (7) The notice mentioned in Subsection (5) is not required where
- (a) the collateral is perishable;
 - (b) the secured party believes on reasonable grounds that the collateral will decline speedily in value;
 - (c) the collateral is of a type customarily sold on a recognized market;

- (d) the cost of care and storage of the collateral is disproportionately large relative to its value;
 - (e) for any reason not otherwise provided for in this Subsection, the court, on an application made without notice to any other person, is satisfied that a notice is not required;
 - (f) after default, every person entitled to receive a notice of disposition under Subsection (5) consents in writing to the immediate disposition of the collateral; or
 - (g) a receiver and manager disposes of collateral in the course of the debtor's business.
- (8) The secured party may buy the collateral or any part thereof only at a public sale unless the court, on application, orders otherwise.
- (9) Where collateral is disposed of in accordance with this Section, the disposition discharges the security interest of the secured party making the disposition and, if the disposition is made to a buyer who buys in good faith for value, discharges also any subordinate security interest and terminates the debtor's interest in the collateral.
- (10) Where collateral is disposed of by a secured party after default otherwise than in accordance with this Section, then
- (a) in the case of a public sale, if the buyer has no knowledge of any defect in the sale and if the buyer does not buy in collusion with the secured party, other bidders or the person conducting the sale; or
 - (b) in any other case, if the buyer acts in good faith,
- the disposition discharges the security interest of the secured party making the disposition and, where the disposition is made to a buyer for value, discharges also any subordinate security interest and terminates the debtor's interest in the collateral.
- (11) A person who is liable to a secured party under a guarantee, endorsement, covenant, repurchase agreement or the like and who receives a transfer of collateral from the secured party or is subrogated to the secured party's rights has thereafter the rights and duties of the secured party, and such a transfer of collateral is not a disposition of the collateral.

§5.67. Distribution of Surplus.

- (1) Where the secured party has dealt with the collateral under Section 5.66 and 5.68 or has disposed of it, the secured party shall account for and, subject to Subsection (2) pay over any surplus consecutively to,
- (a) any person who has a security interest in the collateral that is subordinate to that of the secured party and whose interest,

- i. was perfected by possession, the continuance of which was prevented by the secured party and whose interest ,
 - ii. was, immediately before the dealing or disposition, perfected by registration;
- (b) any other person with an interest in the surplus who has delivered a written notice to the secured party of the interest before the distribution of the proceeds; and
- (c) the debtor or any person who is known by the secured party to be an owner of the collateral,

but the priority of the claim of any person referred to in Subsections (1)(a), (1)(b) and (1)(c) against the recipient of the surplus shall not be prejudiced thereby.

- (2) The secured party may require any person mentioned in Subsection (1) to furnish proof of that person's interest, and, unless the proof is furnished within ten (10) days after demand by the secured party, the secured party need not pay over any portion of the surplus to the person.
- (3) Unless otherwise agreed in the security agreement or unless otherwise provided under this or any other Chapter, the debtor is liable for any deficiency.
- (4) Where there is a question as to who is entitled to receive payment under Subsection (1), the secured party may pay the surplus into court and the surplus shall not be paid out except upon an application to the court by a person claiming an entitlement thereto.

§5.68. Compulsory Disposition of Consumer Goods.

- (1) Where a security agreement secures an indebtedness and the collateral is consumer goods and the debtor has paid at least sixty percent (60%) of the indebtedness secured and has not signed, after default, a statement renouncing or modifying the debtor's rights under this Subsection, the secured party who has taken possession of the collateral shall, within ninety (90) days after taking possession, dispose of or contract to dispose of the collateral under Section 5.65, and, if the secured party fails to do so, the debtor may proceed under Section 5.69 or in an action for damages or loss sustained.
- (2) In any case other than mentioned in Subsection (1), secured party may, after default, propose to accept the collateral in satisfaction of the obligation secured and shall serve a notice of the proposal on the persons mentioned in Section 5.65 (4).
- (3) If any person entitled to notification under Subsection (2) whose interest in the collateral would be adversely affected by the secured party's proposal, delivers to the secured party a written objection within fifteen (15) days after service of the notice, the secured party shall dispose of the collateral in accordance with Section 5.65.
- (4) Upon application by any person entitled to notification under Subsection (2), the court may make an order extending the fifteen (15) day period mention in Subsection (3).

- (5) The secured party may require any person who has made an objection to the proposal to furnish proof of that person's interest in the collateral and, unless the person furnishes the proof within ten (10) days after demand by the secured party, the secured party may proceed as if no objection had been made.
- (6) Upon application to the court by the secured party, and after notice to every person who has made an objection to the proposal, the court may order that an objection to the proposal of the secured party is ineffective because,
 - (a) the person made the objection for a purpose other than the protection of the person's interest in the collateral or in the proceeds of a disposition of the collateral; or
 - (b) the fair market value of the collateral is less than the total amount owing to the secured party and the estimated expenses recoverable under Section 5.65 (1)(a).
- (7) If no effective objection is made, the secured party shall be deemed to have irrevocably elected to accept the collateral in full satisfaction of the obligation secured at the earlier of,
 - (a) the expiration of the fifteen (15) days period mentioned in Subsection (3) or, if the period was extended under Subsection (4), the expiration of the extended period; and
 - (b) the time when the secured party received from each person entitled to notification under Subsection (3) written consent to having the secured party retain the collateral in satisfaction of the obligation.
- (8) After the deemed election under Subsection (7), the secured party is entitled to the collateral free from all rights and interests in it of any person entitled to notification under Subsection (3) whose interest is subordinate to that of the secured party and who was served with the notice.
- (9) When a secured party disposes of the collateral after expiration of the period mentioned in Subsection (3) to a buyer who buys in good faith for value and who takes possession of it or, in the case of an intangible, receives an assignment of it, the buyer acquires the collateral free from any interest of the secured party and the debtor and free from every interest subordinate to that of the secured party, whether or not the requirements of this Section have been complied with by the secured party.

§5.69. Redemption of Collateral.

- (1) At any time before the secured party, under Section 5.65, has disposed of the collateral or contracted for such disposition or before the secured party under Section 5.66 (7) shall be deemed to have irrevocably elected to accept the collateral, any person entitled to receive notice under Section 5.67 (3) may, unless the person has otherwise agreed in writing after default, redeem the collateral by tendering fulfilment of all obligations secured by the collateral together with a sum equal to the reasonable expenses referred to in Section 5.65 (1)(a) incurred by the secured party, but if more than one person elects to redeem, the priority of their rights to redeem shall be the same as the priority of their respective interests.

- (2) Where the collateral is consumer goods, at any time before the secured party has disposed of the collateral or contracted for such disposition or before the secured party under Section 5.71 (7) shall be deemed to have irrevocably elected to accept the collateral, the debtor may reinstate the security agreement by paying,
- (a) the sum actually in arrears, exclusive of the operation of any acceleration clause, and by curing any other default which entitles the secured party to dispose of the collateral; and
 - (b) the sum equal to the reasonable expenses referred in Section 5.65 (1)(a) incurred by the secured party.
- (3) The right to reinstate under Subsection (2) may not be exercised more than once during the term of the security agreement, unless the court, on the application of the debtor, orders otherwise.

§5.70. Court Orders and Directions.

- (1) Upon application to the Court by a debtor, a creditor of a debtor, a secured party, an obligor who may owe payment or performance of the obligation secured or any person who has an interest in collateral which may be affected by an order under this Section, the court may:
- (a) make any order, including binding declarations of right and injunctive relief, that is necessary to ensure compliance with this Chapter;
 - (b) give directions to any party regarding the exercise of the party's rights or the discharge of the party's obligations under this Chapter;
 - (c) make any order necessary to determine questions for priority or entitlement in or to the collateral or its proceeds;
 - (d) relieve any party from compliance with the requirements of this Chapter but only on terms that are just for all parties concerned;
 - (e) make any order necessary to ensure protection of the interest of any person in the collateral, but only on terms that are just for all parties concerned;
 - (f) make an order requiring a secured party to make good any default in connection with the secured party's custody, management or disposition of the collateral of the debtor or to relieve the secured party from any default on such terms as the court considers just, and to confirm any act of the secured party.
- (2) Despite Subsection (1), the court may, if the secured party has taken security in both real and personal property to secure payment or performance of the debtor's obligation, make any order necessary to enable the secured party to accept both the real and personal property, including an order requiring notice to be given to certain persons and governing the notice, an order permitting and governing redemption of the real and personal property, and an order requiring the secured party to account to persons with an interest in the real property and an order requiring the secured party to account to a person with an interest in the real property or personal property for any surplus.

§5.71. Compensation for Loss or Damages.

- (1) Where a person fails to discharge any duties or obligations imposed upon the person under this Chapter the person to whom the duty or obligation is owed has a right to recover compensation for any loss or damage suffered because of the failure and which was reasonably foreseeable, and where the collateral is consumer goods, the debtor has a right to recover in any event an amount equal to the greater of US \$500 (or its market rate equivalent in Liberian Dollars) or the actual loss or damages.
- (2) Except as otherwise provided in this Chapter, any provision in any security agreement which purports to exclude any duty or obligation imposed under this Chapter or to exclude or limit liability for failure to discharge duties or obligations imposed by this Chapter is void.

§5.72. Service of Notices.

- (1) If, under this Chapter, a notice or any other document may be or is required to be given or delivered to or served on,
 - (a) a secured party named in a registered financing statement or financing change statement, the notice or document may be,
 - i. served by personal service,
 - ii. delivered by prepaid courier, or sent by registered mail, to the most recent address of the secured party as shown in the financing statement or financing change statement,
 - iii. sent by telephone transmission of a facsimile, or
 - iv. sent by electronic transmission;
 - (b) a debtor by a secured party, the notice or document may be,
 - i. served by personal service,
 - ii. delivered by prepaid courier, or sent by registered mail, to the most recent address of the debtor known to the secured party,
 - iii. sent by telephone transmission of a facsimile, or
 - iv. sent by electronic transmission.
- (2) If, under this Chapter, a notice or any other document may be or is required to be given or delivered to or served on a person, other than a person to whom Subsection (1) applies, the notice or document may,

- (a)** in the case of an individual,

 - i.** be served by personal service,
 - ii.** be delivered by prepaid courier, or sent by registered mail, to the individual's residence or place of business or, if the individual has more than one residence or place of business, to any one of the residences or places of business;
 - iii.** be sent telephone transmission or a facsimile; or
 - iv.** be sent by electronic transmission;

- (b)** in the case of a partnership,

 - i.** be served by personal service,
 - ii.** upon any one or more of the partners, or
 - iii.** upon any person having control or management of the partnership business at the principal place of business of the partnership,
 - iv.** be delivered by prepaid courier, or sent by registered mail, to,

 - 1. the partnership,
 - 2. any one or more of the general partners, or
 - 3. any person having control or management of the partnership business, at the principal address of the partnership, or
 - v.** be sent by telephone transmission of a facsimile, or by electronic transmission, to any person mentioned in Subsection (2)(ii).

- (3)** Any notice or other document sent by telephone transmission of a facsimile or by electronic transmission shall be deemed to have been given, delivered or served when the addressee actually receives the notice or document or upon the first business day after the day of transmission, whichever is earlier.

- (4)** Any notice or other document to be served on any person in relation to a proceeding in a court shall be served in accordance with the rules of the court and the provisions of this Section do not apply to such notice or other document.

