

11/10/90
2000

INVESTMENT APPROVAL PROCESSES IN THE GAMBIA

October 1990

Prepared for:

**The United States Agency for International Development
Banjul, The Gambia**

and

**Agency for International Development
Africa Bureau, Office of Market Development and Investment**

Prime Contractor:

**LABAT-ANDERSON INCORPORATED
2200 Clarendon Boulevard, Suite 900
Arlington, Virginia 22201
(703) 525-9400**

Subcontractor:

**Nathan Associates Inc.
Economic and Management Consultants
1301 Pennsylvania Avenue, N.W.
Washington, D.C. 20004**

LAI
**LABAT-ANDERSON
INCORPORATED**

INVESTMENT APPROVAL PROCESSES IN THE GAMBIA

October 1990

Prepared for:

**The United States Agency for International Development
Banjul, The Gambia**

and

**Agency for International Development
Africa Bureau, Office of Market Development and Investment**

Prime Contractor:

**LABAT-ANDERSON INCORPORATED
2200 Clarendon Boulevard, Suite 900
Arlington, Virginia 22201
(703) 525-9400**

Subcontractor:

**Nathan Associates Inc.
Economic and Management Consultants
1301 Pennsylvania Avenue, N.W.
Washington, D.C. 20004**

TABLE OF CONTENTS

<u>Chapter</u>	<u>Page</u>
LIST OF TABLES	iii
LIST OF FIGURES	iv
EXECUTIVE SUMMARY	v
1. INTRODUCTION	1
2. OBJECTIVES AND SCOPE OF WORK	3
Background	3
Objectives	4
Statement of Work	4
3. METHODOLOGY	7
4. THE DEVELOPMENT ACT, 1988	9
Background	9
The Act	10
The Manual	13
Recommendations	14
5. APPLYING FOR PROJECT APPROVALS AND DEVELOPMENT CERTIFICATES	21
Background	21
Findings	21
The MEPID Component: Applying for a Development Certificate	22
Peculiarities of the Application Process	25
An Intricate Process	26
Knowing the System	26
Land Tenure	28
Conclusions	31
Recommendations	33

TABLE OF CONTENTS
(Continued)

<u>Chapter</u>	<u>Page</u>
6. THE GAMBIA NATIONAL INVESTMENT BOARD DIVISION OF INVESTMENT PROMOTION	45
Background	45
Findings	45
Prospective Investor Contacts	50
Conclusions	51
Recommendations	52
7. GENERAL OBSERVATIONS AND RECOMMENDATIONS	55
Appendix A. LIST OF ACRONYMS	
Appendix B. DOCUMENTS CONSULTED	
Appendix C. PRIMARY CONTACTS	
Appendix D. UNTITLED APPLICATION FOR A DEVELOPMENT CERTIFICATE	
Appendix E. THE DEVELOPMENT ACT, 1988	
Appendix F. SAMPLE DEVELOPMENT CERTIFICATE	
Appendix G. SAMPLE TAX CREDIT CERTIFICATE	
Appendix H. DEVELOPMENT REGULATIONS TO ACCOMPANY THE DEVELOPMENT ACT, 1988	

LIST OF TABLES

<u>Table</u>		<u>Page</u>
1.	A Comparison of Investment Incentives from Eight Countries	15
2.	Steps Required for Processing Development Certificate Applications	23
3.	Time Requirements for Development Project Application Submissions Within the Current System	32
4.	NIB Investment Promotion Staff Backgrounds	49

LIST OF FIGURES

<u>Figure</u>		<u>Page</u>
1.	A Maze of NIB's Regulatory Agencies	27
2.	Sample Development Certificate Application Form	35
3.	Sample Form for a Generic Project Approval Application	37
4.	View of a Proposed Application Approval Process	43
5.	Comparison of Estimated Numbers of Formal Contacts with <u>Three Government Agencies</u>	44
6.	Organizational Chart of the National Investment Board	46

EXECUTIVE SUMMARY

From February 13 to March 3, 1990, and from July 12 to July 30, 1990, Nathan Associates Inc. fielded a consultant in The Gambia to

- Review incentives available to investors under the Development Act, 1988;
- Review the approval process of Development Certificates (DCs), recommend streamlining procedures, and simplify the criteria for evaluating development investment projects; and
- Examine The Gambia National Investment Board's (NIB) one-stop services for prospective investors and suggest methods for improvement.

The consultant examined current investment legislation, reviewed project approval processes, and developed an understanding of NIB's Investment Promotion Division, all of which affect investment decisions.

This report examines (1) the Development Act, 1988; (2) the application process for project approvals and Development Certificates; and (3) the NIB division of investment promotion. Each of these areas will be viewed simultaneously as independent systems and as components of a holistic and systemic process. Following submission of draft reports in the field, A.I.D./Banjul, NIB, and the Ministry of Economic Planning and Industrial Development (MEPID) submitted comments and suggestions to the consultant, who subsequently held further discussions with government officials. The comments and suggestions of the agencies are reflected in this report.

Multilevel government involvement in various aspects of project approval—from the Cabinet on down—is unnecessary and, in general, impedes

investments in The Gambia. NIB could implement positive change in the current system of investment incentives and project approvals. The purpose of such change is to enable The Gambia to enhance its attractiveness to prospective investors, particularly foreigners. As a one-stop service center, NIB facilitates expeditious decision making in the national agencies responsible for administering project approval processes and investment incentives.

On the basis of the consultant's findings and conclusions, along with the comments and suggestions of the participating agencies of the Government of The Gambia and A.I.D./Banjul, this report provides 27 recommendations: 11 suggest improvements or clarifications of the Development Act, 1988; 5 aim to help streamline project approval processes; and 11 offer assistance to the Investment Promotion Division of NIB.

After the final draft report was written, the consultant was unofficially advised of possible changes in the structures and functions of several relevant ministries (such as moving the Trade Division from the Ministry of Finance and Trade (MOFT) to MEPID and Economic Planning from MEPID to MOFT). The impacts of such changes and how they will occur are unknown at this time.

Chapter 1

INTRODUCTION

Nathan Associates, under a subcontract with Labat-Anderson, fielded a consultant from its Washington, D.C., headquarters staff to The Gambia for a study that examined current investment legislation and project approval processes. These processes affect investment decisions, regardless of whether a project features development characteristics.

The consultant has participated in four in-country experiences in The Gambia and is involved in a series of ongoing activities involving the Gambian private sector and USAID. He has extensive experience in both export and investment promotion and project and organizational development.

This report examines (1) the Development Act, 1988; (2) the application process for project approvals and Development Certificates; and (3) the NIB division of investment promotion. Each of these areas will be viewed simultaneously as independent systems and as components of a holistic and systemic process. Following submission of draft reports in the field, A.I.D./Banjul, NIB, and the Ministry of Economic Planning and Industrial Development (MEPID) submitted comments and suggestions to the consultant, who subsequently held discussions with government officials. The comments and suggestions of the agencies are reflected in this report.

The consultant believes that NIB is capable of implementing, and is well positioned to facilitate, positive change in the current system of investment incentives and project approvals. The purpose of such change would be to enable The Gambia to enhance its attractiveness to prospective investors, and to ease the project approval process. Constructive change is the subject and intention of this report.

This report consists of seven chapters, including this Introduction, and appendixes. Chapter 2 reviews the objectives and scope of the work, and Chapter 3 describes the methodology used to obtain, compile, and analyze data. The Development Act, 1988, along with suggestions for modification are

reviewed in Chapter 4. Chapter 5 reviews step by step the processes required for prospective investors to secure Development Certificates and various other project approvals; several recommendations are provided for improving the collective process. In Chapter 6, the Division of Investment Promotion of The Gambia National Investment Board (NIB) is described in the context of its serving as a "one-stop investor service center," with specific suggestions for increasing its functional elements. General observations and suggestions are given in Chapter 7.

Appendix A contains a list of acronyms used in this report. Publications consulted are given in Appendix B. Appendix C lists the primary contacts used in preparing this report. Examples of various documents used in applying for project approvals and Development Certificates are given in Appendixes D through H.

Chapter 2

OBJECTIVES AND SCOPE OF WORK

Background

One of the key elements of the economic policy of the Government of The Gambia in its Program for Sustained Development is to encourage both domestic and foreign private investment in development projects in The Gambia.

Both the National Investment Board (NIB) and USAID have conducted investment surveys, indicating opportunities in the following areas:

- Horticulture and floriculture
- Aquaculture
- Shrimp and fisheries
- Livestock
- Tourism
- Forestry
- Agribusiness

To promote investment, The Gambia revised the Development Act, 1973, in 1988. The government offered incentives to prospective investors who initiated development projects. The act assigned the Industrial Development Unit (IDU) of the Ministry of Economic Planning and Industrial Development (MEPID) to run technical appraisals of development projects. In addition, NIB

was designated a one-stop service center to provide direct assistance to prospective investors. The center was designed to facilitate expeditious decision making in the national agencies responsible for the administration of investment incentives.

Despite the new Development Act, 1988, and the new designation of NIB, problems now persist in the approval process for investments and development projects. Approval is needed for exemptions from taxes and customs duties, as well as land allocation, business licenses, expatriate quotas, and residence permits. The application and, in the context of this report, collective project approvals require from 12 months to 2 years or longer after all documentation is complete and cleared by the necessary government agencies.

Needed changes call for a simple development questionnaire, precise investment criteria and incentives, and an expeditious decision-making process so that investors are not discouraged by uncertainties or delays in the application process.

Objectives

The objectives of this report are to

- Suggest additional incentives that might be offered to investors under the Development Act, 1988;
- Identify impediments in the process whereby Development Certificates (DCs) are reviewed for approval and recommend methods to streamline the procedures and simplify the criteria for evaluating development investment projects; and
- Examine and recommend improvements for NIB one-stop services.

Statement of Work

In this study, the consulting investment expert (consultant) was asked to examine the current investment process and recommend specific methods to streamline procedures, making them clearer and more predictable. Specifically, the consultant was asked to

- Examine the Development Act, 1988; analyze the incentives available to investors under the act; and

suggest methods to improve and further specify the incentives offered, including the addition of new incentives defined by the amount of exemption and the time granted.

- Examine the process by which Development Certificate (DC) applications submitted by prospective investors are reviewed and make recommendations. These recommendations call for methods that simplify the Development Act questionnaire, better define the criteria that prospective investors must meet in order to be granted a DC, and streamline the application review process so that decisions take less time and investors can begin work sooner.
- Review the functioning of the NIB one-stop investment services center and make recommendations for improving its administration and implementation.

Chapter 3

METHODOLOGY

The consultant used a standard interview and documentation review approach to become familiar with relevant Gambian legislation, government agencies and other institutions directly and indirectly involved in the issues under study, government and other institutional personnel, and members of the private sector and of the professional international community.

More than 35 individuals were interviewed and 19 documents were reviewed, providing the consultant with an appropriate level of background information and data. The consultant used his knowledge of The Gambia gained from previous in-country experiences, as well as ongoing contact with members of the Gambian business community and USAID. This background enabled him to make the most efficient use of his time.

Initial interviews with subjects were scheduled by appointment and, in many instances, were followed by second and some third interviews so that the consultant could confirm or verify data and clarify concepts obtained from public documents and private sources.

Copies of the first-draft report were circulated and a frank and constructive round table discussion was held for additional clarifications.

Chapter 4

THE DEVELOPMENT ACT, 1988

Background

Increasing emphasis on free enterprise systems has provided the impetus in less-developed countries (LDCs) to focus more on market-driven economies. Accordingly, in many LDCs, recent legislative action is intended to attract private investment in development projects by creating an attractive investment climate and by offering specific fiscal incentives to investors.

The principal objectives and premises of such legislation are to create investment climates and conditions that not only will attract capital infusion, but also will enable LDCs to compete more effectively for the same investment capital in order to generate badly needed hard currency, create employment, and produce other national benefits.

As indicated by government officials, the Gambian Parliament repealed the Development Act, 1973, primarily to redress problems of perceived overgenerosity. Consensus opinion on the 1973 Act was that provisions were too open-ended and that the Government of The Gambia, in its zeal to attract investments, was relinquishing too much. A new Development Act, 1988, was passed in its place (hereinafter referred to as the Act). The intent was to create a more favorable investment climate in The Gambia so that the country would become more competitive in attracting foreign as well as local investment by offering additional fiscal incentives for development projects. Although investments can be made in The Gambia without being granted a Development Certificate, the primary focus of this legislation is the DC, its provisions, and requirements. It should be noted, however, that other approvals are required before a new project can legally operate in The Gambia (see Chapter 2).

Shortly after passage of the Act, the Overseas Development Administration (ODA), on behalf of the Government of The Gambia, commissioned two consultants to develop, in conjunction with the National

Investment Board (NIB), the Ministry of Economic Planning and Industrial Development (MEPID), and the Ministry of Finance and Trade (MOFT), a manual addressing operating procedures associated with the Act. From this work, regulations were drafted and are currently under review by the Ministry of Justice. Although the manual is not considered a legal document, its contents represent an interpretation of the Act, and it functions as the Act's regulatory guidelines. In this context, the provisions and interpretations of the Act are addressed in this chapter.

The Act

Findings

The Act establishes a series of provisions for fiscal and nonfiscal incentives for development projects. The Minister is responsible for regulating and providing guidelines for implementing the Act.

Development projects are envisioned to focus activity in (1) manufacturing; (2) agriculture, livestock, fishing, and forestry; (3) mining and quarrying; and (4) tourism.

The objectives of development projects are to

- Achieve net foreign exchange earnings or savings,
- Generate substantial domestic value added,
- Promote maximum employment and training for Gambians,
- Make maximum use of local resources and services, and
- Decentralize projects geographically.

Two essential elements of the Act relate to the issuance of a Tax Credit Certificate, which specifies the amounts of exemptions for customs duties and company taxes for qualified development projects. Such projects have been granted DCs and meet requirements for fiscal incentives.

These exemptions are valid for 2 years. Although the Act is barely 2 years old and its interpretations have not yet been tested, discrepancies are apparent between this provision and the "Interpretations" section of the Act:

- "Exemptions" in the Interpretations section refers to exemptions from customs duty and not corporate tax, as stated in Section 5.1(b).
- "Tax holiday period" in the Interpretations section refers to a maximum of 5 years, versus the 2-year period specified in Section 5.4).

A development project qualifies for these incentives if it has "an investment potential sufficient to make a significant contribution towards economic diversification and the promotion of economic growth generally."

Section 6.1(a) refers to "preferential treatment for the allocation of land" for the holder of a DC. (Some applications for DCs, as in the case of fisheries and livestock projects, require site selections as a prerequisite for DCs.)

Under the law, the Minister shall not grant any incentive that creates exclusive privileges in competitive environments, nor shall he grant incentives for monopolies. Only the Minister or his authorized designate can issue a DC. According to MEPID staff, in practice, all grants of DCs must be approved by the Cabinet.

