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**REPORT ON WORKSHOPS  
ON  
BUSINESS TRANSACTIONS  
AND  
BUSINESS ORGANISATIONS LEGISLATION**

*Prepared By*

*AUSTIN AMISSAH and ALBERT FIADJOE*

**FOR  
HERON LIMITED  
THE GAMBIA**

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**REPORT ON WORKSHOPS ON BUSINESS TRANSACTIONS  
AND BUSINESS ORGANISATIONS**

**SEPTEMBER 19-23 AND 26-28 1994**

**ORGANISED BY HERON LIMITED AND THE MINISTRY OF JUSTICE  
IN COLLABORATION WITH USAID BANJUL**

**NOVOTEL KOMBO BEACH HOTEL**

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**INTRODUCTION**

The above Workshops were organised by Heron Limited and the Ministry of Justice, The Gambia in collaboration with USAID, Banjul. Appendix I sets out the original calendar for the Workshops, and Appendix II represents the calendar as applied at the Workshops indicating changes which were actually made.

The Workshop was opened on Monday, 19 September by the Hon. Attorney General and Minister of Justice, Mr. Fafa M'Bai, who welcomed the participants to the Workshop.

In his opening remarks, he observed that:

"This is the second of two workshops which have great significance for the legal environment affecting the private sector in this country. The need for a responsive regulatory framework that would facilitate the development of our financial sector, promote investment and encourage the growth of a vibrant private sector is one of the fundamental objectives of Government's economic policies. This objective in effect calls for a more equibrous balancing of public and private sector interests and the removal of legal obstacles to the efficient conduct of commercial transactions and the creation of equitable contractual relationships."

A copy of the speech is annexed to this Report as Appendix III.

The Representative of USAID, Gambia, Ms. Rose Marie Depp, in her remarks stressed the importance that the USAID placed on the exercise to be conducted at the Workshop. She invited the participants to critique the draft Bills so that the final product may help to shape a healthy legal regime for The Gambia. She said in part:

"A well administered legal system which enforces the timely, efficient, and impartial settlement of claims is also necessary to instil investor confidence in the legal system. It is one of the most important factors in deciding whether to invest or not. It is clearly in The Gambia's best interest to provide and firmly adhere to a legal code that ensures fair and equitable treatment to all concerned."

Ms. Depp also took advantage of the opportunity to state the position under the laws of the United States on USAID projects and programs, and the conditions for continued support for such projects and programs. In particular, she described the factors which might help The Gambia, now under military rule, in arguing a case for USAID to continue its presence in, and assistance to, The Gambia.

A copy of the speech is annexed to this Report as Appendix IV.

### **COMPANIES BILL**

The Workshop devoted full attention to the Companies Bill over the first two days. Chaired by the Chief Justice, Mr. B.A. Omosun, the Accountants Council was represented by

Mr. Kabba Jallow and Mr. Ismaila Ceesay as Resource Persons. Their comments, though limited to the accounting issues in the Bill, were full, frank and well considered.

The other Resource Person, Ms. Ida Drammeh, also made a spirited presentation on the draft Companies Bill.

A basket of very useful ideas was harvested during discussions, leading to the acceptance by the Consultants of the desire to effect some minor amendments to the Bill. At the end of the two days, the Workshop approved the proposals contained in the Companies Bill and the numerous enhanced reform proposals therein contained.

Arising out of the discussions were three suggestions which are hereby recommended for the consideration of the relevant authorities. Firstly, the Workshop endorsed the necessity for The Gambia to provide for a one-stop house for investors, thus short-circuiting the present situation whereby a potential investor has to relate to different authorities and agencies for permission to invest in selected enterprises.

Secondly, the Workshop also recommended that the establishment of a Companies House, separate and apart from the Registrar General's Department, would be a most useful adjunct to the business environment dealing with companies. Thirdly, the Workshop also approved the suggestion from the Consultants that the Government of the Gambia consider as a matter of

urgency the setting up of a Business Gazette which would contain information relating to companies specifically.

A summary Report on the Workshops need not itemise in detail the points made at the sessions. But the initial resistance of the Accountants to the introduction of no par value shares is worth recording.

The Accountants themselves admitted that no par value shares more truly reflected the market value of shares. They accepted that the modern trend in Commonwealth countries was to adopt the no-par value share concept. But their original position was that the concept would entail the re-writing of companies' books in a manner different from accounting practices in the United Kingdom from which they drew inspiration. What would happen to the "share premium" on the issue of shares, and to the "share premium account"? they asked. True, the capital or value of the company would not be diminished or affected in anyway, but if the proposed concept were to be adopted, terminology more akin to that used in United States accounts would have to be used to explain matters, and the Gambian accountants' close relationship with the accounting practices of the United Kingdom, from where most investment to The Gambia came, would be broken.

The Accountants' fight ended when after the Consultants had exercised their right to reply on the Companies Bill, the Chairman of the Accountants Council intervened to say that there should be no anxiety over the Accountants adopting accounting practices which conformed to

a no-par value share system; that in his view the whole argument was over semantics; and that he expected to persuade the Accountants to that view. That magnanimous concession drew a round of applause from participants at the Workshop.

