

"AN ACT TO AMEND CHAPTER 29, OF THE MINISTRY OF COMMERCE AND INDUSTRY OF THE EXECUTIVE LAW, TITLE 12, LIBERIAN CODE OF LAWS REVISED TO PROVIDE FOR THE ESTABLISHMENT OF A DEPARTMENT OF SMALL BUSINESS ADMINISTRATION"

APPROVED DECEMBER 22, 2014

PUBLISHED BY AUTHORITY
MINISTRY OF FOREIGN AFFAIRS
MONROVIA, LIBERIA

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AN ACT TO AMEND CHAPTER 29, MINISTRY OF COMMERCE AND INDUSTRY, OF THE EXECUTIVE LAW, TITLE 12, LIBERIAN CODE OF LAWS REVISED, TO PROVIDE FOR THE ESTABLISHMENT OF A DEPARTMENT OF SMALL BUSINESS ADMINISTRATION

PREAMBLE

WHEREAS it is in the best interest of Liberia to encourage and promote the establishment, growth and expansion of micro, small and medium-sized enterprises; and,

RECOGNIZING that the economy of Liberia depends heavily on the success of micro, small and Medium-sized enterprises, the Government of Liberia has instituted the policy to assist, promote and foster the interests of those enterprises by ensuring that they receive their fair share of procurement contracts for the provision of goods and services to the Government, and that such enterprises 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,

RECOGNIZING that a vibrant micro, small and medium-sized business sector is essential to the economic recovery of Liberia, since it strengthens the economy, stimulates an open and competitive marketplace through increased employment opportunities for Liberians, provides a greater supply of goods and services produced and offered for sale within Liberia, and offers more opportunities to export Liberian goods and services to foreign states, all of which benefit Liberia;

NOW THEREFORE, it is hereby enacted by the Senate and House of Representatives of the Republic of Liberia, in Legislature assembled:

PART I

PRELIMINARY PROVISIONS

Section 1.1. Short Title

This Act may be cited as the "Small Business Empowerment Act, 2014."

Section 1.2. Definitions

In this Act, unless the context otherwise requires:

"Assistant Minister" means the person appointed by the President under Part II Section 2.1 of this Act as the technical head of the Bureau of Small Business Administration.

"Borrower" means a Liberian-owned Micro, Small and Medium Enterprises (MSME) to which a loan is made pursuant to Section 3 of this Act.

"Bureau" means the Bureau of Small Business Administration established within the Department pursuant to Part II of this Act.

"Business organization" means any corporation, company, body corporate, partnership, sole proprietorship, micro business, joint venture, association, foundation, trust or other organization or entity, whether for profit or not for profit, incorporated, created, formed or established under the business laws of any jurisdiction.

"Court" means the Commercial Court or any court of competent jurisdiction regarding an existing matter cognizant before a court within the Republic.

"Department" means the Department of Small Business Administration established pursuant to Part II of this Act.

"Deputy Minister" means the person appointed by the President under section 2.1 of this Act as the principal assistant and MSME policy advisor to the Minister as well as the head of the Department.

"Director" means the head of each of the Divisions within the Department.

"Division" means an operating unit within the Department that is designated as such under this Act, or from time to time by the Minister, with such duties and responsibilities as shall be assigned to it by the Minister, and the initial Divisions are those established under Section 2.1 (c) of this Act.

"Fund" means the Liberian Innovation Fund for Entrepreneurs (LIFE) and/or such other fund or funds as shall be designated by the Minister from time to time as a Fund for purposes of this Act.

"Fund Custodian" means a banking institution that serves as the custodian of Liberian Innovation Fund for Entrepreneurs (LIFE) and/or such other fund or funds as shall be designated by the Minister from time to time as a Fund for purposes of this Act.

"Fund Manager" means the managing entity contracted to manage underwriting and onward lending of the Liberian Innovation Fund for Entrepreneurs (LIFE) and/or such other fund or funds as shall be designated by the Minister from time to time as a Fund for purposes of this Act.

"Government" means the Executive Branch of the government of the Republic of Liberia.

"Government Agency" means any ministry, bureau, department, commission, organization, institution, agency, parastatal or other instrumentality of the Government which at any time or from time to time enters into procurement contracts.

"Hearing Officer" means an officer designated by the Minister to hold hearings either prior to the making of determination by the Department or subsequent thereto.

