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**USAID/THE GAMBIA**

**ASSISTANCE TO  
THE ASSETS MANAGEMENT  
RECOVERY COMPANY**

**Final Report  
November 24, 1992**

*Price Waterhouse*



November 24, 1992

Ms. Sarah Adam  
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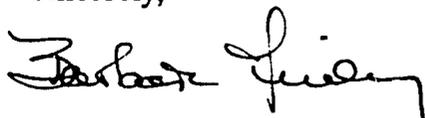
Dear Ms. Adam:

**Re: Financial Sector Development Project  
USAID/The Gambia - Assistance to the Assets Management Recovery Company**

Attached please find eight copies of our final report on the Assistance to the Assets Management Recovery Company prepared by Price Waterhouse, Prime Contractor under FSDP.

We greatly appreciate the opportunity to be of service on this interesting and very important assignment, and look forward to working with you in the future.

Sincerely,



Barbara Friday,  
Deputy Director, FSDP

Enclosure

## TABLE OF CONTENTS

### EXECUTIVE SUMMARY

I.	INTRODUCTION .....	4
A.	Economic Recovery Program .....	4
B.	Program for Sustained Development .....	4
C.	Revisions to the Financial Institutions Act .....	6
II.	INSTITUTIONAL FRAMEWORK .....	7
A.	Legal Framework .....	7
B.	Regulation of the Banking Sector .....	8
C.	Accounting/Financial Reporting .....	8
III.	STRUCTURE OF THE ASSETS MANAGEMENT RECOVERY COMPANY .....	9
A.	Introduction .....	9
B.	Institutional Structure .....	10
C.	Management .....	15
D.	Parastatal Status for AMRC .....	16
IV.	ASSET RECOVERY STRATEGY .....	18
A.	Preparatory Tasks .....	18
B.	Assessment of Credit Exposure .....	19
C.	Principal Borrowers .....	20

### APPENDICES

- Appendix A: Proposed Organizational Chart
- Appendix B: Ten Biggest Debtors in Recoveries Department
- Appendix C: Major Cases in Court, Gambia Commercial and Development Bank Limited
- Appendix D: Customer Facility Review
- Appendix E: Estimate of Accounts which will not be accepted by Meridien Bank
- Appendix F: List of People Interviewed
- Appendix G: Establishment of the AMRC/Legal System

## **EXECUTIVE SUMMARY**

### **I. Background**

The Government of the Gambia (GOTG) has embarked upon an ambitious program of financial sector liberalization, including elimination of credit and foreign exchange controls, strengthening of banking supervision, improvement of debt recovery procedures, and privatization of the government-owned Gambia Commercial and Development Bank (GCDB). In particular, the government has, with impetus from USAID and the World Bank, embarked upon a program to strengthen the commercial banking system. An integral part of this process involves the creation of the Assets Management Recovery Company (AMRC), legally established in May 1992. The objective of this program is to administer and collect the non-performing credit assets of the former GCDB deemed to be unsatisfactory through negotiated settlements and/or legal action.

### **II. Scope and Methodology**

The primary objective of the project was to assist and to develop a plan for the resolution of the non-transferable assets of the GCDB. Price Waterhouse, under the U.S. Agency for International Development-sponsored Financial Sector Development Project (FSDP), conducted an in-depth evaluation of the proposed Assets Management Recovery Company (AMRC). Recommendations were made to assist in the establishment and design of the management, structure and operation of the AMRC, as well as the regulation and controls to be established and the transitional tasks to be established prior to mid-September 1992.

### **III. Conclusions and Recommendations**

The principal conclusions and recommendations, as detailed in the body of this report, are summarized as follows:

#### **Gross Direct Credit Assets**

Combined gross direct credit assets to be managed by the AMRC aggregate D 308 million (US\$ 36 million), including D 84 million from the

Managed Fund, of which nearly 40 percent represents interest accrued but not received. At present, none of the portfolio is current.

- Transitional Tasks

A short term schedule of transitional tasks should be accomplished by the recovery staff prior to mid-September to allow for a realistic assessment of collection targets. These include consolidation of the credit file data base and input into MIS, an informal valuation of assets pledged by principal debtors, and a legal/documentary review of the credit and collateral files in conjunction with the Office of the Solicitor General.

- Liquidation Period

In order to reduce the possibility of renewed lending activity by the GCDB, we recommend its liquidation by the Board within 45 to 90 days of commencement of Meridien's operations.

- Organizational Structure

AMRC should be comprised of a small group of experienced professionals, assisted by appropriate outside technical support. We recommend that compensation be based on attainment of established performance criteria at all levels. Given the limited availability of well-qualified, experienced staff, additional in-country training in workout and recovery techniques may be required, as well as short term training and exposure to similar institutions elsewhere in West Africa. A summary profile of its proposed organizational chart is provided in Appendix A.

- Sponsorship

While the Recovery Company must be free from political influence or intervention, it should enjoy a profile of solid political support. It should be created as a public institution through an act of parliament and its management should be comprised of designated officers of the court who enjoy specifically delegated legal authority including the right to serve process and to subpoena documents and witnesses. To underscore the unreserved commitment of the government to realizing its objectives, the AMRC Chair should be appointed directly by the Office of Presidency.

- Commercial Court

Following the model of other African countries, Price Waterhouse recommends that a separate tribunal or commercial court be established under the Ministry of Justice or Solicitor General. This court would be specifically dedicated to adjudication of GCDB credit claims.

- Collection Targets

There is a need to establish verifiable quantitative collection targets and to include mutually agreed upon recovery benchmarks within the terms of future multilateral lending conditionality. This would support the Government's unequivocal commitment to collecting GCDB credit assets, as was recently affirmed by the Minister of Finance in his 26 June budget speech, and following completion of those short term transitional tasks referenced above.

- Board of Overseers

Imperative to the success of the AMRC is a more formal, aggressive, and interventionist role for the newly constituted Board of Overseers. The Board should direct and supervise AMRC's performance, both with respect to the effectiveness of internal controls and meeting its recovery targets. If, after its first year of operation, AMRC's results are negligible and fall substantially short of established benchmarks, it should be liquidated by the Board without further delay.

- Governmental Support

Failure of the Government to provide the necessary institutional infrastructure and operating support will not only result in project failure, but may place at risk confidence in the stability of the financial sector as lenders, unable to access legal remedies in collecting delinquent credits, increasingly resort to short term, risk free, or externally collateralized lending arrangements.

## **I. INTRODUCTION**

### **A. Economic Recovery Program**

The Economic Recovery Program (ERP) adopted by the Government of the Gambia in 1985 focused on the improvement of market-based policies. The primary objective has been to maximize the efficiency of resource allocation, through the determination of new investment opportunities, and an improvement of the performance and profitability of public enterprises, in some cases through mixed ownership and privatization. The ERP seeks to raise the current inadequate level of domestic productivity and of economic growth, despite limited availability of private foreign investment and the meager levels of domestic savings.