### **PARTNERSHIP & BUSINESS REGISTRATION BILLS**

Next to be discussed were the Draft Partnership Bill and Business Registration Bill. The session on Partnership was chaired by Mr. Justice F. Chomna, while that on Business Registration was chaired by Mr. O. Darboe.

Both Bills excited very active discussion. Substantially, both bills were accepted with no amendments of any substance. It must be noted that the Draft Partnership Bill was breaking new ground since it was introducing local legislation on the subject for the first time in The Gambia.

A record must be made of the epic battle fought by the lawyers especially those in private practice to have members of the professions relieved of the registration obligation under both the Partnership and Business Registration Bills. The lawyers had hoped for a compromise which would insist on their registration under the Partnership Bill, but relieve them of the duty of registration, and annual renewals of certificates, under the Business Registration Bill. In the end, after the Consultants had exercised their right of reply, the Workshop accepted that the idea of regulating the partnership of each of the professions in its own governing legislation, such as

the Legal Profession Act for lawyers, and the Medical and Dental Act for doctors and dentists, was unrealistic, unnecessarily cumbersome and repetitious.

With respect to the Partnership Bill, the draft had followed the unanimous view reflected during the Field Study that a Partnership Act for The Gambia should follow the UK Partnership Act of 1890, as brought up to date by subsequent decisions and by whatever resolutions and clarifications of problems arising out of that Act have been handed down by the courts.

Accordingly, the requirement for accounts had been incorporated into the Act. There were also extensive provisions on the circumstances under which a partnership could be dissolved. With regard to candour among partners, it was provided that partners stood in a fiduciary relationship to the firm and their co-partners. The general statement was further elaborated by, among others, a provision that every partner was bound to render to every other partner full information of all things affecting the firm (see section 18(2)(a)). Where a partner persistently failed to contribute to the partnership, he was guilty of committing a breach of the partnership agreement and could be forced to sever relations with the partnership.

Perhaps the most revolutionary concept was the requirement that partnerships had to be in writing. Insistence on the fact that all partnerships must be in writing means that what has been described as implied partnerships would not be recognised by law in The Gambia. In preferring written partnerships, the Bill explained as follows:

There is great advantage in having the terms of the arrangement between partners clear and certain. This is better achieved in a

written document. When there is a dispute, as has been the case from time to time in The Gambia, the partnership instrument or deed would settle arguments as to the terms. We, therefore, take the view that partnership agreements should be in writing. There are two possible types of action which would arise out of a partnership agreement: one is by a partner against his fellow partner(s); the other is an action by a third party against the partners individually or against the partnership assets. In the latter case, it would be unfair if the third party who had relied on the association of the persons in doing business were to be denied a remedy because of the absence of a written agreement. But in the case of actions between the partners themselves, it is obviously easier and more proper to enforce the requirement of a writing. We have, accordingly, provided that the partnership should not be enforceable by a partner against other partners unless the partnership agreement is in writing.

The Workshop debated this philosophy with some care and eventually adopted the Bill in its entirety as a forward-looking piece of legislation that was necessary to assure certainty and fairness in partnership transactions in The Gambia.

### **CONTRACT BILL**

Next to be discussed was the Draft Contract Bill.

The discussion of this Bill lasted a whole day under the Chairmanship of the Solicitor General and Legal Secretary, Mrs. Amie Bensouda, with Mr. O. Darboe and Mrs. Hawa Sisay Sabally as Resource Persons.

Consistent with the philosophy that The Gambia should adhere to a legal code that enforces fair and equitable treatment to all concerned, the Workshop carefully scrutinised the

Draft Contract Bill clause by clause. It was resolved to endorse the Bill as a useful re-statement of the common law of contract with important modifications designed to reflect the situation of The Gambia. It was also decided that for this type of legislation, it was useful to reflect in the statute examples of illustrations of the basic principles in the manner recommended by the Consultants. However, so that the point may be put beyond doubt, the Consultants proposed and the Workshop accepted that it would be advisable to insert in the Bill a statement to the effect that the illustrations are not part of the text of the legislation.

For contract formation or creation, the Workshop recommended that the age of maturity should be pegged at 18. In the Contract Bill, the Consultants provided for the exclusion of transactions coming before the District Tribunals from the age of majority of 18. If in their policy consideration the Gambian authorities decide to cancel that, although the Consultants doubted that very much, there should be no objection. In the end, the question whether the District Tribunals were to be exempted from applying the Contracts Act, when passed into law, was left to be resolved on policy grounds by the Ministry of Justice in conjunction with the Consultants.

On the international scene, attention was drawn to the following Conventions and instruments as relevant to the subject-matter of this Bill -

- \* The Hague Convention on the Law Applicable to Agency;
- \* The International Chamber of Commerce (ICC) Adaptation of Contracts;
- \* The ICC Uniform Rules for Contract Guarantees.

The Contract Bill was approved by the Workshop.

### **SALE OF GOODS (AMENDMENT) BILL**

The draft Sale of Goods (Amendment) Bill occupied the attention of the Workshop on Friday 23rd September, 1994. Unlike the other Bills under consideration, this Bill was not entirely new except for the amendments which it introduced. The main import of the amendments in this regard was to enable the Gambia to take advantage of the important International Conventions and Protocols applicable to the sale of goods, as well as to update the Domestic Law on the Sale of Goods.