Only companies incorporated and registered in The Gambia may apply for DCs. The Act describes rudimentary data requested in the DC application and provides an opportunity (30 days advance notice in the *Gazette*, but 14 days in practice, before granting) for the public to express objections, if any, to the issuing of the certificate.

In the absence of justifiable objections, the Act provides that the benefits and incentives offered by the certificate and awarded by the Minister will be specified. Also, a timetable will be specified for various project components and conditions (for example, quantity and value of imported items to be exempted from customs duties, level or extent of tax holiday). Timetables for construction and production can be amended. However, the tax holiday period cannot be extended beyond 5 years from the production date.

DCs can also be issued for alterations or expansions of existing enterprises. If an enterprise expands its operations while operating under an existing DC, the DC can be revised to fit the circumstances. A company cannot apply for a new DC until its previous one has expired.

The Act discusses requirements for reporting and maintaining records. It also provides for default situations, restitution, staff training, and disputes. The prospective investor has no provision for recourse if his or her application is refused.

Conclusions

The intent of the Act is to create a series of fiscal and nonfiscal incentives to attract private investment in export-oriented enterprises and, in addition, in enterprises that affect development. A number of inexplicable inconsistencies appear in key areas of several of the Act's provisions, indicated below.

The Minister appears to have complete authority over the establishment of guidelines and regulations associated with the provisions of the Act. He also has control over and decision-making authority in granting DCs. There appears to be an inconsistency with the policies in practice. MEPID has indicated that authority to grant DCs rests with the Cabinet. Therefore, in practice, the Minister cannot exercise his authority under the Act to grant DCs.

It is assumed that a partial or total tax exemption is determined on the basis of government regulations, namely, the types and categories of proposed projects, as well as how criteria for project valuations and objectives are to be met. No specifications for determining regulatory guidelines have adequately interpreted or implemented the Act, other than an unofficial document described in the next section of this report. However, draft legislation is currently under review at the Ministry of Justice (MOJ).

A primary feature of the Act relates to the issuance of a Tax Credit Certificate for development projects, indicating the "amount of money the Government shall forgo from the holder of a development certificate." Taken at face value, there are some ambiguities between tax credit and development certificates; the Act is unclear on whether a Tax Credit Certificate could be issued if a DC were not granted. A number of subjects interviewed from the private sector indicated, however, that they were benefiting from tax credit certificates or deferred duty payments. A deferred duty payment is issued, for example, in situations in which DC approvals are delayed for more than 90 days. The consultant found no reference to MOFT or to temporary waivers or deferred payments in the Act.

The Act does not specify the basis for calculating amounts to be exempted other than "these are [also] to be determined by the minister." Although these bases are addressed in the manual, without specific legal references to parameters and requirements, problems and confusion in the approval process are more likely to occur.

There appear to be several unexplained inconsistencies involving specified maximum durations of exemptions from customs duties and company or turnover tax. Although the intent is acknowledged, it is difficult to determine by law whether both exemptions are valid for 2 years or 5

years, or if one exemption has a 2-year duration and the other a 5-year duration. Provisions of Sections 2 and 5 demonstrate this inconsistency.

In Section 2, the duration of the tax holiday period is not to exceed 5 years from the production date "during which time a tax credit certificate has been granted." In Section 5, the validity and duration of any exemption covered by tax credit certificates, as detailed in Subsection (1)(a)(ii) (customs duties) and in Subsection (1)(b) (company or turnover tax), "shall be limited to a period of not more than two years from the production date."

The Manual

Findings

The manual was developed as an expansion of the Act, as well as to provide some practical operational guidelines. It contains report formats, such as those for customs duty credits.

The described requisites for a tax holiday are (1) 50 percent or more of total export sales (and tourism-related businesses as part of the export sector) or (2) 60 percent or more of total inputs from The Gambia.

Fiscal benefits (if a DC is issued) include the following:

- Training taxation offset will be equivalent to two times the cost of training to include wages and salaries of staff while in training, plus an additional 20 percent of preparatory costs and an exemption from quota tax of expatriates.
- Additional depreciation allowance for infrastructural development that can be used by others, equivalent to 20 percent over 10 years (instead of the 10 percent rate).
- A 10 percent credit on the cost of local content for export sales, for the first 5 years.
- Credits earned can be applied against payment of corporation tax and customs duties.
- The Commissioner of Income Tax issues the Tax Credit Certificate. The unused portion of the tax credit is transferable; that is, it can be sold (at a privately negotiated price). However, it is unclear

whether the assignee has to be a DC holder. This should be clarified.

If a project fails to meet targets of export sales or local content, the following action will be taken: for every 10 percentage points below targets, the tax credit will be reduced by 2 percent (for example, 40 to 49 percent instead of 50 percent, tax credit will be 8 percent instead of 10 percent).

A provisional component, by which government attempts to deal with delays exceeding 90 days in issuing DCs, is to issue a deferred duty payment for customs duties.

Conclusions

As with the Act, the description of the tax holiday period in the manual is ambiguous. However, the manual more clearly specifies the features of and qualifications for a DC. Comprehensive instructions that reflect a more all-encompassing process of applying for and receiving a DC remain unavailable for prospective investors. The impression is that getting a project approved requires contacts with a number of government offices because, apart from MEPID's processing of DC applications, there is no clear understanding or identification of which government agency is ultimately responsible for the project approval process. With proposed changes in the structures and functions of some ministries (such as MEPID and MOFT), would responsibility rest with the Cabinet, the Minister of MEPID, or MOFT?

If the provisions contained in the manual became official regulations, with few exceptions (such as company tax rates and tax credits for training), fiscal incentives offered by The Gambia appear to be in line with those of other LDCs (see Table 1).

Recommendations

The following recommendations should be considered individually and in tandem as possible alternatives to enhance the clarity and provisions of the Act. MOFT should be consulted concerning any alternative involving impacts on government revenues.

1. The consultant believes that the Act would have been more appropriate as an amendment to the Income Tax Act, primarily because of its relationship with government revenues. Nonetheless, in consultation with MOFT, the consultant recommends a review and analysis of the existing tax structure and codes. This process should consider:

Table 1. A Comparison of Investment Incentives from Eight Countries

	Côte d'Ivoire	The Gambia	Ghana	Nigeria	Belize	Honduras*	Hungary	Senegal**
Capital Allowances	NA	Yes	20-100%	Yes	100%	NA	Yes	Yes
Corporate Tax Rate	NA	50%	45%	40%	NA	None	40-50%	NA
Customs Duties Waiver	100% for start-up 75-25% last 3 years of approval period	Drawback in the form of a Tax Certificate	During start-up phase	Drawback	100%	100%	100%	100% for 2 years, then unlimited export drawback
Depreciation	NA	10%; 20% with develop- ment of infrastructure	20%	10-110%	NA	NA	NA	NA
Expatriate Quota	NA	Yes	Yes	Yes	NA	NA	NA	Yes
Foreign Ownership Allowed	Yes	Yes	100%	100%	Yes	100%	100%	100%
Repatriation of Imported Capital	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Tax Holiday	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Duration	7-15 years	5 years	5 years	5-7 years	Up to 15 years	Unlimited	5 years	3-5 years
Certification Required	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Tax Relief for R & D	NA	NA	100%	120-140%	NA	NA	NA	Exemption from pay- roll on nationals
Tax Credits for Training	NA	200%	NA	NA	NA	NA	NA	NA
Year of Investment Code	1984	1988	1985	1988	na	NA	1989	1987

Notes:

1. "Yes" indicates feature is present, but code is nonspecific.

2. "NA" means data were not available.

* Relates to Free Zones

** A free zone exists in Senegal, but these codes apply to the general investment climate.

Sources: Investment Codes from Belize, Côte d'Ivoire, The Gambia, Ghana, Honduras, Hungary, Nigeria, and Senegal

- a. The extent to which a reduction in the company income tax rate will affect government revenues for a tax reduction to 35 or 40 percent to coincide with competing countries,
- b. The extent to which eliminating or modifying the 3 percent turnover tax will affect government revenues, and
- c. That training costs should be viewed as a deductible expense. (With the exception of The Gambia, none of the other seven countries in Table 1 offers tax offsets for training.) Training incentives described in the manual appear to be overly generous—DC holders are given tax offsets equal to twice the cost of training, including workers' salaries considered as on-the-job training. Clarification is needed if offsets are regarded as deductions.

The consultant views this credit as equivalent to a government training grant and suggests that an analysis of government-sponsored, in-country, training grant programs similar to those supported in other countries (such as Botswana) be compared for relevance in The Gambia.

- d. Revenue implications if expatriate quota taxes are eliminated.

The rationale for considering this item concerns the greater expense of bringing in expatriate workers versus using Gambian nationals. Why would an investor increase human resource costs by using expatriate staff unless the required personnel skills were unavailable in The Gambia? If this were the case, why should the prospective investor be further penalized with an expatriate quota tax? Furthermore, if the investor has a staff role in the project, under the current system he or she would have to be part of the quota and fee. This is clearly a disincentive.

Concerns that expatriate workers would displace Gambian workers should be dealt with as a human resource issue by MHLSW or MOI

to determine the impacts that might result from eliminating quotas.

2. One alternative to treating different types of enterprises equitably would be to specify that during the holiday period, all tax liabilities (customs duties and sales taxes on items used in production, and company taxes) would be prorated to the enterprise's exports as a percentage of total sales. For example, based on a company tax rate of 50 percent, a company whose exports represented 100 percent of its total sales would have no company tax liability; if its export sales represented or fell to 50 percent of its total, a company would be taxed at a rate of 25 percent.

This scenario could also be applied to nonexporting enterprises eligible for a DC by using various Gambian input percentages as a basis for the formula so that nonexporting companies qualifying for a DC would not be penalized.

A number of other issues are inherent in this recommendation, such as how to document percentages of exports. (This issue should be addressed in a review of customs duties and company taxes.) To offer a simplified alternative (such as providing an exemption of a certain value and canceling it if targets are not met) would not allow for equitable considerations of varieties of enterprises.

3. Incentives should be valid for 7 years from the date of issuance of a DC. The rationale for this feature relates to the current validity and duration of "five years from the production date"; concerns that companies might delay start-up in order to extend the validity period of duties waivers would be relieved (a holiday period could extend beyond 7 years under the current Act). Conversely, this would encourage enterprises to move ahead so as not to exceed the validity period. Based on the premise that enterprises might require 2 years for construction and start-up, the duration would not actually be extended beyond the current benefit.
4. Notwithstanding, if the Act is to remain as a stand-alone piece of legislation, the inconsistencies cited

need correction, and what is now considered the regulatory framework should be modified and made into law.

5. Customs duties rates should be reviewed and the following alternatives considered:
 - a. Amend the Act to state more specifically that exemptions on customs duties for all relevant items imported will last for 2 years. The rationale for this time period is that it corresponds to an average length of time required for a business to reach an operational level, and allows time to overcome cash-flow concerns.
 - b. Develop an offset or drawback program consistent with Item 5.a. that also provides time-unlimited customs duties credits, prorated to the enterprise's exports as a percentage of its total sales after the initial 2 years and valid for 5 additional years. It is understood that this would require the development of specific parameters and a standardized, enforceable system of documentation and monitoring.

The rationale for this feature is that it would (1) provide greater emphasis on export trade, while not depriving the local market of new products; (2) simplify criteria for customs duties concessions; (3) simplify criteria for enforcement and compliance to ensure that government revenues would not be harmed by potential abuses; and (4) maintain duties on products that remain in The Gambia.
6. Consult with MOFT to determine the impact of providing tax credits to export industries that meet the above criteria, to offset sales tax on Gambian inputs.
7. A standard reporting requirement, containing data to satisfy customs duties and company taxes, should be developed to ensure accountability and to avoid duplicative reporting requirements.

8. Although not mentioned earlier, in Section 21.(2), "ignorance on the part of a director," in the event of a company offense, should not relieve the director of his or her accountability.
9. A preliminary training plan should be provided with the application for a DC, and actual training requirements should be reassessed periodically. This provision is to be considered along with other development features of the project.
10. In Section 28, the following wording is suggested: "For purposes of implementing this act, rules, regulations, and administrative procedures will be established by the implementing agency, with approval by MOFT."
11. A formal appeals process should be established for applicants if a DC is not granted because of some oversight. NIB could facilitate such a process.

These recommendations indicate a need for the following:

- Focus of responsibility;
- Clarification of judicial and jurisdictional boundaries;
- Monitoring, accountability, and enforcement;
- More effective implementation;
- Ongoing evaluation of impacts;
- Corrective measures; and
- Fiscal soundness.

Specific recommendations for restructuring the application process are given in Chapters 5 and 6.

Chapter 5

APPLYING FOR PROJECT APPROVALS AND DEVELOPMENT CERTIFICATES

Background

As less-developed countries actively compete for foreign and domestic investments in development projects, the role of government becomes even more challenging. New legislation designed to attract capital infusion is the first step; regulating the process adds to the challenge.

Investment codes in LDCs are increasingly attractive and internationally competitive (see Table 1, Chapter 4), forcing prospective investors to look beyond a nation's wage rates, utility and land costs, infrastructure, skill levels, and work ethic. Many LDCs offer similar incentives; the selection of a country for either investing in new enterprises or expanding existing ones is determined by several factors. Among these are the ease or difficulty of the procedures to qualify for incentives and the level of participation required in the approval and certification processes.

Within the context of a regulatory and policy-making environment, The Gambia is becoming a more attractive country in which to invest. It has implemented a structural adjustment program that has liberalized government control over trade, currency exchange, and so on. Accordingly, administrative procedures need modification to properly support these adjustments.

Findings

The Ministry of Economic Planning and Industrial Development (MEPID) has described an application process that, at face value, requires no more than 90 days to complete to obtain a Development Certificate (DC). Many individuals who were interviewed advised the consultant that the process is often tedious and that the application requires an excessive amount of time to complete.

Printed literature describing the DC and indicating where to apply for it is available from MEPID and the National Investment Board (NIB). However, certain steps are prerequisite to applying for a DC. A document is needed that discusses such requirements and qualifications.

Prospective investors, particularly foreign investors, often use the services of attorneys or other representatives to prepare applications and other documents. Applications for a DC may be turned in to NIB or other entities but must ultimately be submitted to MEPID for the Industrial Development Unit (IDU) staff to begin processing. The IDU application form is discussed in Section 8.(3), subsections (a) and (b), and all of Section 9 of the Act.

According to Section 8.(2), applications will only be considered when submitted "on behalf of a company incorporated and registered in The Gambia." (To clarify a common misnomer, this provision does not in any way indicate that foreign project sponsors must be represented by a Gambian or a Gambian-owned company, and anyone who meets the incorporation and registration prerequisites can submit an application for a DC.) Several of those interviewed disclosed that the Act was unclear on this issue and believed that their applications had to be turned in by a Gambian.