"Inter-agency Steering Committee" means a committee co-chaired by representatives of the Ministry and the General Services Agency, and comprised of representatives of the Ministry of Finance, the Ministry of Justice, the National Investment Commission, the Public Procurement and Concessions Commission, the Governance Commission, the Liberia Chamber of

Commerce and the Liberia Business Association, the purpose and function of which is described in Section 4.3 (b) of this Act;

"Liberian-owned MSME" means any micro, small or medium enterprise of which more than 50% of the securities, equity and/or ownership interests carrying sufficient votes to elect a majority of the board of directors or other similar body of the MSME is owned, directly or indirectly, by one or more Liberian citizens, including women-owned MSMEs; with such majority Liberian shareholder being a signatory to the official documents and bona fide bank accounts of the business.

"Minister" means the Minister of Commerce and Industry.

"Ministry" means the Ministry of Commerce and Industry as is established under and in accordance with Chapter 29 of the Executive Law.

"Public Procurement Contract" means any contract entered into by a Government Agency to procure goods or services of whatsoever nature or kind following a request for bids, tenders or proposals to supply such goods or services in accordance with the provisions of the Public Procurement and Concessions Act, 2009 and all amendatory acts thereto, and as funded through the national budget and other contracts funded by intergovernmental and international organizations, as applicable.

"MSME" means a micro, small or medium enterprise formally registered as a business organization with fewer than one hundred (100) employees or annual gross revenue taxable in the micro, small or medium tax category as is stipulated in the Liberian Revenue Code or which meets certain standards or criteria prescribed from time to time by the Ministry through regulations, which standards or criteria may relate to the number of employees, gross revenue or sales, net revenue or profit, net worth, or any combination thereof, or any other factors the Ministry considers to be appropriate or relevant.

"Women-owned MSME" has the same meaning as Liberian-owned MSME except that the persons with the required securities or ownership interests and signatory rights are women who are Liberian citizens.

PART II

DEPARTMENT OF SMALL BUSINESS ADMINISTRATION

Section 2.1. Establishment of the Department

- (a) There is hereby established a Department of Small Business Administration to form part of the Ministry which shall include the Bureau of Small Business Administration headed by an Assistant Minister.
- (b) The Department shall be supervised by a Deputy Minister, who shall serve as the principal assistant and advisor to the Minister on Micro, Small and Medium Enterprises (MSME) matters. The Deputy Minister's principal assistant shall be an Assistant Minister, who shall be a technical officer who shall serve as the technical manager of the Bureau of Small Business Administration. The Deputy Minister shall report to the Min-

ister, and the Assistant Minister shall report to the Deputy Minister. The Deputy Minister and the Assistant Minister shall each be appointed by the President as provided for in the Constitution of the Republic.

- (c) The Minister, with recommendations from the Deputy Minister, may create such Divisions within the Department as are considered necessary for the effective and efficient administration and operation of the Department, and shall determine the duties and responsibilities of each Division. The initial Divisions of the Department which shall fall under the Bureau of Small Business Administration within the Department are the Division of Market Access, the Division of Financial Access, the Division of Partnership and Innovation, and the Division of Capacity Development and Performance Monitoring.
- (d) The Deputy Minister shall, with the approval of the Minister, appoint a Director for each of the Divisions of the Department and prescribe the duties, responsibilities and functions of each Director.

Section 2.2. Duties and Responsibilities of the Department

- (a) The Department shall be responsible for the promotion, development, regulation, control, operation and control loan facilitation of MSMEs, with particular focus and emphasis on Liberian-owned MSMEs.
- (b) The Department shall also be responsible for the functions formerly delegated to and performed by the MSMEs Division of the Ministry as set forth in the MSME 2011 Policy.
- (c) The Department shall monitor and evaluate the development and performance of Liberian-owned MSMEs, and shall include a written assessment of such development and performance in the reports prepared pursuant to section 5.1 of this Act.
- (d) The Department shall coordinate programs for small business development and entrepreneurship with funding provided for such purposes. The Department shall prepare an annual report on MSMEs in Liberia.
- (e) The Department shall prepare statistics semi-annually relating to small businesses in Liberia and submit such statistical reports to the President, Cabinet and the Legislature upon preparation.