It was noted that commercial transactions had leaped beyond national boundaries and that inter-state trade and trade at the international level were now common-place. To that end, the reforms proposed were geared towards achieving uniformity with the laws of the International Community. The draft law allows the Minister the flexibility to bring the Conventions and the Protocols into effect whenever the Government of The Gambia deems that the time is ripe to do so.

A re-ordering was made in the programme schedule such that Mr. S.J.B. Mahoney took the chair for the session while Mr. H. Thomasi acted as the Resource Person.

In many ways, the adoption by the Workshop the previous day of the Contracts Bill was an indication that the adoption of the Sale of Goods (Amendment) Bill would be a logical follow-

up as Sale of Goods is nothing more than a specialised form of contract. The absence of a Consumer Protection Law in The Gambia meant that the Consultants had gone to great lengths to factor some minimal protection into the Bill as far as that was practicable.

The discussions centred on the definition of Merchantable Quantity of goods; whether an implied warranty that goods are fit for the purpose for which they were sold should be elevated into a condition; whether The Gambia should adopt the International Convention on the Sale of Goods; and also whether the Convention should be annexed to the Bill as a schedule thereto.

Upon a full consideration of the Sale of Goods (Amendment) Bill, the Workshop decided to adopt the recommendations of the Consultants as presented. It was decided that the best interests of The Gambia required that it ratified the International Convention on the Sale of Goods as early as practicable. This did not mean its immediate applicability. As recommended in the Draft Bill, The Minister would have power to bring the Convention into force whenever the Government of The Gambia deemed that the time was ripe to do so.

To that end, the Workshop considered the applicability of the main Conventions dealing with the law of the Contracts of International Sale of Goods. These are:

1. ICC Incoterms 1980
2. United Nations Convention on the Limitation Period in the International Sale of Goods - New York, 14 June 1974

3. Protocol Amending the United Nations Convention on the Limitation Period in the International Sale of Goods - Vienna, 11 April 1980
4. United Nations Convention on Contracts for the International Sale of Goods (Vienna Sale Convention) - Vienna, 11 April 1980
5. Liquidated Damages & Penalty Clauses - Uniform Rules on Contract for a Agreed Sum Upon Failure of Performance - Vienna, 29 June 1983

The Workshop accepted the Consultants' recommendations that the United Nations Convention on Contracts for the International Sale of Goods provides a balanced representation of all legal systems of the world.

### **NEGOTIABLE INSTRUMENTS BILL**

The Workshop discussed the draft Negotiable Instruments Bill on Monday 26 September, 1994 under the Chairmanship of Mr. Justice Adio. The Resource Person was Dr. Abdoulie Conteh.

The Draft Bill was based on the UK Bills of Exchange Act, 1882. However, the Consultants took the opportunity to update the Law and to modernise the language of the statute. The discussion focussed on specific issues such as the title of the Bill (Negotiable Instruments as opposed to Bills of Exchange), the nature and requirements of a Bill of Exchange, Cheques, Promissory Notes and Supplementary Provisions. The Consultants thus recommended that it would give some clarity to the subject matter of the proposed legislation if it were to be described by the title which comprehends the different types of instruments dealt with by it. For that reason, the title Negotiable Instruments Bill was proposed.

The Workshop welcomed the change of the title of the Bill from the Bills of Exchange Act to The Negotiable Instruments Act. The reason for this variation of title was that although the legislation which has governed and continues to govern transactions in this field in The Gambia is the United Kingdom Bills of Exchange Act, 1882, that Act itself dealt not only with Bills of Exchange as the Title indicated, but with three types of Negotiable Instruments: Bills of Exchange in the strict sense, Cheques and Promissory Notes.

Another matter that fell for discussion was whether the phrase "Negotiable Instruments" should be defined or not? One view was that it would be useful to have a definition which takes account of new forms of instruments which are negotiable. The other view was that it was not useful to define concepts in a Bill which did not relate to the text of the Bill.

It was the view of the Consultants and the Ministry of Justice that the types of Instruments reflected in the discussions were already covered sufficiently by the Bill in the Interpretation Section.

Notwithstanding that there was no need to amplify the Definition Section in order to address the point, the Consultants were prepared to abide by the directive of the Ministry of Justice on the point. If the Ministry felt that, out of abundance of caution, a further definition would be helpful the Consultants would oblige, though they did not think that that was warranted.

A great deal of discussion was generated by the criminal aspects of Cheques. Views were divided as to whether the Negotiable Instruments Bill ought to reflect such criminal provisions or whether the Criminal Code ought to be re-examined with a view to a possible amendment to reflect probity in cheque transactions.

It was the view of the Workshop that the problem was serious enough to require immediate attention. As to whether the offences should be placed in the Negotiable Instrument Bill or not, the Consultants advised that it would be impolitic to insert a criminal offence in the Bill. It would change the tenor of what is essentially a civil Bill. Furthermore, one cannot re-write the Criminal Law in such a Bill. It is best that the technical rules of the Criminal Law be left for the Criminal Code.

### **HIRE-PURCHASE AND FINANCE LEASING BILL**

The Draft Hire Purchase and Finance Leasing Bill was the next to be discussed. This Bill was new, seeking to regulate for the first time such activities as Hire Purchase and Finance Leasing.