The application form does not indicate where or to whom completed applications should be submitted, however, accompanying brochures instruct applicants to submit forms to IDU, MEPID. NIB and most other government agencies could easily refer applicants to MEPID or forward their applications.

The MEPID Component: Applying for a Development Certificate

IDU receives completed application forms with accompanying letters of reference, photocopies of certificates of incorporation and registration, license(s) to operate where necessary, land documentation, expatriate quotas, feasibility studies, and project information. Table 2 gives the steps required to process the application from the point of submission to the Cabinet, which makes the final approval.

IDU receives the application and assigns it to a technical review team. The team requires a maximum of 14 days to determine whether the project is technically viable and consistent with the provisions of the Act. If so, IDU refers the application to the Permanent Secretary for review.

IDU staff estimate that the time required to review the document does not exceed one work month, but the time varies. If the project is viewed favorably, the Permanent Secretary refers the application to the Minister, who initials the document. Applications are referred back to IDU within 1 week.

Table 2. Steps Required for Processing Development Certificate Applications

Action	Government agency	Time required for action (approximation in days)
Submit application	MEPID	0
Project appraisal by Technical Review Team	IDU	14
Review by Permanent Secretary	MEPID	20
Forward to Minister for his initials	MEPID	7
Draft a Cabinet memorandum	IDU	2
Review by Permanent Secretary	MOET	These are accomplished concurrently
Review by project- specific sector	Various Ministries	
Place ad in Gazette for objections	.	
Prepare Cabinet Memorandum	IDU	3
Submit to Secretary of the Cabinet to be placed on agenda for final decision	Cabinet	14
Total:		90

Source: MEPID

At this point, IDU develops a Draft Cabinet Memorandum, requiring approximately 2 days, then concurrently

- Submits a copy of the draft to the Permanent Secretary of the sector-specific ministry;
- Submits a copy of the draft to the Permanent Secretary of MOFT; and
- Places an announcement in the *Gazette* stating that any objections to the project must be submitted within 30 days, as provided by the Act.

The stated time requirement for these procedures is 30 days.

Barring any objections from the public, sector-specific ministries, or MOFT, IDU prepares a Cabinet Memorandum within 3 days. The memorandum is referred to the Secretary of the Cabinet, who places the matter on the agenda for the next Cabinet meeting. In the event of a full agenda, the matter is placed as a priority for the following meeting. This step requires approximately 2 weeks. Cabinet decisions rarely counteract MEPID recommendations.

A DC can be denied at any point in the process. A recourse procedure does not seem to have been developed.

In 1989 MEPID processed approximately 89 applications, of which

- Sixty percent were not processed because they were incomplete, even following requests from IDU for additional required information;
- Twenty percent were not recommended because they did not qualify; and
- Twenty percent were approved.

Alone, the DC application process appears uncomplicated and straightforward. However, several distinctions require a number of additional processes.

Peculiarities of the Application Process

A major problematic aspect of the DC application process concerns submissions of incomplete applications. In many instances, submissions consist only of a one- or two-page letter, which many prospective investors incorrectly consider a sufficient application.

A second problem involves requirements for project-specific licenses and site selections. According to MEPID and NIB, under the current system, the sequence of official approvals for licenses and land as prerequisites to receiving a DC varies according to the type of project under review. Omissions of these requirements could prevent immediate processing of applications. Public documents specifying prerequisites for licensing were not available; no references to licenses are made in the application form.

A written communication to A.I.D./Banjul from MEPID states: "project specific licenses and site locations are not to be met by all projects. Livestock and fisheries projects where it is already stated in their acts that they should apply for a license before they operate their business, logically, MEPID should ask the prospective investors to produce a license or approval from the technical/line ministry before we consider their applications for Development Certificate[s]." During a meeting in July 1990, the consultant was advised that "no licenses to operate are needed for manufacturing and trade."

The DC application form refers to plant location and cites this issue in Section 8(3)(d) of the Act. Although no other written document was seen that specifies approved site selection as a prerequisite, government officials stated that disputes over land would cause delays in issuing a DC. This is demonstrated in the case of an applicant for an industrial project described later in this report.

A meeting with various officials (representatives from MEPID, NIB, Customs, Income Tax, and USAID) provided a forum for frank and constructive discussions on such issues, and site selection policies were reiterated. For DC applicants, site and license prerequisites depend on the nature of the project. However, the exact requirements may not be obvious to prospective investors at the outset.

Although not a prerequisite or condition, MEPID also indicated a need for assurances of the availability of utilities, particularly if a rural site is selected. Section 6(1)(a) of the Act specifies "preferential treatment for the allocation of land for the project site and the provision of infrastructural facilities" as a nonfiscal incentive for holders of a DC. Unless an investor is subleasing land or has arranged for facilities from a private source, in some instances an untenable situation exists because the application cannot be processed without approved site selection, and, according to the Act,

preferential treatment to secure the most appropriate site will be provided after the granting of a DC.

Another problem is letters of reference and proof of financial capability. The Act and the application form clearly indicate such requirements (for example, "banker's and other references"). IDU staff interpret applications submitted without financial references as being nonserious and unresponsive. In 1989 approximately 60 percent of applications received by MEPID were not processed because they were considered nonserious or unresponsive.

Still another problem is whether the venture is a "development project" and whether a priority area referenced in the Act would be served. How and what specific legal guidelines have been established and are being used remains unclear. The Operational Procedures manual, which provides guidelines, is not a legal document and was not identified as an official document. During the second segment of the study, the consultant was advised that legal regulations had been drafted and were under review by MOJ.

MEPID's policy is that applications will not be processed until all required data are made available. The consultant examined copies of letters sent to prospective investors that requested additional information. An inconsistency surfaced during interviews with prospective and current investors from the Gambian private sector who indicated that official follow-up letters from MEPID are rare. As illustrated later in this chapter, the agency has no mechanism or procedure for formally acknowledging application or advising of their status.

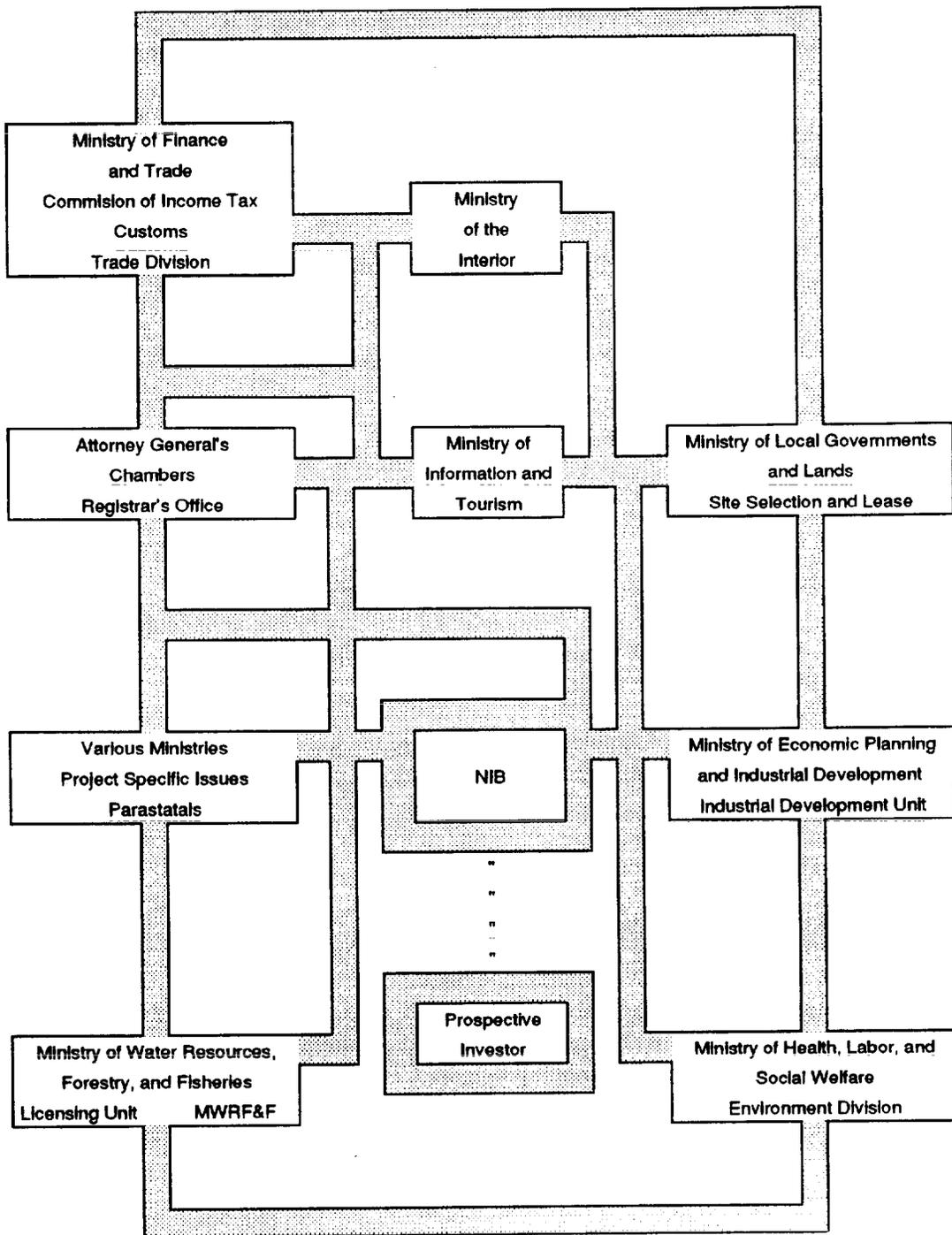
An Intricate Process

Depending on the nature of the project, prospective investors, foreign or domestic, must successfully interact with a number of government agencies before submitting a completed and "qualified" application form to MEPID. Figure 1 shows the flow of activity, highlighting a maze of regulatory agencies likely to be contacted. The actual number of required agency contacts varies according to the nature of the proposed project.

Knowing the System

From the investor's viewpoint, a tedious and frequently frustrating process of meeting prerequisites to submit a responsive application currently exists. The consultant deemed it appropriate to present the information obtained in the same sequence as it was uncovered.

Critical time will be lost when the prospective investor is not fully aware of all of the steps necessary to obtain approvals, unless assistance is provided by a Gambian agency, such as NIB, or an individual familiar with the process (for example, a lawyer).



Note: Specific parameters for interaction between government agencies, vis-à-vis project approval, have not been consistent.
 Sources: NIB, Nathan Associates

Figure 1. A Maze of NIB's Regulatory Agencies

Assuming that the prospective investor understands the prerequisites for a DC, and depending on the nature of the project, an application must be submitted to the Ministry of Local Governments and Lands (MLG&L), accompanied by a project profile in order to secure a site for a proposed project. Standardized application forms are not currently in use. Applicants are advised to submit a letter detailing the scope of the investment and the land requirements of the project.

It is expedient to legally establish the enterprise before submitting an application for land; DCs can be issued only to a company incorporated and registered in The Gambia. Registration may take from 1 day to more than 2 months. NIB will continue to provide expeditious assistance in this process.

Members of the public and private sectors have explained several descriptions of this process to the consultant. The following steps appear to be involved:

- Obtain a corporate registration form from the Department of Central Revenue within MOFT.
- While at MOFT, purchase stamps from the Income Tax Division for certification.
- Obtain a new set of registration forms from the Registrar General's Office at the Ministry of Justice (MOJ).
- Notarize forms at the courthouse.
- Return to MOJ with the notarized forms. Leave the articles to be stamped for certification.
- When all documents have been processed and released, go to the Accountant General's Office for additional stamps and certifications.

Land Tenure

Apart from Banjul and the St. Mary's area, two land tenure systems operate in The Gambia: state lands and customary lands. State lands are essentially within the jurisdiction of the Government of The Gambia, with no local authority controls. Customary lands are under the control and jurisdiction of local authorities. Within the five divisions of The Gambia, three divisions have both systems and two divisions have only customary lands.

Undeveloped land can be leased for no more than 21 years. However, this policy is currently being revised; it is anticipated that the maximum duration of land/lease arrangements will be extended to 99 years. Lease prices per square meter are also being revised.

It is possible to own the developed components of leased land; structures, such as factory shells or houses, can be sold or transferred at market prices. In Banjul and the St. Mary's Area, a freehold system exists whereby land ownership is permitted on a limited basis.

Following submission of a request for land, both the Department of Physical Planning and Housing and the Department of Lands and Surveys review the application. If they locate alternative sites on state lands, these departments will study the application and make recommendations to the Permanent Secretary of MLG&L. However, if any of the site alternatives are located on customary lands, the applications are submitted to the corresponding Local District Authority for review and approval before ministry departmental reviews.

The Local District Authority submits a request to the ministry for a survey if it approves and recommends the project. The Permanent Secretary will then make recommendations to the Minister, who has final decision-making authority. It is at the discretion of MLG&L whether to consult with other ministries (for example, the Ministry of Water Resources, Forestry, and Fisheries [MWRFF] for a fisheries project or the Ministry of Health, Labor, and Social Welfare [MHLW] for a medical facility). This process requires 30 to 60 days.

The Process Expands

Land-leasing procedures vary with each project. When a prospective investor calls on a perceived project-specific ministry (such as the Ministry of Information and Tourism [MI&T] for a proposed tourism-related project), MLG&L will refer the application to that ministry.

MI&T's Tourism Area Development Board meets monthly to consider applications for tourism-related projects. Their mandate is to ensure that proposed tourism-related projects will not conflict with a "master" planning component. Applications (a standard form is being developed), either referred by MLG&L or submitted directly to MI&T, are reviewed by the Technical Review Committee, which advises the Board. The committee meets monthly, 2 weeks before board meetings. On the committee's advice, the board rules on the project and advises MI&T of its decision. If MI&T approves the project, MLG&L is notified.

MI&T has other provisions. To maintain approved project status and land allocation rights, construction must commence within 18 months of the

allocation of land for the project. Sponsors are required to deposit 10 percent of the estimated project costs in a bank in The Gambia. One problem encountered with this provision, if every step of the process of securing a DC is followed, is that construction probably would need to begin before the DC is awarded, thereby requiring a deferred duty payment.

If an application for a DC involves a tourism-related project, the activities described above will take 30 additional days.

The Process Further Expands

An expatriate quota for the new enterprise must be determined if the new enterprise employs expatriate personnel. Approved expatriate workers require resident permits and must be reviewed annually. The expatriate quota should be established before, or at least at the same time as, a DC application is approved. This issue is addressed in the application under Items 8 and F, which require listings of employees by their nationalities. Government officials assured the consultant that expatriate quotas are not a prerequisite to the granting of a DC. However, they are eventually required if expatriates are to be employed in The Gambia. A Gambian lawyer stated that quota requirements are prerequisite to the granting of a DC. A clear policy is needed; this issue is often a critical factor for the investor.