Section 2.3. Administration of the Department

- (a) The Deputy Minister shall be responsible for the management, supervision, direction and operation of the Department.
- (b) The Deputy Minister shall appoint and fix the compensation of such officers, employees, attorneys, agents, consultants and other persons as shall be necessary but comparable with similar positions in the Government, to carry out the provisions of this Act and the work of the Department, and shall determine the authority, duties and re-

sponsibilities of such persons in accordance with Civil Service Agency Standing Orders.

- (c) In performing the responsibilities referred to in sub-section (a) and (b) above and in carrying out any of the functions or duties vested in him or her under this Act, the Deputy Minister, with the approval of the Minister, shall have the power to:
- i. Prescribe such rules, regulations and guidelines as are deemed necessary or advisable for purposes of administering this Act;
 - ii. Take any and all actions, steps or proceedings as are considered necessary or advisable to sell, assign, transfer, collect, compromise, modify or otherwise deal with or realize on any loans made to a Liberian-owned MSME under this Act, and any property or assets mortgaged or charged as security therefor;
 - iii. Undertake such investigations as are necessary or advisable in accordance with the provisions of Part V of this Act to determine whether any person has engaged or is about to engage in any acts, practices or conduct which constitute or may constitute a violation of any provision of this Act, any rule or regulation made under this Act, or any order issued under this Act; and
 - iv. Impose, levy and recover such fees and other charges as may be prescribed from time to time under this Act.
- (h) The Assistant Minister shall serve as the assistant to the Deputy Minister of the Department as the technical officer with management oversight of the Bureau.

PART III

LOANS TO MSME'S

Section 3.1. Power to Facilitate Loans

- (a) The Department shall have the power to recommend and facilitate the provision of loans to Liberian-owned MSMEs through designated financial institutions, for any purpose related to their business, including, without limitation, acquisition of property, plant and equipment, construction or renovation of business premises, expansion of the business, and for working capital purposes.
- (b) All such recommendations shall be forwarded to the Ministry of Finance and the Ministry of Justice for appropriate advice and the grant of such loan to the MSME shall be strictly the prerogative of the institution granting the loan to perform due diligence to ascertain the capacity of the MSME to repay such loan.
- (c) In the event the Department recommends that the Government guarantees the loan, such guarantee shall be approval by the Inter-agency Committee established by this Act with the advice of the Ministry of Justice.

PART IV

GOVERNMENT PROCUREMENT CONTRACTS

Section 4.1. Government Policy and Objectives

- (a) In furtherance of the objectives of this Act, all Liberian-owned MSMEs shall be provided with the greatest practicable opportunity to participate in the performance of Procurement Contracts.
- (b) Consistent with subsection (a) above, it shall be mandatory that prime contractors under any Procurement Contracts establish procedures that guarantee that Liberian-owned MSMEs are provided the ability, whether through subcontracts or otherwise, to participate to the greatest extent practicable, in the performance of Procurement Contracts to which a prime contractor is a party.
- (c) In furtherance of the mandates set forth in subsections (a) and (b) of this section, the Department, in collaboration with the Public Procurement and Concession Commission (PPCC), shall ensure that, in respect of each fiscal year of the Government, 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, of which at least 5% shall be allocated and provided to Women-owned MSMEs. For greater certainty, the foregoing percentages relate to the aggregate monetary value of all Procurement Contracts during the life of each contract.
- (d) To facilitate the achievement of the percentage set forth in subsection (c), the Department shall consult with each Government Agency on a regular and continuous basis throughout each fiscal year to ensure that, in respect of that year, each such Agency sets aside and allocates, to the greatest extent possible, at least twenty-five (25%) of all Procurement Contracts which it proposes to enter into during the year exclusively for Liberian-owned MSMEs. Each Government Agency shall make appropriate adjustments to its "set-asides" of Procurement contracts throughout each year as circumstances warrant to ensure that the 25% allocation is achieved. Each Government Agency on a quarterly basis shall provide to the Department such reports, studies, materials, data and statistical information to confirm that the requirements of this section have been and will continue to be duly satisfied.
- (e) Without limiting the generality of the foregoing, the Department shall ensure that, to the greatest extent practicable, procurement strategies are adopted by each Government Agency that is entering into Procurement Contracts to ensure that Liberian-owned MSMEs are aware of, and are afforded an equitable opportunity to compete for those Procurement Contracts which are set aside and allocated by such Agency for Liberian-owned MSMEs, pursuant to subsection (d) of this section.
- (f) In furtherance of subsection (e) of this section, the Department, PPCC, pursuant to its procurement proposal approval powers, and the head of procurement for each Government Agency that proposes to enter into Procurement Contracts in a particular fiscal year shall meet to establish the procurement strategies of that Agency for that year, and shall consult with each other throughout the year with respect to the implementation and effectiveness of those strategies.