Discussion on the Bill was full and vigorous. The Workshop warmly supported the Bill, stressing the social value and significance of this type of legislation. The Chairman for the occasion was Mr. Justice Obayan and the Resource Person, Mr. Baba Aziz.

## **CARRIAGE OF GOODS BY SEA BILL**

The final Bill discussed at the Workshop was the Carriage of Goods By Sea Bill. The Workshop was chaired by Mr. Justice S. F. Njai and the Resource Persons were Messrs. Sanyang, Sarr and Mrs. F. B. Bensouda. The Draft Bill, recognising that the Bill of Lading is now a principal internationally recognised document in overseas trade, provided a central focus for it and recommended the adoption and ratification of the Hamburg Rules attached in a schedule to The Bill.

Elsewhere, in the Consultants' overview of the FAPE and FSR programs, the point was noted that the shipping fraternity's contribution to the Workshop was invaluable. Even when they were not proposing amendments, their contributions provided a backdrop of information and insights which illuminated the proceedings of the Workshop.

## **CONSULTANTS' STATEMENT**

The final session of the Workshop on September 28, 1994 was reserved for the Consultants to provide an overview of the FSR and FAPE Programs and the Workshop and to indicate the way forward to the submission of final drafts to Heron Ltd., USAID/Banjul and the Ministry of Justice. The joint statement of the Consultants delivered by Mr. Justice Amissah is hereby appended to this report as appendix V.

In a wide ranging review of the FAPE and FSR Programs, the Consultants dealt with issues such as:-

- (i) Their gratitude and thanks to USAID for providing financial assistance to the Government of The Gambia for the enactment of legislation in support of the financial sector to create a proper environment for investment.
- (ii) Their gratitude and thanks to the Government of The Gambia, and more particularly to the Ministry of Justice for the opportunity to serve.
- (iii) The passage of eleven pieces of legislation drafted during the past two years.
- (iv) The total endorsement by the Workshop of the philosophy and reforms proposed in the eleven Bills.
- (v) The acceptance of the view that all eleven pieces of legislation were necessary for the regulation of the business sector, especially as when taken collectively, they do provide for the three main vehicles through which business is conducted, namely, Limited Liability Companies, Partnerships and Sole Proprietorships, and
- (vi) The excellent preparations made for the Workshop.

It is pertinent to refer to a point which is referred to in Appendix V. The Gambia has travelled thus far in its legislative reform programme. It would be a tragedy for The Gambia to rest on its laurels. There is still unfinished business which logically arises from the present cluster of reformed laws.

The Consultants suggested that after experiencing the operation of all these laws over a period of time, say five years, there should be a review to see what improvements could be

effected to redress shortcomings and excesses. The suggestion was first made after the first Workshop on the three pieces of legislation supported by USAID in 1992.

They went further to indicate a vision for the future as follows:-

With the enactment of these Bill, the regulatory system and investment climate from the point of view of the business community would, more or less, be set. An acceptable investment legislation would certainly further enhance the investment statute. An Investment House, not necessarily part of Government, as an institution to which businessmen from Gambia and abroad could turn for information and guidance on business matters, was proposed. Though not part of our mandate, we think the proposal has merit and ought to be explored. It is our view that having in substance completed the legislation in support of the financial sector from the point of view of the businessman and investor, consideration should now be given to the large but uncovered area of consumer protection; the setting-up of standards and quality control for the supply of goods and services; ensuring that those allowed to supply these items for the public do not over-reach themselves in their desire for gain at public expense. Other related or supporting legislation to make the system operate efficiently and to improve its legal administration would have to be put in place.

### CLOSING ADDRESS

The closing address was delivered by Mr. Justice F. Chomba, President (Ag.) of the Court of Appeal of The Gambia. The full text of his extremely illuminating speech is appended herewith and marked as Appendix VI. In his remarks he said the following, *inter alia*:

While some of these Bills aim to revise the existing Gambian Law in order to bring it in line with modern trends in the business world, other Bills are directed at breaking new ground statute-wise in the field of business in The Gambia. Indeed some of the Bills are intended to plug *lacunae* which have existed for a long time; forcing legal practitioners to make adaptations which have lacked legal force.

Although by their very nature the Bills you have been discussing will when enacted into law serve separate purposes, they have one common factor and aim to collectively achieve one common goal.

According to his address when he came to open this workshop, The Hon. Minister of Justice and Attorney-General, Mr. Fafa M'Bai, all these pieces of draft legislation included in the deliberations at the workshop were designed to create an enabling environment for economic development.

If when the various Bills are turned into statutes they are going to contribute to the attainment of that envisaged economic development, then the time participants have spent at this workshop will not have been dissipated or spent in vain.

Workshop attendance was very good. In all sixty eight (68) persons were recorded as having participated in the Workshops at one time or the other. Appendix VII records such participation while Appendix VIII represents a Press Release issued by the Ministry of Justice, Banjul.

### **ASSESSMENT OF WORKSHOP**

The overwhelming view of the participants was that the Workshop was a resounding success. The participants were well-prepared. They carefully read the draft bills and provided insightful critique at all times. The Workshop provided a most important opportunity for an exchange of ideas and for the Consultants to clarify their thinking on the several innovative reforms introduced in the Bills.

