

## **PURPOSE:**

“The purpose of this Bill is to strengthen and expand the existing law protecting Liberian Businesses and business interests of Liberians as contained in the Liberianization Act of 1973 and the Investment Act of 2010. This Bill ensures the smooth transitioning in implementation, creation of a statutory authority to administer and enforce the provisions stated herein. This [Bill](#) also ensures the enforcement methodology and establishment of a Liberian Business Development and Investment Fund to provide financing for Liberian businesses and business interests of Liberians.”

## **LIBERIAN BUSINESS ECONOMIC EMPOWERMENT ACT OF 2018 AND THE ESTABLISHMENT OF THE “LIBERIAN BUSINESS ECONOMIC EMPOWERMENT AUTHORITY” (LBEEA)**

WHEREAS, in the interest of Liberia it is the policy and desire of the Government that Liberians be empowered and have effective participation in their own economy; and,

WHEREAS, the Investment Act of 2010 and its progeny provided for restrictions on foreign ownership of businesses within certain sectors, including the reservation of some sectors exclusively for Liberian participation; and,

WHEREAS, the National Bureau of Concessions Act of 2010 mandates the Bureau to develop standards and guidelines to monitor and evaluate compliance by various concessions operating in Liberia- with Liberianization provisions specifically relating to clauses on local content within concession agreements; but did not provide a mechanism for the Bureau to enforce compliance with such provisions; and,

WHEREAS, the Small Business Empowerment Act of 2014 determined that it is in the interest of Liberia to encourage and promote the establishment, growth and expansion of Liberian owned micro, small and medium-sized enterprises (MSME); that the economy of Liberia depends heavily on the success of such enterprises, and therefore sought to promote the interests of those enterprises by ensuring that they receive a minimum 25% share of procurement contracts for the provision of goods and services to the Government of Liberia (GoL), as well as have adequate access to capital at competitive rates of interest and with reasonable terms and conditions that will enable these businesses to expand and grow; and,

WHEREAS, it is the finding of the Legislature that the “Liberianization” policy

enshrined in the various Acts of Legislature mentioned above has minimally achieved its objectives due to a) circumvention, b) non-enforcement of those Acts and other related regulations intended to promote such Liberianization, c) fragmented advocacy for enforcement of such laws and regulations, d) lack of an effective framework to enhance the competitiveness of Liberian-owned businesses, and e) limited access to lower-cost capital for Liberians; and,

WHEREAS, there is a need to create a more enabling environment and a stronger enforcement mechanism so that Liberianization as envisaged by the Government and people of Liberia becomes a full-fledged reality; and,

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

#### **A. SHORT TITLE**

This Act shall be known as the Liberian Business Empowerment Act of 2018

#### **B. DEFINITIONS**

1. “Margin of Preference” means The preferential treatment given to a Liberian owned company ahead of foreign owned in a procurement process
2. “Fronting” means a deliberate or willful circumvention or attempted circumvention of this Act via fraudulent declarations, misrepresentation of equity ownership by or board directorship of Liberian citizens.
3. “Senior Management” means one third of management’s highest decision-making body. Senior Management means a level in the company where critical decision can be made including the signing of checks and contracts
4. **“Supermarket” means a retail outlet carrying food and household goods with value of not less than US\$3 million**
5. “Natural Person” means an individual human being.
6. “Natural Liberian Person” means a Liberian citizen or human being.

#### **C. PROHIBITION AGAINST FOREIGN OWNERSHIP**

As of the effective date of the passage of this Act the following businesses are reserved for the exclusive ownership of natural persons who are citizens of

Liberia;

