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Garber & Co. was founded in 1972 and was known at that time as Ijesha Chambers. Upon the death of its founder, Manilius R.O. Garber, in 1989, his son, Maurice R.O. Garber returned home from New York where he was practising as an attorney to continue his practice and re-named the chambers Garber & Co. Partners are admitted to diverse jurisdictions in the UK, the USA and the Caribbean and are all licensed solicitors of the Law Society of England & Wales. Practice areas comprise civil and commercial matters and the firm specialises in all aspects of international commercial law. Of primary importance is the provision of ethical, competent, timely, reliable and seasoned legal advice and assistance to all our clients. Garber & Co has handled sophisticated project finance transactions including representing First Bank (UK) Ltd and Afreximbank in the USD40 million construction of the Cape Sierra Hilton Hotel. We reviewed and participated in all legal aspects of the project in collaboration with international counsel and have embarked upon and been consulted on subsequent collateral refinancing transactions emanating from this project. Garber & Co also represented Caterpillar USA in meeting its due diligence requirements for the supply of USD18 million worth of earth moving equipment to an independent contractor in Sierra Leone servicing the mining sector. We have a proven track record in handling large project finance and infrastructure transactions and conducting the required due diligence needed for the consummation of such transactions and infrastructure projects.

Author

Maurice Garber is the senior partner and founder of the law firm of Garber & Co. He qualified as an English barrister in 1986, relocated to the United States and was admitted as an attorney of the State of New York in 1988 and a barrister & solicitor of the High Court of Sierra Leone in 1989. He was also admitted to the Bar of the Judicature of Jamaica, West Indies in 1992. Mr. Garber serves as City Solicitor to the Freetown City Council and is the retained lawyer for numerous clients including banks, manufacturers, insurance companies and other national and international clients. He also serves as a legal consultant to the African Development Bank, the World Bank, the International Finance Corporation, Afreximbank and several other multinational institutions and international conglomerates. Mr. Garber specialises in commercial transactions and routinely acts as solicitor on project finance transactions for clients including Afreximbank, First Bank UK, and the Islamic Development Bank. He holds a Masters' degree in international trade and maritime law from the University of London and is experienced in drafting and reviewing loan and finance instruments, employment matters, PPA's, procurement contracts and the provision of legal opinions on complex commercial transactions and corporate issues. He is a Fellow of the Chartered Institute of Arbitration, United Kingdom. He has represented the Sierra Leone Chamber of Commerce and the Ministry of Trade & Industry on numerous conferences within the West African region and he maintains close ties with other law firms in Nigeria, Ghana, the United Kingdom and the United States.

1. Project Finance Panorama

1.1 Recent Trends and Development

Project finance in Sierra Leone is predominantly focused on government sponsored project initiatives: construction of roads and highways, power and telecommunications infrastructure, and the infrastructure needs of the mining sector. A notable recent example, on which our firm advised, was the proposed conduction of the Bumbuna 2 hydroelectric dam in Sierra Leone, projected to provide about 240MW of power. Other related power projects include the construction of high density power grids for the West African Power Pool, which will provide power lines from Cote d'Ivoire, though Liberia and Sierra Leone to Guinea.

One interesting mega-project that the Government of Sierra Leone is thinking of embarking upon is the construction of the Lungi Bridge which would link the Lungi Airport to the mainland capital, Freetown. The bridge, which should span about 8 km, is estimated to cost about USD1.8 billion and will be commissioned as a BOT project. European and Chinese firms have already expressed some interest in the project. As the prices of metals and minerals rise, we should expect more projects to be developed and implemented, usually on a public–private partnership (PPP) basis.

1.2 Sponsors and Lenders

Most projects are conceived either by the Government or by players in the mining and telecommunications industries. The sponsors are usually development banks such as the International Finance Corporation (IFC), the African Development Bank, DIFID and the Islamic Development Bank; an amalgamation of traditional development banks and investment fund managers; or the investment arms of the larger commercial banks such as Standard Chartered bank, FBN Bank UK or Nedbank South Africa.