A series of structural and financial reforms, successfully implemented in recent years, has resulted in annual average GDP growth of 3.5 percent, a reduction in inflation from 70 to 14 percent, and a major strengthening in both the internal and external position of the national currency. These policy reforms included broadly-based macroeconomic incentives through unification of the exchange rates and the imposition of a free market pricing mechanism; the tightening of fiscal controls through reduced expenditures and an expanded domestic revenue base, a restrictive monetary and credit regime, and the strengthening the financial position and efficiency of parastatals through a public enterprise reform program.

### **B. Program for Sustained Development**

The Program for Sustained Development (PSD), implemented in 1990 as a continuing phase of the ERP, has consolidated and reinforced earlier economic policy achievements, and accelerated an increase in the living standards of the Gambian population. It must be noted, however, that the continuing inflow of significant ODA disbursements, aggregating nearly 10 percent of GDP, has contributed substantially to the impressive results achieved thus far in the country's structural adjustment efforts as well.

The PSD has focused on strengthening financial institutions, preparing public expenditure programs for priority sectors and reducing the role of the public sector within the economy. Financial sector reform was significantly enhanced by the sale of the Gambia Commercial and Development Bank (GCDB), a government-owned institution, in June 1992. This effectively eliminated the last vestige of direct public participation in the country's commercial banking sector.

**1. Sale of Gambia Commercial and Development Bank Assets**

The recent sale of selected GCDB assets and deposits to the Meridien Banking Group will raise the total number of privately owned banks to four, and is expected to stimulate a greater degree of market competition resulting in enhanced borrowing opportunities and a gradual reduction in the structure of interest rates. The high levels of profitability currently enjoyed by the private commercial banking sector reflect a continuing need for reduced intermediation costs through lower spreads and a more aggressive approach to financing the requirements of the country's emerging non-traditional sectors.

While new private investors have agreed to acquire less than 10% of the GCDB gross credit portfolio of D 250 million (US\$ 29.4 million), the transfer of underlying deposit obligations will be funded through the issuance of approximately D 80 million in short and medium term treasury instruments which will, in theory, be largely liquidated through the collection of residual credit assets by the Assets Management Recovery Company.

**2. Asset Management Recovery Company (AMRC)**

The D 223 million (US\$ 26.2 million) in non-performing assets of the GCDB and the outstanding D 84 mm (US\$ 9.9 million) in other unsatisfactory assets of the banking system (which had been assumed through the Managed Fund in 1987) will be transferred to the Assets Management Recovery Company, a newly established public company. The AMRC will be responsible for their administration and recovery, which is expected to continue for a period of 3 to 5 years. In order to guard against the risk of renewed lending activities, the GCDB should be formally liquidated within 45 - 90 days of the commencement of Meridien Bank operations.

The high level of non-transferable assets and the Bank's poor performance may be attributed to a combination of: poor management with little banking experience; the use of GCDB as a quasi-conduit for government funding; a virtual absence of internal systems and controls; little assessment of the quality of projects as to their viability and collateral value; and failure of the regulatory authorities and outside auditors to properly monitor performance and credit quality.

C. Revisions to the Financial Institutions Act

To assure that a similar situation does not arise in the future, proposed revisions to the Financial Institutions Act have been designed with IMF assistance to provide for a strengthening of the prudential requirements including higher capital/assets ratio, expanded reporting requirements, and more vigilant supervision by the Central Bank of The Gambia.

## II. INSTITUTIONAL FRAMEWORK

Development of an appropriate institutional framework to govern and facilitate operation and expansion of the financial system is a prerequisite to sustained private sector growth. The legal, regulatory, and accounting frameworks which seek to reasonably protect the rights of creditors and investors and which assure the expeditious and equitable adjudication of commercial claims must be adopted.

### A. Legal Framework

Failure to assure the realization of commercial claims by banks and other creditors will diminish and restrict availability of credit and other financial services, and ultimately place at risk the longer term effectiveness and stability of the financial sector itself. In order to assure that the rights of creditors and investors are protected, the following actions should be taken:

- Adoption of realistic legislation to balance public policy priorities with private interests.
- Elimination of legal and judicial impediments to the effective settlement of commercial disputes. Relating to this, several studies of the Gambian legal structure have been commissioned, including the comprehensive draft legislation proposed by Dr. Albert Fiadjoe and Justice Austin Amisshah on behalf of USAID/Banjul dated June 1992. These recommendations are currently being considered by Gambian authorities. The Fiadjoe Study proposes a new Mortgages Act, and substantive changes to the Sheriff's and Civil Process Act, and the Insolvency Act.
- Consolidation of bankruptcy provisions under the revised Insolvency Act, each of which significantly impacts on the issues of bank credit and loan recovery.

Given the relative ease with which injunctions and other trivial litigious mechanisms can be secured with the goal to frustrate and delay the rendering and execution of legitimate commercial claims by financial and other creditors, there is an urgent need to adopt a

more expeditious approach to the adjudication and execution of judgements. In fact, without implementation of the necessary changes in the legal framework, supported by concurrent efforts to reduce the susceptibility of the Sheriff and other officers of the Court to undue external influence, prospects for significant loan collections by AMRC are not encouraging.

#### B. Regulation of the Banking Sector

A vital function of any financial system is prudential regulation and supervision of the banking sector, designed specifically to maintain confidence in the system while providing protection to depositors funds. A professional, aggressive, and independent banking supervision function is a prerequisite for a sound financial system.

While IMF advisors have recently completed a draft proposal for revision of the Central Bank of The Gambia's regulations and guidelines, there continues to be a need for longer term technical assistance in the critical assessment of monthly bank financial reporting, in conducting effective on-site portfolio reviews and bank inspections, and training in the techniques of modern bank examination. Short term technical support should be made available to assure that all examiners and supervisors receive formal World Bank/FDIC training at each level. Appropriate long term training and reviews of other banking supervisory systems should be provided on a regular basis.

An independent and professional supervisory function should be free of political influence, have clearly defined and enforced regulations, and provide regular technical training to keep staff proficient in supervisory techniques. A professionally supervised banking system both provides investor and public confidence while promoting a stable regulatory environment that encourages competition.

#### C. Accounting/Financial Reporting

Uniform accounting standards and a required standard format for final reporting developed in conjunction with the country's Professional Accounting Board would also prove helpful to regulators, potential investors, and customers assessing the relative condition of financial institutions.