From the point of view of the Consultants, the comments made during the Workshop were most useful. It cannot be stressed enough the desirability of the future Bills being

subjected to the process of a Workshop. The country's legal regime is the better for it and that is a positively good process.

Arrangements for the Workshop were excellent, very well planned, professionally executed and the delivery properly co-ordinated. The Workshop had nothing but praise for the professionalism of Heron Ltd. and the Ministry of Justice. It was a welcome change from the past to see the Contractor take part in the Workshop and relate to concerns on a one-on-one basis. The Contractor's presence clearly assisted in the smooth running of the Workshop.

The Workshop was thoroughly encouraged by the full representation of the Bench, Bar, Accountants, and the Shipping Fraternity, without whose incisive contributions the Workshop could not have been such a tremendous success.

This Report ends with expressions of hope and optimism:- That this tremendous undertaking under the FAPE and FSR Programmes by which eleven modern laws have been crafted for The Gambia will help The Gambia establish a comprehensive framework of credible legislation within which an efficient and effective financial sector could develop and operate.

Respectively submitted

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A. N. E. AMISSAH  
London

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A. K. FIADJOE  
Barbados

SEPTEMBER 28, 1994

APPENDIX I

ORIGINAL WORKSHOPS' TIME TABLE

MINISTRY OF JUSTICE - USAID/BANJUL

W O R K S H O P S

ON

BUSINESS TRANSACTIONS

AND

BUSINESS ORGANISATION LEGISLATION

SEPTEMBER 19 - 23 AND 26 - 28, 1994

NOVOTEL KOMBO BEACH HOTEL

THE GAMBIA

ORGANISED BY:

HERON LIMITED  
AS CONTRACTOR UNDER  
GAMBIA GOVERNMENT/USAID FAPE PROJECT



13H00 - 14H00 Lunch

14H00 - 17H00 Draft Companies Bill - Discussions by Participants

**WEDNESDAY 21 SEPTEMBER, 1994**

09H30 Subject: Draft Partnership Bill  
Chairperson: Justice F Chomba  
Resource Persons: Mr. P.C.O. Secka (Legal Practitioner)  
Registrar General  
Discussions by Participants

11H00 - 11H20 Coffee Break

11H20 - 13H00 Draft Partnership Bill - Discussions by Participants

13H00 - 14H00 Lunch

14H00 - 17H00 Subject: Draft Business Registration Bill  
Chairperson: Mr. A.N.M.O. Darboe (Legal Practitioner)  
Resource Persons: Registrar of Companies  
Chairman - Gambia Chamber of Commerce  
and Industry  
Discussions by Participants

**THURSDAY 22 SEPTEMBER, 1994**

09H30 Subject: Draft Contract Bill  
Chairperson: Solicitor General and Legal Secretary  
Resource persons: Ms. H.K. Sisay (Legal Practitioner)  
Mr. A.N.M.O Darboe (Legal Practitioner)  
Discussions by Participants



Discussions by Participants

11H00 - 11H20

Coffee Break

11H20 - 13H00

Draft Negotiable Instruments Bill - Discussions by Participants

13H00 - 14H00

Lunch

14H00 - 17H00

Subject: Draft Hire Purchase and Finance Leasing Bill

Chairperson: Justice B.A. Obayan

Resource Persons: Mr. Baba Aziz (Legal Practitioner)  
Managing Director, Alliance Auto Network  
Managing Director, Meridien Bank  
(Gambia) Limited

Discussions by Participants

TUESDAY 27 SEPTEMBER, 1994

0H30

Subject: Draft Carriage of Goods By Sea Bill

Chairperson: Justice S.F. Njai

Resource Persons: Mrs. F.B. Bensouda (Legal Practitioner)  
Acting Managing Director, Gambia Ports  
Authority  
Managing Director, Interstate Shipping  
Company Limited

Discussions by Participants

11H00 - 11H20

Coffee Break

11H20 - 13H00

Draft Carriage of Goods by Sea Bill - Discussions by Participants

13H00 - 14H00

Lunch

14H00 - 17H00

Draft Carriage of Goods by Sea Bill - Discussions by Participants

WEDNESDAY 28 SEPTEMBER, 1994

09H30 - 12H00

Subject: Review of Discussions Relating to Draft Bills

Speakers: Consultants - Justice Austin N.E. Amissah  
Dr. Albert Fiadjoe

12H00

END OF WORKSHOPS

**APPENDIX II**

**ACTUAL WORKSHOPS' TIME TABLE AS APPLIED**

**MINISTRY OF JUSTICE - USAID/BANJUL**

W O R K S H O P S  
O N  
B U S I N E S S T R A N S A C T I O N S  
A N D  
B U S I N E S S O R G A N I S A T I O N L E G I S L A T I O N  
S E P T E M B E R 1 9 - 2 3 A N D 2 6 - 2 8 , 1 9 9 4

N O V O T E L K O M B O B E A C H H O T E L  
T H E G A M B I A

O R G A N I S E D B Y :  
H E R O N L I M I T E D  
A S C O N T R A C T O R U N D E R  
G A M B I A G O V E R N M E N T / U S A I D F A P E P R O J E C T