1.3 Public-Private Partnership Transactions

Public-private partnerships (PPPs) in Sierra Leone are subject to the Public Private Partnership Act 2014 which provides detailed guidelines on how PPPs should be conducted. It makes provisions for the contents of the PPP agreement, the type and nature of security interests, responsibility of the public institution/government, assignment of the PPP contract, cabinet approval of PPPs, competitive bidding, termination and compensation of the PPP contracts, and dispute settlement options.

There are no restrictions, as such, on embarking upon PPPs save that all PPPs are subject to oversight from the Public Private Partnerships Unit, which is a statutory body created under the PPP 2014 Act that oversees all PPPs and is housed in the Office of the President. Further, all PPPs must receive cabinet approval, and in some cases parliamentary approval, before they can take effect and are legally binding upon all parties.

1.4 Structuring the Deal

The deal is normally envisaged either by the public authority based upon its needs assessment or by the private sector participant. It is very important to identify the most appropriate ministry to partner with so that that ministry will take control and spearhead the process of getting the necessary approvals and supplying the relevant documentation needed to actualise the deal.

Funding can be secured through a variety of mechanisms: through the private sector, from a development bank, from a loan from the World Bank or a similar institution, fully funded by the private sector participant or via a government backed guarantee. The latter is difficult to secure given the Government's concern for, and goal to minimise, its debt profile. Consequently, the Government looks more favourably upon PPPs where there is little financial exposure on its part, such as BOTs, concession agreements, or self-financed deals put together by the private sector in which the government contribution takes the form of land; technical assistance; or the granting of a concession, mining rights or other tangible or intangible interests.

2. Guarantees and Security

2.1 Assets Available as Collateral to Lenders

Assets available to lenders are varied and may take the form of the PPP agreement itself; a concession agreement; land and mining/property rights; the income stream/receivables; machinery and equipment; shares in the company set up to run the PPP known as a special purpose vehicle (SPV); guarantees given by the government/private parties; or even an insurance-backed guarantee, export guarantee or other financial instrument provided by the financially buoyant third party.

The charges, debentures, finance instruments and pledges on the loan documents are signed by the appropriate parties These are generally registered either with the Corporate Affairs Commission, if the grant emanates from a company such as the SPV, or with the Office of the Registrar General, if the asset involves real property, or with both entities where it is a hybrid or basket of various securities being pledged as collateral for the loan/financing.

2.2 Charges or Interest over All Present and Future Assets of a Company

The laws of Sierra Leone which, in this regard, are based on general English common law company principles provide for the registration of fixed and floating charges over the assets of a company. Note that with almost all PPPs, incorporation of a local company or the registration of the foreign company in Sierra Leone is mandatory so that one can take advantage of the laws of Sierra Leone.

The registration of a floating charge over assets is governed by Section 150 of the Companies Act 2009 which defines a floating charge as "an equitable charge over the whole or a specified part of the company's undertaking and assets including cash and uncalled capital of the company both present and future, but the charge shall not preclude the company from dealing with such assets until (a) the security becomes enforceable and the holder thereof, pursuant to a power in that behalf in the debenture or the deed securing the debenture appoints a receiver or manager or enters into possession of the assets; (b) the court appoints a receiver or manager of the assets on the application of the holder or (c) the company goes into liquidation."

2.3 Registering Collateral Security Interests

There are costs associated with registration of such securities, usually 1% of the value or a sliding scale percentage of the value of the security. There will also be legal fees for the preparation of the security instrument by local solicitors and other miscellaneous expenses such as notarisation and the replication of copies of the instrument.

2.4 Granting a Valid Security Interest

When dealing with a floating charge, a general description of the type of collateral is sufficient but the description should be accurate and sufficient to allow a court or the security trustee to easily be able to identify the asset concerned. This means that there is no harm in providing a general description, or a description with specificity, of the collateral subject to a floating charge where possible.