§5.73. Knowledge and Notice.

For the purposes of this Chapter, a person learns or knows or has notice or is notified when service is effected in accordance with Section 5.76 or the regulations or when

- (a)** in the case of an individual, information comes to his or her attention under circumstances in which a reasonable person would take cognizance of it;

- (b) in the case of a partnership, information has come to the attention of one or more of the general partners or of a person having control or management of the partnership business under circumstances in which a reasonable person would take cognizance of it;
- (c) in the case of a corporation, information has come to the attention of a senior employee of the corporation with responsibility for matters to which the information relates under circumstance in which a reasonable person would take cognizance of it.

§5.74. Extension or Abridgment of Time.

Where in this Chapter, a required time within which or before which any act or thing must be done, the court, on an application without notice to any other person, may extend or abridge the time for compliance on terms that the court considers just.

§5.75. Authority of Registrar.

The registrar may prescribe regulations,

- (a) respecting the registration system and its operations;
- (b) requiring the payment of fees, other than fees specified in this Chapter;
- (c) specifying forms, the information to be contained in forms, the manner of recording the information, including the manner of setting out names, and the persons who shall sign forms;
- (d) governing the format or formats of financing statements or financing change statements, the format or formats of verification statements and the information to be included in the statements;
- (e) governing the tendering for registration of financing statements and financing change statements;
- (f) governing the time assigned to the registration of financing statements and financing change statements.

**TITLE 7: CHAPTER 6 OF THE LIBERIAN CODE OF LAWS, REVISED
COMMERCIAL CODE – MORTGAGES**

Arrangement of Sections

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- §6.2. Application.
- §6.3. Repeal.
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- §6.27. Action by Motion on Notice.
- §6.28. Regulations.

SUBCHAPTER 1: GENERAL PROVISIONS

§6.1. Short Title.

This Chapter shall be known and may be cited as Commercial Code – Mortgages.

§6.2. Application.

This Chapter applies to all transactions between or among:

- (a) Financial institutions and their customers relating to the extension of credit through loans or otherwise for the construction, purchase, completion, extension, improvement of homes, commercial properties or any realty, and
- (b) Natural or legal persons whereby a security interest is taken in a realty for the purpose of securing the performance of an obligation.

§6.3. Repeal.

- (1) Chapter Section 2.12(3) of the Civil Procedures Law, Title 1, Liberian Code of Laws Revised, providing for an equitable redemption period of twenty years is hereby repealed.
- (2) Decree No. 20 of the Interim National Assembly (INA), providing for a six month period of equitable redemption is hereby repealed.

§6.4. Interpretation; Definitions.

In this Chapter unless the context otherwise requires:

- (a) **“Annual Percentage Rate (APR)”** means the total cost of credit that the mortgagor pays, expressed as a simple annual percentage;
- (b) **“Appraiser”** shall be a person who is certified by a competent public authority as qualified to determine the market value of realty, or who is accepted by the party litigants to determine the market value of a property mortgaged or to be mortgaged.
- (c) **“Demand Note”** means a notice to the mortgagor demanding payment of all amounts due or past due;
- (d) **“Estimate”** means a sum total of anticipated costs that will be borne by the mortgagor in the mortgage transaction;
- (e) **“Financial Institution”** includes a bank and non-bank entity licensed by the Central Bank of Liberia to carry on the business of banking and or other financial activities;
- (f) **“Floating Charge”** means an equitable charge over the whole or specified part of a person’s undertaking and assets both present and future;

- (g) **"Foreclosure"** is a process or proceeding whereby payment of a debt or the performance of an obligation secured by a mortgaged is enforced by taking and selling the mortgaged property;
- (h) **"Judicial Foreclosure"** is a court-approved and supervised foreclosure, which ends in a public sale of the mortgaged property;
- (i) **"Loan"** includes any credit or other financial assistance granted by a financial institution;
- (j) **"Mortgage"** means an encumbrance created on a real property or an interest therein to secure a payment of a credit or the performance of an obligation, but excludes maritime mortgages which are governed by the Liberian Maritime Law;
- (k) **"Mortgage Agreement"** means an agreement between a mortgagor and a mortgagee which grants the mortgagee a charge over the mortgaged property as security for the payment of a loan or the performance of an obligation;
- (l) **"Mortgagor"** includes a person who has taken a loan and any person who derives title through the original mortgagor or entitled to redeem a mortgage according to an interest in the mortgaged property.
- (m) **"Mortgagee"** includes a person that acquires and or holds a security interest in the real property of another as a guarantee for the performance of a payment obligation or such other obligations owed the person.;
- (n) **"Power of sale Foreclosure"** is a foreclosure procedure conducted without judicial involvement or approval, which is permissible only when authorized by the express terms of a mortgage agreement;
- (o) **"Purchaser"** includes a person who buys a property in good faith for valuable consideration.

SUBCHAPTER 2: LOANS FOR REALTY

§6.5. Security for Loans.

Where a financial institution or any person grants a loan for the purchase, construction, extension or improvement of realty, the security for the loan may include a mortgage over the property to be purchased, constructed, extended or otherwise benefited.

§6.6. Use of Loan.

A loan extended to enable the borrower purchase, construct, complete, extend or otherwise improve a real property or a fixture shall be used only for the intended purpose. Unless otherwise agreed, use of the loan proceeds for purpose(s) other than those intended shall in and of itself constitutes a breach of the mortgage agreement, rendering all amounts due under the loan immediately due and payable.

§6.7. Disclosure before Disbursement of Loans.

A financial institution or any person granting a loan that is to be secured by a mortgage shall provide the borrower and or the person whose property is to be mortgaged:

- (a) all relevant information and documentation pertaining to the mortgage and stating in clear language the material terms and conditions of the loan; and
- (b) a reasonable opportunity to review the necessary documentation and, if necessary, seek legal and financial advice in respect of the loan or the documents thereof.

A loan covered by this Section shall not be disbursed earlier than two (2) days after all necessary information and documents pertaining to the said loan have been provided the borrower and or the person whose property is to be mortgaged.

SUBCHAPTER 3: CREATION OF A MORTGAGE

§6.8. Mortgage as a Written Agreement.

Subject to the provisions of Section 6.14 governing Purchase Money Mortgage, a mortgage is created by a written agreement between an obligor and obligee and any necessary party wherein a specified property is pledged as a security for the payment of a credit extended a specified obligation. A mortgage may be over a property owned by the obligor or by someone other than the obligee as long as the owner(s) of the property agree to the mortgage and show consent by subscribing to the mortgage.

§6.9. Enforceability of a Mortgage.

Except for a Purchase Money Mortgage as provided for in Section 6.14 of this Act, a mortgage is not enforceable unless it is:

- (a) evidenced in writing that is signed by all necessary parties and complies with the provision of this Sub Chapter;
- (b) delivered to the Mortgagee and, where the mortgaged property or any portion thereof is owned by another, to such owner; and
- (c) probated and registered according to the provisions of Section 6.11.

§6.10. Required Elements of a Mortgage Agreement

Every mortgage agreement shall, at a minimum, provide in writing the:

- (a) names and addresses of the mortgagor and mortgagee;
- (b) full description of the mortgaged property;
- (c) names of persons whose consent is required, if any;

- (d) full description and registration details of at least one parent deed of the mortgagor;
- (e) nature of the mortgagor's interest in the mortgaged property;
- (f) extent to which the mortgagor's interest is subject to the mortgage;
- (g) nature of the charge created, in case of a floating charge, the nature of the restriction on the power of the mortgagor to grant further charges that rank in priority or at the same level with the charge created;
- (h) Insurance for the Mortgaged property, including the party responsible for the insurance
- (i) interest on the principal amount;
- (j) due date for payment;
- (k) events of default; and
- (l) conditions for foreclosure.

Notwithstanding the preceding sentence, a mortgage agreement is enforceable with regard to form and content if it is in the form contained in the Form 1 or in similar form or uses expressions of a similar effect.

SUBCHAPTER 4: REGISTRATION; PRIORITY

§6.11. Registration of Mortgages.

- (1) Every mortgage shall be probated and registered with a Registry to be established sole for the registration of mortgages and other security interests. Mortgages shall be recorded by the register in the order of time in which they are received by the Registry.
- (2) The Registry for Mortgages and Security interest provided for in this Code shall be established within one year as of the enactment of this Code.
- (3) Until such time as the Registry for Mortgages and other security shall have been established, all mortgages and other security interests shall be filed with and recorded by the Center for National Documents and Records (CNDR).

§6.12. Effect of Failure to Register Mortgage

An un-probated and or unregistered mortgage is valid and binding as between the mortgagor and the mortgagee as well as their assignees and representatives, but it shall not be enforceable against any third party unless such third party can be said reasonably to have had notice of the existence of the mortgage.

§6.13. Priority.

A single property may be burdened by one or more mortgages and other liens. Except for purchase money mortgages covered by Section 6.14, the priority of mortgages shall be determined by the date of their registration with seniority accorded the first in time of registration.

§6.14. Purchase Money Mortgage.

- (1) Where a lender provides credit for the purchase or construction of a property, the lender takes or acquires a purchase money mortgage in the property purchased or constructed.
- (2) A purchase money mortgage, if registered in keeping with this Chapter, has priority over any other mortgage or lien in the same property as well as judgement liens.

SUBCHAPTER 5: POSSESSION AND INSURANCE

§6.15. Possession.

The mortgagor shall at all times have and remain in possession of the mortgaged property, and shall generally be responsible for the insurance and maintenance of the mortgaged property.

§6.16. Insurance.

- (1) A mortgagor shall insure a mortgaged property against loss or damage by theft, fire, earthquake or other natural disaster.
- (2) Where the mortgagor fails to insure all or part of the mortgaged property, the mortgagee may insure and keep insured the mortgaged property after giving notice in writing to the mortgagor, and the premiums paid by the mortgagee for the insurance shall be secured with the same priority as the mortgage.
- (3) Unless a contrary intention appears, where the mortgagee secures payment of money on behalf of the mortgagor, the money shall be added to the principal sum with interest at the same rate as on the principal sum.
- (4) Unless a contrary intention appears, insurance proceeds in respect of the mortgaged shall be applied to make good the loss or damage for which the money is received, unless the mortgagor elects to apply all or part of the money toward the performance of the act or acts secured by the mortgage.

§6.17. Transfer of Interest or Creation of Further Charges.

- (1) A mortgagor shall first obtain the prior written consent of the mortgagee before:
 - (a) transferring an interest in the mortgaged property; or
 - (b) creating further charges or interests in the mortgaged property.
- (2) A mortgagee shall not unreasonably withhold consent for the transfer of the Mortgagor's interest.

SUBCHAPTER 6: DEFAULT AND REMEDIES

§6.18. Default in Payment.