### **III. STRUCTURE OF THE ASSETS MANAGEMENT RECOVERY COMPANY**

#### **A. Introduction**

The Government of The Gambia, with impetus from the World Bank and USAID, has embarked upon a program to strengthen the commercial banking system. An integral part of this process involves the creation of the Assets Management Recovery Company, legally established in May 1992, with the objective of administering and collecting problem credit assets of the former GCDB through negotiated settlements and/or legal action. Its success will reduce the heavy financial cost of privatization of the GCDB through issuance of about D 80 million (US\$ 7-11.8 million) in treasury obligations which eventually must be retired through cash payments. Furthermore, the success of the AMRC will restore confidence in the ability of the banking system to efficiently collect outstanding credits.

To prepare the AMRC for its important role, it is necessary to develop the written policies and procedures which will govern the following aspects of its operations:

- An annual budget and medium term institutional and financial plans;
- Enhancement of the AMRC's organizational structure;
- Selection and training of staff according to a realistic yet flexible timetable;
- Assurance that the legal transfer of assets from the GCDB to the AMRC does not compromise its claims against debtors on behalf of the bank.

It is anticipated that substantial technical assistance will be required to accomplish these tasks, which will focus on both institutional development and on the process of managing and collecting problem credit assets. This external support must be closely coordinated with Senior Management and members of the Board of Overseers, and should include provision of assistance in formulating specific recovery strategies for principal borrowers. Negotiating techniques should be based on transparent and realistic policies and guidelines underlying AMRC's intervention strategy including discounting capital, forgiving interest, segmenting debt, and resolving collateral and documentary issues.

These policies should be considered and agreed to by the Board of Overseers which must also be satisfied that all principal debt settlements are consistent, transparent and conform fully to the objectives of an effective recovery program. Again, we affirm that

at all times the Board must require full accountability on the part of management and staff for all negotiated settlements.

In an effort to underscore Government's commitment to collecting GCDB assets, verifiable, quantitative collection targets and realistic recovery benchmarks must be established within the terms of future multilateral and bilateral ODA lending conditionality.

## **B. Institutional Structure**

Asset management in a recovery context is the process whereby underperforming, non-performing or foreclosed assets are resolved. The objective of the resolution process is to enable the institution to recover all or part of its loans and related costs by maximizing the net present value of cash proceeds from an asset. Clearly, the principal focus of AMRC's recovery efforts should be on those 26 largest borrowers whose outstanding loans form half of the potential collection pool.

Resolution may be achieved in four ways:

- Restructuring loans by reducing the legal balance, extending repayment terms, or adjusting the interest rate to enable the borrower to service the debt;
- Enforcing debtors or guarantors to meet their contractual obligations and repay their loans;
- Selling loans to third parties at a discount;
- Foreclosing in order to seize loan collateral and obtain repayment by its sale.

### **1. The Recovery/Collection Department**

The successful establishment of the AMRC lies in the creation of an aggressive and well-organized recovery/collection department which concentrates on the following tasks:

a. Debt Restructuring

Analyze both single loan and larger more complex borrower relationships with multiple types of loan facilities and collateralization arrangements. Develop and negotiate restructuring proposals. Convert findings into concise case memoranda formats by developing specific strategic plans.

b. Asset Business Plans

Prepare business plans for all asset types. These should include budget requirements (revenue and expense), marketing techniques, and disposition strategies.

c. Insolvency Analysis

Submit business recommendations as they relate to insolvency proceedings within the context of the proposed new act, evaluate borrower asset search findings, and compile a complete listing of assets involved in insolvency proceedings. Interface with legal counsel to coordinate both business and legal elements of each case.

d. Appraisals

Provide personnel and systems to track assets; request, review and reconcile appropriate appraisals for principal real estate and other assets.

e. Disposition of foreclosed assets

Evaluate disposition strategies in light of legal assessment, create marketing programs, auctions, and single asset sales, price real estate and other assets on a realistic basis, engage and monitor local estate agents. Prepare status and disposition reports, negotiate contracts to facilitate sales, and evaluate the need to commit additional funds to preserve asset value as well as understanding potential tax implications of foreclosure, where appropriate.

f. Terms and Conditions for Rescheduling Viable Debtors

Determine the purpose and scope of applications for rescheduling debts. Set minimum conditions for a debtor qualifying for rescheduling, policy guidelines as to terms, rates, discounts and cash payments by borrower

type, debt to equity conversions, and conditions to be imposed upon rescheduled borrowers. Ensure approval, implementation and monitoring of rescheduling arrangements.

The AMRC recovery/collections department should consist of a small group of experienced professionals, assisted by appropriate outside technical support. Compensation should be based on their achievement of established performance criteria. Given the lack of available qualified staff, on-going training to develop workout techniques and negotiation strategies will be required, as well as short term training in similar institutions elsewhere in Africa. Please see Appendix A for a complete list of personnel required.

Given the concentration profile of the AMRC portfolio, minimal resources should be expended in collecting the approximately 2,500 smaller credits with exposure below D 50,000 (US\$ 5,882), since the potential legal expense far exceeds anticipated revenue. A maximum of four collection officers should be assigned to these marginal accounts. Their efforts should focus on standard, hands-on collection practices that concentrate on avoiding costly litigation.

The 26 largest borrowers and the 18 Managed Fund accounts should form the core of the AMRC recovery program. Development of related workout action plans should involve the direct participation of both the Managing Director and the Board of Overseers. The action plans should be implemented by two senior workout officers closely collaborating with the Legal Department.

The balance of the credit portfolio, which contains nearly 400 mid-sized loans between D 50,000- D 1,000 million, should be managed by three junior officers coordinating with the Managing Director and Legal Department. The legal costs for these loans should be minimized as much as possible.

All personnel providing asset management services should be versed in the institution's policies and procedures pertaining to their particular functions. Written policies should be provided for staff guidance and should be regularly reviewed and updated. The Board of Overseers should carefully assess both the adequacy of the procedures and the degree of adherence to these policies. In addition, the staff's familiarity with these policies should be checked regularly.

2. Accounting and Administration Function

Essential to the success of the recovery effort is an efficient operational support function, referred to here as the Accounting and Administrative Function, responsible for financial accounting, billing, budget administration and management reporting. Internal personnel management and bookkeeping activities and the implementation of accounting and financial and operating controls within established guidelines must be adequately addressed by the Accounting and Administrative Function.