2.5 Restrictions on the Grant of Security or Guarantees

The lender must ensure that the necessary approvals have been obtained for the grant of the security interest or guarantee. If the Government is involved, the security instrument must be signed by the appropriate minister overseeing that industry and if it involves a government asset, it may also require the signature and approval of the Attorney General and the Minister of Finance. A government issued security or bank guarantee may, depending upon its value, also require parliamentary approval.

2.6 Absence of Other Liens

Normally, a search with be done in the registry of the Corporate Affairs Commission or the Office of the Registrar General. Liens are registered and an unregistered security instrument is unenforceable against a registered interest that took without notice of the unregistered interest. Indeed, the Registration of Instruments Act renders the unregistered interest void as against subsequent lien holders who register their interest.

2.7 Releasing Forms of Security

Security instruments are normally released by the filing of a discharge, satisfaction or release of the encumbrance as reflected in a properly prepared and signed document to that effect.

3. Enforcement

3.1 Enforcement of Collateral by Secured Lender

A secured lender can enforce its collateral where there has been a material breach of contract, breach of covenant, material misrepresentation, cross default where there are multiple lenders, actual or threatened insolvency, illegality or unlawful conduct by the borrower, execution, levy or attachment of assets, repudiatory breach or any other ground giving rise to enforcement by the lender. Usually a notice of default must be given, which will normally be issued after a reasonable opportunity to cure the default has been provided to the defaulting party.

If the security is subject to a charge, the right of seizure or attachment may automatically arise, wherein the lender may take immediate possession of the asset. In some other circumstances, a court order or judicial intervention may be required to permit the lender to enforce the loan and recover the pledged asset. Note that where the asset is question is a government asset, the State Proceedings Act mandates a 90 days' notice of claim to be served upon the Attorney General before any court action can be instituted. Care must be taken to ensure that the asset is not subject to any other liens/encumbrances and has not been transferred sold to a third party.

3.2 Foreign Law

A foreign jurisdiction clause in a contact will be recognised and enforced by the Sierra Leone courts provided it is clearly drafted, has been agreed by the parties and there are no public policy reasons or other compelling reasons why it should be ignored. The clause may be discarded where the relative contractual bargaining positions of the parties were uneven or forum conveniens issues lean against utilising the foreign jurisdiction. For example, if the affected party may find it difficult to obtain legal redress in that foreign jurisdiction or to even participate in litigation or arbitration in that jurisdiction.

3.3 Judgments of Foreign Courts

Judgments made in foreign courts are enforceable in Sierra Leone, provided that the precise procedural and substantive legal requirements of Chapter 21 of the Foreign Judgments (Reciprocal Enforcement) Act are adhered to. The chapter defines "judgment" as a judgment or order of a court in any criminal or civil proceedings including an award in arbitration proceedings. Enforcement under Chapter 21 is based upon "substantial reciprocity" between the treatment of the foreign judgment in the Sierra Leone courts and the treatment of Sierra Leone judgments in that foreign jurisdiction.

An anomaly exists in that the foreign countries that can take advantage of Chapter 21 are supposed to be found in an Order from the Minister identifying such countries. These countries are deemed to satisfy the substantial reciprocity test. To date, no such Order or list of designated countries exists. However, by virtue of Section 9(1) and (2) of Chapter 21, countries which can be described as "Her majesty's Dominions" can make use of Chapter 21 and it is thought that, using the mischief rule of interpretation, this should now encompass all former British colonies/Commonwealth countries.

Otherwise, the holder of the foreign judgment must bring an application under Order 16 of the High Court Rules which provides for a procedure whereby a plaintiff may bring a summary judgment application before the court on the premise that the defendant has no defence to the claim. In this case, the plaintiff will be exhibiting and relying upon the judgment or award of the foreign court or arbitral proceedings as res judicata. This is however a fresh action which is subject to the court's perception of the finality of the award, defences to the application and challenges to the validity of the judgment/award raised by the other party.