1. All Sand Mining and All Sand Mining Retailing Services
2. Manufacture of Locally Produced Construction-related Products, Concrete/Earth Blocks and related products
3. Production of Ice Cream and its related products
4. Petty Trading and Itinerant Merchant Businesses(Peddling)
5. Real Estate Agencies and Real Estate Management Services
6. Travel Agencies and All Air Travel Related Services to include General Sales Agent (GSA), Personal Sales Agent (PSA) and Cargo Handling for Airlines
7. Import, Wholesale, Distribution and Retail of the following: Flour, Sardines, Can Mackerel, Sugar, Salt, Cooking Cubes, Cooking Oil, Margarine, Salted Products (Meat/Fish) Onions, Eggs, Tomato Paste, Corn Beef, Luncheon Meat, Milk, Detergent, aAnd Spaghetti: **Supermarkets are excluded.**
- ~~7-8.~~ Retail of all Basic commodities. Supermarkets are excluded.-
- ~~8-9.~~ Wholesale, Distribution, and Retail of stationery and office supplies.
- ~~9-10.~~ Production, Wholesaling, Distributing, and Retailing of packaged water and ice products
- ~~10-11.~~ Import, Wholesale, Distribute, Retail and Repairs of All Tires
- ~~11-12.~~ Independent Auto Repair Shop (not associated with a dealership)
- ~~12-13.~~ Shoe Repair and Manufacturing
- ~~13-14.~~ Distribution, Retail and Manufacture of Timber and wood products
- ~~14-15.~~ Production, Wholesale, Distribution, and Retail of Charcoal
- ~~15-16.~~ Operation of Gas Stations
- ~~16-17.~~ Video Clubs
- ~~17-18.~~ All Commercial Road Transport and Motor Vehicle Rental Services
- ~~18-19.~~ Import, Distribute, and Retail of all clothing and clothing related items
- ~~19-20.~~ Distribution and retail of ex-factory of locally manufactured products
- ~~20-21.~~ Importation and sale of used cars
- ~~21-22.~~ Customs brokerage services
- ~~22-23.~~ Stevedoring
- ~~23-24.~~ Ship Chandler Services

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- 24.25. Commercial printing services
- 25.26. Newspaper publishing and printing
- 26.27. Payment processing systems and services including sales on behalf of Government.
- 27.28. Garbage collection and waste management
- 28.29. Internet café, local online shops, ICT repair shops
- 29.30. Commercial and Industrial Catering and Hospitality to include Onshore and Offshore Services (excluding in-house services)
- 30.31. Production and Retail of Uniforms
- 31.32. Employment and Recruitment Agencies
- 32.33. Operation of commercial seedling nurseries for oil palm, cocoa, rubber and other tree crops (excluding those attached to concessions)
- 33.34. Import, Distribution, and Retail of all types of Cooking and Industrial gases
35. Import, Wholesale, Distribute, and Retail -of beauty supplies
- 34.36. Entertainment centers of \$50,000.00 and below excluding those connected with hotel establishments
- 35.37. Events Planning, Management and Tour Operations
- 36.38. Retail of Computer network cabling components, security devices, and accessories
- 37.39. All Class B and C Mining License operators, Mineral Brokerage, and Exportation of all Minerals excluding those produced by Class A License operators
- 38.40. Contracts for the provision of any Information and Communications Technology (ICT) Software, Hardware, or Consulting Services less than US\$500,000.00
- 39.41. Distribution, and Retail of all electronic appliances and devices
- 40.42. Import, Wholesale, Distribution, and Retail of all Livestock and Related Products
- 41.43. Import, Supply, Distribution and Fabrication of Hydraulic Hoses & Fittings
- 42.44. Operation of All Construction companies of Class B category and below
- 43.45. Security Guard Services excluding those security guard companies with global contracts with international organizationsdiplomatic missions. These security guard companies, however, shall limit their service only to the relevant international organizationbe restricted to the diplomatic mission.
- 44.46. Laundry, Dry-cleaning and related Services

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45.47. Import, Distribute, and Retail of All Batteries for Motorized Vehicles and Equipment

48. Export of All Agriculture Products excluding those businesses that produce or beneficiate the product being exported.

46.49. Import, Distribute, and retail of agriculture produces.

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## **D. JOINT VENTURE AND FOREIGN PARTICIPATION**

Foreign investors may invest or engage in the following businesses provided however that the investment capital of said investor is more than TWO MILLION UNITED STATES DOLLARS (US\$2,000,000) and at least thirty percent (30%) of the common stock or shares of the company is owned by natural Liberian persons or businesses wholly owned by natural Liberian persons, and Liberians must hold at least 1/3<sup>rd</sup> of the Senior Management positions in the enterprise.