## TIME-TABLE AND SCHEDULE OF ACTIVITIES

### MONDAY 19 SEPTEMBER, 1994

- 09H30                      Opening Remarks  
                                 Hon. Attorney General and Minister of Justice  
                                 USAID Representative To The Gambia
- 10H00                      Subject: Draft Companies Bill  
                                 Chairperson: **Justice B.A. Omosun, Chief Justice of The Gambia**  
                                 Resource Persons:    Miss Ida Drammeh (Legal Practitioner)  
   **Abaji Kabba Jallow**  
   **Ismaila B. Ceesay**  
                                 Discussions By Participants
- 11H00-11H20              Coffee Break
- 11H20 - 13H00              Draft Companies Bill - Discussions by Participants
- 13H00 - 14H00              Lunch
- 14H00 - 17H00              Draft Companies Bill - Discussions by Participants

### TUESDAY 20 SEPTEMBER, 1994

- 09H30                      Subject: Draft Companies Bill  
                                 Chairperson: Chief Justice of The Gambia  
                                 Discussions by Participants
- 11H00 - 11H20              Coffee Break
- 11H20 - 13H00              Draft Companies Bill - Discussions by Participants

13H00 - 14H00 Lunch

14H00 - 17H00 Draft Companies Bill - Discussions by Participants

**WEDNESDAY 21 SEPTEMBER, 1994**

09H30 Subject: Draft Partnership Bill  
Chairperson: Justice F Chomba  
Resource Persons: Mr. P.C.O. Secka (Legal Practitioner)  
M.A. Ceesay, Registrar General  
Discussions by Participants

11H00 - 11H20 Coffee Break

11H20 - 13H00 Draft Partnership Bill - Discussions by Participants

13H00 - 14H00 Lunch

14H00 - 17H00 Subject: Draft Business Registration Bill  
Chairperson: Mr. A.N.M.O. Darboe (Legal Practitioner)  
Resource Persons: Mrs. Fola H. Allen, Registrar of Companies  
Discussions by Participants

**THURSDAY 22 SEPTEMBER, 1994**

09H30 Subject: Draft Contract Bill  
Chairperson: Mrs. Amie Bensouda, Solicitor General and Legal  
Secretary  
Resource person: Mr. A.N.M.O Darboe (Legal Practitioner)  
Discussions by Participants

11H00 - 11H20 Coffee Break

11H20 - 13H00 Draft Contract Bill - Discussions by Participants

13H00 - 14H00 Lunch

14H00 - 17H00 Draft Contract Bill - Discussions by Participants

FRIDAY 23 SEPTEMBER, 1994

09H30 Subject: Draft Sale of Goods (Amendment) Bill  
Chairperson:  
Resource Person: **Mr. H. Thomasi (Legal Practitioner)**  
Discussions by Participants

11H00 - 11H20 Coffee Break

11H20 - 13H00 Draft Sale of Goods (Amendment) Bill - Discussions by  
Participants

13H00 - 14H00 Lunch

MONDAY 26 SEPTEMBER, 1994

09H30 Subject: Draft Negotiable Instruments Bill  
Chairperson: Justice M.O. Adio  
Resource Person: **Dr. Abdoulie Conteh (Legal Practitioner)**  
Discussions by Participants

11H00 - 11H20 Coffee Break

11H20 - 13H00 Draft Negotiable Instruments Bill - Discussions by Participants

13H00 - 14H00 Lunch



12H00

**Vote of Thanks      ~      Ms. H.K. Sisay**  
**END OF WORKSHOPS**

**APPENDIX III**  
**WORKSHOP ON BUSINESS ORGANISATIONS AND  
BUSINESS TRANSACTIONS**

**SEPTEMBER 19 - 28, 1994  
AT THE NOVOTEL KOMBO BEACH HOTEL**

**ADDRESS BY THE ATTORNEY GENERAL AND  
MINISTER OF JUSTICE, MR. FAFA E. M'BAI**

My Lord Chief Justice

My Lord President of The Gambia Court of Appeal

My Lords

Representative of the United States Agency for International Development (USAID)

Ladies and Gentlemen

It is my pleasure to welcome you all to this Workshop on Business Organisations and Business Transactions and in particular Mr. Justice Amissah and Dr. Albert Fiadjoe who have been working with us in the Ministry of Justice on various important legislative initiatives for the past two years. They are therefore no strangers to most of us here to today.

This is the second of two workshops which have great significance for the legal environment affecting the private sector in this country. The need for a responsive regulatory framework that would facilitate the development of our financial sector, promote investment and encourage the growth of a vibrant private sector is one of the fundamental objectives of Government's economic policies. This objective in effect calls for a more equilibrating of public and private sector interests and the removal of legal obstacles to the efficient conduct of commercial transactions and the creation of equitable contractual relationships.

The USAID is one of our development partners who has contributed immensely towards achieving this important objective. It has enabled us to make great strides towards the creation of a basis for a sound regulatory framework. Through the Financial Restructuring Programme the law affecting Financial Institutions were reviewed and a new Insolvency Act, Sheriffs and Civil Processes Act and Mortgages Act were enacted in 1992. You will recall that a similar workshop was held in this very hall to consider those legislations.