Aside from the above rules dealing with the enforcement of a foreign judgment, it should be noted that Sierra Leone is not a signatory to the New York Convention 1958 which would permit the reciprocal enforcement of arbitration awards granted in Sierra Leone in any other jurisdiction which is a co-signatory to the Convention. The Government of Sierra Leone is now considering the revamping and modernisation of its arbitration laws and becoming a signatory to the New York Convention.

3.4 A Foreign Lender's Ability to Enforce

It should be noted that a foreign lender must have a designated agent, or a local agent, or someone authorised to represent it via a power of attorney before a legal action can be instituted in the Sierra Leone courts. There is also a six-year statute of limitations for contractual matters which means that the action must have been commenced within six years of the accrual of the cause of action – usually the date of default.

4. Foreign Investment

4.1 Restrictions on Foreign Lenders Granting Loans

Foreign lenders can give loans provided they are project based, isolated transactions and do not otherwise amount to the foreign lender operating a commercial bank in Sierra Leone; which would involve accepting deposits from the public and providing loans and other facilities in exchange. The loan agreement must, of course, be registered in Sierra Leone if subject to Sierra Leonean law or abroad if subject to foreign law.

4.2 Restrictions on the Granting of Security or Guarantees to Foreign Lenders

The granting of securities to foreign lenders is not restricted or impeded, provided the decision is made in good faith and the proper documentation exists to show the pledge of assets. Note that where the foreign lender has to go to court to enforce the security, then it may need a local agent or SPV to bring the action on its behalf. It should further be noted that there are restrictions in Sierra Leonean land law as to the leasehold/freehold interest that a foreign entity can acquire on land in Sierra Leone. Usually, a foreign lender cannot acquire a freehold interest and a leasehold interest is usually restricted to a grant of 21 years plus an option to renew. Longer leasehold interest can be acquired but only if a formal waiver is granted by the Government or responsible ministry.

4.3 Foreign Investment Regime

The foreign investment regime in Sierra Leone is largely based upon project finance transactions, loans to Government, loans to commercial banks and other types of foreign direct investment. It may also take the form of new companies (SPVs) that are formed to embark upon trading, mining or infrastructure development and they tend to import into the county their equipment, machinery and other resources required to get the company up and running.

4.4 Restrictions on Payments Abroad or Repatriation of Capital

In theory, there are no restrictions on payments abroad to foreign investors. However, there are some procedural and practical restrictions such as the need to secure clearance from the Bank of Sierra Leone (the central bank) if the amount involved is large. There are anti-money laundering laws, compliance with which will mandate providing the relevant documentation to support the payments abroad, such as an invoice, the underlying contract, or board approvals. There may also be practical challenges such as the access to, or the paucity of supply of, locally available foreign exchange which can be remitted abroad. Repatriation of capital is by and large permitted provided it is properly documented and, in some cases, the necessary prior approvals have been obtained.

4.5 Offshore Foreign Currency Accounts

A project company can maintain offshore accounts. Many times, proceeds are due and payable to such offshore accounts and there is no prohibition of same in Sierra Leonean law. Indeed, onshore or local foreign currency accounts are also permissible to be opened in Sierra Leone both for companies and individuals.

5. Structuring and Documentation Considerations

5.1 Registering or Filing Financing of Project Agreements

The finance or project documents will need to be registered or filed with the appropriate government authority. Many times, finance documents are registered with the Corporate Affairs Commission and project documents with the office of the Registrar General in Freetown. Sometimes these documents are filed abroad, particularly if governed by foreign law, but with complimentary filing locally. If the finance or project documents are governed exclusively by foreign law, then the parties may opt to register said documents as a miscellaneous filing with the Office of the Registrar General in Freetown although they are not bound to do so.