The Accounting and Administration Function, composed of eight staff members, should be responsible for providing the following functional support services:

- General asset administration and management information systems. This would require one staff member.
- Maintenance of physical records for management and inventory control of assets by loan type, asset type, borrower name, appraised value, estimated recovery value, and personnel assignment of asset management; sorting, retrieval, and distribution of asset information; performance of varied accounting functions from billings to generating accounts payable; provision of management and accounting reports. We envision that this will require two staff members.
- Physical security: certain asset management activities are confrontational in nature in that they involve taking legal action against and persuading borrowers to repay loans. Often, legal action must be taken to secure collateral from defaulted borrowers and guarantors. This department must ensure the physical security of all records and employees. All loan documentation and credit files should be consolidated under their control in Banjul without further delay. One staff member would be required.
- Budget planning and management: The budget officer will be responsible for proper accounting of all collection proceeds and will serve as AMRC's liaison with other government agencies also involved in the recovery effort. Expenses must be maintained within planning and reporting guidelines including on-going review and analysis of budget adequacy, maintenance of budget policy and procedures, and funds and expenditures management. Responsibilities also include supervision of building maintenance, office management and personnel administration. One manager, one staff member, one secretary, and one messenger are required.

As with the recovery function, all accounting/administration staff, should be versed in AMRC policies with respect to their particular tasks. Written procedures should be provided for employee's guidance and should be reviewed and updated regularly.

### 3. Legal Department

Both in-house and outside legal activities relating to all aspects of AMRC's collection effort should be coordinated through the Legal Department. Any policy decisions involving significant expenditures should be reviewed by the supervisor of the Legal Department and confirmed both by the Budget Director and the Managing Director. In most similar loan recovery efforts, legal costs account for over 80% of operating expenses. These expenses must be subject to strict controls at all times.

Price Waterhouse recommends that a competent and aggressive in-house legal staff be organized. The current Bank General Counsel should not be appointed to the AMRC owing to its apparently unsatisfactory performance in both litigation and internal administrative and cost controls. In this respect, we note that the Bank had, as of April 1992, disbursed D 3 million (US\$ 352,941) in legal fees, including D 1.5 million (US\$ 176,471) for the Ceesay litigation alone, with future contractual payments of at least an additional D 2.3 million (US\$ 270,588). These expenditures have failed to produce substantive results favorable to the Bank.

The disappointing performance of the Bank's legal effort, as affirmed both by exorbitant costs and dismal results, warrants a reformulation of the Legal Department under new and more assertive leadership. Compensation for legal services, for both staff and outside counsel, must be directly related to attaining clearly established performance objectives. The lawyers should be paid only for basic out-of-pocket expenses before producing tangible, satisfactory results. Poor performance and failure to extract reimbursements should result in the cancellation of contracts and preclude them from being assigned to new briefs. Again, given the explicit mandate surrounding the creation of the AMRC, we suggest that the in-house legal effort be directed by a new candidate selected in consultation with the Solicitor General. The Senior Legal Officer will act as General Counsel to the Company and will have the following functional responsibilities:

- Legal contracting, litigation and tax matters;
- Implementation of conflict of interest and ethical standard policies;
- Contract administration for the purchase and sale of non-performing assets;

- Documentation review;
- All other legal issues.

## C. Management

### 1. The Managing Director

The Managing Director will oversee all administrative and policy execution functions. This includes implementation of Board policy for all facets of the operation, leadership, direction and guidance to officers and staff, and liaising with government agencies and private sector institutions. Ultimately responsible for the AMRC's overall financial performance he, together with the Board of Overseers, will review the corporate strategic plan and annual budget.

The most important role of the Director is to assure the successful resolution of the AMRC collection mandate. This will require hands-on involvement in the development and execution of recovery strategies, particularly with respect to the largest borrowers.

### 2. Board of Overseers

The function of the Board of Overseers is to provide leadership and prudential supervision, and to assure public accountability. The Board will provide a direct link between the company and Government Ministries and the Office of the Presidency. It is imperative that the Board be composed of and closely identified with these sectors and chaired by a senior executive of the Office of the Presidency.

The Board must assist in defining both policy objectives and operating procedures in securing an adequate source of budgetary funding and in setting realistic criteria against which the performance of management and staff may be evaluated and compensated. Should the company fail to meet a significant portion of its recovery objectives within a reasonable period, (approximately one year), it is the responsibility of the Board to recommend its liquidation.

We recommend that the GCDB Board meetings be regularly scheduled on a monthly basis. This will allow the board to exercise a direct and vigilant role in the recovery process. The Board should be composed of senior level officers from the Ministry of

Finance, the NIB, and the Ministry of Justice and representatives from the private sector, under the chair of an executive of the Office of the Presidency.

The company accounts should be audited by an outside firm appointed by the Board at such times as the Board may determine, but at least at the end of each financial year. Its findings should be submitted to the Board within three months after the end of the period to which they relate.

#### D. Parastatal Status for AMRC

Due to the unique nature of its mandate, it is imperative that the AMRC be seen as a high-powered and effective, but independent agent of government policy, empowered with the maximum prerogatives necessary to achieve its objectives. The AMRC should be created as a public institution either through a Presidential Decree or special Parliamentary legislation. This should include provision for an Asset Recovery Tribunal. As such, it should enjoy privileges and immunities reserved to parastatal enterprises and not granted under the provisions of the Companies Act. The Commercial Court (or Tribunal) should be either directly or indirectly under the jurisdiction of the Ministry of Justice, and its activities should be confined exclusively to the AMRC recovery effort.

The specially dedicated court or judicial tribunal should have sole authority to hear and adjudicate all claims relating to any assets transferred from the GCDB or the Managed Fund. AMRC Management should be designated officers of the Court, with immunity from personal liability in conducting the company's business, and should be granted limited judicial authority including the right to serve process, subpoena documents, attach assets, and perform other duties consistent with their responsibilities.

Application of commercial law does not always prevail in the Gambia, and it has become increasingly common for bad debtors to obtain frivolous injunctions through the courts in order to frustrate the collection process. The continuation of such practices will, in the short term, preclude the success of the Company's mission and ultimately serve to undermine the viability of the banking system. This would result in the contraction of commercial credit to only short-term, risk-free, financial transactions. The potential detrimental impact of this scenario on Gambia's development objectives is apparent. It is absolutely essential, therefore, that, a priori, those judicial and regulatory reforms currently being proposed through separate USAID and IMF technical support projects be adopted and implemented. A satisfactory judicial mechanism should be established and empowered to address former GCDB/Managed Fund claims.

If fundamental changes in the legal framework are required to facilitate the AMRC collection process, then these must be adopted. To hide behind the "Rule of Law" defense and resist such changes, given that most GCDB credits were granted, is in clear violation of public trust. Indeed, the same government that presided over GCDB's lending activities must be now be called upon to rectify a situation that has imposed high direct and indirect costs on the Gambia's development and on the economic well-being of its people.

The June 26, 1992 Budget Speech by the Minister of Finance and Economic Affairs affirmed that all GCDB borrowers will be required to repay their debts to the AMRC. To underscore the government's unequivocal commitment to the success of the Company's objectives, it is suggested that realistic but challenging recovery benchmarks be imposed on the AMRC.