- (1) Where a mortgagor fails to make a payment when due, the mortgagee shall within fourteen (14) days after the due date notify the mortgagor in writing of this fact and request the mortgagor to take urgent steps to pay the amount due.
- (2) Where the mortgagor fails to respond to the initial notice and also defaults in the payment of the installment immediately following, the mortgagee shall issue a Demand Note on the mortgagor in the form of the second schedule of this Mortgage Chapter, requesting immediate payment of the total outstanding arrears.
- (3) The mortgagee may deliver the Initial Notice and the Demand Note to the Mortgagor at the address specified in the Mortgage agreement, or:
 - (a) by hand and receipt acknowledged in writing by the mortgagor;
 - (b) through a person apparently above the age of eighteen (18) years at the mortgagor's address and receipt acknowledged in writing by that person; or
 - (c) by registered mail or by courier.
- (4) In the case of a body corporate or a partnership, the mortgagee may deliver the notice or note to the registered agent or principal place of business of the business, and receipt of the Notice or Note shall be acknowledged in writing by an officer of the company or partnership.
- (5) Where a note is delivered by registered mail or courier service, the Demand Note is deemed to have been received by the mortgagor at the time at which the note would have been delivered in the ordinary course of post or the courier service.
- (6) Where a settlement of the arrears is not made and the mortgagor has not made a satisfactory arrangement with the mortgagee for the settlement of the outstanding amount after the date of issue of the Demand Note, the mortgagor is considered to be in default as soon as the third succeeding installment also falls into arrears.

§6.19. Mortgagee's Remedies on Default.

Where a mortgagor is in default in keeping with the provisions of Section 6.18 of this Chapter, the mortgagee may

- (a) sue the mortgagor on any personal covenant to perform; or
- (b) foreclose the mortgage in keeping with Agreement of the parties, but subject to the provision of this Chapter.

§6.20. Foreclosure of Mortgagee.

- (1) Where a mortgagor is in default, the Mortgagee may, with or without the aid of court, foreclose the mortgage in keeping with the provision of this Code.
- (2) A mortgagee shall not institute any foreclosure proceedings or processes unless
 - a. the mortgagor is in default, as provided in Section 6.18 of this Chapter, and
 - b. the mortgagee shall have served a written notice on the mortgagor, providing the said mortgagor at least 60-days to settle its full obligation failing which the mortgage shall be foreclosed.
- (3) Where, at the end of the 60-day period required by Section 6.20 (2) the mortgagor fails to pay off the debt or settle its obligations, the mortgagee shall be entitled to commence foreclosure by filing a complaint against the mortgagor, showing that a default has occurred in the obligations secured by the mortgage and requesting that the mortgage be foreclosed in a court-supervised sale. The complaint shall be served on both the mortgagor and all other interested parties.
- (4) A foreclosure decree or judgment shall lie in favour of the mortgagee pursuant to a judgment by default or upon a hearing where foreclosure is justified.
- (5) A foreclosure decree or judgment shall:
 - (a) state the amount due on the mortgage;
 - (b) direct that the property be sold at a public auction thirty days after the judgment if the debt is not paid; and,
 - (c) stipulate that notice of the sale shall be given to the public through no less than three (3) consecutive daily publications in two local daily newspapers. The final notice must be published at least fifteen days before the sale.
- (6) A mortgagee can foreclose a mortgage through a private sale without the aid of the court if a power of sale is expressly granted to the mortgagee in the mortgage agreement. A mortgagee who intends to exercise the power of sale shall in addition to the period provided in Section 6.20 (2), give thirty (30) days notice of the sale to the mortgagor and each person who the mortgagee has notice of having an interest in the property. Notice of the sale shall be given to the public through no less than three (3) consecutive daily publications in two local daily newspapers. The final notice must be published at least fifteen (15) days before the sale. Where all requirements are satisfied, a mortgagor and a mortgagee may purchase at a private sale carried out in keeping with this Chapter. A foreclosure through a private sale is null and void if conducted in contravention of this Section.
- (7) Where a sale is conducted by public auction, the auctioneer's fee shall not exceed three percent (3%) of the gross amount realized from the sale.
- (8) A mortgagor and a mortgagee are both competent to bid and purchase a mortgaged property at a public auction just as all other persons.

- (9) A mortgagee is liable for loss caused by a sale of a mortgaged property carried out in contravention of this Chapter. judgment upon a hearing. The complaint shall be served on the a sale be its debt or settle foreclosure shall be otherwise entitled to foreclose a mortgage, may not fails to perform an act secured by the mortgage, the mortgagee is entitled to possession of the mortgaged property as against the mortgagor and any person who has an interest in the mortgaged property through the mortgagor and whose interest is subsequent to that of the mortgagee.

§6.21. Valuation of Mortgaged Property.

- (1) Prior to selling a mortgaged property at a public auction or a private sale, the mortgagor and mortgagee shall have the market value of the property determined by an appraiser agreed on by them.
- (2) Where the mortgagor and mortgagee fail to agree on an appraiser, the Commercial Court shall appoint one upon application by either party.
- (3) The decision of the Court-approved appraiser is final as to the market value of the mortgaged property.

§6.22. Reserved Price of Mortgaged Property.

- (1) Subject to Subsection (2) a mortgagee shall sell a mortgaged property for no less than seventy-five percent (75%) of the appraised market value of the property.
- (2) Where there is no sale at seventy-five percent (75%) of the appraised market value after the first two attempts at sale, the property may be sold at a price less than seventy-five percent (75%) of the appraised market value.

§6.23. Purchaser's Interest in the Sale of Mortgaged Property.

- (1) A mortgagee who exercises a power of sale may convey to the purchaser the whole of the mortgagor's interest in the mortgaged property.
- (2) A purchaser of a mortgaged property shall take title to the mortgaged property free of all interests to which the mortgagee who requested the sale has priority, but subject to interests which are senior to that of the mortgagee.
- (3) The following shall suffice to establish the title of a purchaser of mortgaged property for purposes of registration of title:
 - (a) A sheriff's deed signed by the sheriff of the court that granted the foreclosure and supervised the sale, if it is a purchase made at a judicial foreclosure; and
 - (b) A certificate executed by the Mortgagee, declaring the power of sale granted said mortgagee by the mortgagor, if it is a purchase done at a private sale.

§6.24. Mortgagor's Right of Redemption.

A mortgagor may, at any time before the sale of the property redeem the mortgaged property by paying the outstanding amount of the loan plus accrued interest and all expenses incurred by the mortgagee as a result of the default of the mortgagor.

§6.25. Proceeds from Sale of Mortgaged Property.

- (1) The proceeds from a sale of mortgaged property shall be held in trust for distribution by the mortgagee who caused the sale.
- (2) Proceeds from the sale of a mortgaged property shall be applied:
 - (a) Firstly, in payment of all expenses properly incurred as a result of the Mortgagor's default and the subsequent foreclosure proceeding;
 - (b) Secondly, in payment of the debt, including principal and interest, secured by the mortgage; and
 - (c) Thirdly, in payment of other liens and encumbrances junior to that of the mortgage in the order of their priority.
- (3) The residue of the sale proceeds, if any, shall be paid to the mortgagor or the mortgagor's successor in interest.

§6.26. Liability and Right of the Mortgagor Relative to Sale Proceeds.

- (1) Where the proceeds from sale of a mortgaged property are inadequate to make the mortgagee whole, the mortgagor shall be obliged to pay the outstanding amount of the debt.
- (2) Where the sale proceeds are in excess of the amount required to cover the secured interest and allowable expenses of the mortgagee, the surplus shall be paid over to the mortgagor.

SUBCHAPTER 7: MISCELLANEOUS

§6.27. Action to Enforce Mortgage

Subject to the provisions of this Code, any right or obligation created by or existing under a mortgage agreement is enforceable by any action in a court of competent jurisdiction.

§6.28. Regulations.

The Central Bank of Liberia may, in respect of mortgage transactions involving financial institutions, promulgate such regulations as may be necessary to achieve the disclosure and other protective provisions of this Chapter.

FORMS

(Section ...) Form of Mortgage Agreement

This Mortgage is made the..... day of..... Two Thousand and..... (20...) BETWEEN [Name and Address of Mortgagor] (hereinafter referred to as the "Mortgagor" which expression shall where the context so admits or requires include the personal representatives successors and assigns of the mortgagor) of the one part

AND

[Name of Bank/Financial Institution] a limited liability company incorporated under the laws of Liberia and having its registered office situate [address] (hereinafter referred to as the "Mortgagee") of the other part.

WHEREAS:

[Recitals]

- * Root of Title
- * Person(s) whose consent and/or concurrence is/are required
- * Mortgagor's need for the Loan and
- * Mortgagees willingness to grant the Loan

1. Consideration and Personal Covenant to Pay

In consideration of the loan of [amount] granted to the Mortgagor by the Mortgagee (receipt of which the Mortgagor acknowledges), the mortgagor covenants with the mortgagee to duly and punctually repay the said loan together with interest at [percentage of interest] % within [term of loan] and [additional charges under disclosure requirements] [according to the payment schedule in the second schedule].

2. Mortgage

The Mortgagor as beneficial owner hereby mortgages the [description of property] which property is particularly described in the first schedules hereto (hereinafter referred to as the "Property") together with all fittings and fixtures attached thereto now or to be attached hereafter to the Mortgagee to secure the repayment of the loan, interest and other money hereby covenanted to be paid by the Mortgagor.

3. Payment of Principal, Interests and other Costs

(1) The Mortgagor covenants with the Mortgagee to repay the loan as follows:

- (a)** at the interest rate in [no. of installments] equal monthly installments of..... [amount] each within [term of loan] years, the first installment to be made on..... [date] and the subsequent payments to be made not later than the first day of each month in arrears.

- (b) In the event of a delay on the payment of any installment, the delayed installment shall attract an interest of []% per annum.
- (2) Where a mortgagor makes a payment over and above the required monthly installment, that payment would be treated as an advance payment and applied to future repayments of any payments payable under this agreement.
- (3) Where the Mortgagor makes a prepayment of [] or more of the Loan at any time during the mortgage, that prepayment shall attract a penalty of [] of the amount prepaid.
- (4) In the event of prepayment, the monthly installment of the Loan shall be adjusted accordingly to take effect from the second month following the month in which the prepayment was made.
- (5) The Mortgagor shall pay an estimated Annual Percentage Rate of [] in addition to the principal payable [mode of payment].
- (6) The Mortgagor shall pay the additional charges provided in the Second Schedule as good faith estimates of the charges, fees and costs of this mortgage agreement.

4. Insurance

- (1) The Mortgagor shall insure and keep insured, at the mortgagor's own expense during the subsistence of this mortgage, the property together with all fittings and fixtures attached thereto now or to be attached hereafter, against loss or damage, with a reputable insurance company to be mutually agreed on between the parties, [in the names of both the Mortgagor and the Mortgagee].
- (2) The Mortgagor is required to pay yearly insurance premiums in full prior to the commencement of the Mortgage and thereafter not later than fourteen days before the expiry of such insurance cover.
- (3) The Mortgagor shall duly and punctually pay all premiums and money necessary for effecting and maintaining that insurance and deposit evidence of such payments with the Mortgagee.
- (4) A mortgagor shall at any time at the request of the Mortgagee produce the insurance policy and the premium payment receipts for the inspection of the Mortgagee or its duly authorized agents.
- (5) Where the Mortgagor fails to insure all or any part of the property in accordance with this Agreement, the Mortgagee is entitled to insure and keep insured the mortgaged property.
- (6) Where premiums are paid by the Mortgagee on behalf of the Mortgagor under of this Agreement the premiums shall attract an annual interest rate of [] % and a default interest [] % and is payable as additional loan in [no. of installments] equal monthly installments from the date of payment of such premiums.
- (7) Any money received under any policy of insurance effected or maintained by the Mortgagor or on behalf of the Mortgagor by the Mortgagee, whether or not pursuant to the Mortgagor's obligation under this Agreement shall be applied to make good the loss or damage in respect of which the money is received.