This workshop is also sponsored by the USAID under the Financial and Support Programme and will be reviewing draft legislation prepared in collaboration with the Ministry of Justice for the reform and revision of the laws relating to Business Organisations and Business Transactions. The Business organisations relate to the revision of the Companies and Business Registration Acts and the drafting of a new Partnerships law whilst the Business Transactions Legislation relate to the revision of the Carriage of Goods by Sea Act, the amendment of the Sale of Goods Act and the drafting of a new Contract law, Negotiable Instrument, Hire Purchase and Finance Leasing Acts.

The task before us which is an enormous one, is to review in great detail the provisions of these draft legislation in order to determine whether they adequately represent our concerns and particularly whether they have taken into account the limitations within our legal and regulatory environment which hinder the growth and development of our private sector. The responsibility is therefore ours, to ensure that the legislation when finalised would provide adequate encouragement and support to modern business practices, to the development of financial instruments and also afford protection to parties to commercial transactions.

Finally, I take this opportunity to register the Government's appreciation for the invaluable support we continue to receive from the USAID under these and other programmes. We are indeed most grateful and hope that this fruitful collaboration will continue.

May I also congratulate the consultants for their efforts in this difficult exercise. I hope that they will have an enjoyable stay with us.

Mr. Chairman, I have no doubt that we shall leave this Hall enriched by our exchanges of ideas, of experiences and of aspirations and the friendship, professionalism and camaraderie of the consultation.

And it is in this spirit that I have great pleasure in declaring this important Workshop open and to wish you fruitful deliberations.

I apologise that due to other unavoidable engagements I will be deprived of the pleasure and profit of chairing this first session.

I thank you all.

## APPENDIX IV

### **DRAFT SPEECH FOR ROSE MARIE DEPP OPENING OF BUSINESS ORGANIZATIONS WORKSHOP NOVOTEL HOTEL, SEPTEMBER 19, 1994**

Mr. Chairman, Honorable Minister of Justice and Attorney General, Honorable Chief Justice, Distinguished Gentlemen, and Gentlewomen ... And I am pleased to see so many women here. On behalf of USAID, I welcome you to this Workshop on the Business Organization and Business Transaction Legislation. This Workshop will allow the business, legal, and financial communities to critique and make recommendations on the legislation drafted by Justice Amissah and Dr. Fiadjoe.

You are about to embark on a serious assignment by assisting in the creation of an enabling environment. Before coming to The Gambia I worked in USAID's Office of Legislative Affairs in USAID Washington and worked to explain and justify U.S. Foreign Assistance Programs. I frequently had to explain what was meant by "The Enabling Environment" and it was my experience that my audience's eyes would simply glaze over. It was a complex concept to explain. However, you here today understand what it means to have an enabling environment and how important it is to attracting both domestic and foreign investment.

If you will permit me an aside. As detailed in a recent "Economist" magazine article, there is a strong correlation between democracy and economic growth. A review of economic development and types of political systems shows that, in general, "democracy has promoted growth far more effectively and consistently than any other political system". In order for The Gambia to move forward economically, democracy must be restored and maintained. Free and fair elections are required. Civil liberties must be protected. A free press is essential. The judiciary must be viewed as committed to fair treatment for all and be independent from political pressure.

Last week the AFPRC showed its commitment to the rule of law with the release of the former Ministers from house arrest. Such respect for the law is a critical factor in building the business community's confidence. We the American people commend their actions.

A well administered legal system which enforces the timely, efficient and impartial settlement of claims is also necessary to instill investor confidence in the legal system. It is one of the most important factors in deciding whether to invest or not. It is clearly in The Gambia's best interest to provide and firmly adhere to a legal code that ensures fair and equitable treatment to all concerned.

The United States Government has been actively assisting The Gambia in its efforts to modernize and improve the judicial environment since 1992. The USAID supported Financial and Private Enterprise (FAPE) Project's goal is to encourage increased private investment and accelerated growth of private enterprises in The Gambia by creating a legal and regulatory framework that supports modern business practices.

The FAPE Project has supported a number of activities in this regard including the funding of improved court reporting for the Supreme Court of The Gambia which will relieve excessive delays in the processing of civil claims. The FAPE Project also funded the drafting of this legislation -- the business organizations and business transactions.

It is now your responsibility, as members of the business, legal, and financial communities, to critique this draft legislation to assure that the very best possible legal framework can be put in place. I urge you to fully participate in the discussion of this legislation and the serious work before you.

We were very fortunate that Justice Amissah and Dr. Fiadjoe were available to work on this important project. Both have extensive knowledge of and practical background in the Commonwealth legal system in Africa. They have been involved in the rewriting of a number of laws in The Gambia. We thank them for their support.

Due to recent events, the role that legal reform will play in the future of The Gambia has increased dramatically. Clearly, a monumental task lies ahead and it is only through democracy and cooperation among the legal, business, and financial communities that economic growth will be achieved.