5.2 Licence Requirements

Both ownership of land or natural resources and the operation of a business require a licence, either in the form of a conveyance/lease or a concession agreement/licence or a business registration certificate/certificate of incorporation. Such a certificate can be held by a foreign entity although the limitation mentioned above, in **4.2 Restrictions on the Granting of Security or Guarantees to Foreign Lenders**, with regard to freehold ownership of land by foreigners under Sierra Leonean law should be noted.

In the Western Area of Sierra Leone, the Non-Citizens (Interest in Lands) Act 1966 will preclude a foreign lender or investor from acquiring a freehold interest in land He or she can acquire a leasehold interest for a maximum term of 21 years. If a larger leasehold interest is required, then a special board must be consulted, of which the Minister of Lands is the Chairperson, and that board can provide a waiver for a leasehold interest greater than 21 years to be granted to the foreign entity. Note that a locally incorporated company of which the shareholding interest is more than 50%-foreign will still be viewed as a foreign entity (non-citizen) for the purposes of the above statute.

In the provinces, title to land is governed by customary law and authority is vested in the paramount chief as trustee for the community. In reality, there are several layers of ownership or vested interests shared between the paramount chief(s), the family and the individual. Customary land tenure is quite different from what operates in the Western Area. It differs from community to community and in this region, the Provinces Lands Act applies and this states, under Section 3(1) of Chapter 122, "No land in the provinces shall be occupied by a non-native unless he has first obtained the consent of the tribal authority to his occupation of such land".

Section 4 states "No Non-native shall acquire a greater interest in land in the provinces than a tenancy for a term of fifty years... for a second or further term not exceeding twenty-one years." This means that the greatest leasehold interest that the foreign entity can acquire with regard to land in the provinces is a lease of a maximum tenure of 50 years. The Government of Sierra Leone has the ability however to grant a waiver to this restriction and in some cases, will compulsorily acquire the land from the community using its eminent domain laws, and then grant a long lease of the land to the foreign investor.

5.3 Agent and Trust Concepts

Agent and trust concepts are recognised under Sierra Leonean law and are frequently used in project finance transactions where there is a security trustee representing the rights of the lenders. Special trust accounts and escrow accounts are sometimes used as an alternative to the trust structure.

5.4 Competing Security Interests

The priority of competing security interests is governed by the date of registration. Debentures or charges created and executed locally must be registered with the Corporate Affairs Commission (CAC) within 21 days of the date of their creation. If the charge is created abroad or executed abroad by one of the parties, then it must be registered with the CAC within 90 days of its creation.

Subordination is permitted under Sierra Leonean law but obviously requires a clearly drafted subordination agreement duly filed with the CAC. The subordination agreement may impact upon the priority of competing charges and will be fully enforceable, notwithstanding the insolvency of the borrower, unless the liquidator can show evidence of a fraudulent preference, a charge created in favour of a related party or company or some other compelling equitable reason why the agreement should be sets aside.

5.5 Local Law Requirements

The project company or SPV must be incorporated locally or registered as a local subsidiary of the foreign company in order to have standing and to take advantage of Sierra Leonean law. It is also envisaged that the project company will have to hire staff, perform services and enter into secondary contracts, all of which will require a registered legal presence in Sierra Leone. It is customary consequently for the project company to be organised as a private limited company duly registered with the CAC.

6. Bankruptcy and Insolvency

6.1 Company Reorganisation Procedures

Company reorganisation is permissible under Sierra Leonean laws and may take the traditional form of merger and acquisition. Although not very common, such reorganisations are governed by the Companies Act, common law principles and the contractual agreement of the parties. The

reorganisation will normally take the form of shares swaps and exchanges, an acquisition of the majority of shares in the targeted company or the creation of a new company in which both entities take a shareholding interest. There is unfortunately no active stock market in Sierra Leone, so the listing and acquisition of shares through public takeovers via the stock market is non-existent. Companies who desire to of off-load their shares normally do so through private placements. Notice of a proposed reorganisation, whether for public or private companies, must be provided to the shareholders of the company and to the Corporate Affairs Commission. A reorganisation may also be conducted through a winding-up of the old company and the transfer of all assets and liabilities to the new company as envisaged in Section 412 of the Companies Act 2009.