5. Restriction on Transfer

Mortgagor shall not without the prior written consent of the mortgagee during the subsistence of this mortgage sell, lease, or part with possession or transfer all or part of the interest in the property.

6. Mortgagor's Covenants

The Mortgagor covenants with the mortgagee as follows:

- (a) that the Mortgagor or with the consent or concurrence of all other persons whose consent or concurrence is required, has full power to mortgage the property expressed to be mortgaged by the mortgagor in the manner in which it is expressed to be mortgaged,
- (b) that if either or both the Mortgagee and persons deriving title through the Mortgagee enter into possession of the mortgaged property, the Mortgagor and every person concurring in the mortgage by his direction and every person deriving title through the Mortgagor (other than a person having an interest to which the mortgage is expressly made subject) shall not interfere with, interrupt or disturb the possession of such person in possession,
- (c) that the mortgaged property is freed and discharged from, or otherwise by the Mortgagor sufficiently indemnified against, all interests, encumbrances, claims and demands whatsoever, other than those to which the mortgage is expressly made subject,
- (d) that the Mortgagor and every person concurring in the mortgage by the Mortgagor's direction, and every person deriving title through any of them, and every other person having or rightfully claiming any interest in the mortgaged property other than an interest to which the mortgage is expressly made subject will, from time to time and at all times on the request of the Mortgagee or any person deriving title through him, execute and do all such assurances and things for further or more perfectly assuring the title to the security interest as such person may reasonably request, the expenses in respect of this covenant to be borne by the Mortgagor during the life of the mortgage and thereafter by the person making the request,
- (e) that the Mortgagor and every person deriving an interest through the Mortgagor, other than a person having an interest to which the mortgage is expressly made subject, will at all times during the life of the mortgage preserve, protect, repair and maintain the mortgaged property so as not to diminish its value below what is reasonably required as security for the performance of any act secured by the mortgage but which has yet to be performed,
- (f) that the lease is at the date of the mortgage a, valid lease of the mortgaged property,
- (g) that all the rents reserved by, and all the covenants, conditions and agreements contained in, the lease and to be paid, observed or performed by the Mortgagor and persons deriving title through him have been paid, observed and performed up to the time of the mortgage,
- (h) that the Mortgagor, or the person deriving title through the Mortgagor during the subsistence of the Agreement, observe and perform or cause to be paid, observed and performed, all rents reserved by the lease and all covenants, conditions and agreements contained in the lease, which he or they are bound to pay, observe and perform.

7. Mortgagee's Covenants

The Mortgagee covenants that

- (a) The mortgage made is discharged when the Mortgagor performs all the obligations under this Agreement and undertakes to issue a written discharge to the Mortgagee as soon as the Mortgagor has duly fulfilled all obligations under this mortgage.
- (b) The Mortgagee shall furnish or deliver to the Mortgagor a [monthly/quarterly/ annual] statement of Account on the Loan payments on or before the [] day of [Month] of [period] and the Mortgagor may raise any queries on the statement if any.
- (c) In the event that the Mortgagor raises any queries the Parties shall reconcile the accounts.

8. Mortgagee's Rights and Powers

- (1) The Mortgagee shall hold all title documents relating exclusively to the Property and shall keep same whole, uncanceled and undefaced.
- (2) The Mortgagee acknowledges the right of the Mortgagor to the production of the title documents and to the supply of copies of same.
- (3) The Mortgagee shall upon receiving a [duration of notice] notice permit the Mortgagor or its representative to inspect the title documents.
- (4) The parties agree that the Mortgagee has the right to irrevocably assign any of its rights under this Agreement to any third party without prior notice to the Mortgagor.

9. Events of Default

Any breach of this Agreement shall amount to an Event of Default in addition to the following:

- (a) where the Mortgagee is considered to be in default under Section 6.6 of this Chapter,
- (b) where the Mortgagor dies, becomes bankrupt or makes any arrangement with creditors generally or takes or suffers similar action as a result of the debt,
- (c) where an execution is levied upon the Mortgagor's property,
- (d) where the Mortgagor becomes of unsound mind,
- (e) where the Mortgagor fails to comply with any of the terms, conditions covenants or obligations under this Agreement, or
- (f) where a representation or warranty given by the Mortgagor to the Mortgagee is found out to be false.

10. Rights of Mortgagee upon Default

- (1) In the event of the occurrence of an Event of Default, the Mortgagee shall exercise any one or more of the Mortgagee's rights in accordance with Subchapter 3 of the Mortgage Chapter.

(2) The parties agree that the Mortgagee's right upon default by the Mortgagor may be exercised in the Mortgagee's behalf by a trustee or any beneficiary to whom the Mortgagee's rights might have accrued.

11. Termination

This Agreement shall remain valid and may terminate after the Mortgage is discharged and the Mortgagee has issued the written discharge required under section [] of this Agreement.

12. Renewal of Mortgage

If the Mortgagor shall duly and punctually repay the principal money, interest and other money the Mortgagor has covenanted to pay to the Mortgagee in accordance with section 3 of this Agreement then, if the Mortgagor so desires, the security hereby made is used to secure further advances not exceeding, in aggregate of [amount] the Mortgagee shall give the Mortgagor at the original interest rate and priority. The Mortgagor shall give at least [length of notice] months' notice, in writing to the Mortgagee of the Mortgagor's intention to enforce this provision.

13. Notice

Any notice required to be served under this mortgage is sufficiently served on the Mortgagee if its delivered either by hand and a receipt acknowledged in writing by the Mortgagor; or by leaving it for the Mortgagor with a person apparently over the age of eighteen years at the Mortgagor's address and acknowledged in writing by that person; or by pasting the notice on a reasonably noticeable part of the mortgaged premises; or sent by registered mail or by courier or to the last known address provided by the Mortgagor.

14. Stamping and Registration

The Mortgagor shall immediately after the execution of this Agreement register this Agreement in accordance with Property Law, Title 29, Liberia Code of Laws Revised.

15. Waiver

Failure or neglect by either party to enforce a provision of this Agreement shall not be construed or considered to be a waiver of rights of the whole or part of this Agreement.

16. Entire Agreement

This Agreement constitutes the entire and only agreement between the parties and supersedes all previous understandings, commitments and agreements whether oral or written relating to this Agreement.

17. Amendments

Any term condition or provision contained in this Agreement may be amended on the mutual consent of both parties and any agreed amendment is in writing, executed by both parties and annexed to this Agreement.

18. Jurat [applicable when Mortgagor is illiterate and/or blind]

I..... (name and position of employee or representative of Mortgagee) declares that on..... day of..... (day/month/year).

I read and explained the contents of this Agreement to the Mortgagor herein, who is illiterate and/or blind in the. . . [language] language and seemed perfectly to understand and approve of the contents before executing it.

IN WITNESS WHEREOF the Mortgagor has set his/her hand and the Mortgagee has caused its hand and seal to be hereunto affixed on the day, month and year first above written.

[Detailed description of property and site plan]

Signed by the within named Mortgagor

Name:
Address:
Fax:
Tel:
Email:

In the presence of

Name:
Address:
Fax:
Tel:
Email:

Signed by or on behalf of the Mortgagee

Name:
Address:
Fax:
Tel:
Email:

In the presence of

Name:
Address:
Fax:
Tel:
Email:

FORM OF A DEMAND NOTICE

[Section ...] Demand Notice

[On Mortgagee's Letterhead]

Dear Sir/Madam,

MORTGAGE DEMAND NOTE

We refer to:

1. The [Mortgage Agreement] dated [] entered into between [] and the [] for a total amount of [] in respect of which there is a current outstanding indebtedness of [] plus interest of [] making a total of []
2. The notification of default dated []

In spite of the above, as at [date] the amount outstanding remains unpaid. We hereby issue this demand, in accordance with Section 6.11 (2) of the Mortgage Chapter and Section [] of the [Mortgage Agreement] for the immediate payment of the amount outstanding plus interest, from you as primary obligor, within seven (7) days of the date of this letter.

Please note that if a settlement of the arrears is not made within the stipulated time and no arrangement is entered with [the financial institution] for the settlement of the amount outstanding, we are entitled to exercise our rights against you in accordance with this Chapter.

Please be advised accordingly.

Signed:

.....Date:

TITLE 7: CHAPTER 7 OF THE LIBERIAN CODE OF LAWS, REVISED COMMERCIAL CODE – COMMERCIAL ARBITRATION

Arrangement of Sections

SUBCHAPTER 1: GENERAL PROVISIONS

- §7.1. Short Title.
- §7.2. Scope of Application.
- §7.3. Interpretation; Definitions.

SUBCHAPTER 2: ARBITRATION AGREEMENT

- §7.4. Form of Arbitration Agreement.
- §7.5. Reference to Arbitration.
- §7.6. Application to Court.
- §7.7. Reference by Court.
- §7.8. Reckoning of Time.
- §7.9. Place of Arbitration.

SUBCHAPTER 3: APPOINTMENT OF ARBITRATOR

- §7.10. Appointment of Arbitrator.
- §7.11. Qualification of Arbitrator.
- §7.12. Number of Arbitrators.
- §7.13. Impartiality and Challenge of Arbitrator.
- §7.14. Challenge of Appointment Procedure.
- §7.15. Revocation of Arbitrator's Authority.
- §7.16. Revocation of Arbitrator's Authority by the Court.
- §7.17. Resignation of Arbitrator.
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SUBCHAPTER 4: JURISDICTION OF ARBITRAL TRIBUNAL

- §7.22. Competence to Rule on Jurisdiction.
- §7.23. Application to Court on Jurisdiction.
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- §7.26. Arbitration Management Conference.
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- §7.46. Form and Content of Arbitral Award.
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SUBCHAPTER 6: POWERS OF THE COURT IN RELATION TO ARBITRAL AWARD

- §7.54. Enforcement of the Award.
- §7.55. Challenge of Award.
- §7.56. Enforcement of Foreign Awards.

SUBCHAPTER 1: GENERAL PROVISIONS

§7.1. Short Title.

This Chapter may be cited as the Liberian Commercial Code – Commercial Arbitration.

§7.2. Scope of Application.

- (1) This Chapter applies to commercial arbitration proceedings duly conducted in accordance with an arbitration agreement and this Chapter in the Republic of Liberia.
- (2) Without prejudice to the generality of Subsection (1) of this section, an arbitration proceeding is commercial where it involves matters of a commercial nature including matters arising between persons in a commercial relationship notwithstanding that the parties are not commercial parties or merchants under any law in force.
- (3) For the avoidance of doubt, this Chapter does not apply to matters involving the determination of liability for the commission of a crime, a tort, environmental pollution or matters relating to the public interest or the Constitution.

§7.3. Interpretation; Definitions.

In this Chapter, unless the context otherwise requires

- (a) “**Appointing authority**” means any person or authority including the Court in whom parties to an arbitration agreement vest power to take any action for or on behalf of the parties, in relation to the arbitration.