- (g) In addition to the foregoing, the Department in collaboration with the PPCC shall ensure that each Government Agency has in place a policy requiring prime contractors to enter into subcontracts with Liberian-owned MSMEs, and that each Government Agency clearly communicates that policy to prime contractors, pursuant to the regulations.
- (h) In furtherance of the policy set forth in this section, the Department shall ensure that Liberian-owned MSMEs have adequate access to capacity development opportunities through a network of certified business services providers and entrepreneurship promotion services through a network of various tertiary institutions.

Section 4.2. Monitoring of Objectives

- (a) Each Government agency shall, at the conclusion of each fiscal quarter, or more frequently, if so requested by the Department, submit a report to the Department setting out:
 - i. the extent of participation by Liberian-owned MSMEs in procurement contracts entered into by such government agency during the year;
 - ii. whether the Government agency achieved the goals established for that respective year pursuant to section 4.1; and
 - iii. if the Government Agency did not achieve such goals, the reason or reasons for such failure.
- (b) The Department shall review the reports received pursuant to section 4.3 and, in comparison with its own data regarding the performance of procurement contracts, determine, and continuously monitor, whether, at any time or from time to time and, in particular, at the end of each fiscal year, the participation by Liberian-owned MSMEs in procurement contracts is at an adequate level in light of the purpose, intent and policies of this Act, including, in particular, whether the percentages prescribed in section 4.1 were achieved in respect of each fiscal year.

Section 4.3. Reporting Obligations

- (a) The Deputy Minister shall provide a quarterly performance report to the Minister on the work of the Department generally and, in particular, indicating the extent to which there has been compliance with the percentage requirements prescribed in section 4.1 in respect of that current fiscal year.
- (b) The Inter-agency Steering Committee shall meet semi-annually and shall be provided with a copy of the semi-annual performance report referred to in sub-section (a) above. It shall review and discuss the report and shall provide guidance to the Deputy Minister, as appropriate, with respect to how the policies and objectives of this Act could be better achieved. The Inter-agency Steering Committee shall review and comment on the semi-annual report referred to in section (c) prior to it being submitted to the President and the Cabinet.

- (c) Not later than thirty (30) days after the end of each semester of the fiscal year, the Department shall submit a semi-annual performance scorecard report to the President and the Cabinet setting forth, among other things, whether the purposes, policies, goals and objectives of this Act have been achieved in respect of that year, sufficient data and statistical information to indicate the level of participation in the performance of procurement contracts by Liberian-owned MSMEs in that year, an assessment of the prospects of such participation in the following year, and such other matters that pertain to the effective and efficient administration and implementation of this Act as the Department considers necessary or relevant.
- (d) The reports, which are required to be prepared pursuant to this section, shall include, where relevant, information received by the Department in the reports provided to it by each Government Agency pursuant to section 4.2.
- (e) In furtherance of implementing the objectives of this Act and not in limitation of the authority vested in the PPCC, The Act establishing the Public Procurement and Concessions Commission is hereby amended to the extent necessary to carry into effect the provisions of this section.

PART V

INVESTIGATIONS AND ENFORCEMENT

Section 5.1. Investigation

- (a) The Minister shall designate qualified officers employed by the Ministry as may be necessary, to hold hearings and conduct investigations on matters arising from the Department's own initiative, or upon the receipt of information, a request to investigate or a complaint from any person or any business entity, including the Government, into any conduct or proposed conduct which is alleged to constitute or may constitute a contravention of any provision of this Act.
- (b) A request to investigate or a complaint or information which is delivered or provided to the Department pursuant to subsection (a) of this section shall set forth the nature of the alleged contravention and shall contain a concise statement of the evidence which the person making the request or complaint or providing information believes supports the allegation that a contravention has occurred.
- (c) Any person compelled to appear in person, shall be accorded the right to be accompanied, represented, and advised by counsel, or other qualified representative. Every party shall be accorded the right to appear in person or by or with counsel or other duly qualified representative in all proceedings.
- (d) Notice: A person or business entity entitled by law to a hearing under this Act before a determination becomes final shall be given reasonable notice thereof. Such notice shall include:

- (i) A statement of the time, place and nature of the hearing;
 - (ii) A statement of the legal authority and jurisdiction under which the hearing is to be held;
 - (iii) A reference to the particular sections of the statutes and rules involved; and
 - (iv) A short and plain statement of the matters asserted.
- (e) For the purposes of subsection (a) of this section, the Presiding officer, as permitted under the laws of Liberia, has the power to:
- (i) Administer oath and affirmations;
 - (ii) Issue subpoenas authorized by law;
 - (iii) Rule upon offers of proof and receive relevant evidence
 - (iv) Take or cause depositions to be taken whenever the ends of justice would be served thereby;
 - (v) Regulate the course of the hearing;
 - (vi) Hold conferences for the settlement or simplification of the issues by consent of the parties;
 - (vii) Dispose of procedural requests or similar matters
 - (viii) Make decisions or recommend decisions in conformity

Section 5.2 Enforcement

- (a) 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 MSME may be charged with violating the law and subject to the prosecution.
- (b) In addition to the penalties prescribed under this section, if a person knowingly misrepresents the status of any business organization as a Liberian-owned MSME, that person and the MSME shall be ineligible to participate in any public procurement activity and this program or activity under this Act for a period not less than five (5) years.
- (c) An aggrieved party may seek from the court 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 decisions of the Ministry, on such terms and for such time periods as the court directs to meet the circumstances of the case.
- (d) Appeals of Decision of Hearing Officers: A party who is dissatisfied with a final decision of a Hearing Officer shall have the right to file a petition for judicial review of such decision to the Commercial Court or a Circuit Court vested with the authority to hear such matter depending on the nature of the case.

PART VI
GENERAL PROVISIONS

Section 6.1. Confidentiality

- (a) No person who performs or has performed duties or functions in the administration or enforcement of this Act shall communicate or permit to be communicated to any other person, except as required by law in Liberia or for purposes of the administration or enforcement of this Act:
- i. the identity of any person from whom information was obtained pursuant to this Act;
 - ii. any information obtained pursuant to a requirement in any provision of this Act; or
 - iii. any information provided voluntarily pursuant to this Act.
- (b) A ten percent (10%) reward shall be paid to any whistleblower at the conclusion of enforcement of fines or the value of other penalties when imposed pursuant to section 5.2.
- (c) Subsection (a) above does not apply to any information that was previously made public or to any information, the communication of which was authorized or can be deemed no longer privileged by law.

Section 6.2. Rules, Regulations and Guidelines

In addition to any rules, regulations or guidelines which the Minister is expressly authorized to make under any provision of this Act, the Minister may, at any time or from time to time, prescribe rules, regulations and guidelines for any purpose of this Act, to bring to the attention of the public, including, in particular, Liberian-owned MSMEs, matters covered by the publication. Such publications shall be consistent with the laws governing the promulgation of regulations by ministries and agencies of the Government.

This Act shall take effect immediately upon publication into handbills.

ANY LAW TO THE CONTRARY NOTWITHSTANDING.

-2014-

THIRD SESSION OF THE FIFTY-THIRD LEGISLATURE OF THE
REPUBLIC OF LIBERIA

SENATE'S ENGROSSED BILL NO. 25 ENTITLED:

"AN ACT TO ACT TO AMEND CHAPTER 29, MINISTRY OF
COMMERCE AND INDUSTRY, OF THE EXECUTIVE LAW TITLE
12 LIBERIAN CODE OF LAWS REVISED, TO PROVIDE FOR THE
ESTABLISHMENT OF SMALL BUSINESS ADMINISTRATION"

On motion, Bill read. On motion, the Bill was adopted on its
first reading and sent to Committee Room on Tuesday, June
24, 2014 @ 13:18 G.M.T.

On motion, Bill taken from the Committee Room for its
Second reading. On motion, under the suspension of the rule,
the second reading of the Bill constituted its third and final
reading and the Bill was adopted, passed into the full force of
the Law and ordered engrossed today, Thursday, November
27, 2014 @ 12:55 G. M. T.