The Permanent Secretary of the Office of the Vice President chairs the Expatriate Quota Board. Requests for expatriate quotas must be submitted to the Secretary of the Board, who is also the Secretary to the Cabinet. From there, the reviewed requests are forwarded with recommendations to the board. Copies are submitted to immigration and related ministries. Other Board members include representatives from MEPID, MOFT, MOJ, the Immigration Department, NIB, and the Labor Department. The board then submits its recommendations to a subcommittee of the cabinet, chaired by the Vice President, where final approvals are made. This process takes time because the quota board does not convene on a regular basis.

The Process Expands Again

A timing problem will develop if a prospective investor submits a request for land in the area where a government agency is contemplating activity. This occurred with an expatriate involved in an agricultural production/marketing project. The individual applied for land near the airport to install a cold storage facility in March 1989.

The prospective investor had received no formal acknowledgment of his application in what he considered an excessive period of time. He bypassed the system by contacting numerous government officials in writing. During the course of the year since the original submission, he assumed his application would not be approved. The investor's project represents an

infrastructural development from which others in The Gambia with cold storage needs could benefit, especially exporters of perishable horticultural crops.

Although the investor has only recently received one formal response to his written communications (from the Ministry of Agriculture), government officials led by NIB are quite familiar with his case. NIB staff initiated measures to arrange a fair and early solution as soon as they became aware of the situation. However, the investor claims that he still has not received an official communication from NIB. As with MEPID, written communications from NIB are rare. One way to avoid some of the problems associated with this process is for government agencies responsible for the process to send written acknowledgments of their decisions or actions.

A similar land dispute, causing delays in the issuance of a DC, involves a light industrial facility whose owners wish to expand. Despite numerous contacts over several years, the situation was still unresolved in July 1990. Both MEPID and NIB are involved in providing assistance to resolve the issue, which is currently being litigated. It appears that a DC will not be granted until the case is resolved.

Conclusions

The straightforward DC application process is sidetracked by an unnecessary labyrinth of government agencies. It is part of a larger process of project approvals, creating delays that may discourage investors. Despite multiple needs for project data and approvals required by one or more agency, even before the DC application can be submitted, no single agency monitors or tracks the entire process. The consultant believes that interoffice agencies officially communicate concerning the ultimate objective of project approval or denial. The process would be more effective, however, if one agency provided coordination and management and other agencies routinely directed investors to that agency for assistance. This is of particular significance when prospective investors, knowingly or otherwise, usurp the system by using improper channels.

In this scenario, a prospective investor's proposed project is caught in a web of government bureaucracy, bound by the discretionary requirements of agency personnel. In some instances, prospective investors have been aware of correct procedures, yet still attempted to bypass the system—when communications were not acknowledged.

Based on interviews with public and private sector participants involved in the process, if every procedure is followed—no matter what the sequence—the entire process of project approvals will require from 1 to 1½ years, as can be seen from Table 3. By this time, the prospective investor will either abandon the project, proceed with it and hope for the best, or invest in another country.

Table 3. Time Requirements for Development Project Application Submissions Within the Current System

Action	Government agency	Time required for action (maximum approximation in days)
Obtain information on investing in The Gambia	NIB	1
Incorporate and register company	MOFT MOJ Accountant General's Office	1 - 60
Expatriate quota	Minister of the Interior	
License to operate	Various Ministries (e.g. MHL, SW, MWRFF)	30 (estimate)
Site selection approval if project is related to tourism	MLGL	60 (add 30 days)
Apply for Development Certificate	MEPID	90
Totals:		256-345 or 12.8-17.25 months

Note: Based on a 5-day work week and 30 days if tourism related.
Sources: MEPID, MINT, MLGL, NIB, Nathan Associates

In all fairness to IDU, however, by design, the actual DC application process should not require more than 90 days. Investors' guides from other countries specify that their certification processes require 30 to 60 days, an objective that would greatly improve the image of the current system in the eyes of prospective investors.

Apart from the remarkable numbers and levels of government personnel required in the process, the system slows primarily for the following administrative reasons:

- Except for the DC application form, standardized application forms are not currently in use.
- Most of the steps required in the existing process are addressed sequentially, as opposed to concurrently, and many individual agency requirements have collectively duplicative components. Such processes—incorporation and registration, for example—could easily be concurrent with the processing of DC applications.
- Among the agencies, the consultant found inconsistencies in the understanding of the process.
- Too many agencies without sufficient decision-making authority require staff discretions.
- Government personnel from most other agencies do not immediately or routinely refer all investment inquiries to NIB.
- In current practice official written acknowledgments and communications are not a standard operating procedure; government officials are left without proper documentation of their efforts.

Recommendations

1. A single, multipurpose, standardized application form should be developed for interagency use for all new projects, regardless of development components. This form should request basic project information in the first section, and more specific and nonrepetitious information in different subsections, sufficient to satisfy the following processes where applicable:

- Incorporation and registration,
- Land allocation,
- Licenses to operate,
- Expatriate quotas,
- Tax Credit Certificates for customs duties waivers, and
- Development Certificate (project-specific data).

The form should be managed and its processing monitored by NIB.

An alternative would be for each relevant agency to develop its own form to be incorporated into a larger one, eliminating duplication.

If a single application form were used, an investment promotion officer (IPO) or counselor at NIB could help the prospective investor complete the form properly. A case number could be assigned to the prospective project and the application could then be distributed to the appropriate officials in different agencies, including IDU, with formal acknowledgments. The case number would enable NIB to track and monitor the progress of the application through its various stages. Formal approvals from other government agencies would use the same number when issuing official statements and decisions concerning the project.

One suggested format for a DC application is shown in Figure 2. Figure 3 is an example of a more comprehensive, generic application form. Much of the information requested could be extracted from the project's feasibility study.

Any prospective investor who could not provide most of the applicable data requested in this questionnaire has probably not gone through a "due diligence" exercise and should be advised accordingly.

APPLICATION FOR A DEVELOPMENT CERTIFICATE

Priority Sector: _____ Case Number: _____

Schedule 1.0 General IPO: _____

1.1 Name of Registered Company
Registered Address
Business Telephone Number
Name of Principal Applicant

1.2 Name of Agent in The Gambia
Address
Telephone

1.3 Nature of Business: (types of products and/or services)

1.4 Location (or Proposed Location) of Plant
(if different from Item 1.1)

1.5 Approximate Construction Date

1.6 Approximate Production Date

1.7 Projected Total Investment

1.8 Feasibility Study Attached--Exhibit A
(Includes all financial and technical features,
such as financial projections, sources of inputs,etc.) Yes: _____ No: _____

1.9 Proof of Financing Capability and
Letters of Reference Attached--Exhibit B Yes: _____ No: _____

Schedule 2.0 Development Features

2.1 Projected Total Annual Turnover

2.2 Projected Exports as a Percentage
of Annual Turnover

continued

Figure 2. Sample Development Certificate Application Form

- 2.3 Employment to be Generated _____
- 2.4 Number of Gambians to be Employed
as a Percentage of Total
(*non-Gambians will require Residents Permits) _____
- 2.4 Value of Projected Total Annual Inputs _____
- 2.5 Gambian Inputs as a Percentage of Total _____
- 2.6 Training Schedule Attached--Exhibit C
(if applicable) Yes: _____ No: _____

Schedule 3.0 Investment Incentives Request

- 3.1 Details of Customs Duties Waivers
Request Attached--Exhibit D Yes: _____ No: _____
- 3.2 Details of Company Tax Holiday
Request Attached--Exhibit E Yes: _____ No: _____

For all intents and purposes, I declare to the best of my knowledge that all information contained in this application form and accompanying exhibits is true and factual.

Submitted by: _____

Date: _____

All applications should be submitted to:

Industrial Development Unit
Ministry of Economic Planning
and Industrial Development
Buckle Street
Banjul
The Gambia

Date _____ Case Number _____
Project Sponsor _____ Sector _____
Assigned to _____ (NIB staff member)

I. Project description

- A. Summary description of proposed project
- B. Status of project development
 - 1. Government approvals and incentives
 - 2. Land and/or equipment acquisitions
 - 3. Existing financing
 - 4. Other relevant information
- C. Availability of existing resources (e.g., raw materials, labor, infrastructure)

II. Project sponsors

- A. Identity of equity investors (financial statements could be requested)
- B. Nature of their business
- C. Experience in similar projects (submit resumes)
- D. Experience in host country
- E. Experience with and/or ownership of other companies with which the project company will interact

III. Project company

- A. Status
 - 1. Name, location, legal status, and ownership of the proposed (or existing) project company
 - 2. Requests for all required licenses, approvals, and other agreements (e.g., long-term leases, land use permits, tax exemptions, training grants) to be obtained from the government, together with an indication of agreements yet to be obtained from other entities (e.g., donor agencies)
 - 3. Project timetable

continued

Figure 3. Sample Form for a Generic Project Approval Application

- B. Project costs and financial plan
1. Breakdown of costs for expenditures of land, construction, equipment, organization and pre-operating expenses, working capital, and contingencies
 2. Any existing assets and basis for valuation
 3. Local, third-country costs for hardware and technology (e.g., hardware from Italy, technology from the United States, construction from The Gambia)
 4. Anticipated financing for the project
 - a. Source(s), currency, and terms of all equity and debt
 - b. If any equity other than cash is or will be issued in exchange for property, specify its source, nature, and the basis for valuation.
 - c. Provide details of existing capitalization and terms of debt obligations if project is an expansion of an existing company.
- C. Technical aspects
1. Description of engineering and construction plans
 2. Raw material usage and arrangements for supplies
 3. Details of manufacturing process
 4. Environmental effects of the project
 5. Site selection and provision for power
 6. Availability of transportation and other facilities
 7. Copies of all feasibility studies, pre-feasibility studies, or project profiles
- D. Market information
1. Location(s) and nature of the market
 2. Historical and forecast volume and prices
 3. Basis for projections
 4. Comparison of project with major competition, including location, operating costs, prices, and product quality
 5. Present and projected capacity and market share for project and competition

Figure 3 (Continued).

E. Financial projections

1. Pro forma financial statements for the requested term of financing
2. Income statement, balance sheet, and source and use of funds statement
3. Assumptions and basis for projected financial statements. Include sales volume and prices, costs of raw materials, labor and other production inputs, selling, general and administrative expenses, depreciation and amortization, interest and principal payments, identification of fixed and variable costs, inventory, receivable and payable levels and seasonal variance, additions and replacements of fixed assets, any price regulations of host government, effect of exchange rate or inflation adjustments on financial projections.

F. Management and employees

1. Composition of board of directors
2. Role in project's management and operation of each sponsor, together with copies of all management, marketing, technical services, or similar agreements
3. Biographical data on project's key management personnel. Include both foreign and domestic experience.
4. Number and salary levels of Gambian and expatriate personnel by category (administration, sales, skilled, semi-skilled, and unskilled labor)
5. Availability and skill-level of labor, training plans, need for project to provide housing, transportation, etc.
6. Request for expatriate quota

It is not uncommon to find prospective investors who have sound concepts but who lack experience in developing them into actual projects. An advisory services component [at NIB or Indigenous Business Advisory Service (IBAS)] could address issues of this nature with the prospective investor.

The prospective investor would need to complete only one application at one agency at one time. Delays involved in meeting with various government officials would be reduced, if not eliminated, except in instances when such contacts would provide clarifications needed to further expedite the process.

2.
 - a. One project—one appraisal: Applications need not be processed consecutively because a project will technically qualify for a DC whether the licensing, land, and expatriate requirements are met before, during, or after the IDU evaluation. Rather, all four applications could be processed simultaneously, without unnecessary interagency reviews.
 - b. Project evaluation, performed by a technical review team, would provide interagency input. The team would consist of qualified agency representatives who would consider all the requirements for appraisal.
 - c. Representatives of each agency involved in the process would constitute the technical review team. Members would be authorized to make recommendations for their respective agencies. This would save the time and expense of each agency putting the proposed project through similar processes. In addition, it would greatly reduce the number of government personnel and officials involved in the process, in turn reducing the prospective investor's contact with government officials.
3. Consolidate company incorporation and registration in The Gambia in the application process. Often, new companies are founded specifically to promote a new venture. Considering provisions in the Act [Section 8.(2)], the inclusion of this function in the application process could save time.
4. An application fee would help defray the cost of processing, cover the cost of registration and incorporation, and help eliminate nonserious applicants.

45

5. **NIB should manage and monitor the process.** NIB was mandated by an act of Parliament, The Gambia National Investment Board Act of 1977. Although NIB has undergone transformations since its inception, as an independent government agency it is structurally able and mandated to interact with the units and divisions of numerous ministries and parastatals.

Within the current system, each unit in each ministry involved in the project approval process is responsible for, and centers on, issues related to their own locus. They are not individually, conjunctively, or collectively structured to deal comprehensively with all of the issues to be considered in this process. NIB's structure and functions are more conducive to effective facilitation in that its organization can develop a broader scope.

6. **One project—one coordinated decision-making process:** In any system where boundaries become unclear, functionality is at risk. The processes described here are taking too long to be accomplished; the current system needs to become more functional and more competitive. Accountability would be greater through one coordinated process, and the decision-making component would be more thoroughly monitored.