- (b) **"Arbitration"** means the voluntary submission of a dispute to one or more impartial persons for a final and binding determination.
- (c) **"Arbitration agreement"** means an agreement to submit to arbitration a present or future dispute.
- (d) **"Arbitration management conference"** means a meeting held between the arbitrator and the parties to the arbitration under Section 7.32 of this Chapter to resolve preliminary issues and set down a guideline for the arbitration.
- (e) **"Award"** means an arbitration award on agreed terms.
- (f) **"Arbitrator"** means one or more impartial persons appointed or who can be appointed to offer a final and binding resolution to a dispute.
- (g) **"Arbitral tribunal"** means a sole arbitrator or a panel of arbitrators.
- (h) **"Commercial relationship"** means a relationship governed by the terms of a commercial contract or transaction to which this Code applies.
- (i) **"Conciliation"** means the submission by the parties of a dispute which is the subject of an arbitration during the cause of the arbitration to an impartial person who is not the arbitrator to facilitate the resolution of the dispute between the parties.
- (j) **"Conciliator"** means an impartial person appointed to preside over a conciliation conference.
- (k) **"Court"** means a court of competent jurisdiction.

SUBCHAPTER 2: ARBITRATION AGREEMENT

§7.4. Form of Arbitration Agreement.

- (1) Parties to a commercial transaction may agree that all or certain disputes arising under the transaction be submitted to arbitration and such agreement shall be deemed to constitute an arbitration agreement for the purposes of this Chapter.
- (2) A provision to submit a dispute to arbitration may be in the form of an arbitration clause in a contract or in the form of a separate agreement but in each case shall be in writing.
- (3) For the purpose of this Chapter an arbitration agreement is in writing if it is made by exchange of communications in writing including exchange of letters, telex, fax, electronic mail or other means of communication which provides a record of the agreement or there is an exchange of statement of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.
- (4) A reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement provided that the contract is in writing and the reference is such as to make the clause part of the contract.

- (5) Unless otherwise agreed by the parties, an arbitration agreement which forms or is intended to form part of another agreement, shall not be regarded as invalid, non-existent or ineffective because that other agreement is invalid or did not come into existence or has become ineffective and shall for that purpose be treated as a distinct agreement.
- (6) Unless a contrary intention is expressed in the agreement, an arbitration agreement is irrevocable except by agreement of the parties.
- (7) An arbitration agreement is not discharged by the death of a party to that agreement and it is enforceable by or against the legal representative of the deceased party.

§7.5. Reference to Arbitration.

- (1) A party to a dispute in respect of which there is an arbitration agreement may, subject to the terms of the arbitration agreement, refer the dispute to any person or institution for arbitration.
- (2) Where reference is made to a person or institution for arbitration the procedure and rules shall be as the parties and arbitrators determine.

§7.6. Application to Court.

- (1) Where there is an arbitration agreement and a party commences an action in a court, the other party may on entering appearance, and on notice to the party who commenced the action in court, apply to the court to refer the action or a part of the action to which the arbitration agreement relates, to arbitration.
- (2) The court on hearing an application made under Subsection (1) shall, if satisfied that the matter in respect of which the application has been made is a matter in respect of which there is an arbitration agreement, refer the matter to arbitration.
- (3) The grant of an application shall serve as stay of the proceedings in the Court.
- (4) Unless otherwise agreed to by the parties, where proceedings in court are stayed for the purpose of arbitration, any security given, property detained, injunction or restraining orders imposed in the original action shall apply to the arbitration.

§7.7. Reference by Court.

- (1) Where a court before which an action is pending is of the opinion that the action or a part of the action can be resolved through arbitration, that court may with the consent of the parties in writing, despite that there is no arbitration agreement in respect of the matter in dispute, refer the action or any part of the action for arbitration.
- (2) A reference under Subsection (1) shall state the reasons for the reference, the nature of the dispute, the monetary value of the claim and the remedy sought and shall have attached copies of the pleadings and any other documents the court deems relevant in the circumstances of the case.
- (3) Where at the time of reference under this section pleadings have closed, the pleadings shall be deemed to be the statement of claim, defence, reply, counterclaim and defence to counterclaim as the case may be in the arbitration proceedings.

- (4) A party to the arbitral proceedings may make a new claim or counterclaim or amend his defence by writing to the other party and in accordance with procedures agreed to by the parties and the arbitrator.
- (5) For the purpose of a reference under this section the plaintiff in the original action shall be the claimant and the defendant shall be the respondent in the arbitration.
- (6) Where in any action before a court the court realises that the action is the subject of an arbitration agreement, the court shall stay the proceedings and refer the parties to arbitration.

§7.8. Reckoning of Time.

- (1) Parties to an arbitration may agree on a method of reckoning any period of time in relation to the arbitration.
- (2) Where an arbitration agreement or this Chapter fixes a time for taking any step in an arbitration or other dispute resolution proceedings, the parties may by agreement modify that period of time or the arbitrator may do so with the agreement of the parties or the appointing authority may do so at the request of any of the parties for good cause shown.

§7.9. Place of Arbitration.

- (1) The parties to an arbitration may agree on the place of arbitration.
- (2) In the absence of an agreement the place of arbitration shall be determined by the arbitral tribunal which shall take into account the circumstances of the case and the convenience of the parties.
- (3) Notwithstanding Subsections (1) and (2) of this section, the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers suitable after consultation among its members, for hearing witnesses, the parties, experts or for the inspection of documents, goods or other items.

SUBCHAPTER 3: APPOINTMENT OF ARBITRATOR

§7.10. Appointment of Arbitrator.

- (1) Except as otherwise provided in the arbitration agreement or under this Chapter, the parties may decide their own procedure for the appointment of an arbitrator.
- (2) Where the arbitration agreement does not provide for a procedure for appointing an arbitrator and the parties fail to agree on a procedure for appointing an arbitrator and the arbitration agreement does not provide for the settling of the disagreement, each party in an arbitration which requires the appointment of three arbitrators, shall appoint one arbitrator and the two appointed arbitrators, shall appoint the third arbitrator who shall be the chairperson.

- (3) For the purposes of Subsection (2) where a party fails to appoint an arbitrator within fourteen (14) days from the receipt of a request to do so from the other party or the two appointed arbitrators fail to agree on the third arbitrator within fourteen (14) days from the date of their appointment, the appointment shall be made by the appointing authority upon a request by a party.
- (4) In an arbitration which requires the appointment of a sole arbitrator, if the parties fail to agree on the arbitrator within fourteen (14) days after the receipt of a request for arbitration by one party from the other party, the appointment shall be made by the appointing authority upon a request by a party.
- (5) An appointing authority may keep a register of arbitrators to which the public shall have access at a reasonable cost.

§7.11. Qualification of Arbitrator.

- (1) An arbitrator shall be a person appointed by the parties or by a person or institution acting under a power conferred by the parties and may be a person with the experience or qualification that the parties may agree on.
- (2) A person without experience or qualification relevant to the subject of the dispute may be appointed an arbitrator if the parties so agree.
- (3) A person of any nationality may be appointed an arbitrator unless otherwise determined by the parties.
- (4) Without prejudice to the generality of Subsection (3) of this section, a person qualified to practise at the Liberian Bar and members of registered business and professional bodies within Liberia may be appointed arbitrators for the purposes of this Chapter.
- (5) In appointing an arbitrator, the parties, the person or the institution vested with the power of appointment shall have regard to the personal or financial interest of the arbitrator in the matter to which the arbitration relates, the relationship of the arbitrator to a party or counsel of a party to the arbitration, the nationalities of the parties and any other relevant considerations to ensure the appointment of an independent and an impartial arbitrator.
- (6) A person appointed an arbitrator shall before acceptance disclose to the parties or the appointing authority any information likely to affect the neutrality of the arbitration, particularly with regard to that arbitrator's interest in any case involving the parties.

§7.12. Number of Arbitrators.

- (1) The parties are at liberty to determine the number of arbitrators except that the number must be an uneven number.
- (2) Failing the determination as provided in Subsection (1), the arbitration shall consist of three arbitrators.

§7.13. Impartiality and Challenge of Arbitrator.

- (1) Where a person is requested to be an arbitrator, that person shall disclose in writing any circumstances likely to give reasonable cause to doubt as to the independence or impartiality of that person.

- (2) An arbitrator, from the time of appointment and throughout the arbitral proceedings shall without delay, disclose to the parties in writing any circumstances referred to in Subsection (1).
- (3) An arbitrator's appointment may be challenged only if circumstances exist that give rise to reasonable doubt as to the arbitrator's independence or impartiality or the arbitrator does not possess the qualification agreed on by the parties.
- (4) A party may not challenge an arbitrator appointed by the party or in whose appointment that party participated, except for reasons of which the party becomes aware subsequent to the appointment.

§7.14. Challenge of Appointment Procedure.

- (1) Subject to Subsection (2), the parties may agree on a procedure for challenging the appointment of an arbitrator.
- (2) Unless otherwise agreed upon in accordance with Subsection (1), a party challenging the appointment of an arbitrator shall within fifteen (15) days of becoming aware of the constitution of the arbitral tribunal or after becoming aware of circumstances that justify the challenge of the appointment of an arbitrator, submit a written statement of the reasons for the challenge to the arbitral tribunal.
- (3) Unless the arbitrator whose appointment is challenged withdraws from the arbitration or the other party to the arbitration agrees to the challenge, the arbitral tribunal shall decide on the challenge.
- (4) Where there is a challenge to the appointment of a sole arbitrator appointed by an appointing authority the appointing authority shall decide on the challenge.
- (5) Where the arbitrator is appointed by a party the party challenging the arbitrator may apply to the court for the determination of the challenge.
- (6) Where a sole arbitrator's appointment is challenged the sole arbitrator shall cease to be the arbitrator for the case.
- (7) Where the challenge of an arbitrator is from both parties, the appointing authority shall replace the arbitrator.

§7.15. Revocation of Arbitrator's Authority.

- (1) The parties may agree on the circumstances under which the appointment of an arbitrator may be revoked.
- (2) Unless the parties have agreed on the circumstances for revocation, the authority of an arbitrator terminates if,
 - (a) the arbitrator withdraws from office as an arbitrator;
 - (b) the parties acting jointly or by the appointing authority vested by the parties with the power for the purpose, terminates the appointment; or
 - (c) the arbitrator fails to sit within a reasonable time.

- (3) The revocation of the authority of an arbitrator by the parties acting jointly shall be in writing.

§7.16. Revocation of Arbitrator's Authority by the Court.

- (1) The Court may on an application on notice by a party to an arbitration remove an arbitrator where it considers it fit.
- (2) Without prejudice to the generality of Subsection (1), the Court may make an order to remove an arbitrator where
 - (a) there is sufficient reason to doubt the impartiality of the arbitrator;
 - (b) the arbitrator does not possess the qualifications or experience required under the arbitration agreement or as otherwise agreed to by the parties;
 - (c) the arbitrator is physically or mentally incapable or there is justifiable doubt as to the arbitrator's capability to conduct the proceedings;
 - (d) the arbitrator has refused or failed to conduct the arbitral proceedings in accordance with agreed rules of procedure or to use reasonable methods in conducting the proceedings or making an award and substantial injustice has or will be caused to the applicant.
- (3) Where the parties have by agreement vested the power of removal of an arbitrator in an appointing authority, the Court shall not entertain the application unless it is satisfied that the applicant has prior to the application requested the appointing authority to revoke the arbitrator's appointment and the appointing authority has failed or neglected to do so.
- (4) An application under Subsection (2) shall operate as a stay of arbitral proceedings.
- (5) The arbitrator may make representation to the Court in respect of the application.
- (6) Where the Court upon conclusion of the hearing of the application, removes the arbitrator, it may make any orders that it considers appropriate for payment of fees and expenses of the arbitrator or the repayment by the arbitrator of any fees or expenses already paid to the arbitrator.

§7.17. Resignation of Arbitrator.