#### **IV. ASSET RECOVERY STRATEGY**

##### **A. Preparatory Tasks**

Prior to, and concurrent with the adoption of a formal credit recovery strategy for the AMRC, related preparatory tasks must be accomplished in order to realize the objective of asset collection.

A policy decision must be forthcoming regarding the establishment of the Commercial Court or Judicial Tribunal dedicated either exclusively or principally to the resolution of GCDB/Managed Fund claims. The structure of this court depends on the country's legal and constitutional structure. Details should be reviewed with the Solicitor General and Dr. Fiadjoe in order to determine the most appropriate and effective arrangement. This is in addition to implementing the proposed changes in the legal and regulatory framework necessary to support and strengthen creditor claims which should be presented to Parliament during the latter part of the current calendar year.

We also recommend enhancing the portfolio database (currently under development and including an accurate compilation of loan balances, off-balance sheet obligations and accrued interest and penalty charges) and a thorough review of all credit files. This should be followed by the completion of a detailed "Customer Facility Review", as shown in Appendix D. An in-depth legal documentary analysis of the largest 400 credit files, in conjunction with the Office of the Solicitor General should then be conducted. It is also recommended that an informal valuation of assets pledged by principal borrowers be conducted, after which it will be possible to determine realistic recovery targets.

In summary, completion of the following preparatory tasks is suggested within the timeframe indicated:

- Database consolidation and MIS input of all direct and contingent exposure including separation of principal and interest component (June-July 1992);
- Revision and consolidation of credit files (June - July 1992);
- Informal valuation of assets pledged by largest borrowers (August 1992);

- Legal and documentary review in conjunction with the Office of the Solicitor General of the largest 400 cases representing credit balances above D 50,000 (July - September 1992);
- Development of portfolio recovery strategy for principal borrowers including agreement to reasonable and transparent negotiation guidelines (September - October 1992);
- Formal in-country training of company recovery and collection staff in workout strategy and negotiation techniques (September - October 1992);
- Determination of realistic, verifiable collection targets to provide donors with potential conditionality benchmarks (September - October 1992).

**B. Assessment of Credit Exposure**

The following summary of GCDB direct exposure, which includes the Managed Fund, reflects a high degree of risk concentration among relatively few borrowers.

<u>Balance Limit</u>	<u># Accounts</u>	<u>Aggregate O/S</u>	<u>%*</u>
Above D 1 mm	26	D 138 mm	45
Above D 50 k	386	D 57 mm	19
Below D 50 k	2500	D 29 mm	10
Managed Fund	22	D 84 mm	26
	<u>2934</u>	<u>D 308 mm</u>	<u>100</u>

\*as of March 31, 1992

The AMRC mandate to maximize recoveries within imposed budgetary constraints implies that reasonable collection policies be defined, consistent with an appreciation for expenses. This requires an accurate determination of the Bank's credit exposure, including collateral assigned and documentary complexity or shortfalls. Clearly, those 2,500 smaller debtors with exposure below D 50,000 (US\$ 5,882) should be part of a systematic, aggressive collection program involving minimal legal expense. To achieve this, it is envisioned that a small team of debt collectors will be employed by the company and empowered to extract repayment from this group of borrowers with compensation largely based on repayment proceeds.

Those Managed Fund (D 84 million/ US\$ 9.9 million) credits which are under the tutelage of various ministries and parastatal agencies can only be recovered through the internal political process, which should clearly involve active participation by the Board of Overseers. Given the nature of this debt it does not appear that the use of company resources for these public sector debtors could be justified. Private sector Managed Fund borrowers, however, should be actively pursued.

### C. Principal Borrowers

With respect to the second largest borrower group (between D 50,000 - D 1 million), experience has shown that if a strong, aggressive tribunal or judiciary and legal infrastructure are in place and if the recovery company is empowered with sufficient authority, borrowers are more likely to seek out-of-court settlements through direct negotiation. It is usually only the largest debtors who possess the resources to evade payment and who will pursue their cases through the courts.

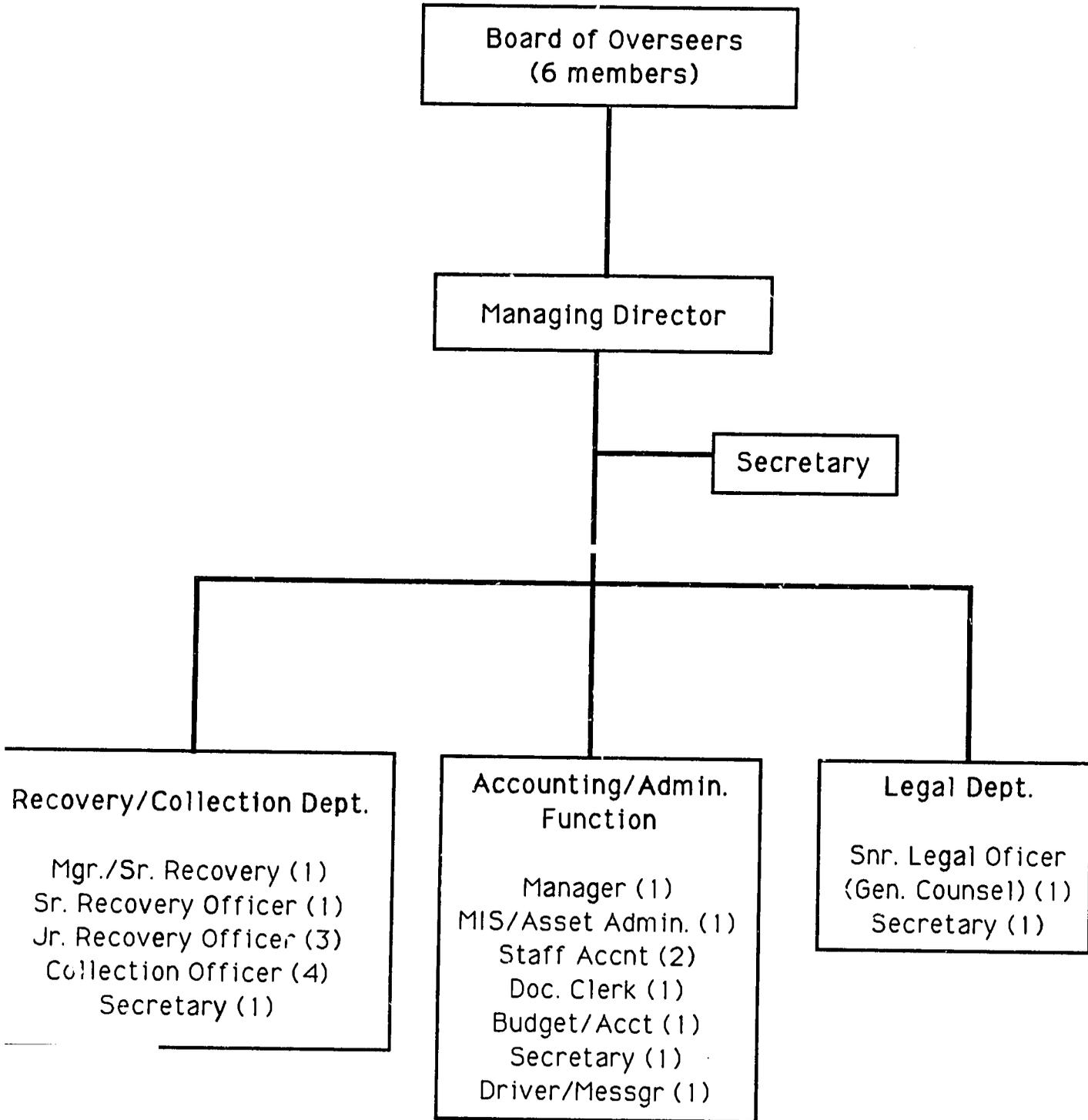
Clearly, the primary focus of the recovery effort must be on the 26 largest debtors whose exposure, aggregating D 139 million (US\$ 16.4 million), constitutes nearly half of outstanding credit. Summary details of the ten largest borrowers are attached in Appendix B. Significant repayment from these debtors would substantially reduce the ultimate obligation of the Government in meeting the D 80 million estimated cost of privatizing the Bank, the current shortfall between assets and deposit liabilities transferred to Meridien and funded through obligations of the Treasury.