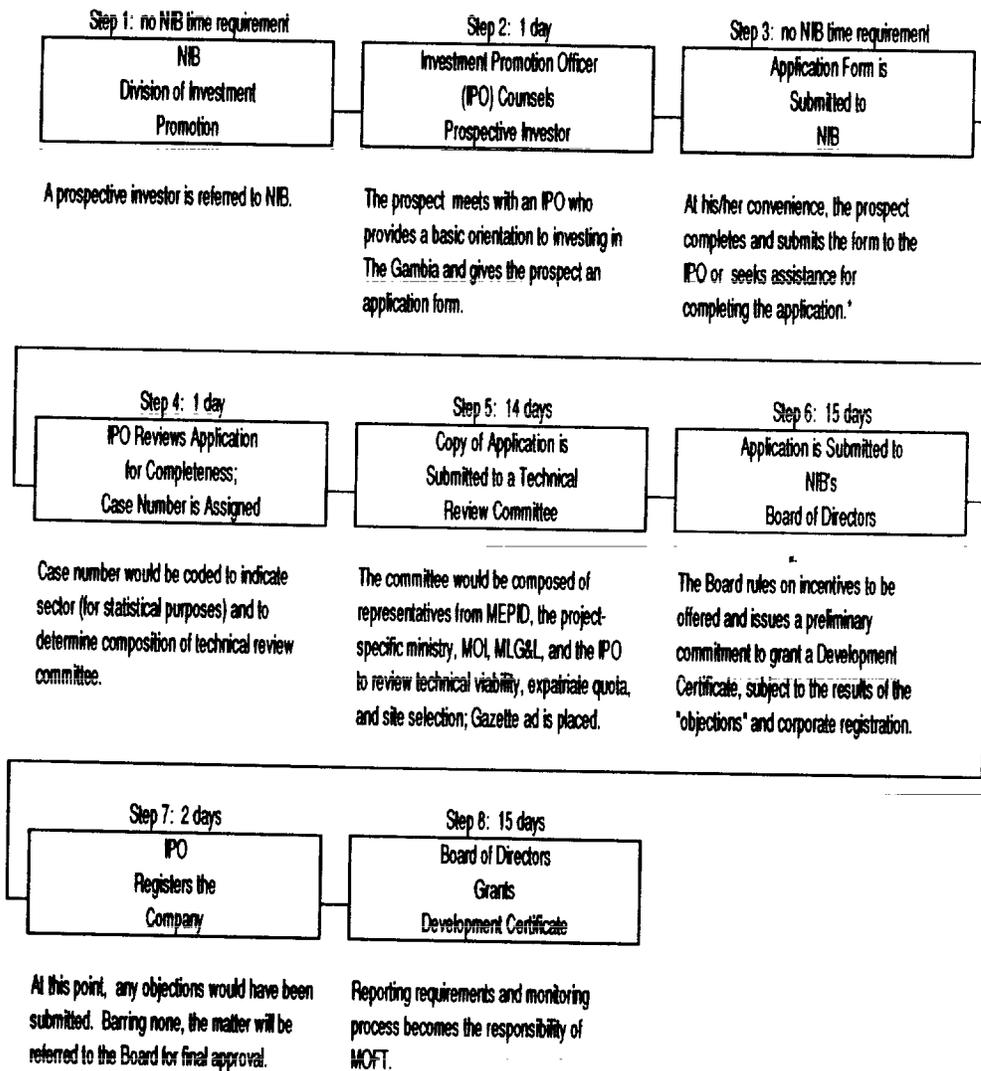
According to one interviewee, NIB has the responsibility, but not the authority, to deal effectively with investment promotion issues. If one agency assumed such authority, matters involving project approvals would be better resolved. The consultant believes that The Gambia is capable of gaining viable and valuable projects by increasing the system's ability to reach effective decisions within a reasonable period of time.

7. **Referrals to a "one-stop shop":** applications should be submitted through NIB. It is crucial for government personnel to refer all prospective investors to NIB to understand the process and its requirements. Only one individual in government service stated that he regularly referred prospective investors to NIB. No others in government service interviewed in February acknowledged a strong need to refer investors to NIB.

If a proactive "one-stop shop" for prospective investors is to be supported, government personnel, the Chamber of Commerce, and the business community at large must understand the importance of referrals to NIB. To change the status quo, government needs to further demonstrate its confidence in NIB and enable it to carry out its responsibilities more effectively.

Consequently, a directive should be issued to all government agencies indicating that all prospective investor inquiries should be referred to NIB. Considering the implications of a successful investment promotion strategy, the time requirement for processing applications would be greatly reduced.

Figure 4 shows how this proposed process would flow, to be concluded within 60 days, with compliance responsibility more appropriately placed at MOFT. Without referrals, the amount of formal activity among various government agencies will remain imbalanced, as shown in Figure 5.



Notes: * Assistance can be in the form of technical or business advice or referral to a professional services agency (e.g., lawyer, accountant).

** Process depicted assumes successful completion of each step.

*** GOTG decision is made within 60 days.

Source: Nathan Associates

Figure 4. View of a Proposed Application Approval Process

68

1989 Estimates

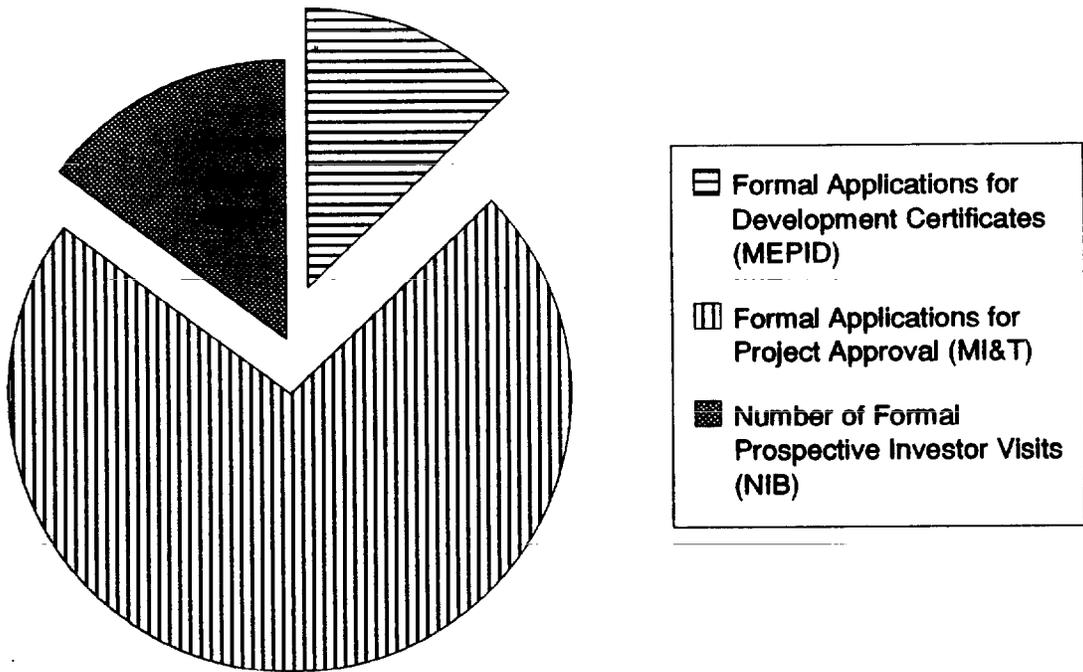


Figure 5. Comparison of Estimated Numbers of Formal Contacts with Three Government Agencies

44

Chapter 6

THE GAMBIA NATIONAL INVESTMENT BOARD DIVISION OF INVESTMENT PROMOTION

Background

NIB was established as an independent government agency under the auspices of the Office of the President by The Gambia National Investment Board Act, 1977. Its initial mandates were to provide oversight and monitor the progress of parastatal enterprises, advise the government on its investments, and promote private investment in The Gambia.

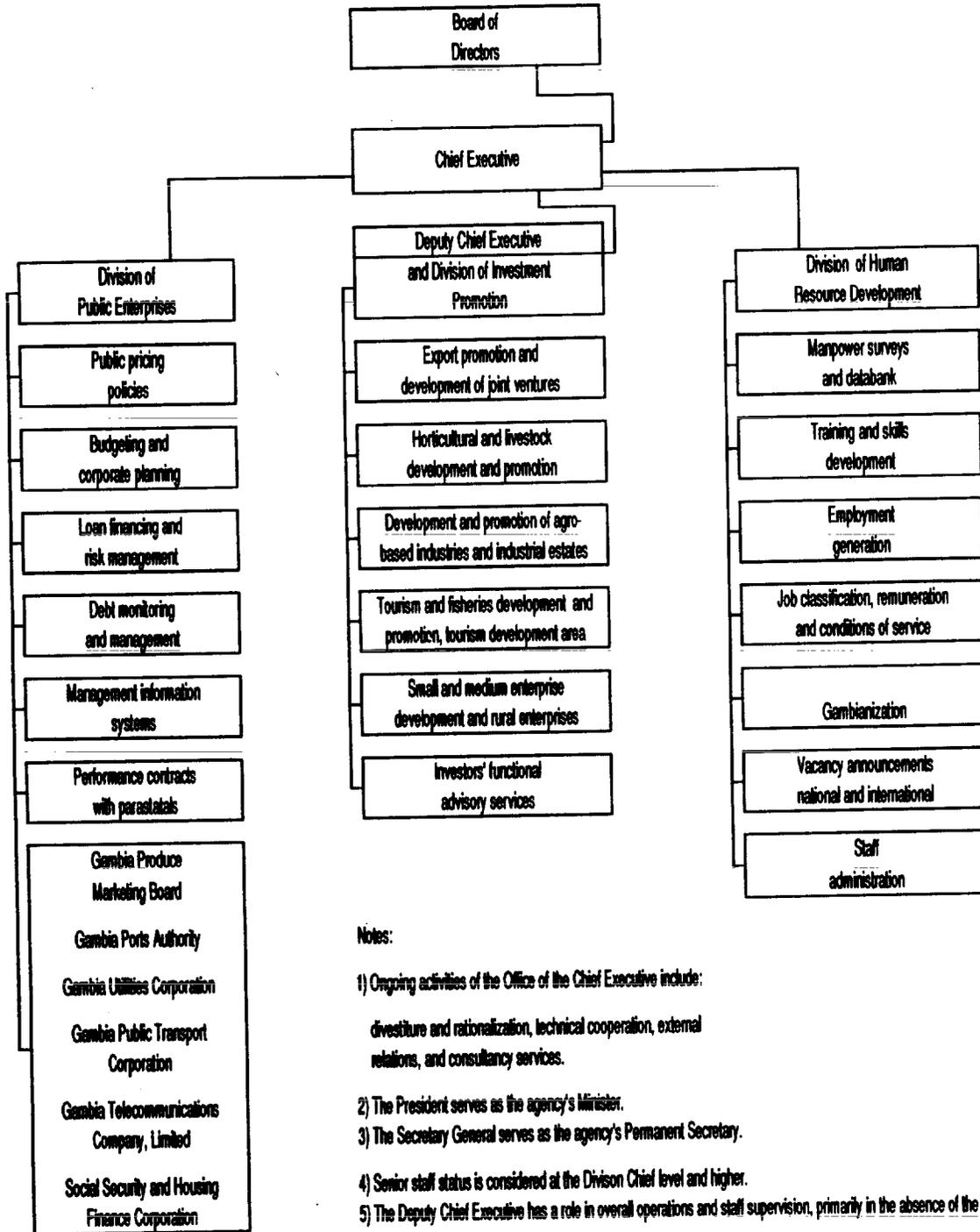
Since its inception, NIB has evolved into a multipurpose agency with program objectives facilitated through three divisions:

1. Division of Public Enterprises,
2. Division of Investment Promotion, and
3. Division of Human Resource Development.

In accordance with the scope of work, the emphasis of this segment of the study centers on the Division of Investment Promotion, with NIB designated as a one-stop investment service center.

Findings

NIB occupies three floors of a retail/office building located at 71 Hagan Street in the downtown section of Banjul. The agency has been authorized 19 professional staff positions, of which 3 are currently on study and 1 is vacant. NIB personnel are not part of The Government of the Gambia's regular civil service. Professional and administrative staff positions are assigned to the Office of the Chief Executive and the agency's three divisions. Figure 6 shows NIB's functional structure.



Notes:

- 1) Ongoing activities of the Office of the Chief Executive include: divestiture and rationalization, technical cooperation, external relations, and consultancy services.
- 2) The President serves as the agency's Minister.
- 3) The Secretary General serves as the agency's Permanent Secretary.
- 4) Senior staff status is considered at the Division Chief level and higher.
- 5) The Deputy Chief Executive has a role in overall operations and staff supervision, primarily in the absence of the Chief Executive.
- 6) NIB has 29 professional and 19 administrative personnel; 5 professional positions are currently vacant.
- 7) Board of Directors consists of CE, Permanent Secretaries of MOFT and MEPID, Auditor General, General Manager of Central Bank, and one member from the private sector.

Source: NIB

Figure 6. Organizational Chart of the National Investment Board

The office is equipped with a telex, facsimile, multiline phone system, photocopier, typewriters for eight secretaries, three stand-alone personal computers, and a five-terminal computer network system that is not currently in use. NIB also has five vehicles for staff use. Personnel from each division cooperatively share these facilities.

The Chief Executive (CE) has some investment promotion responsibilities in addition to providing overall direction to Division Chiefs. The Office of the Chief Executive also deals in matters concerning:

- Divestiture and rationalization,
- Technical cooperation,
- External relations,
- Project negotiations, and
- Consultancy services.

The Division of Investment Promotion falls under the supervision of the Deputy Chief Executive (DCE), who also serves as its Division Chief. Within the division, NIB's organizational structure provides for six functional components concerning different project areas of investment promotion activity. One member of NIB's professional staff is assigned to each of these components to facilitate the following activities:

- Export promotion and joint ventures,
- Horticultural and livestock development and promotion,
- Development and promotion of agrobased/ manufacturing industries and industrial estates,
- Tourism and fisheries development and promotion,
- Small and medium enterprise development and rural enterprise development, and
- Investors' functional advisory services.

As Division Chief, the DCE is primarily responsible for directing and supervising investment promotion staff and activities of the agency. A portion

of the DCE's time is allocated for travel to trade shows, seminars, investment forums, negotiations with prospective investors on specific projects, and related events. Time is also allocated for follow-up activities on prospective investor leads, staff supervision, and responsibility for the Office of the Chief Executive in the absence of the CE.

All but one of the divisions' components are staffed by Gambians. Under the auspices of UNDP, a technical assistant has been staffing the export promotion and joint ventures component for the last 3 years. His participation in NIB activities was scheduled to cease at the end of February 1990 and, while it was originally anticipated that he would be succeeded by a Gambian under a grant from the Islamic Development Bank, the UNDP adviser has remained on the job.

A cadet economist, under supervision of the DCE, temporarily holds the permanent position in the horticultural/livestock development and promotion division. Table 4 indicates other positions within the division, as well as work experience and educational levels. Each staff member contributes expertise to the promotional process, responding to issues raised by prospective investors, identifying new investment opportunities and needs, and maintaining contact with other government agencies on project-specific matters.

Independently, the CE and DCE both reported that the agency lacks the resources to implement an effective strategic planning component for investment promotion, primarily because NIB does not have an approved, realistic investment promotion program budget. Even with a personnel budget, last year NIB requested D 100,000 for investment promotion program activities and project appraisals, but received only D 20,000 (U.S. \$2,500). These funds were inadequate for proactive implementation; they did not even cover the costs of printing investment promotion literature.

Promotional literature, funded in the past by the Commonwealth Fund for Technical Cooperation, consists of the *Investor's Guide to The Gambia* and *Investing in The Gambia—Service, Protection, Inducements, Opportunities*. Since these publications were printed, the agency has moved to its current location, leaving the publications with an incorrect address of NIB.

Staff participation in trade fairs, investment forums, and seminars is sometimes funded by grants from donor agencies, such as USAID and UNDP. However, strategic implications for such participation are not considered because executive personnel do not have adequate advance knowledge of grant availability. The DCE reported that staff travel for investment promotion functions is infrequent.