- (1) Subject to the provisions of this Chapter, an arbitrator duly appointed by the parties or the appointing authority may resign his office by notice to the parties and the other arbitrators, if any.
- (2) The parties may agree with the arbitrator, in the event of the resignation of the arbitrator, on the fees or expenses and relief for any liability incurred by the arbitrator in the performance of his duties.
- (3) If there is no agreement under Subsection (2), an arbitrator who resigns may on notice to the parties, apply to the appointing authority if any or the Court for relief from any liability incurred and an order in respect of entitlement to fees or expenses.

- (4) Where there is an appointing authority, an application under Subsection (4) shall first be made to the appointing authority.
- (5) If the appointing authority or the Court finds the resignation of the arbitrator reasonable, it may grant relief on such terms as it thinks appropriate.
- (6) An arbitrator who is dissatisfied with a decision of the Court or the appointing authority in respect of an application for a relief or an order, may in the case of an application to the Court, appeal to the Supreme Court or in the case of an appointing authority apply to the Court for judicial review.

§7.18. Death of Arbitrator or Person Who Appointed the Arbitrator.

- (1) The authority of an arbitrator ceases on the arbitrator's death.
- (2) Unless the parties otherwise agree, the death of the person who appointed the arbitrator does not revoke the arbitrator's appointment.

§7.19. Filling of Vacancy and Adoption of Arbitral Proceedings.

- (1) If the position of an arbitrator becomes vacant, the parties may agree on whether and how the vacancy is to be filled, and whether the previous proceedings should be adopted.
- (2) If there is no agreement between the parties under Subsection (1) regarding the filling of the vacancy, the appointing authority shall, on a reference by a party, appoint another arbitrator in accordance with this Chapter.
- (3) Where the parties fail to reach an agreement under Subsection (1) regarding the adoption of previous proceedings, the new arbitrator appointed to fill the vacancy shall decide whether to adopt the previous proceedings or to start afresh.

§7.20. Fees of Arbitrators.

- (1) The parties and the arbitrators shall agree on the fees payable by the parties in respect of the arbitration and the parties are jointly and severally liable for the payment of the agreed fees and if a dispute arises about the fees a party may refer the issue to the appointing authority or the Court for resolution.
- (2) An arbitrator shall be paid based on the complexity of the case and the agreed hourly rate of fee.
- (3) An arbitrator may after consultation with the parties request the parties to make further payments in respect of fees where the circumstances so require.
- (4) A party may apply to the appointing authority or the Court upon notice to the other party and the arbitrators, for an order adjusting the amount of fees upon such conditions as the appointing authority or the Court shall determine and any excess payment made as a result of the adjustment may be ordered to be refunded having regard to all the circumstances.
- (5) Subsection (3) applies to an arbitrator who has ceased to act.

- (6) Where there is an appointing authority, a matter shall not be referred to the Court under this section unless the matter has been first referred to the appointing authority.

§7.21. Immunity of Arbitrator.

- (1) An arbitrator is not liable for any act or omission in the discharge of the arbitrator's functions as an arbitrator unless the arbitrator is shown to have acted in bad faith.
- (2) Subsection (1) applies to an employee or an agent of an arbitrator.
- (3) This section does not affect a liability incurred by an arbitrator as a result of the resignation of the arbitrator.

SUBCHAPTER 4: JURISDICTION OF ARBITRAL TRIBUNAL

§7.22. Competence of Arbitral Tribunal to Rule on Jurisdiction.

- (1) An arbitral tribunal may rule on its own jurisdiction, including any objections relating to the existence, scope or validity of the arbitration agreement and whether the matters submitted to arbitration are in accordance with the arbitration agreement.
- (2) A party that intends to object to the jurisdiction of an arbitrator shall do so before taking the first step in the proceedings to contest the case on its merits.
- (3) The appointment or the participation in the appointment of an arbitrator by a party is not a bar to that party raising an objection on jurisdiction.
- (4) Subject to Subsection (1), a party who in the course of arbitral proceedings intends to raise an objection that the arbitrator is exceeding the arbitrator's jurisdiction shall do so immediately after the matter alleged to be beyond jurisdiction is raised.
- (5) Despite Subsections (1) and (3), the arbitrator may entertain an objection made later than the prescribed time if the arbitrator considers that there is sufficient justification to do so.

§7.23. Application to Court on Jurisdiction.

- (1) A party dissatisfied with the arbitrator's ruling on jurisdiction may on notice to the arbitrator and the other party apply to the appointing authority or the Court for a determination of the arbitrator's jurisdiction.
- (2) An application under Subsection (1) shall be made within seven (7) days of the arbitrator's ruling and shall state the reasons for the application.
- (3) The appointing authority or the Court may consider and grant an application if it is satisfied that the application has been made within the stipulated time and that there is justification for the Court or the appointing authority to intervene.
- (4) Unless the parties otherwise agree, an application to the appointing authority or the Court shall not serve as a stay of the arbitral proceedings.

- (5) An appeal, in the case of the Court or a judicial review in the case of an appointing authority, does not lie from a decision under Subsection (3) except with the leave of the Court.
- (6) The Court shall grant leave for a judicial review or to appeal where it is satisfied that the appeal or judicial review involves a point of law which is fundamental to the case or is one which for some special reason deserves consideration by the Court or the Supreme Court.

§7.24. Waiver of Right.

- (1) A party who takes part or continues to take part in an arbitral proceeding, knowing that
 - (a) the arbitrator does not have jurisdiction;
 - (b) the proceedings are improperly conducted;
 - (c) the arbitration agreement or this Chapter has not been complied with; or
 - (d) there is an irregularity in respect of the arbitrator or proceedings

and who fails to promptly or within the time specified in the arbitration agreement or under this Chapter to object to the proceedings shall be deemed to have waived the right to raise the objection.

§7.25. Rights of Party not Notified of Arbitral Proceedings.

- (1) A party to an agreement who is not notified of arbitration proceedings arising under that agreement may, by an application to the Court,
 - (a) question whether there is a valid arbitration agreement;
 - (b) question whether the arbitral tribunal is properly constituted;
 - (c) question whether the matters submitted are in accordance with the arbitration agreement;
 - (d) challenge an award on the ground of lack of jurisdiction in relation to that party; and
 - (e) challenge an award on the ground of serious irregularity that affects that party.
- (2) A party whose application to the Court is refused may, with the leave of the Court appeal to the Supreme Court.

SUBCHAPTER 5: ARBITRAL PROCEEDINGS

§7.26. Arbitration Management Conference.

- (1) Unless the parties otherwise decide, an arbitrator shall, within fourteen (14) days of being appointed and upon giving seven (7) days written notice to the parties, conduct an

arbitration management conference with the parties or their representatives in person or through electronic or telecommunication media to determine

- (a) the issue to be resolved by arbitration;
 - (b) the date, time, place and estimated duration of the hearing;
 - (c) the need for discovery, production of documents or the issue of interrogatories and to establish the procedures therefore;
 - (d) the law, rules of evidence and the burden of proof that is or are to apply to the proceedings;
 - (e) the exchange of declaration regarding facts, exhibits, witnesses and related issues;
 - (f) whether there is the need to resolve issues of liability and damages separately;
 - (g) whether the summary of evidence of parties should be oral or in writing;
 - (h) the form of the award;
 - (i) costs and arbitrator's fees; and
 - (j) any other issue relating to the arbitration.
- (2) The decisions of an arbitrator at an arbitration management conference shall be in writing and shall be served on the parties.
- (3) An arbitrator may hold further arbitration management conference as is considered necessary upon written notice to the parties.

§7.27. Conciliation Conference.

The appointing authority or any institution or individual may, with the consent of the parties at any time during the arbitration process, arrange a conciliation conference to facilitate the resolution of the dispute, except that an arbitrator in the dispute shall not be a conciliator.

§7.28. Duties and Powers of Arbitrator in Proceedings.

- (1) An arbitrator shall be fair and impartial to the parties and shall give each party equal opportunity to present his case.
- (2) Subject to this Chapter, an arbitrator shall conduct the arbitration in a manner that the arbitrator considers appropriate, shall avoid unnecessary delay and expenses and adopt measures that will expedite resolution of the dispute.
- (3) Subject to the right of parties to agree on any matter of procedure, the arbitrator shall decide on matters of procedure and evidence, including but not limited to the time and place for holding any part of the proceedings, the questions that should be put to and answered by respective parties and how the questions should be put, the documents to be provided by the parties and at what stage of the proceedings and the application or non-application of the rules of evidence as to admissibility, relevance or weight of any documents sought to be tendered and how the material should be tendered.

- (4) The arbitrator may determine the time within which any direction is to be complied with.
- (5) The parties may agree to permit an arbitrator to consolidate one arbitral proceedings with other arbitral proceedings and to hold concurrent hearings.
- (6) Unless otherwise agreed by the parties, the arbitrator may order a claimant to provide security for the costs of the arbitration whether or not the claimant is an individual resident in this country or a body established or registered by law in Liberia.
- (7) The arbitrator may give directions in respect of property which is the subject matter of the arbitration and which is owned or is in the possession of a party for the inspection, preservation, photographing or detention of the property by the arbitrator, an expert or a party and that samples be taken or an experiment be conducted of the property.
- (8) The arbitrator may subpoena a witness and shall at the request of a party subpoena a witness.
- (9) The arbitrator may direct a party or a witness to give evidence on oath or affirmation and may for that purpose administer the oath or affirmation.

§7.29. Language of Proceedings.

- (1) Unless otherwise agreed by the parties and the arbitrator, the language of the arbitration proceedings shall be English.
- (2) The arbitrator may direct that any documentary evidence should be accompanied with a translation into English if such evidence is in another language.

§7.30. Statement of Claim and Defence.

- (1) Within the period of time agreed by the parties or determined by the arbitral tribunal the claimant shall submit a statement of the facts supportive of his claim, the issues of fact to be determined by the tribunal and the relief sought and the respondent shall submit a statement stating his defence in respect of these particulars.
- (2) The parties may submit their statements together with documents considered relevant to the proceedings or provide references to other documents or other evidence intended for production at the proceedings.
- (3) Unless otherwise agreed by the parties, a party may amend or add to the particulars of claim or defence submitted, except that the arbitrator may refuse an amendment or addition on the ground that it is inappropriate to allow the amendment or addition because there has been undue delay on the part of the party.
- (4) A party may submit a counterclaim or defence to counterclaim and the arbitrator shall in consultation with the parties determine the applicable period for doing so.

§7.31. Default of a Party.

Unless otherwise agreed by the parties, where without sufficient cause being shown

- (a) the claimant fails to submit his statement of claim in accordance with Section 7.27 (1) the arbitral tribunal shall terminate the proceedings;

- (b) the respondent fails to submit his statement of defence in accordance with Section 7.27 (1) the arbitral tribunal shall continue the proceeding without treating such failure in itself as an admission of the claimant's allegations; or
- (c) any party fails to appear at the hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make an award on the evidence before it.

§7.32. The Arbitration Hearing.