6.2 Impact of Insolvency Process

In many situations, the commencement of insolvency proceedings will, in and of itself, trigger a default on the loan, finance or security instrument. It is clear however that the commencement of insolvency will vest all powers and authority over the company in the liquidator and court, which will then administer the liquidation process and deal with the competing claims of all creditors of the company.

In Sierra Leone, there are three types of insolvency/liquidation, otherwise known as a "winding-up" of the company under the Companies Act. Section 343 (1) provides for the following: a winding-up by the court, a voluntary winding-up by the members of the company and a winding-up subject to the supervision of the court.

The first category occurs when:

- the company has, by special resolution, resolved that it be wound up;
- default is made in filing the required statutory reports;
- the company does not commence business for a whole year;
- membership of the company falls below the statutory threshold;
- the company is unable to pay its debts; or
- the court is of the opinion that it is just and equitable that the company be wound up.

The application to the court for the winding-up of the company can be by petition brought by the company, by a member/shareholder or by its creditors. The lender, depending upon whether his or her interest is secured or unsecured, and the priority to be granted to that interest will be affected by the insolvency. The liquidator may ring-fence all assets within the jurisdiction, or within his or her control, and then call upon the various creditors to establish their prior claim over the asset; failing which it would be regarded as part of the assets of the company available for the satisfaction of general claims. With project finance transactions, where the security instruments are properly drafted, the insolvency will trigger a crystallisation of the charge over the assets if dealing with the floating charge, or will entitle the lenders to take legal control over the secured/pledged asset, and lenders will be able to show to the liquidator or court that those assets are beyond the realm of assets available to satisfy the general or unsecured creditors of the insolvent company. Note that assets falling within a floating charge will be subject to, and inferior to, those debts that are entitled to preferential payments (Sections 438 (1) and 438 (4) (a) and (b) of the Companies Act).

In addition to the winding-up by the court, the members/shareholders of a company may opt for a voluntary winding-up under Section 402, Companies Act 2009 which occurs where:

- the period fixed for the life of the company has expired and the company in a general meeting passes a resolution that it be wound up;
- the company resolves by a special resolution that it be wound up; and
- the company resolves by special resolution due to extent of its liabilities that the company be wound up.

Where the members opt for a voluntary winding-up, after the required resolution has been passed, the members should (within 14 days of passing the resolution) publish in a local newspaper and in the Gazette that the company is being wound up.

The last type of insolvency is one subject to the supervision of the court and it occurs where the company has passed a resolution for a voluntary winding-up but the court has made an order that said winding-up shall be subject to the court's supervision (Section 431, Companies Act 2009).

It should be noted that from a legal perspective, the passing of a winding-up resolution marks the beginning of the liquidation/insolvency process and once the resolution is made, all court cases pending against the company may be subject to a stay of proceedings upon the application of the company, or any creditor of the company, or a member of the company (Section 354 of the Companies Act 2009). Further, any disposition of company assets after the winding-up has commenced shall, unless the court orders otherwise, be deemed void (Section 355, Companies Act 2009). It is customary for a receiver or liquidator to be appointed by the court to oversee the company's affairs and make all decisions on behalf of the company.

6.3 Priority of Creditors

When a company becomes insolvent, creditors are paid in the following pecking order:

- secured creditors;

- preferential creditors comprising government taxes & rates, NASSIT payment (the Sierra Leone state pension fund), wages and salaries of employees owed for the last twelve months and worker's compensation payments;
- general creditors and unsecured creditors; and
- unliquidated claim holders of the company.