Operation of any enterprise in Section (D) must be approved by the Liberian Business Economic Empowerment Authority and the National Investment Commission (NIC) before any license can be issued by the relevant agencies, in particular, inclusion in the Liberia Business Registry of the Ministry of Commerce and Industry (MoCI):

1. Quarrying and Supply of Stone and Granite
2. Advertising agencies, graphics and commercial artists
- ~~3. Entertainment centers not connected with hotel establishment~~
- 4.3. Bakeries
- 5.4. Cinemas
- 6.5. Sale of Pharmaceuticals
- 7.6. Repairs, assembly, and Maintenance of Electricity Transformer and Generators (unless those under manufacturer warranty)
7. Fishing and fish processing, especially activities within the territorial waters
8. Production of Livestock and related products
9. Light manufacturing, processing or packaging services of any kind
10. Sale of industrial chemicals, oil drilling mud and mining equipment
11. Manufacturing of wooden furniture
12. Sale, installation and maintenance of solar panels, solar

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- inverters and accessories
13. Developing and licensing of computer application software excluding in-house services
  14. Sale, Installation, maintenance, and support of wired and wireless computer networks
  15. Assembly and distribution of desktop computers, servers, laptops, and accessories
  16. Sale, installation, maintenance, and support of smart building systems inclusive of access control, time and attendance, fire alarm and suppression, surveillance (CCTV) systems, internal telephony and video/telephone conferencing
  17. Sale, installation, maintenance, and support of Call centers for emergency, non-emergency, and commercial use
  18. Sale, installation, maintenance, and support of Vehicle Tracking and Fuel Tracking solutions.
  19. [Government of Liberia and State Owned Enterprises](#) Consulting Services of any kind must have at least 30% Liberian participation.
  20. Construction companies not listed in Section C above. However, those companies implementing public contracts (government and public corporations), and/or contracts for companies enjoying concessionary benefits from the Republic of Liberia shall award subcontracts for the supply of goods and services valued at no less than 25% of the total contract value to businesses listed in Section C above. [All public contracts valued at US\\$10 Million shall be awarded to Liberian construction companies.](#)

#### **E. FOREIGN INVESTOR PROOF OF FUNDS**

In order to be considered a foreign investor for the purpose of forming a Business Venture with a Liberian citizen under this Act, the foreign national must provide proof of funding by submitting a local bank confirmation of wire transfer into the country via a foreign bank satisfactory to the Liberian Business Economic Empowerment Authority and National Investment Commission (NIC) re the source and legitimacy of the funds. Said funds shall not be less One Million Five Hundred Thousand United States Dollars (US\$1,500,000.00) for the initial deposit and said amount must be used to conduct only business activities and not be used to pay any other unrelated persons or businesses.

#### **F. PROOF OF LOCAL INVESTOR SHAREHOLDING AND BOARD POSITION**

All foreign investors forming Business Ventures with Liberian citizens must also provide proof of the minimum 30% Liberian ownership of the venture by

presenting duly notarized, registered and probated share certificates evidencing such equity ownership as well as the following documents which will be subject to annual audit and verification by the Liberian Business Economic Empowerment Authority. The following documents shall be required:

1. Duly signed minutes of quarterly and annual Shareholder and Board of Director meetings evidencing participation of Liberian Directors thereat (what does this mean)
2. Bank statements of Liberian shareholder(s) evidencing periodic payment by the Joint Venture of dividends to them
3. Evidence that a Liberian Director is one of the authorized signatories on all the Business Venture's accounts
4. Proof of Liberians in Senior Management Positions
5. Business venture should submit to the NIC and LBEEA its organogram showing Senior Management Positions filled by Liberians
6. LBEEA shall make periodic requests for, and the venture shall submit without delay, payroll and withholding tax reports to prove the continuous compliance with this Act
7. Other indicators of compliance which may be required are letters of appointment and job description for Senior Managers
8. At least one Liberian Senior Manager shall be signatory to the venture's bank accounts