- (1) Subject to any contrary agreement by the parties, the arbitral tribunal shall determine whether to hold oral hearings for the presentation of evidence or for oral argument by the parties or their counsel or whether the proceedings shall be conducted on the basis of documents and other materials.
- (1) Unless the parties have agreed that no hearings shall be held, the arbitral tribunal shall hold such hearings at an appropriate stage of the proceedings if so requested by a party.
- (2) The parties shall be given sufficient advance notice of any hearing and of any meeting of the arbitral tribunal.
- (3) A party shall before the hearing give the arbitrator and the other party the personal particulars of witnesses that the party intends calling and the substance of the testimony of each witness.
- (4) The arbitrator may at the beginning of the hearing ask for opening statements from the parties to clarify the issues involved in the arbitration.
- (5) Except as otherwise agreed by the parties or provided by law, the arbitrator shall ensure the confidentiality of the arbitration.
- (6) An arbitrator has the authority
 - (a) to exclude a witness who is not a party from the hearing; and
 - (b) to determine whether a person who is neither a witness nor a party should attend the hearing.
- (7) Unless otherwise agreed by the parties, the hearing of the arbitration proceeding shall be private.

§7.33. Taking of Evidence in Presence of Parties.

- (1) Except where a party is absent without good cause or has waived the right to be present, evidence shall be taken in the presence of the arbitrator and the parties.
- (2) Evidence of a witness may be presented by affidavit and the arbitrator may admit that evidence, after considering any objection raised against its admission.
- (3) An arbitrator shall in taking evidence take into account applicable principles of legal privilege.
- (4) An arbitrator may direct or parties may agree, that documents or other evidence should be submitted to the arbitrator after the hearing.

- (5) Documents or other evidence in respect of which there is an agreement or direction under Subsection (1) may be submitted to the appointing authority for transmission to the arbitrator.

§7.34. Representation.

- (1) Unless otherwise agreed by the parties, a party may be represented by counsel or any other person chosen by the party.
- (2) Unless a claim or an answer is filed by a representative, a party who intends to be represented shall give notice stating the name and address of the representative to the other party at least seven (7) days before the commencement of the arbitral proceedings.

§7.35. Appointment of Expert.

- (1) The arbitrator may appoint an independent expert to report to the arbitrator in writing on issues specified by the arbitrator and this shall be communicated to both parties.
- (2) A party shall for this purpose
 - (a) provide relevant information; and
 - (b) produce for inspection, any relevant document or material that the expert may require.
- (3) The arbitrator shall settle any dispute between the parties and the expert as to the relevance of any information or material demanded by the expert.
- (4) The arbitrator shall send a copy of the expert's report to each party and give an opportunity to each party to comment in writing on the report.
- (5) The arbitrator shall give an opportunity to the parties to
 - (a) cross examine the expert at the hearing; and
 - (b) call their experts to testify on the subject of the report and the evidence of the expert appointed by the arbitrator.

§7.36. Postponement of Hearing.

- (1) An arbitrator may postpone a hearing
 - (a) at the arbitrator's own instance; or
 - (b) at the request of a party who gives sufficient reason.
- (2) The arbitrator shall postpone a hearing if the parties agree on a postponement.
- (3) If a party without sufficient reason fails to take a required step in the proceedings or to give evidence, the arbitrator may proceed with the arbitration, and on the evidence before it, make an award.

§7.37. Closing of Hearing.

- (1) An arbitrator may declare a hearing closed after specifically inquiring from the parties whether they have any further evidence to give and the parties have answered in the negative.
- (2) If closing statements are to be filed, a hearing shall be declared closed as of the last date for the submission of the statements.
- (3) If a document is to be filed and the date for the filing of the document is after the date for the submission of statements, the last date for the filing of the document shall be the date of the closing of the hearing.

§7.38. Re-opening of Hearing.

- (1) An arbitrator may on application by a party or for a reason which the arbitrator considers appropriate, re-open the hearing at any time before an award is made.
- (2) A hearing shall not be re-opened without the agreement of the parties for an extension of time, if re-opening the hearing will prevent the making of the award within the time specified in the arbitration agreement or the time agreed on by the parties for making of an award.
- (3) Where the arbitration agreement or the parties do not specify the time for making an award and a hearing is re-opened, the arbitrator shall make an award within thirty (30) days of the closing of the re-opened hearing.

§7.39. Settlement before Conclusion of Arbitration.

- (1) In an arbitral proceeding the arbitrator may encourage settlement of the dispute with the agreement of the parties.
- (2) The arbitrator may for the purposes of Subsection (1), use mediation or other procedures at any time during the arbitral proceedings.
- (3) If during the proceedings the parties settle the dispute, the arbitrator shall terminate the proceeding and with the agreement of the parties, record the settlement in the form of an arbitral award on agreed terms.
- (4) An arbitral award on agreed terms shall contain in substance the terms of an arbitral award provided for under Section 6.46 .

§7.40. Notice of Investigation or Inspection.

- (1) An arbitrator who decides to conduct an inspection or investigation in connection with the arbitration shall give notice to the parties stating the date and time of the inspection or investigation.
- (2) A party may attend an inspection or investigation.
- (3) Whether or not a party attends an inspection or investigation, the arbitrator shall present a report to the party and afford the party an opportunity to comment on the report.

§7.41. Interim Relief.

- (1) An arbitrator may at the request of a party grant any interim relief the arbitrator considers necessary for the protection or preservation of property.
- (2) An interim relief may be in the form of an interim award and the arbitrator may require the payment of cost for such a relief.
- (3) The arbitrator may apportion costs related to applications for interim relief in an interim award or in the final award.

§7.42. Powers of the Court to Support Arbitral Proceedings.

- (1) Unless otherwise agreed by the parties, the Court has power in relation to an arbitral proceeding to make an order
 - (a) for the taking of evidence of witnesses;
 - (b) for the preservation of evidence;
 - (c) in respect of the determination of any question or issue affecting any property right which is the subject of the proceedings or in respect of which any question in the proceedings arise
 - i. for the inspection, photographing, preservation, custody or detention of property; or
 - ii. for the taking of samples from or the observation of an experiment conducted upon a property; and
 - iii. for that purpose authorizing any person to enter any premises in the possession or control of a party to the arbitration;
 - (d) for the sale of any goods the subject of the proceedings;
 - (e) for the granting of an interim injunction or the appointment of a receiver.
- (2) Where the case is one of urgency, the Court may, on the application of a party to the arbitral proceedings, make orders as it considers necessary for the purpose of preserving evidence or assets.
- (3) If the case is not one of urgency, the Court shall act only where the application to the Court is upon notice to the other party and to the arbitrator and is made with the permission of the arbitrator or is supported by an agreement in writing of the other party.
- (4) In any case, the Court shall act if the arbitrator or other institution or person vested by the parties with power in that regard, is unable for the time being to act effectively.

- (5) If the Court so orders, an order made by it under this section shall cease to have effect in whole or in part upon a decision to that effect by the arbitrator or other institution or person vested with power to act in relation to the subject matter of the order.
- (6) Leave of the Court is required for any appeal from a decision of the Court under this section.

§7.43. Determination of Preliminary Point of Law.

- (1) Unless otherwise agreed by the parties, the Court may, on an application on notice to the other party by a party to arbitral proceedings, determine any question of law that arises in the course of the proceedings if the Court is satisfied that the question substantially affects the rights of the other party.
- (2) The application shall identify the question of law to be determined, and shall state the grounds which require that the question should be decided by the Court.
- (3) Unless otherwise agreed by the parties, the arbitrator may continue the arbitral proceedings and make an award while the application to the Court under this section is pending.
- (4) The decision of the Court on the question of law shall be treated as a judgment of the Court for the purpose of an appeal; except that no appeal lies without the leave of the Court, which leave shall not be given unless the Court considers that the question is one of importance or is one which for some other special reason should be considered by the Supreme Court.

§7.44. Representation by Counsel.

- (1) Unless otherwise agreed by the parties, a party may be represented by counsel or any other person chosen by the party.
- (2) Unless a claim or an answer is filed by a representative, a party who intends to be represented shall give notice stating the name and address of the representative to the other party at least seven (7) days before the commencement of the arbitral proceedings.

§7.45. Governing Law of the Award.

- (1) An arbitrator shall decide the dispute in accordance with the law chosen by the parties as applicable to the substance of the dispute, or in accordance with such other considerations as are agreed by the parties or determined by the arbitrator.
- (2) For this purpose the choice of the law of a country shall be understood to refer to the substantive laws of that country and not conflict of laws rules.
- (3) Where or to the extent that no law has been chosen or agreed on, the arbitrator shall apply the law determined by the conflict of laws rules which the arbitrator considers applicable.
- (4) In disputes relating to contract, the arbitrator shall apply the terms of the contract taking into consideration the usages of the trade to which the contract relates.

- (5) Where there are three or more arbitrators any award or decision of the tribunal shall be made by majority of the arbitrators.
- (6) A monetary award shall be in the currency of the contract unless the arbitrator considers another currency more appropriate.
- (7) The arbitrator may grant the appropriate pre-award or post-award relief at simple or compound interest under the terms of the contract and the applicable law.
- (8) Subsection (6) does not apply to damages awarded to compensate for conduct of bad faith or for time wasting.

§7.46. Form and Content of Arbitral Award.

- (1) The parties may agree on the form of the award and in the absence of such an agreement this section shall apply.
- (2) The award shall be in writing.
- (3) The arbitrator shall sign the award, state the date and place where the award was made and, except the parties otherwise agree, provide written reasons supporting the award.
- (4) Where there is more than one arbitrator the signatures of the majority of the arbitrators shall be sufficient where the reason for the omission of the signatures of some of the arbitrators is stated.
- (5) A signed copy of the award shall be delivered to each party.
- (6) The mode of payment and rate of interest on any sum where applicable shall be determined by the arbitrator.
- (7) Unless the parties otherwise agree, the award shall not be made public without the consent of the parties.
- (8) An arbitral award may be registered with the Court, or other institution as the parties may agree upon.

§7.47. Scope of Award.

An arbitrator may within the scope of the arbitration agreement grant any relief that the arbitrator considers just and equitable including specific performance.

§7.48. Assessment of Fees and Compensation.

The arbitrator shall assess the arbitration fees, expenses and compensation in the award.

§7.49. Effect of Award.

Subject to the right of a party to set aside an award under Section 7.58 of this Chapter, an arbitration award is final and binding as between the parties and any person claiming through or under them.

§7.50. Correction of or Addition to Award.

The arbitrator, at the request of a party or on the arbitrator's own volition, may within twenty-eight (28) days of delivering an award or such longer period as the parties may agree on, upon giving fourteen (14) days notice to the parties, correct any clerical, typographical, technical or computation error in the award and make an additional award in respect of a claim presented to the arbitrator but omitted from the award.

§7.51. Liability and Waiver.

- (1) Except for the consequences of deliberate wrong doing, neither an appointing authority nor an arbitrator is liable for any act or omission in connection with an arbitration.
- (2) A party's right to arbitration is not waived because the party has initiated judicial proceedings in relation to the subject matter of the arbitration.
- (3) An appointing authority or the arbitrator is not a necessary party in a judicial proceeding relating to an arbitration.

§7.52. Expenses.

- (1) A party shall pay the expenses of a witness called by the party.
- (2) Unless the parties otherwise agree or the arbitrator includes an expense in the award against a party, all expenses of the arbitration shall be paid for equally by the parties.

§7.53. Power to Withhold Award in Case of Non-Payment.