These borrowers are in a financial and political position to take advantage of potential delaying tactics within the judicial process and exploit its inadequacies and shortcomings for their own benefit. In some cases, Bank files have been in court since 1984. In the case of the largest borrower, S. S. Ceesay, the procedure has been adjourned four times over the past fourteen months, owing to the borrower's ability to secure injunctions from judges and the Bank's inadequate preparation and unsatisfactory legal defense. Details of major GCDB cases currently pending in court are provided in Appendix C.

These and other judicial manipulations, which in the short term serve to frustrate implementation of GCDB creditor rights as protected by the security documentation in the longer term, directly impact upon the future development of the banking and financial sectors by exposing the actual inability of creditors to realize under their contractual lending arrangements and evade repayment. Ultimately, the detrimental effect on national development will become all too evident as financial institutions are increasingly compelled to restrict future credit to only the shortest term and lowest risk transactions, supported by liquid collateral or by external guarantees.

Formulation of specific recovery action plans targeted to principal borrowers is dependent upon, and must await adoption of, revisions in the legal infrastructure recommended in recent USAID and IMF technical assistance projects, the granting of AMRC adequate prerogatives and responsibilities to effectively execute its recovery mandate, and the establishment of a commercial court or tribunal charged with adjudicating GCDB and Managed Fund claims in an objective and expeditious manner.

AMRC - PROPOSED ORGANZATIONAL CHART



22

**TEN BIGGEST DEBTORS IN RECOVERIES DEPARTMENT**

**SAIHOU S. CEESAY GROUP**

Total outstanding D 81,773,038.01.

(30.6.91 Provision.  
125000518 account - 80%  
125000972 account - 100%  
125000989 account - 100%)

Security - Debenture incorporating mortgages over Amie's Beach Hotel and 13 residential properties situated in Fajara and Cape Point. Attempts have been made to realise security with the customer having obtained an injunction to stop us advertising the properties for sale. The case is still pending in Court, having been adjourned four times already. The next dates fixed for Court are 8th and 14th January 1992. We expect judgement in our favour but the continued delays are of much concern to GCDB, the banking community generally, the overseas donors and the country as a whole.

**MBYE N'JIE & SONS**

Outstanding amount D 6,585,203.90. (30.6.91 Provision 76%)

Security: Mortgage on (1) 11 New Primet Street S.R. No: 29/1967 (2) Fajara Property on Lease S.R. No: C951/1966 (3) Lease S.R. No: K309/1977 situated at Kanifing Industrial Area. Total estimated valuation D 1.5 million.

Status: Case pending in Court, and next hearing date set for the 15th January 1992.

*W*

**SALIFU M. CHAM**

Outstanding balance D2,717,423.42. (30.6.91 Provision 50%)

Security: Mortgage over Romana Hotel Lease S.R No: 116/83 Vol46KD,/Lease S.R. No: K294/1985 and his Pipeline Property Lease S.R. No:141/1974. Total professional valuation D1,505,000.00. Attempts have been made to realise our security. We have agreed the sale price of the Romana Hotel at D700,000 and the expatriate prospective purchasers have already brought in STG 16,234.00 as part of the purchase price. Salifu Cham has now brought injunctions against us restraining us from selling the properties thereby restricting our legal rights. Our next appearance in Court is 17th December. We are hopeful, but not sure, that the prospective expatriate purchasers, wishing to invest in the Gambia, will remain patient.

**MUSUKEBBA DRAMMEH**

Outstanding balance D 2,608,184.77. (30.6.91 Provision 100%)

Security: Deposit over Lease S.R. No: K308/1975 situated at New Jeshwang

Professional Valuation D 240,000.00

Court judgement was given against us in July this year. Our outside Solicitor, Mr Joof, has filed an appeal, which is expected to be heard in 1992.

**LUIS DIAZ DE LOSADA**

Outstanding balance D 2,539,501.26. (30.6.91 Provision 100%)

Security: Deposit of Lease S.R. No: K53/1980 at Kanifing Industrial Estate, estimated value D3 million, an undertaking to pay contract proceeds of over D 1 million by Ministry of Finance. The case is before the Supreme Court in Banjul with the next hearing expected early 1992. We are issuing the final letter of demand with a view to going to Court to attempt to realise our security. We also possibly have a contingent liability to Government by way of Bonds in the amount of over D 1 million.

CITRO PRODUCTS (GAMBIA) LTD.

Outstanding Balance D 5,608,459.94. (30.6.91 Provision 100%)

Security: Bill of Sale S.R. NO: 7/1989 on Company's plant and machinery.

Efforts have been made by N.I.B. to find a buyer but these have proved unsuccessful so far. We are now in discussions with Peat Marwick with a view to putting the company into liquidation.

MALICK O.B. LOWE

Outstanding balance D 3,164,248. (30.6.91 Provision 100%)

Security: Mortgage on (1) lease S.R. No: C165/1964 on 16 New Primet Street (2) S.R. NO. 113/71 V35 CD ON 68 GLOUCESTER STREET (3) S.R. NO: K12/1974 ON FAJARA M SECTION (4) S.R.NO: C150/1977 ON 72 WELLINGTON STREET, total estimated value D 3.5 million.