NIB recognizes that, because of budgetary constraints, its investment promotion activities tend to be reactive rather than proactive. Without the resources to implement their strategic plan, the agency is confined to passive promotion and must resort to "piggybacking" the costs of external

Table 4. NIB Investment Promotion Staff Backgrounds

	Years of professional experience		Years at NIB	Job title	Level of education
Chief Executive	10		10	Business	Master's
Deputy Chief Executive and Division of Investment Promotion	14		7	DCE and Division Chief	Master's
Export promotion and development of joint ventures					
Horticultural and livestock development and promotion	0	TDY-in*	0	Cadet Economist	Bachelor's
Development and promotion of agro-based industries and industrial estates	6		6	Senior Economist	Master's
Tourism and fisheries development and promotion, tourism development area	10		4	Senior Economist	Master's
Small and medium enterprise development and rural enterprises	5	TDY-out	3	Senior Economist	Master's
	5	TDY-in	1	Economist	Bachelor's
Investors' functional advisory services	10		10	Administration	<>

* TDY refers to temporary duty.

Source: NIB

promotional activity onto programs funded through grants, or by hoping that prospective investors will come to The Gambia and to their door.

Prospective Investor Contacts

Primary external contacts with prospective investors result from participating in overseas programs funded by grants, where efforts are made to generate interest in investing in The Gambia. NIB recognizes that it has not been able to make effective use of consulates and embassies abroad. Although attempts have been and are being made to use overseas missions for investment promotion purposes, such attempts are somewhat inhibited by the channels of communications required by the Ministry of External Affairs (MEA).

MEA requires that all official correspondence intended for overseas missions be submitted through the Ministry for forwarding. While individual prospective investors can be contacted directly by NIB, all formal promotional communications or responses to official embassy inquiries must be channeled through MEA, thereby creating communications delays.

In most instances, the first contact with a prospective investor is in The Gambia. Depending on the nature of the inquiry, a prospective investor could contact the Chamber of Commerce, MEPID, MI&T, or another government ministry perceived to be responsible for a particular area of interest. Each ministry assigns NIB liaison officers, but a formal referral network through government and private agencies could be much stronger, as referrals to NIB from the agencies are infrequent. Figure 5 illustrates the disparity in the approximate numbers of contacts with NIB, MEPID, and MI&T.

The DCE reported that some referrals of prospective investors do come from the Trade Division of MOFT, Ministry of Immigration, and Ministry of Agriculture. Referrals also come from other agencies when they have concluded that dealing with NIB would be more productive for the prospective investor. It is difficult to predict where initial prospective investor contacts are made.

While at NIB, the prospective investor is supplied with the *Investor's Guide, Investing in The Gambia*, and the Development Act, 1988. NIB staff brief the prospective investor on government incentives and regulations, and provide information pertaining to the specific sector in question.

An NIB staff member can meet a prospective investor at the airport and arrange hotel accommodations, if the investor makes such a request in advance. If there is no advance notice, the initial contact will involve learning about the prospective investor's interests. After staff have collected and prepared relevant material, a second meeting will take place. Licensing,

site selection, expatriate quotas, registration, and other procedures are discussed at that time.

Arrangements are made for informational visits to other government agencies and for meetings with other members of the business community. NIB staff might suggest or recommend joint venture partners for specific projects already identified or being considered in The Gambia.

If a prospective investor decides to proceed with a project, NIB will serve on the government's team to negotiate terms and conditions. Examples of development projects facilitated by NIB include:

- Benjie Building Materials
- Gihua-Gambia Poultry and Vegetable Farm
- Lu-Lye Fish Company
- Scan-Gambia Shrimp Ltd.

NIB staff made approximately 50 to 100 formal contacts with prospective investors in 1989 (compared with 89 applications for DCs filed with MEPID and 500 applications for tourism-related project approvals filed with MI&T). All records and files on prospective investor visits and identified projects are maintained manually, but it is hoped that a computerized operating system for tangible tracking and progress monitoring will be developed (NIB is sufficiently equipped with computer hardware). NIB has some responsibility for project progress and compliance reports.

Conclusions

The sentiment behind the legislation creating NIB suggested that an independent agency could avoid bureaucracy in government so as to make monitoring and implementation action more effective, constructive, and timely.

NIB's Division of Investment Promotion is operating under numerous constraints, including:

1. Lack of resources, which inhibits the use of strategic planning for establishing and implementing program objectives and activities.
2. Extreme budgetary limitations affecting the planning process and restricting promotional activity (passive promotion).

3. Absence of comprehensive, government-wide, structured standard operating procedures, including a quick and easy system by which to access and track data on The Gambia, prospective investors, and monitor project progress.
4. Lack of cooperation and some resentment from other government agencies (because of nonministerial status, higher staff wages at NIB, and territorial overlap).
5. A poor image in the business community (local and expatriate) because it is one of the components of what is perceived as an unreasonable and unproductive project approval process.
6. Ambiguous legislation and regulatory policies resulting in inconsistent and sometimes conflicting directives.
7. A general lack of authority in a system in which decision-making responsibility needs strengthening.
8. Lack of line-staff experience in the private sector.

The investment process in The Gambia is more complicated than necessary and often frustrates prospective investors and government personnel. With a major objective to strengthen the NIB as a one-stop service center for prospective investors, both foreign and domestic, NIB's investment promotion mandate is no less challenging. Within these constraints, NIB staff have endured and succeeded in a number of instances.

NIB and prospective investors are required to interact with an inordinate number of government (regulatory) agencies (Figure 1), regardless of the development component or incentive request. NIB can draw on outside resources [for example, USAID, UNDP, Commonwealth Fund for Technical Cooperation (CFTC), and Islamic Development Bank (IDB)] but not in a consistent manner, partly because donors fail to give advance notice. Grants could be put to greater use with stronger collective planning between NIB and donors.

Recommendations

The investment promotion interests of The Gambia will be well served when NIB is empowered to take purposeful and decisive action. Following the approval process, NIB could become a stronger point of conclusive assistance for those who have already invested in The Gambia and who wish to expand, or for those who are experiencing problems with government regulations after their investments have already been committed. This

environment will not improve without critically needed technical inputs and modifications in policy directives.

1. The consultant learned that an institutional analysis of NIB was completed by Coopers and Lybrand in 1986. This document could be reviewed for present applicability. If USAID/Banjul is planning any initiative involving major participation from or involvement of NIB, the consultant strongly recommends that a comprehensive institutional analysis of NIB be undertaken to determine whether and how any of the constraints identified above apply to its other two divisions.
2. Provide in-house staff training for
 - a. Establishing proactive program and activity goals and objectives,
 - b. Updating strategic planning and budgeting processes, and
 - c. Essential investment promotion practice.
3. Provide budget support to develop more comprehensive investment and export promotion and privatization efforts.
4. Design and implement standard operating systems and procedures, including a microcomputer-based monitoring and tracking system, and a commercial and business library.
5. Encourage the highest levels of government to issue directives to promote cooperation among other government agencies and to refer all matters involving prospective investments to NIB.
6. Issue public service announcements to the business community and the public at large concerning NIB's role in The Gambia and any changes undertaken in the project approval process.
7. Assist in developing a more effective interagency policy, establishing definitive project approval procedures such as those suggested in Figure 4.

8. Provide an in-house staff seminar entitled "Awareness and Sensitivities in Dealing with the Private Sector."
9. Fund the trade division of MOFT or MEPID to undertake a new business and industry census. The census could form a database of local resources for use in strategic and economic planning. Focus should be on identifying and assessing priority development areas that involve the private sector and on problems experienced by those who have already invested in The Gambia.
10. Devise a system in which formal communications from government officials are made in writing.
11. Ensure that NIB, or whatever definitive agency is responsible for private sector investment promotion leading to project development, has clearly defined institutional boundaries and is empowered to facilitate and take specific and decisive action to fulfill the obligations of its mandate.

The consultant also recommends, subject to full institutional analysis, that the membership of NIB's Board of Directors be expanded to become more representative of the private sector, with the provision that no member of the board be allowed to vote on matters in which he or she is personally involved. (The consultant was not aware of any such situation.)

Chapter 7

GENERAL OBSERVATIONS AND RECOMMENDATIONS

The consultant suggests that USAID/Banjul initiate regularly scheduled sector-specific meetings (in this instance, on matters relating to the private sector) with other donor agencies to provide updates on current and planned projects and studies. The chairmanship for these meetings could be rotated, and the meeting place and time could be the same for each month (for example, the first Tuesday of each month). The rationale for such interactions is to develop a potential for greater donor impact through coordinated efforts. Two examples cited—(1) grants to NIB for conference participation and (2) study of impacts of investment incentives—relate to opportunities when A.I.D. and UNDP are working in similar areas. A third example relates to a draft piece of legislation, "Development Regulations 1990," prepared by the Overseas Development Administration.

The consultant assumes that similar issues raised in the report could also be addressed in other areas (for example, the Management Development Institute's "Review of the Ministry of Finance and Trade"). One final suggestion is that a basic review of the civil service system, namely, wages and benefits, be undertaken to determine how extensive systems in place at parastatal enterprises and other independent government agencies, such as NIB, differ, and how human resource development issues in government service are affected. (The consultant understands that a review of the civil service system was completed by KPMG Peat Marwick; however, he has not seen a copy of the report.)

Appendix A

LIST OF ACRONYMS

CE	Chief Executive, NIB
CFTC	Commonwealth Fund for Technical Cooperation
DC	Development Certificate
DCE	Deputy Chief Executive, NIB
GCDB	Gambia Commercial and Development Bank
GPMB	Gambia Produce Marketing Board
GOTG	Government of The Gambia
IDB	Islamic Development Bank
IDU	Industrial Development Unit, MEPID
IPO	Investment Promotion Officer
MDI	Management Development Institute
MEA	Ministry of External Affairs
MEPID	Ministry of Economic Planning and Industrial Development
MHLSW	Ministry of Health, Labor, and Social Welfare
MI&T	Ministry of Information and Tourism
MLG&L	Ministry of Local Governments and Lands
MOI	Ministry of the Interior
MOFT	Ministry of Finance and Trade
MOJ	Ministry of Justice
MWRFF	Ministry of Water Resources, Forestry, and Fisheries
NIB	National Investment Board
ODA	Overseas Development Administration
SOW	Scope of Work
UNDP	United Nations Development Programme
USAID	United States Agency for International Development

Appendix B

DOCUMENTS CONSULTED

- "Investing in Côte d'Ivoire—Investment Code, Act-Decree-Order"
- "HungaroPress—Act XXIV of 1988 on Foreign Investment in Hungary"
- "Applicable Laws to Exporting Companies" (Honduras)
- "Belize Investment Code"
- "Investment Code 1989" (Ghana)
- "Industrial Policy of Nigeria"
- "Investors Guide to The Gambia," NIB booklet
- "The Development Act of 1988—Procedural Guidelines for Investors for Development Certificates and Fiscal Incentives," MEPID brochure
- "The Development Act 1988—Development Certificate and Investment Incentives," MEPID brochure
- "Investing in The Gambia—Service Protection Inducements Opportunities," NIB brochure
- "The Development Act 1988," MEPID application form for a Development Certificate
- "The Gambia Development Act 1988—Operational Procedures"
- "Review of the Ministry of Finance and Trade," MDI report
- "Development Act, 1988," House of Representatives
- "Development Act, 1973," House of Representatives
- "Income Tax Act, 1949," House of Representatives

Appendix C

PRIMARY CONTACTS

<i>Name</i>	<i>Position</i>	<i>Phone</i>
Gambian Government Officials		
K.M. Bayo	Permanent Secretary, MLG&L	27315
A.R. Cole	Industrial Economist, MEPID	26390
B.C. Jagne	Permanent Secretary, MI&T	
Paul MacNamara	Technical Adviser, MOFT	26046
T.M. Manga	Trade Division, MOFT	28896
A.A. Njie	Deputy Chief Executive, NIB	28168
M. Sangyang	Industrial Economist, MEPID	26390
Abdoulie Touray	Chief Executive, NIB	28332
Brenden Walsh	Technical Adviser, MOFT	28528
U.S. Government Officials		
Donald Drga	Agriculture Officer, USAID	28533
John Babylon	Program Officer, USAID	28533
Peter Riley	Program Analyst, USAID	28533
Jimmie Stone	Mission Director, USAID	28533
Fred Witthans	Mission Economist, USAID	28533
Accountants, Attorneys, and Bankers		
E.G. Bell	Standard Chartered Bank Gambia Ltd.	27744
Ida-Denise Drameh	Barrister	28882
Habib Faye	GCDB	28406
Olly Haggerty	Coopers & Lybrand Deloitte	01-822-4714
David Thwaites	GCDB	27368

Gambian and Other Private Sector Individuals

Miriam Alami	Fish Worth Co., Ltd.	27798
Aki Allen	Banjul Oxygen	92700
M.A. Bah	Retired Accountant	92521
Ousman Bah	Scan Gambia Shrimp Ltd.	95193
Willem Dullemond	Kombo Beach/Novotel	95465
M. Elliot	Banjul Oxygen	92700
Norvald Hellevang	American Protein, USA	404-641-7845
A. Jacobs	A. Jacobs & Co. Ltd.	27463
M. Jacobs		
R. Jacobs	African Transport & Air Service	27463
Amadou Jallow	Farmer	84652
Udo Keupp	Kombo Beach/Novotel	95465
C.K. Jawara	Serekunda	91078
Sayed Mouktara	Mouktara Holding	
A.B. Dande-Njie	Madi (Gambia) Ltd.	27372
Mbye Njie	Mbye Njie & Sons Ltd.	28219
Musa Njie	Musa Mbye & Sons Enterprises Ltd.	28343
Rohit Shah	Radville Farms Ltd.	95365
Douglas Wagner	Commercial Fisherman	92988

Persons Unavailable for Interview

Sola Mahoney	Office of the President	28003
Alieu Mboge	Gambia Chamber of Commerce	28395

Appendix D

**UNTITLED APPLICATION FOR A
DEVELOPMENT CERTIFICATE**

THE DEVELOPMENT ACT, 1988

(Product)

(Part I)

Questionnaire in respect _____ under item _____ of _____ of the

(Part II)

First Schedule:

1. Name and address of person making application:

2. Name and address of agent in The Gambia if different from above:

3. Name and registered address of local Company (if it is proposed to register Company in The Gambia for manufacturing the product):

4. Products to be produced or Activities to be carried on - describe in as much detail as may be practicable (see Part III, Section 8, Paragraph 3A).