SECRETARY, LIBERIAN SENATE, R.L

-2014-

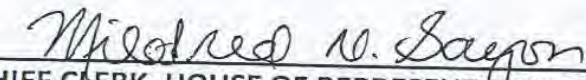
THIRD SESSION OF THE FIFTY-THIRD LEGISLATURE OF THE
REPUBLIC OF LIBERIA

HOUSE'S ENDORSEMENT OF SENATE'S ENGROSSED BILL NO.
25 ENTITLED:

"AN ACT TO ACT TO AMEND CHAPTER 29, MINISTRY OF
COMMERCE AND INDUSTRY, OF THE EXECUTIVE LAW TITLE
12 LIBERIAN CODE OF LAWS REVISED, TO PROVIDE FOR THE
ESTABLISHMENT OF SMALL BUSINESS ADMINISTRATION"

On motion, Bill read. On motion, the Bill was adopted on its
first reading and sent to Committee Room on Tuesday, July
22, 2014 @ 13:00 G. M. T.

On motion, the Bill was taken from Committee Room for its
second reading. On motion under the suspension of the rule,
the second reading of the Bill constituted its third and final
reading, and the Bill was adopted, passed into full force of
the Law, and ordered engrossed today, Thursday, December
18, 2014 @ 14:21 G. M. T.



CHIEF CLERK, HOUSE OF REPRESENTATIVES, R.L

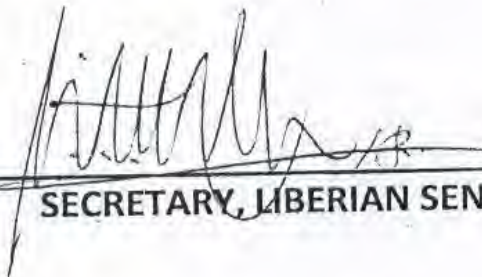
-2014-

ATTESTATION TO:


“AN ACT TO AMEND CHAPTER 29, MINISTRY OF COMMERCE AND INDUSTRY, OF THE EXECUTIVE LAW TITLE 12 LIBERIAN CODE OF LAWS REVISED, TO PROVIDE FOR THE ESTABLISHMENT OF SMALL BUSINESS ADMINISTRATION”



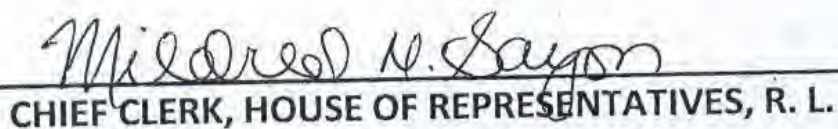
VICE PRESIDENT OF THE REPUBLIC OF LIBERIA/PRESIDENT OF THE SENATE



SECRETARY, LIBERIAN SENATE



SPEAKER, HOUSE OF REPRESENTATIVES, R.L.



Mildred N. Gayson
CHIEF CLERK, HOUSE OF REPRESENTATIVES, R. L.



CLERK OF THE SENATE



The Liberian Senate

CAPITOL BUILDING, CAPITOL HILL, MONROVIA, LIBERIA
WEST AFRICA

E-mail: singbehlibsen@hotmail.com

2014

THIRD SESSION OF THE FIFTY-THIRD LEGISLATURE OF THE
REPUBLIC OF LIBERIA.

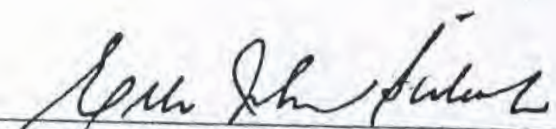
SCHEDULED OF HOUSE'S ENROLLED BILL NO. 18 ENTITLED:

“AN ACT TO AMEND CHAPTER 29, OF THE MINISTRY OF
COMMERCE AND INDUSTRY OF THE EXECUTIVE LAW, TITLE 12,
LIBERIAN CODE OF LAWS REVISED TO PROVIDE FOR THE
ESTABLISHMENT OF A DEPARTMENT OF SMALL BUSINESS
ADMINISTRATION”

PRESENTED TO THE PRESIDENT OF THE REPUBLIC OF LIBERIA FOR
EXECUTIVE APPROVAL.

APPROVED THIS 22nd DAY OF DECEMBER A.D. 2014

AT THE HOUR OF 11:00 A.M.



THE PRESIDENT OF THE REPUBLIC OF LIBERIA