Our case against this customer was adjudged in our favour in July 1991. However, he has filed an appeal, which is not likely to be heard until mid 1992.

B. L. K. SANYANG

Outstanding Balance D 3,049,550.93. (30.6.91 Provision 100%)

Security is mortgage on properties (1) S.R.NO. C137/64 situated on 13 New Primet Street (2) S.R NO: K202/72 on Pipeline, the Factory at Kanifing on S.R. NO: K203/1986 and seeds on property at Brikama on S.R NO: P157/1982. Estimated value of his properties about D 3.1 million. Customer promised to start repaying at the rate of D 40,000 per month effective end of November and we are chasing him to keep his promise. It is likely that we shall have to realise security.

SANJALLY BOJANG

Outstanding Balance D 2,996,813.30. (30.6.91 Provision 100%)

Security: Deposit of Title Deeds S.R. No: P7/1971 situated at Kembuje and P122/1978 situated at Nyanibery. Case pending in Court with the next hearing expected early 1992.

MOMODOU C. CHAM

Outstanding balance D1,509,916.77. (30.6.91 Provision 50%)

Security: Mortgage over properties Deed S.R. No: C32/1967 in Hopkinson Street and Deed S.R. No: K310/1973 and deed S.R. No: K311/1974 situated at Fajara. Estimated value D 3 million. Lending has been called up and the 90 days statutory notice expires February 1992, after which we shall attempt to realise our security.

Source: GCDB Recovery Department

1/16

**GAMBIA COMMERCIAL AND DEVELOPMENT BANK LIMITED  
MAJOR CASES IN COURT**

<u>NAME</u>	<u>TOTAL</u>	<u>SECURITY</u>	<u>L/FEES PAID</u>	<u>L/FEES PENDING</u>	<u>COMMENTS</u>
J.S. Ceesay	D 89,116,037.22	Mortgage Debenture	D 1,516,618.00	D 1,500,000.00	In court since Oct. 1990, adjourned 6 times, next hearing fixed for the 7/5/92.
J.M. Cham	2,921,590.04	Mortgage Debenture	-	-	In court since Dec. 1991, adjourned 4 times, next hearing set for the 20/5/92.
Okuta Thomas	2,265,328.03	Mortgage	-	-	In court since May 1991, adjourned 4 times, next hearing 10/11 June 1992.
Musupha Samba	2,400,000.00	Mortgage Debenture	98,986.04	120,000.00	In court since May 1990, defence yet to be filed. Our solicitor putting in application for judgement in default of defence.
Idye Njie & Sons	11,204,678.52	Mortgage Debenture	276,560.00	329,560.00	In court since August 1989, adjourned a few times, next hearing set for 27/5/92.
Musukebba Drammeh	2,818,383.51	Deposit T/D	172,491.03	-	In court since Oct. 1990, adjudged against us. Appeal shall be heard June 1992.
Batch Quarry	929,983.22	Deposit T/D	19,771.84	41,856.00	In court since Nov. 1990, client dodging justice. Our solicitor applying for substitute service.
Babou A.M. Cisse	952,774.39	Mortgage	-	-	In court since Feb. 1991, adjourned 3 times, next hearing set for May 1992.
Malick Lowe	3,475,659.83	Mortgage Debenture	375,048.05	-	In court since Feb. 1985, adjudged in our favour, however, M.O.B. Lowe has appealed. Hearing June 1992.
Gambia Football Association	1,383,152.41	Unsecured	-	-	In court since Feb. 1992. Next hearing 28th May 1992.
Sanjally Bojang	1,800,000.00	Unsecured	-	90,000.00	In court since Feb. 1985, case adjourned many times, next hearing date yet to be communicated.
M.O.M. Jeng	1,542,689.20	Deposit T/D	12,500.00	77,134.00	In court since Feb. 1985, adjourned many times. Next hearing set for 20.5.92.

	<u>TOTAL</u>	<u>SECURITY</u>	<u>L/FEES PAID</u>	<u>L/FEES PENDING</u>	<u>COMMENTS</u>
Njie	D 731,791.15	Unsecured	D 18,742.67	D 18,742.00	In court since April 1992. Mention date 22/6/92.
am	1,552,229.14	Mortgage Debenture	70,421.52	70,401.00	In court since April 1992. Mention date 15/5/92.
Gomez	1,420,475.89	Mortgage Debenture	-	-	In court since April 1992, case set for hearing early May 1992. Exact date not fixed.

NUHA MARENAN  
  
 Head of Reviews

CUSTOMER FACILITY REVIEW - BUSINESS

REVIEW DATE

(AMOUNTS TO NEAREST WHOLE DOLLAR)

A/C NO.

DATE A/C OPENED		NAME	
NATURE OF BUSINESS		PARTNERS/DIRECTORS	
RELATED ACCOUNTS			
TYPE OF FACILITY:			
OVERDRAFT	LOAN	BOND/G'TEE	DOC. BILLS/CREDITS
PURPOSE			
DATE APPROVED	PERIOD	INTEREST RATE	AMOUNT APPROVED:
REPAYMENT:		DATE & AMOUNT OF LAST CREDIT BY CUSTOMER	PRESENT BALANCE:
- AMOUNT			AMOUNT IN ARREARS:
- START DATE			
- END/EXPIRY DATE		DATE LAST VISITED/INTERVIEWED	INTEREST IN SUSPENSE:

1. DOCUMENTATION	YES	NO	2. SECURITY -	REQD	HELD	DETAILS
SIGNED APPLICATION						DATE & NO OF TITLE DEED
BALANCE SHEET			- R. I. M. / R. 2. M			STAMPED VALUE D.....
BUSINESS REG. CERT.			- INSURANCE			B. I. N. - YES/NO AMT. D..... EXP.....
PARTNER AGREEMENT/ MEMO & ARTICLES			- CESSION OF RENTALS			AMT. p. a. D..... COPY OF LEASE YES/NO.
COPY OF MINUTES/ BOARD RESOLUTION			- R. E. M.			
OTHER BANKERS OPINION			ASSETS			
MANAGER'S RECOMM.			- PLEDGE/CHARGE			STAMPED VALUE D.....
AUTHORISED AT PROPER LEVEL			- LIEN			SAV/TIME A/C BAL. D.....
FACILITY LETTER TO CUSTOMER			- INS.			B. I. N. - YES/NO.
CUSTOMER'S ACCEPTANCE			- LOANS (DIRECTORS)			AMT. D..... SUBORDINATED YES/NO.....
MORTGAGE CONSENT			GUARANTEE			NAME G'TOR
DIRECTOR CONSENT						STAMPED VALUE D..... SUPPORTED/UNSUPPORTED
DIRECTOR REPORT						

BALANCE SHEET/FIN. STATEMENT DATED	AUDITED/UNAUDITED BY-
SURPLUS/DEFICIT	M. E. S. / M. E. D.