5. Capital Works to be undertaken (see Part III, Section 8, Paragraph 3B) Estimated Cost (D) Buildings

Plant and Equipment _____

Other (State Nature) _____

TOTAL D _____

6. Working Capital to be employed initially: D _____

(i) Managerial & Clerical _____

7. Gambian Employment Number to be employed: (ii) other _____
8. Non-Gambian Employment: State description, number and country of origin of any non-Gambian staff for whom residential permits are sought:

9. Finance: Give with banker's and other reference as may be appropriate such particulars of the applicant, his associates and his bankers, as may enable the Minister to be satisfied that the undertaking will be adequately financed. (See Part III, Section 9, Paragraph 9D.)

10. (Note: Information may be supplied in a separate confidential communication if the applicant prefers.) Trained Personnel and Technical Information to which applicant has access. (See Part III, Section 9, Paragraph 9E and F.)

11. Raw Materials: Nature and source of raw materials to be used (see Part III, Section 9, Paragraph 9G)

12. Annual Production capacity of the capital works listed at Paragraph 5 above.

Type of Product	Quantity of value (D)
_____	_____
_____	_____
_____	_____
_____	_____

13. Location of proposed factory (see Part III, Section 8, Paragraph 3D). State arrangements made for occupation of site and building:

14. Proposed "construction date" as defined in Part III, Section 8, Paragraph 3E of the Act:

15. Proposed "production date" as defined in Part III, Section 8, Paragraph 3E:

16. Tax holiday period desired, as defined in Part IV of the Act:

17. Relief in respect of raw or semi-processed materials, under Part II, Section 5 of the Act (which are additional to the reliefs under Part II, Section 5). In respect of what materials, if any, does the applicant seek customs relief:

18. Any other requests or documents:

I declare that, to the best of my knowledge and belief, all the particulars entered above are correct.

Place _____

Date _____

D-4

INVESTMENT SCHEDULE

A. Machinery (a complete list is required)

ITEM	COST (c.i.f. Banjul)
------	----------------------

INVESTMENT SCHEDULE Cont'd

ITEM	COST
1. Installation of Machinery	
2. Land Improvement	
(a) Buildings	
Factory	
Offices	
Other	
(b) Other Infrastructure	
(e.g., roads to factory site)	
3. Office Equipment	
4. Motor vehicle (where applicable)	
Total	
5. Working capital (i.e., amount required for operating before goods are sold and revenue earned. This must include allowance for the following:)	
(a) Wages and salaries (one month)	
(b) Production material (one month)	
(c) Work in progress ($\frac{1}{2}$ month)	
(d) Parts and supplies for repairs	
(e) Accounts receivable	
(e) Electricity (one month)	
(f) Water (one month)	
6. Contingency (10 %)	
Total	
<hr/>	
Total investment (i.e., A & B)	

OPERATING EXPENSES (ANNUAL)

Item	Cost
1. Raw materials (quantity and price)	
(a)	
(b)	
(c)	
(d)	
(e)	
(f)	
(g)	
2. Wages and salaries (direct)	
(a) Unskilled workers	
(b) <u>Skilled workers</u>	
(c) Supervisors	
(d)	
3. Electricity	
4. Water	
5. <u>Oil and lubricants</u>	
6. Maintenance and repairs	
7. Transportation	
8. <u>Insurance</u>	
9. Administration and general expenses	
10. Depreciation	
11. Contingency	
12. Interest + capital repay (investment)	
Total annual operating expenses	
 D. Estimated Revenue (ANNUAL)	

Product	Units to be sold	Unit price	Revenue
1.			
2.			
3.			
4.			
5.			

E.

CAPACITY OF PLANT

1. What is the number of units you would produce in a day (8 hours)? _____
2. What is the estimated life of the equipment?

F. Employment

	Type	Number	Nationality	Salary
1.	Unskilled			
2.	Skilled			
3.	Supervisors			
4.	Managers			

G. PROPOSED FINANCING PLAN

	Type	Interest	Other terms and conditions
1.	Loan Bank		
2.	Own Funds		
3.	Other Capital		
TOTAL			

Appendix E

THE DEVELOPMENT ACT, 1988

HOUSE OF REPRESENTATIVES

A Bill Entitled—

An Act to make provision for granting Investment Incentives to investors and for other matters connected therewith.

Enactment.

Enacted by the Parliament of The Gambia.

Part I—Preliminary

Short title.

1. This Act may be cited as the Development Act, 1988. (No. of 1988).

Development Act, 1988
Arrangement of Sections

Sections	Part I—Preliminary
1.	Short title.
2.	Interpretation.
	Part II—Development Projects and Development Incentives
3.	Application of this Act to development projects.
4.	Requirements for development projects to qualify under this Act.
5.	Incentives for investment.
6.	Development assistance.
7.	Assessment for exemption and granting of tax holiday.
	Part III—Development Certificates
8.	Applications and procedures.
9.	Publication of application in the Gazette.
10.	Objections to development certificate.
11.	Approval and issue of development certificate.
12.	Variation of dates.
13.	Assignment of development certificate.
14.	Alteration or expansion of a development project.
15.	Vital information to Minister.
16.	Maintenance of records.
17.	Enforcement and implementation of conditions.
18.	Provision for restitution.
	Part IV—Customs Duty
19.	Record of duty paid.
20.	Obligations of holder of Development Certificate.
21.	Offences.
	Part V—Income Tax
22.	Application of Income Tax Act.
23.	Monitoring of Income Tax Act.
24.	Application of Part XIV of Income Tax Act.
25.	External monitoring.
	Part VI—Miscellaneous
26.	Training scheme.
27.	Settlement of disputes.
28.	Regulations.
29.	Repeal of Act No. 15 of 1973.
30.	Savings.

Development Act, 1988

2. In this Act, unless the context otherwise requires . . .

Interpretation.

"approved development project" means a development project in respect of which a development certificate has been issued under section 11 of this Act;

"Comptroller" means the Comptroller of Customs and Excise;

"construction date" means the date on which construction, alteration or expansion of a development project commences and specified as such by the Minister in the development certificate;

"development certificate" means a certificate issued by the Minister under section 11 of this Act for an approved development project;

"development project" means any enterprise concerned with any of the economic activities specified in section 3 of this Act;

"domestic value added" means the excess of gross output value of a development project over all imported materials and services absorbed, and value where adequate for the purpose of economic appraisal in world market prices;

"exemption" means exemption from customs duty;

"incentive" means any fiscal exemption, tax relief or other assistance provided under section 5 and 6 of this Act;

"Minister" means the Minister responsible for the administration of this Act;

"production date" means the date on which on which a development project commences production or the provision of services in marketable quantities and specified as such by the Minister in the development certificate; and

"tax holiday period" means in respect of any development period, the period, not exceeding five years from the production date, during which a tax credit certificate has been granted; and

"tax credit certificate" means the certificate which may be granted under section 5(1) of this Act.

Part II—Development Projects and Development
Incentives

3. This Act shall apply to development projects engaged in any of the following activities—

- (a) the manufacturing industry;
- (b) agriculture, livestock, fishing and forestry;

Application
of this Act to
development
projects.

Development Act, 1988

- (c) mining and quarrying; and
- (d) tourism.

Requirements for development projects to qualify under this Act.

4. (1) For any development project to qualify for the purposes of this Act, it shall have an investment potential sufficient to make a significant contribution towards economic diversification and the promotion of economic growth generally.

(2) Subject to subsection (1) of this section, a development project shall have the following objectives—

- (a) the achievement of a net foreign exchange earnings or savings;
- (b) the generation of substantial domestic value added;
- (c) the promotion of maximum employment and adequate training for Gambians;
- (d) the maximum utilization of resources and services of Gambian origin;
- (e) the formation of a national productive capital; and
- (f) the spatial decentralization of development projects.

(3) The Minister may by regulations, provide guidelines for the purposes of this section.

Incentives for investment.

5. (1) Subject to the provisions of this Act and in accordance with the terms and conditions of the development certificate, a development project may be granted an incentive in the form of a tax credit certificate for the following purposes—

- (a) a total or partial exemption of customs duties on the following items—
 - (i) the approved capital equipment, plant, building material, machinery and appliances to be used in establishing the project;
 - (ii) the approved quantity of semi-finished products, spare parts and other supplies to be used in the production operations;
- (b) a total or partial exemption from payment of company tax or turnover tax.

(2) A tax credit certificate shall indicate the amount of money the Government shall forego from the holder of a development certificate as a fiscal incentive.

(3) The basis for calculating such an amount shall be determined by regulations made under this Act.

Development Act, 1988

(4) The duration and validity of any exemption granted under paragraph (a) (ii) and (b) of subsection (1) of this section shall be effective for as long as there is an unused amount outstanding on the tax credit certificate specified in the development certificate, but such duration and validity shall be limited to a period of not more than two years from the production date.

(5) The holder of a development certificate may, at the end of the tax holding period, set off any remaining unused tax credits against future tax customs duty liabilities until the amount granted is completely used up.

6. (1) Subject to any law in force the Minister may provide the holder of a development certificate with such assistance and facilities as are essential to enable him to carry out his development project including the following—

Development assistance.

(a) preferential treatment for the allocation of land for the project site and the provision of infrastructural facilities;

(b) access to advisory services available from government institutions and related external organisations;

7. (1) The Minister shall, in considering tax credit certificates have regard to the capacity of the development project to fulfill the aims and objectives specified in section 4 of this Act.

Assessment for exemption and granting of tax holiday.

(2) The Minister shall not grant any incentive which may create privileges not enjoyed by persons in a competitive position or create monopoly within the economy.

Part III—Development Certificates

8. (1) Any person who desires to engage in a development project and to obtain benefits conferred by this Act, may apply in writing to the Minister for a development certificate.

Application and procedures.

(2) No application under this section shall be entertained, unless the application is made on behalf of a company incorporated and registered in The Gambia.

(3) The application for a development certificate under this Act shall give the particulars of—

(a) the development project including the type of products and services proposed, scale of operation, sources of material, inputs and annual quantities required, and an estimate of local and export markets;

(b) an estimation of the proposed project site, specifying the area of land required, layout and floor area of buildings, and the cost of construction and site improvement;

Development Act, 1988

- (c) a list of plant, machinery and equipment for the development project and a cost estimate for each item;
- (d) the location of the proposed project site and the date on which it was or will be acquired;
- (e) the approximate construction date and the production date;
- (f) the number of Gambian nationals to be employed, the category of their employment and, if expatriates are to be employed, their number and the reason for their employment; and
- (g) a detailed forecast of income statement and cash flow of the development project.

Publication
of application
in the Gazette.

9. Where the Minister is satisfied that—

- (a) the intended development project relates to the activities specified in section 3 of this Act;
- (b) the application has complied with the provisions of section 8 of this Act;
- (c) the intended development project is designed ultimately to promote the objectives specified in section 4 of this Act;
- (d) the application is adequately financed;
- (e) the applicant has an adequate number of trained personnel in his employ or is in a position to obtain the services of such personnel;
- (f) the applicant has access to the necessary technical information;
- (g) the applicant is able to obtain adequate raw material; and;
- (h) the applicant possesses or will possess the necessary place of business.

he shall cause the fact that he is about to consider the granting of a development certificate under section 11 of this Act to be published, by notice, in the Gazette.

Objections to
development
certificate.

10. (1) The notice referred to under section 9 of this Act, shall contain such particulars of the development product or products concerned as the Minister may think necessary in order that any person interested in the development project concerned may object to the proposed granting of the development certificate.

(2) The notice shall state a period not being less than thirty days within which any objection to the proposed certificate shall be made.

Development Act, 1988

(3) Every objection, to the proposed granting of a development certificate, received by the Minister within the time stated in the notice or within such extended time as the Minister may allow, shall be notified to the original applicant for a development certificate and such objection together with any further representations submitted by the original applicant shall be considered by the Minister before any development certificate is granted.

(4) The provisions of section 9 and 10 of this Act shall apply mutatis mutandis in the case of an application to amend a development certificate.

11. (1) In the absence of justifiable objections to the proposed development certificate and after consultation with the appropriate Government agencies the Minister shall approve the application and grant the development certificate.

Approval
and issue of
development
certificate.

(2) The certificate granted by the Minister under this Act shall specify—

- (a) the type of benefit conferred and incentive granted;
- (b) the effective date, which may be a date before the issue of the certificate but not before the date of application;
- (c) the duration and limitation of such incentives and benefits;
- (d) the construction date;
- (e) the production date;
- (f) the production services of the development project;
- (g) the location of the place of business of the development project;
- (h) any development assistance and facility to be offered under section 6 of this act; and
- (i) any specific conditions, obligations or limitations imposed on the applicant by the Minister.

(3) In addition to the particulars mentioned in subsection (2) of this section, the Minister may provide in the development certificate a detailed list specifying the quantity and value of all imports approved for exemption from customs duty and for which the tax credit certificate may be used in payment thereof.

12. (1) The minister may, on a special request from an applicant and after due consideration of the reasons for so requesting, amend the construction and production dates specified in a development certificate.

Variation of date.

(2) The construction and production dates may be amended only after the effective date of the certificate and before such construction or production dates.

Development Act, 1988

(3) No such amendment as may be made under subsection (2) this section shall operate as to extend the period of the tax holiday.

Assignment of development certificate.

13. No development certificate issued under subsection (1) of section 11 of this Act shall be assigned to any other person without the prior consent of the Minister.

Alteration or expansion of a development project.

14. (1) The holder of a development certificate who wishes to expand his development project after the effective date of such certificate may apply in writing to the Minister for an extension of the incentives to cover the proposed new investment.

(2) The Minister may, subject to the provisions of this Act, extend the incentives to cover the proposed new investment.

Vital information to Minister.

15. (1) Any person to whom a development certificate has been issued under this Act shall, as soon as is reasonably practicable, provide the Minister with evidence that the development project described in his application has, in compliance with the terms and conditions stated in the development certificate, been substantially executed.

(2) The holder of a development certificate under this Act shall—

- (a) not later than thirty days after construction commences, inform the Minister of the actual date of construction;
- (b) permit such audits and investigations as are necessary to ascertain compliance with the terms and conditions of the development certificate;
- (c) submit to the Minister at the end of every financial year financial statements and cost accounts in respect of the development project; and
- (d) provide the Minister or any other person authorised by him, with such information on the progress of the development project as he may, from time to time, require.

Maintenance of Records.

16. The holder of any development certificate who has been granted exemption under this Act, shall maintain a record of all articles and materials in respect of which such exemption has been granted and such record shall state—

- (a) the date on which the article or material was landed in The Gambia, or if purchased in The Gambia, the date of purchase of such article or material,
- (b) the value of each article or material imported into or purchased in The Gambia, and
- (c) the total value of all such articles and materials up to and including the date of submission of such record.

5

Development Act, 1988

17. (1) The Minister may serve notice to the holder of a development certificate requiring such holder to comply with the terms and conditions of the development certificate if he is satisfied that such certificate holder has—

Enforcement and implementation of conditions.

- (a) failed in any way to implement the development project in accordance with the terms and conditions of his certificate;
- (b) misused any incentives or benefits granted to him under the Act; or
- (c) failed to comply with any of the provisions of this Act.