#### **G. LOCAL CONTENT IN PROCUREMENT OF GOODS AND SERVICES**

Pursuant to the Public Procurement and Concessions Act (PPCA) of 2005 establishing domestic preference rules or margin of preference for Liberian-owned businesses; Sections 4.1 (a) and (b) of the National Bureau of Concessions Act of 2010 regarding the monitoring and evaluation of implementation by various concessions of their concession agreements in compliance with the PPCA, and specifically with the local content procurement of goods and services; and also pursuant to Section 4.1 (c) of the Small Business Empowerment Act of 2014 which provides that at least 25% of all Public Procurement Contracts entered into by all government institutions including state owned enterprises shall be allocated and provided to Liberian-owned MSMEs; the above mentioned Acts are all amended as follows with respect to the definition of local content in procurement:

1. Local Content in various concession agreements is hereby re-

defined to mean that all procurement of goods and services by the various concessions must be done through local businesses in which Liberian citizens hold a minimum of 60% equity that is verified according to Section F of this Act.

2. Liberian owned MSME is defined in Section 2 of the Small Business Empowerment Act of 2014

All foreign companies doing business in Liberia and enjoying duty free privileges or other tax incentives are hereby required to source all supplies and services that are available on the local market, provided, however, that the requirement of this Act may be waived if the cost of the goods or services is more than twenty-five percent (25%) when compared to ECOWAS Nations. Any company failing to adhere to this provision shall be denied duty free and other tax incentives on those purchases.

## **H. PROTECTION FOR LIBERIAN INVESTORS & INDUSTRIES**

1. In any area of business or industry in which a natural Liberian person or business owned by natural Liberian persons has made investment in excess of One Million United States Dollars (US\$1,000,000.00), no business owned by non-Liberians shall be allowed to engage in such activities unless it is proven that the Liberian owned business is unable or incapable of meeting market demands. This does not apply to other Liberian owned businesses or natural persons.

**2. For any locally available material which can be used as a raw material or input for which there is a processing or manufacturing plant, there shall be no export of said materials or inputs unless the local demand is fully met.**

## **I. INCENTIVES FOR LIBERIANS**

The Government of Liberia is hereby authorized to establish the Liberian Business Development and Investment Fund of not less than Twenty Million United States Dollars (US\$20,000,000) per annum, domiciled at any Liberian owned Bank or Financial Lending Institution in good standing with the Central Bank of Liberia (CBL). Said Bank or Lending Institution shall be determined by the Board of Directors of the LBEEA. This fund shall ~~only~~ be available to the businesses stated under Section C and D of this Act ~~—~~and shall be for guaranteeing, subsidizing, syndicating loans, providing incentives or financing instruments for Liberians to succeed in private enterprise in accordance with the goals and objectives of this Act.



A portion of this Fund shall also be allocated annually towards the provision of business development and support services per Section [NM](#) below.

Contribution to the Fund shall be made through:

1. A minimum annual Five Million United States Dollars (US\$5,000,000) from GoL budgetary appropriation;
2. Setting aside a minimum 10% of the gross proceeds from the Liberia Maritime Program on an annual basis;
3. Allocating a minimum 20% from signature fees collected on any concession agreement signed;
4. Soft loans or grants from Development Partners interested in business development;
5. Any other dedicated fees or taxes or such other mechanism as the government may devise.
6. Allocating a minimum 1% royalty on gross sales of all extractive industry companies or any company without Liberian ownership as in Section D, which enjoys concessionary terms with the Republic of Liberia.

#### **J. MANAGEMENT OF THE FUND**

The LBEEA shall pre-qualify all applicants for access to the fund. The terms and conditions for lending shall be mutually determined by the financial lending institution and LBEEA with the primary goal of keeping said terms and conditions at concessionary levels.

#### **K. PENALTIES**

Any Liberian, be he/she a resident or not of Liberia, who violates any provision of this Act and any Liberian, for purposes of evading the aims and objectives of this Act, who fronts or attempts to front for a foreign national be he/she a resident or not of Liberia, shall be subjected to prosecution for Economic Sabotage and imprisonment for not less than 3 years plus a fine of not less than one hundred thousand United States Dollars (US\$100,000) or it's Liberian Dollar equivalent. Any foreign National who violates the provisions herein prescribed shall be subjected to deportation. In addition to the penalties herein described all materials, equipment and proceeds associated with the violation shall be confiscated and auctioned for the benefit of the public treasury, in accordance with Section 5.2 A through D of the Small Business Act of 2014.