COMMENTS ON 1. DOCUMENTATION, 2. SECURITY & VALUE 3. CONTROL & VIABILITY (OVERLEAF AS NECESSARY)

14

ESTIMATE OF ACCOUNTS WHICH WILL NOT BE ACCEPTED BY MERIDIEN  
BANK AND MAY HAVE TO BE TAKEN OVER BY ASSETS RECOVERY CO. LTD.

HEAD OFFICE	OVER D1,000,000		D500 - D100,000		D100 - D500,000		D50 - D100,000		UNDER D50,000		TOTAL	
	# OF A/CS	VALUE	# OF A/CS	VALUE	# OF A/CS	VALUE	# OF A/CS	VALUE	# OF A/CS	VALUE	# OF A/CS	VALUE
a. Dormant	8	8,112,711	5	11,520,811	36	6,752,469	39	2,635,808	596	7,020,972	684	31,630,054
b. Development	4	13,202,325	1	956,404	38	7,072,375	75	4,809,458	757	2,185,194	875	38,225,756
c. Others (C/A)	12	116,649,688	6	4,027,796	52	4,329,961	32	2,257,854	189	2,967,975	291	130,233,274
<u>BASSE</u>	-	-	-	-	15	3,091,209	15	1,023,680	352	2,072,144	382	6,187,033
<u>BAKAU</u>	2	2,670,886	-	-	7	1,150,091	3	223,720	80	887,684	92	4,933,181
<u>FARAFENNI</u>	-	-	-	-	14	2,747,778	21	1,424,815	444	3,652,553	479	7,824,146
<u>LEMAN STREET</u>	-	-	-	-	10	1,569,416	16	1,086,259	81	1,512,627	107	4,168,302
<b>TOTAL</b>	<b>26</b>	<b>138,635,610</b>	<b>12</b>	<b>16,505,023</b>	<b>173</b>	<b>26,713,299</b>	<b>201</b>	<b>13,461,594</b>	<b>2499</b>	<b>30,299,149</b>	<b>2910</b>	<b>223,202,746</b>
<b>MANAGED FUND</b>											<b>84,000,000</b>	
<b>GRAND TOTAL</b>											<b>307,202,746</b>	

*M. Mareh*  
 NUHA MARENAN  
 HEAD OF RECOVER.  
 20/2/197

## LIST OF PEOPLE INTERVIEWED

### USAID\Banjul

Bonnie Pounds, Representative  
Fred Witthans, Deputy  
Sarah Adam, Project Manager  
Anne Button, Intern  
Richard Day, Country Desk Officer

### THE WORLD BANK, Washington, D.C.

Denise R. Williamsor., Country Officer  
Gradamir Radisic, Economist, AF5CO  
Phillip Adoteye, AF5IE  
Silvia Sagari, Division Chief

### INTERNATIONAL MONETARY FUND, Washington, D.C.

T. Hadjimichael, Economist  
Tom Rumbaugh, Desk Officer

### GAMBIA COMMERCIAL AND DEVELOPMENT BANK, Banjul

Dembra Ndow, former Chairman  
Momodou Sallah, Acting Managing Director  
Benjamin Carr, former acting MD  
Pa M. M. Njie, Commercial Manager  
Nuha Marenah, Recovery Unit Manager  
Omar M'bye, Bank lawyer  
M. Roch, Administration Manager  
Robert Maddocks, Technical Advisor, Audit  
M. Nene, Supervisor, Documentary Controls

**PEAT, MARWICK & COMPANY, Banjul**

**Paul Bird, Manager  
M. Benson, Associate**

**MERIDIEN BANK LTD., Banjul**

**Michael Knight, Managing Director  
Tony Bigwood, Finance Director**

**NATIONAL INVESTMENT BOARD, Banjul**

**Hosenu Njie, Assistant Director**

**CENTRAL BANK OF THE GAMBIA**

**Clark Bajo, General Manager  
Val Jensen, Treasury  
Momodou Ceesay, Director, Economic Research  
M. N. Njie, Chief Economist  
Haddy Ngie, Banking Supervision Manager**

**STANDARD CHARTERED BANK LTD., Banjul**

**Calum Buchanan, Manager  
Omar Djubrail, Operations Mgr.**

**MINISTRY OF FINANCE, Banjul**

**A. M. Ngum, Permanent Secretary  
Charles Mann, HIID, Technical Advisor  
Andrew Adam, HIID, Technical Advisor**

**MINISTRY OF JUSTICE**

**Amie Bensouda, Solicitor General**

GCDB TASK FORCE

Abdou Njie, Governor, CBG, Chairman  
Clark Bajo, General Mgr. CBG  
A. M. Ngum, PM, Ministry of Finance  
Hosenu Njie, Asst. Dir., NIB

To: Ms. Barbara Friday,  
Price Waterhouse  
Financial Sector Restructuring Program  
U.S. Aid, Banjul

From: Jerry Peck

Date: August 19, 1992

With reference to our recent report dated 8 July 1992 on the proposed Asset Management Recovery Company in the Gambia, we are pleased to provide the following additional information.

#### I. Establishment of the AMRC

It is recommended in our report that the AMRC, which is currently established within the provisions of the Companies Act, be reinstated as a parastatal (public enterprise) through an act of parliament. In addition to providing a visible profile of much-needed political commitment at the highest levels in support of its objectives, the unique legal status of state agencies provides for certain specific immunities and privileges such as eminent domain, the right to serve process and to prejudgment attachments, as well as to subpoena witnesses and documents, and to claim priority liens as opposed to participation in a general distribution of residual assets which is the situation at present.

Most important, however, is that by being established under an act of the legislature (or by Presidential decree), the AMRC can be given a wide variety of additional statutory powers not provided within the framework of the Companies Act. Its officers can be designated Officers of the Court, protected against retaliatory legal action, and the effectiveness of the recovery effort can be significantly enhanced.

#### II. Legal System

In each case in Africa where an asset recovery operation has been established to collect debts on behalf of government-owned banks, a special court (or tribunal) has been designated to adjudicate claims not resolved by the recovery agency itself.

A separate commercial court can be more effectively made to deal with complex financial issues, and judges with more experience in commercial law can be appointed.

In many cases, the special courts include mandatory negotiation, mediation, and compulsory arbitration provisions, often without the usual legal defenses afforded to other defendants, although these elements are not essential and the degree of extraordinary authority conferred varies widely within each jurisdiction.