- (1) An arbitrator may refuse to deliver an award to the parties until there is full payment of the fees and expenses of the arbitrator.
- (2) If the arbitrator refuses on the ground specified in Subsection (1) to deliver an award, a party to the proceedings may, upon notice to the other party and the arbitrator, apply to the Court, which may, order that
 - (a) the arbitrator shall deliver the award on the payment into Court by the applicant of the fees and expenses demanded or such amount as the Court may specify;
 - (b) the amount of the fees and expenses properly payable shall be determined by such means and upon such terms as the Court may direct; and
 - (c) out of the money paid into Court there shall be paid out such fees and expenses as may be found to be properly payable to the arbitrator and the balance of the money, if any, shall be paid out to the applicant.
- (3) For the purposes of this section, the amount of fees and expenses properly payable is the amount the applicant is liable to pay under this Chapter or any agreement that relates to the payment of the arbitrator.
- (4) No application to the Court may be made where there is an available arbitral process for an appeal against or review of the amount of the fees or expenses demanded.

- (5) References in this section to arbitrator include an arbitrator who has ceased to act.
- (6) The provisions of this section also apply to any arbitrator or an appointing authority with powers in relation to the delivery of the arbitrator's award and for that purpose the references to the fees and expenses of the arbitrator shall be construed as including the fees and expenses of that appointing authority.
- (7) The leave of the Court is required for an appeal from a decision of the Court under this section.

SUBCHAPTER 6: POWERS OF THE COURT IN RELATION TO AWARD

§7.54. Enforcement of the Award.

- (1) An award made by an arbitrator pursuant to an arbitration agreement may, by leave of the Court, be enforced in the same manner as a judgment or order of the Court to the same effect.
- (2) Where leave is so given, judgment may be entered in lieu of the award.
- (3) Leave to enforce an award shall not be given where, or to the extent, that a person against whom the award is sought to be enforced shows that the arbitrator lacked substantive jurisdiction to make the award.

§7.55. Challenge of Award.

- (1) An arbitral award may, subject to this Chapter, be set aside on an application by a party to the arbitration.
- (2) The application shall be made to the Court and the award may be set aside by the Court only where the applicant satisfies the Court that
 - (a) a party to the arbitration was under some disability or incapacity;
 - (b) the law applicable to the arbitration agreement is not valid;
 - (c) the applicant was not given notice of the appointment of the arbitrator or of the proceedings or was unable to present the applicant's case;
 - (d) the award deals with a dispute not within the scope of the arbitration agreement or outside the agreement except that the Court shall not set aside any part of the award that falls within the agreement;
 - (e) there has been failure to conform to the agreed procedure by the parties;
 - (f) the arbitrator or umpire, if any, has an interest in the subject matter of arbitration which the arbitrator or umpire failed to disclose.
- (3) The Court shall set aside an arbitral award where it finds that the subject-matter of the dispute is incapable of being settled by arbitration or the arbitral award was induced by fraud or corruption.

- (4) An application to set aside an award may not be made after three months from the date on which the applicant received the award unless the Court for justifiable cause orders otherwise.
- (5) On hearing the applicant, the Court may make an order as is just in the circumstances of the case.
- (6) An appeal from the Court lies to the Supreme Court.

§7.56. Enforcement of Foreign Awards.

- (1) The Court shall enforce a foreign arbitral award if it is satisfied that
 - (a) the award was made by a competent authority under the laws of the country in which the award was made;
 - (b) a reciprocal arrangement exists between the Republic of Liberia and the country in which the award was made; or
 - (c) the award was made under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958 (New York Convention) or under any other international convention on arbitration ratified by the Legislature; and
 - (d) the party that seeks to enforce the award has produced
 - i. the original award or has produced a copy of the award authenticated in the manner prescribed by the law of the country in which it was made;
 - ii. the agreement pursuant to which the award was made or a copy of it duly authenticated in the manner prescribed by the law of the country in which it was made or in any other manner as may be sufficient according to the laws of the Republic of Liberia; and
 - (e) there is no appeal pending against the award in any court under the law applicable to the arbitration.
- (2) A party who seeks to enforce a foreign award and who relies on a document which is not in the English language shall produce a certified true translation of that document in English to the Court.
- (3) Despite Subsection (1) the court shall not enforce a foreign award if
 - (a) the award has been annulled in the country in which it was made;
 - (b) the party against whom the award is invoked was not given sufficient notice to enable the party present the party's case;
 - (c) a party, lacking legal capacity, was not properly represented;
 - (d) the award does not deal with the issues submitted to arbitration; or
 - (e) the award contains a decision beyond the scope of the matters submitted for arbitration.

TITLE 7: CHAPTER 8 OF THE LIBERIAN CODE OF LAWS REVISED COMMERCIAL CODE - FRAUDULENT CONVEYANCE ACT

Arrangement of Sections.

SUBCHAPTER 1: GENERAL PROVISIONS

- § 8.1. Short Title
- § 8.2. Interpretation; Definition of Terms.

SUBCHAPTER 2: INSOLVENCY

- § 8.3. Insolvency.
- § 8.4. Fair Consideration.
- § 8.5. Conveyance by Insolvent.

SUBCHAPTER 3: CONVEYANCE WITH INTENT TO DEFRAUD

- § 8.6. Conveyance by Person in Business.
- § 8.7. Conveyance by a Person About to Incur Debts.
- § 8.8. Conveyance Made With Intent to Defraud.
- § 8.9. Conveyance of Partnership Property.

SUBCHAPTER 4: RIGHTS OF CREDITORS

- § 8.10. Rights of Creditors Whose Claims Have Matured.
- § 8.11. Right of Creditors Whose Claims Have Not Matured.
- § 8.12. Cases Not Provided For in Chapter.

SUBCHAPTER 1: GENERAL PROVISIONS

§ 8.1. Short Title

This Chapter shall be known and may be cited as the Liberian Commercial Code – Fraudulent Conveyance.

§ 8.2. Definition of terms.

For the purpose of the applicability and enforcement of this Chapter, the following terms shall have the meanings ascribed to them notwithstanding the definitions given to them in other parts of this Title and other laws heretofore:

- (a) "**Assets**" of a debtor means his property not exempt from liability for his debts. To the extent that any property which is liable for any debts of the debtor, such property shall be included in his assets.
- (b) "**Conveyance**" includes every payment of money, assignment, release, transfer, lease, mortgage or pledge of tangible or intangible property, and also the creation of any lien or encumbrance. The enforceability of this provision is however subject to the limitations or requirements imposed by section 1.9, Chapter 1 of this Title 7.

- (c) "**Creditor**" is a person having any claim, whether matured or unmatured, liquidated or unliquidated, absolute, fixed or contingent.
- (d) "**Debt**" includes any legal liability, whether matured or unmatured, liquidated or unliquidated, absolute, fixed or contingent.

SUBCHAPTER 2: CONVEYANCE CONSIDERATION AND INSOLVENCY

§ 8.3. Insolvency.

For the purpose of this Chapter, notwithstanding the provisions of the Associations Law and any provisions contained in this Title:

- (a) A person is insolvent when the present fair salable value of his assets is less than the amount that will be required to pay his probable liability on his existing debts as they become absolute and matured.
- (b) In determining whether a partnership is insolvent there shall be added to the partnership property the present fair salable value of the separate assets of each general partner in excess of the amount probably sufficient to meet the claims of his separate creditors, and also the amount of any unpaid subscription to the partnership of each limited partner, provided the present fair salable value of the assets of such limited partner is probably sufficient to pay his debt, including such unpaid subscription.

§ 8.4. Fair consideration.

Fair consideration is given for property, or an obligation

- (a) When in exchange for such property, or obligation, as a fair equivalent therefor, and in good faith, property is conveyed or an antecedent debt is satisfied, or
- (b) When such property, or obligation is received in good faith to secure a present advance or antecedent debt in amount not disproportionately small as compared with the value of the property, or obligation obtained.

§ 8.5. Conveyance by insolvent.

Every conveyance made and every obligation incurred by a person who is or will be thereby rendered insolvent is fraudulent as to creditors without regard to his intent if the conveyance is made or the obligation is incurred without a fair consideration.

SUBCHAPTER 3: CONVEYANCE WITH INTENT TO DEFRAUD

§ 8.6. Conveyance by person in business.

Every conveyance made without fair consideration when the person making it is engaged or is about to engage in a business or transaction for which the property remaining in his hands after the conveyance is an unreasonably small capital, is fraudulent as to creditors and as to other persons who become creditors during the continuance of such business or transaction without regard to his actual intent.

§ 8.7. Conveyances by a person about to incur debts.

Every conveyance made and every obligation incurred without fair consideration when the person making the conveyance or entering into the obligation intends or believes that he will incur debts beyond his ability to pay as they mature, is fraudulent as to both present and future credit.

§ 8.8. Conveyance made with intent to defraud.

Every conveyance made and every obligation incurred with actual intent, as distinguished from intent presumed in law, to hinder, delay, or defraud either present or future creditors, is fraudulent as to both present and future creditors.

§ 8.9. Conveyance of partnership property.

Every conveyance of partnership property and every partnership obligation incurred when the partnership is or will be thereby rendered insolvent, is fraudulent as to partnership creditors, if the conveyance is made or obligation is incurred.

- (a) To a partner, whether with or without a promise by him to pay partnership debts, or
- (b) To a person not a partner without fair consideration to the partnership as distinguished from consideration to the individual partners.

SUBCHAPTER 4: RIGHTS OF CREDITORS

§ 8.10. Rights of creditors whose claims have matured.

- (1) Where a conveyance or obligation is fraudulent as to a creditor, such creditor, when his claim has matured, may, as against any persons except a purchaser for fair consideration without knowledge of the fraud at the time of the purchase, or one who has derived title immediately from such a purchaser,
 - (a) Have the conveyance set aside or obligation annulled to the extent necessary to satisfy his claim, or
 - (b) Disregard the conveyance and attach or levy execution upon the property conveyed.
- (2) A purchaser who, without actual fraudulent intent, has given less than a fair consideration for the conveyance or obligation may retain the property or obligation as security for repayment.

§ 8.11. Rights of creditors whose claims have not matured.

When a conveyance made or obligation incurred is fraudulent as to a creditor whose claim has not matured, he may proceed in a court of competent jurisdiction against any person against whom he could have proceeded had his claim matured, and the court may,

- (a) Restrain the defendant from disposing of his property,
- (b) Appoint a receiver to take charge of the property,
- (c) Set aside the conveyance or annul the obligation or
- (d) Make any order which the circumstance of the case may require.

§ 8.12. Cases not provided for in Chapter.

In any case not provided for in this Chapter, the rules of law and equity including the law merchant, and in particular the rules relating to the law of principal or agent, and the effect of fraud, misrepresentation, duress or coercion, mistake, insolvency, or other invalidating cause shall govern.

CHAPTER 9: REPEALERS

§ 9.1. Repeal of Title 7

Except as provided in the following section 9.2, the Liberian Commercial and Bankruptcy Law, Title 7, of the Liberian Code of Laws Revised, is hereby repealed.

§ 9.2. Chapters of Title 7 not repealed.

Chapter 20 of the Commercial and Bankruptcy Law, Title 7 of the Liberian Code of Laws Revised (Voluntary Assignments for Benefit of Creditors), and Chapter 31 of the Commercial and Bankruptcy Law, Title 7 of the Liberian Code of Laws Revised (Involuntary Proceedings) are not repealed but are instead fully incorporated in the Liberian Commercial Code of 2010, constituting this new Title 7.

CHAPTER 10: EFFECTIVE DATE

§ 10.1. This Act shall take effect immediately upon publication in handbills.

ANY LAW TO THE CONTRARY NOTWITHSTANDING.