Any person who makes a false or intentionally misleading statement for the purpose of obtaining any loan under this Act or for the purpose of being qualified

as a Liberian-owned businesses to circumvent this Act will be charged with violating this Act and be subject to prosecution for Economic Sabotage with the above penalties.

| Any Public Official or ~~Employee~~ who deliberately or willfully aids or abets any individual or entity in circumventing this Act shall be dismissed immediately and subject to prosecution for Economic Sabotage

In addition to the penalties prescribed under this section, if a person knowingly misrepresents the status of any business organization as a Liberian-owned businesses, the person and the businesses shall be ineligible to participate in any public procurement activity as well as Incentives provided for under this Act for a period of not less than five (5) years.

An aggrieved party may seek from the Commercial Court or a Circuit Court vested with the authority, any form of relief including injunctive relief, both interim and permanent, prohibition orders or other remedies, whether from enforcement of the provisions of this Act or decision of the LBEEA, on such terms and for such time periods as the court directs to meet the circumstances of the case.

#### **L. REPEALER**

The Investment Act of 2010 is hereby repealed and replaced in its whole and as to its subparts, with the provisions of this Act.

#### **M. TRANSITIONAL PERIOD**

The transitional period will vary depending on the type and scale of the business being transitioned. As of the effective date of this Act any foreign national engaged in any prohibited business in Section C, or not in compliance with the conditions of businesses in Sections D, E, and F shall have a minimum of six (6) months and no more than eighteen (18) months to close the enterprise and/or come into compliance, with such determination being made by the Liberian Business Economic Empowerment Authority.

#### **N. CREATION OF THE LIBERIAN BUSINESS and ECONOMIC EMPOWERMENT AUTHORITY**

The Department of Small Business Administration, which is currently situated at the Ministry of Commerce, was created as a result of the Small Business Empowerment Act of 2014. The said Act is hereby repealed, with all its antecedents and amendments, and creates an autonomous agency to be known and styled “Liberian Business and Economic Empowerment Authority” or

LBEEA. The mandate of the LBEEA is to administer and enforce ALL the provisions of this Act in collaboration with financial institutions, other private sector entities and GoL agencies.

The provision of Business Incubation, Business Development and Business Linkages as well as financing services shall be implemented through the creation of a public, private partnership to be known as the National Business Development and Advisory Center (NBDAC) with Five regional centers to be successively established across the Country. The day to day management of these centers will be implemented by a Liberian private sector entity or entities vetted every 3 years through a competitive bidding process by the Board of Directors of the LBEEA in strict compliance with the PPCA.

The Liberian Business and Economic Empowerment Authority will also enter into enforcement agreement with the Liberia Anti-Corruption Commission, Liberia National Police and the Ministry of Justice.

The LBEEA shall from time to time review the list of businesses mentioned in Section C and D of this act and add additional business as deemed necessary. At no time shall any businesses listed above be removed.

The LBEEA shall be headed by a Director General who shall be assisted by two (2) Deputy Directors General for Business Development and Financing and for Monitoring and Enforcement respectively.

*(Need to address key governance issues: how/who appoints the DG? Appointment of DDG? Minimum qualifications? Tenure? Fiscal Authority/ Remuneration? Also how shall the transition process be managed?) - Very important to state here in the Law to provide clarity and give authority/ adequate backing to the SBA. May be useful to develop the governing document for the SBA which may be included in this Act by reference or only the main controlling items placed in the Act.*

The LBEEA shall be governed by a Board of Directors comprising of:

- I. Minister of Commerce & Industry
- II. Chair of the National Investment Commission
- III. Head of a Liberian Bank
- IV. A Representative of Private Sector Liberian Partners with highest contribution
- V. The president of the Liberian Business Association
- VI. President of the Liberian Marketing Association
- VII. Head of the National Association of Liberian Business Women and Women Entrepreneurs

**VIII.** Head of two other prominent Liberian Organizations each

**O. AMENDMENTS**

To ensure the Act is not subject to the constant threat of frequent amendment(s) against the interest of Liberian Business by undue and induce influence, this Bill should include a minimum mandatory time frame when amendments can be entertained by the Legislature. (Eg. Five, Six, Ten or X number of years from its passing into Law)

ANY LAW TO THE CONTRARY NOTWITHSTANDING