(2) Where the holder of a development certificate fails to comply with the notice referred to under subsection (1) of this section the Minister may withdraw any incentive or benefits granted or cancel the development certificate.

Provision for restitution.

18. The Minister may, on the cancellation of a development certificate under this Act, require the holder of such development certificate to pay to the Accountant General such compensation as he may, after consultation with the Minister of Finance, determine.

Part IV—Customs Duty

19. The comptroller shall record and collect the customs duties on approved imported goods in accordance with regulations made under this Act.

Record of Customs duty paid.

20. (1) The Comptroller may require the holder of a development certificate—

Obligations of holder of development certificate.

- (a) to keep such records and submit such returns in such form and containing such particulars as he may, from time to time, determine;
- (b) to pay the duty due on approved imported goods in accordance with the procedure described by regulations made under this Act; and
- (c) to permit the Comptroller or any person authorised by him at all reasonable times to have access to any premises under his control and to inspect such records and examine such articles and materials which the Comptroller may believe to be therein and to satisfy himself of the accuracy of particulars in relation to such articles and materials contained in such records.

21. (1) Any person who fails to comply with section 20 of this Act commits an offence and on conviction thereof shall be liable to a fine not exceeding D 20,000.

Offence.

Development Act, 1988

(2) If the person who commits the offence is a company, every director of that company shall be held guilty of the offence unless any such director can explain to the satisfaction of the court that he was unaware of the commission of the offence.

Part V—Income Tax

Application of
Income Tax.

22. Notwithstanding the provisions of this Act, the granting of a development certificate does not confer any special status to the holder with respect to the Income Tax Act.

Monitoring of
Income Tax.

23. The provisions of Part X of the Income Tax Act shall apply to the holder of a development certificate in respect to information, returns, books of accounts and other requirements necessary to compute tax liability and tax credits earned by the holder of the development certificate.

Application
of Part XIV
of Cap. 96.

24. The provisions of Part XIV of the Income Tax Act shall apply to any false return delivered or any false account kept or prepared, as if such return had been made or such false account had been kept or prepared with reference to income tax on profits or gains chargeable under the Income Tax Act.

External
Monitoring.

25. The Auditor General shall at the request of the Ministry of Economic Planning and Industrial Development be empowered to audit the books of any holder of a development certificate with respect to the calculation of tax credit, customs duty and excise payments or income tax.

Part VI—Miscellaneous

Training
scheme.

26. The holder of any development certificate shall—

- (a) within six months from the production date, establish a scheme for the training of persons who are citizens of The Gambia in the fields of administration, technology, management and other skills, with a view to imparting knowledge and skills to such persons; and
- (b) on the advice of the Commissioner of Labour provide such facilities as are considered necessary for the benefit and welfare of employees of the development project.

Settlement
of disputes.

27. (1) Where a dispute arises between a holder of a development certificate and the Government with respect to any development project, such dispute shall be settled amicably between the certificate holder and the Government.

(2) Where the certificate holder and the Government fail to reach any amicable settlement the dispute shall be returned to arbitration in accordance with—

Development Act, 1988

- (a) any bilateral or multilateral agreement on investment protection to which the Government and the country of which the holder of the development certificate is a national, are members;
- (b) the International Convention for Settlement of Investment Disputes between States and Nationals of other States and under the auspices of the International Centre thereunder established; or
- (c) any agreement between the Government and the holder of the development certificate.

Regulations.

28. The Minister may make regulations and rules for the better carrying out of the purposes and objectives of this Act.

Repeal of Act No. 15 of 1973.

29. The Development Act, 1973 is hereby repealed.

Savings.

30. Notwithstanding the repeal of the Development Act, 1973, all orders made or certificates and benefits granted under that Act and which have effect when this Act comes into force, shall continue to have effect as if made or granted under this Act.

(2) Nothing contained in this Act shall be construed as adversely affecting any rights, privileges or obligations existing in respect of a development certificate previously granted.

OBJECTS AND REASONS

This Bill reenacts the Development Act by introducing significant changes in the original. The object of the Act remains unaltered. Development Act of 1973 provides attractive investment incentives and other forms of assistance to would be investors.

2. The new Bill, while maintaining the original concept in the Development Act of 1973, spells out in detail certain objectives required of any development project established under this Bill and intended to benefit from its provisions. For these objectives to be achieved, it is considered important to provide measures adequate enough to monitor and enforce the proper execution of these projects.

3. Provision is also made in the Bill for any project established under the Act to design and set up a training scheme capable of assisting Gambians to acquire new skill in the handling of transferred technology.

4. In consideration of the benefits conferred by this Bill on projects, corresponding obligations have been imposed on owners of such projects to execute the project's objectives in accordance with the approved specifications.

5. In clause 5 of the Bill provision is made to grant partial or total exemption from the payment of customs duties on certain articles and

Development Act, 1988

materials necessary for the execution of the project. The exemption under this clause is not intended to be automatic. Application has to be made by a holder of a development certificate to the Minister for consideration. The Minister's power in this regard is not arbitrary. Clause 7 of the Bill provides him with the guidelines by which to decide. Furthermore, it is proposed in subclause (5) of this clause to empower the Minister to regulate the terms, conditions and circumstances by which an applicant may be granted total or partial exemption.

6. Clause 6 introduces as a new element additional incentives in the form of providing easy access to facilities necessary in the execution of these projects. These facilities include, among other things, land allocation, loans, advisory services from government agencies and support for permits required for the processing of applications.

7. Clauses 8, 9 and 10 spell out the procedural arrangement for applications, notifications in the Gazette, objections to the grant of applications and finally consideration and approval for the grant of certificate. These procedures are designed to streamline the machinery for the grant and issue of development certificates and to provide effective means of monitoring and supervising the activities of development projects under this Act.

8. It is proposed under clause 18 of this Bill that a certificate holder who fails to comply with the Act or any provisions made thereunder may be required to make such restitution as may be determined to the Government.

9. Clauses 15, 16 and 17 of the Bill specify the obligations imposed on a certificate holder. These obligations include information relating to the execution of the project, the provision for keeping accurate records of capital goods, the marketing of any articles for which exemption from customs duties have been granted. Further obligation is imposed on certificate holders to furnish particulars of records required to be kept by them to the Minister or to the Comptroller of Customs. The intention of these provisions is to enable the authorities to keep a close watch on the progress of the project, to monitor the use of articles and materials to which exemption has been granted and to enforce the penalty provisions against the misuse or abuse of the incentives given under the Bill.

10. Clause 20 seeks to impose an obligation on any certificate holder to institute a training scheme within six months from the production date. Furthermore a certificate holder is required to establish such other facilities for the benefit and welfare of the employees of the scheme.

11. Clause 27 of the Bill proposes to make provision for the settlement of dispute and differences arising under this Bill between the Government and a certificate holder out of court. Accordingly this clause proposes the manner by which such disputes may be settled.

M. B. Jatta
*Minister of Economic Planning and Industrial
Development*

155

Appendix F

SAMPLE DEVELOPMENT CERTIFICATE

DEVELOPMENT CERTIFICATE

NO. _____

I hereby certify that

is this day granted a Development Certificate under
the Development Act, 1988.

The terms and conditions for the license are as stated
in MPJ/_____ dated _____ 199_____

Given under my hand at Banjul

this _____ day of _____ One
thousand nine hundred and _____

Fee: D25.00 (Twenty-five Dalasis)

Minister for Economic Planning and
Industrial Development -

5

DEVELOPMENT CERTIFICATE

This certificate is granted by the Minister under section (5) of the Development Act (1988) to:

The following terms and conditions shall apply:

1. Relief is limited to the following development project:
2. Development industry (see First Schedule to the Act):
3. This certificate takes effect from _____ 19____
4. Construction date:
5. Production date:
6. Tax holiday period:
7. Limitations on the amount of relief

8. Customs duty and purchase tax relief under Section (15) of the Act:

9. The following conditions which the Minister may impose under Section (15) of the Act shall also apply

This certificate was issued on _____ 19____
and expires on _____ 19____

Signature: _____
PERMANENT SECRETARY

cc: Perm Sect - MFT
Director General - Customs & Excise
Commissioner of Income Tax
Registrar General

Appendix G

SAMPLE TAX CREDIT CERTIFICATE

**The Development Act, 1988
Tax Credit Certificate**

Company Name (1)	Assignment (2) (Company Name)	Assignment (3) (Company Name)	Assignment (4) (Company Name)	Assignment (5) (Company Name)
XXXXXXXXXX	XXXXXXXXXX	XXXXXXXXXX	XXXXXXXXXX	XXXXXXXXXX
	Stamp and Signature of previous company			
	Date	Date	Date	Date

Value

figures

words

XXXXXXXXXX

Stamp and signature
of Commissioner of
Income Tax

date

		Usage		
Value	Stamp and Signature of Commissioner of Income Tax	Amount of tax paid	Stamp and Signature of Tax Authorities	Residual
figures words	Date	figures words	Date	figures words
Value	Stamp and Signature of Tax Authorities			
figures words	Date			
Value	Stamp and Signature of Tax Authorities			
figures words	Date			
Value	Stamp and Signature of Tax Authorities			
figures words	Date			

Appendix H

**DEVELOPMENT REGULATIONS DRAFTED TO ACCOMPANY
THE DEVELOPMENT ACT, 1988**

THE DEVELOPMENT ACT, 1988

NO. OF 1988

DRAFT DEVELOPMENT REGULATIONS, 1990

IN EXERCISE of the powers conferred on the Minister by sections 4(3) and 28 of the Development Act, 1988, these Regulations are hereby made:

- 1. These Regulations may be cited as the Development Regulations, 1990 (LN of 1990).**
- 2. (1) Any development project engaged in a qualifying activity shall be entitled to a certificate under the act if such project has investments which -**
 - (a) exports at least fifty per centum of total sales; or**
 - (b) sixty per centum or more of its total current inputs are sourced from The Gambia.**
- (2) For the purposes of paragraph (a) of sub-regulation (1), all sales to tourist hotels or retail outlets in such hotels shall be regarded as sales for export.**
- (3) For the purposes of paragraph (b) of sub-regulation**
 - (a) any important input which has value added to it can be sourced from The Gambia; and**
 - (b) raw materials or intermediate goods brought into The Gambia by traders and subsequently sold shall not be treated as being sourced from The Gambia.**

H-2

Non Fiscal
Benefits

3. In addition to the development assistance specified in Section 6 of the Act, the holder of a development certificate shall have -

- (a) access to advisory services available from government institutions and related external organisations;
- (b) support for obtaining relevant permits to employ foreign personnel; and
- (c) support for obtaining access to domestic material resources and services, relevant licenses and permits.

Other fiscal
benefits

4. Any holder of a development certificate who trains management and other employees in skills relating to the operations of the enterprise shall, if such training programme is with an approved government or private sector training institute, have such training programme offset against taxation equivalent to double its cost which cost shall include the wages and salaries of the staff while they are attending such a course.

2. Where the holder of a development certificate provides an inhouse training programme agreed with the Ministry responsible for Labour it shall have an offset against taxation equivalent to double the cost of the training programme (including the wages and salaries of the staff providing the training) for the duration of the training which time shall include preparation.

3. The training programme agreed with the Ministry under sub-regulation (2) shall specify the inputs and training to be involved.

4. Where the holder of a development certificate who has obtained a quota for employing foreign personnel provides a training programme for Gambian nationals to replace the foreign personnel, such holder shall, in addition to the benefits it may be entitled under sub-regulation (1) or (2), be exempted from paying the per capita tax on foreign employees.

Incentives
for infras-
tural develop-
ment

5. (1) Where a project is situated in an area of The Gambia which does not have adequate infrastructure and the project provides the infrastructure, the capital allowance for depreciation provided under the Income Tax Act (Cap 96) for such investment shall be accelerated to double the rate allowed per annum with any half of one year rounded upwards to one year.

Provided that the infrastructure thus provided may be used by persons other than the enterprise subject to normal changes usually applied for the use of public amenities of the same kind.

(2) For the purposes of this regulation, "infrastructure" includes electricity, water houses, schools, medical facilities, roads and port facilities.

The Tax
credit

6. (1) The tax credit granted to any enterprise shall be equivalent to ten per centum of local content use in the first five years of such enterprises' production at the capital and construction stage.

(2) For the purposes of the tax credit, local content shall include:

- (a) the cost of employment of Gambian nationals and nationals of ECOWAS nationals;
- (b) costs of raw materials sourced in The Gambia;
- (c) the cost of intermediate inputs sourced in The Gambia;
- (d) the cost of services sourced in The Gambia;

Provided that -

where a building or land is rented, the proportion of Gambian equity in the company renting such land shall be used to apportion local content;

- (e) gross profits accruing to Gambian equity holders; and
- (f) interest payments on any loans denominated in dalasis.

(3) For the purposes of the tax credit

- (a) utilities and transportation, and
- (b) intermediate goods and raw materials brought into The Gambia by traders and subsequently sold -

shall not be included in the composition local content.

(4) Whereof in an activity which qualifies for the granting of the benefits contained in this Act, there exists a significant gap between the completion of the capital phase and the sale of the output, and current costs continue to be incurred on an annual basis -

(a) the tax credit on the construction phase and input costs shall apply for the first five years of the project's life after completion of the construction phase; and

(b) the tax credit on the local content element of profits shall apply for the first five years of sales of the output.

Expansion projects

7. A development certificate shall be granted to an expansion project which has an additional investment which creates new capacity and is not merely replacement investment, and where the additional investment allowed the whole enterprise to export at least 50% of total outputs.

Provided that the fiscal incentives granted by such certificate shall be scaled down in accordance with the following formular -

10% of local content x $\frac{\text{additional capacity created}}{\text{total installed capacity}}$

Application of tax credit earned

8. The tax credit earned by the holder of a development certificate may be used against the payment of -

- (a) company's tax;
- (b) customs duty; or
- (c) turnover tax

(2) In order to assist the development of a project customs and excise duties due on capital equipment, raw materials and intermediate inputs in the first fiscal year will be recorded in the Department of Customs and Excise, but payment shall be deferred until the tax credit is determined at the end of the first fiscal year at which time the outstanding account of the enterprise with the department of Customs shall be settled.

(3) The holder of a development certificate may utilize a tax credit for the payment of Customs duties paid by an intermediary.

Failure to
meet export
sales or
local content

9. Where the holder of a development certificate does not achieve the export sales or local content targets in any one year his tax credit will be reduced in accordance with the schedule to these Regulations.

Earning greater
tax credit than

10. Where an enterprise earns a tax credit greater in value to its tax liability for any year, the enterprise may -

- (a) carry over the tax credit to a subsequent fiscal year; or
- (b) assign the tax credit to an enterprise which has an existing tax liability.