6.4 Risk Areas for Lenders

The risks for lenders if their borrower, security provider or guarantor becomes insolvent are real unless mitigated by secured asset investments and insurance. Sometimes, even where fixed assets that are the subject matter of a secured interest, the cost of identifying, locating, moving and disposing of the equipment and machinery may be significant. There are also other intangible risks such as foreign exchange fluctuation particularly where the income stream is being generated in SLL (the local currency), foreign exchange scarcity and a slow and prolonged court liquidation process in which the lender must participate.

Lenders may also be subject to non-assignability of the asset/concession or licence given that the company is now insolvent and may have defaulted in making payments due under its licence or concession.

6.5 Entities Excluded from Bankruptcy Proceedings

All companies can take advantage of Sierra Leonean winding–up insolvency proceedings. Even government owned companies that have a separate legal personality are entitled to the protection of bankruptcy proceedings. If the project finance transaction is with the Government of Sierra Leone itself, or a ministry, agency or department of the government with no separate juridical identity, then it may not take advantage of Companies Act legislation dealing with liquidation of companies.

7. Insurance

7.1 Restrictions, Controls, Fees and/or Taxes on Insurance Policies

The payment of insurance premiums on insurance policies is subject to a goods and services tax (GST) of 15%.

7.2 Foreign Creditors

Insurance policies, once properly procured, can be paid to any recipient, be it a foreign or local creditor. In our experience, where the policy amount is sizeable and payable in USD or other foreign currency, it is customary for the policy to be reinsured with a large foreign insurance company or reinsurer.

8. Tax

8.1 Withholding Tax

Payments of principal, interest and other payments are subject to GST which applies as a withholding tax. However, a lender that is exempt from local taxes, such as the International Finance Corporation (IFC), the African Development Bank (ADB) or similar institutions that have a treaty with the government exempting them from all national taxes are not subject to this withholding tax.

8.2 Other Taxes, Duties, Charges

There are registration fees due and payable on loans and the Corporate Affairs Commission also charges fees in the form of a percentage of the value of the loan due and payable on debentures and charges on assets. This is usually 1% of the loan amount before the charge can be registered.

8.3 Limits to the Amount of Interest Charged

There are no usury laws in Sierra Leone regulating the interest rate that can be charged on loans. It is simply a matter between lender and borrower as to the term of repayment and the interest rate chargeable. Indeed, our local commercial banks charge interest on loans of between 21% and 30%, as well as rates of around 35% penalty interest on defaulting loans. However, when a bank or creditor is trying to enforce and secure judgment on a bad debt, it is within the discretion of the court to discount the level of percentage of interest recoverable if it is of the opinion that the interest rate charged by the creditor is excessive or the interest component of the total debt is disproportionate to the principal amount loaned.

9. Applicable Law

9.1 Project Agreements

Project agreements are usually governed by the law of the jurisdiction in which the project will be performed. In this case, with projects taking place in Sierra Leone were construction is envisaged locally, the project agreement will usually be governed by Sierra Leonean law. Sometimes, the project agreement provides the applicability of more than one legal regime, for example Sierra Leone and England, with the option given to either party to choose the forum in which they want to resolve their dispute.

9.2 Financing Agreements

The financing agreements are usually governed by the law with which the lender is most comfortable. It is thus quite customary for the finance agreement to be governed by the laws of a foreign jurisdiction, particularly where the lender is domiciled abroad. Indeed, the financing agreement is usually drafted and provided by the lender and it will generally dictate the choice of law applicable to the financing transaction.

9.3 Domestic Laws

Construction agreements, engineering agreements, employment agreements and most secondary agreements related to the implementation of the project will be governed by local law, to wit, the laws of Sierra Leone. Thus employees, contractors, etc, usually have their underlying transactions governed by domestic law, namely Sierra Leonean law.

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