In closing, I would like to take this opportunity to stress the importance of the AFPRC'S promise to deliver a timetable for a return to a constitutional democracy. It is not only important to the business climate, but also to USAID's ability to remain in The Gambia and continue to assist in any capacity, whether through our previous programs or through non-government organizations. The United States Government, the Ambassador, and I, do not want to abandon the Gambian people, but we are obliged to respect our own law which forbids assistance to a country whose democratically-elected government has been removed by military action. Therefore, the announcement and adherence to a credible timetable for presidential elections will become an essential factor in the U.S.'s consideration of whether it is in our (The U.S.'s) national interest to remain in The Gambia and help in the transition to a return to democracy.

Thank you.

I would be happy to respond to any questions.

## APPENDIX V

MY LORDS, LADIES AND GENTLEMEN,

WE HAVE NOW REACHED THE TIME FOR REFLECTION. FOR SEVEN TIGHTLY PACKED DAYS WE HAVE CONSIDERED EIGHT DRAFT BILLS, SOME OF THEM, LIKE THE COMPANIES BILL AND THE CONTRACT BILL, MAJOR WORKS REQUIRING PARTICIPANTS TO READ AND CONSIDER A TREMENDOUS AMOUNT OF LITERATURE BEFORE ATTEMPTING TO MAKE A MEANINGFUL CONTRIBUTION. WE HAVE GONE THROUGH THAT PERIOD OF HARD LABOUR WITH JUSTIFIABLE CREDIT. THIS CONCLUDING SESSION OF OUR WORKSHOP IS ENTITLED "REVIEW OF DISCUSSIONS RELATING TO DRAFT BILLS", AND THE CONSULTANTS ARE CALLED UPON TO SPEAK TO THAT SUBJECT. BY UNANIMOUS VOTE, I HAVE BEEN ELECTED TO PRESENT THE JOINT AND SEVERAL VIEWS OF THE CONSULTANTS.

PERMIT US TO BROADEN OUR TERMS OF REFERENCE TO INCLUDE OUR GENERAL REFLECTIONS ON THE ASPECTS OF THE FAPE AND FSR PROGRAMS OF USAID WITH WHICH WE HAVE BEEN CONNECTED NAMELY: THE PROJECTS FOR, AMONG OTHER THINGS, PROVIDING FINANCIAL ASSISTANCE TO THE GOVERNMENT OF THE GAMBIA FOR THE ENACTMENT OF LEGISLATION IN SUPPORT OF THE FINANCIAL SECTOR TO CREATE A PROPER ENVIRONMENT FOR INVESTMENT. WE

WOULD ALSO LIKE PERMISSION TO VOICE OUR TENTATIVE THOUGHTS ON WHAT NEEDS DOING NEXT IN THE REGULATORY FRAMEWORK FOR BUSINESS AND CONSUMERS IN THE GAMBIA. WE ASK FOR THIS INDULGENCE BECAUSE WE, AS CONSULTANTS, HAVE BEEN ASSOCIATED WITH THE PROJECTS, IN SO FAR AS THEY AFFECT THE MINISTRY OF JUSTICE FROM, THE BEGINNING, AND THIS IS THE FIRST OPPORTUNITY WE HAVE GOT OF CASTING OUR MINDS OVER THESE PROJECTS WITH WHICH WE HAVE BEEN ASSOCIATED. WE ALSO WISH TO TAKE ADVANTAGE OF THIS OPPORTUNITY NOW, BECAUSE IT MAY NOT RECUR. BUT FOR THE FINANCIAL AID GIVEN BY USAID, THE SERIES OF DRAFT LEGISLATION ON THE FINANCIAL SECTOR ABOUT TO BE COMPLETED COULD NOT HAVE BEEN DRAWN UP WITHIN THE TWO YEAR PERIOD THAT HAS BEEN TAKEN. IN OUR VIEW, THE UNITED STATES GOVERNMENT DESERVES THE THANKS OF THE GOVERNMENT AND PEOPLE OF THE GAMBIA AND OF OURSELVES FOR THIS AID. AS WE SHALL HAVE OCCASION TO EXPLAIN MORE FULLY BEFORE WE ARE THROUGH WITH THIS REVIEW, LAW REFORM IS OFTEN A SLOW AND DIFFICULT TASK. WITHOUT FINANCIAL RESOURCES TO BACK THE EFFORT, THE ENTHUSIASM FOR IT FIZZLES OUT. IT IS A REMARKABLE ACHIEVEMENT TO SEE THE NUMBER AND WEIGHT OF THE PIECES OF LEGISLATION UNDERTAKEN UNDER THE PROGRAMS NOW NEARING COMPLETION, IN SO SHORT A TIME.

NO LESS THAN ELEVEN PIECES OF LEGISLATION HAVE BEEN DRAFTED DURING THE TWO YEARS. THE FIRST SET WAS THE DRAFT BILLS ON SHERIFFS AND CIVIL

PROCESS, INSOLVENCY AND MORTGAGES. THESE HAPPILY HAVE BEEN ENACTED INTO LAW. IN OUR EXCHANGES DURING THE TEA-BREAKS IN THIS WORKSHOPS, WE HAVE BEEN INTRIGUED TO HEAR THAT THE INSOLVENCY ACT 1992 IS ON ACTIVE SERVICE IN THE COURTS TODAY. IT WAS THE REPORT THAT WE PUT IN AFTER DRAFTING THIS FIRST SET OF LAWS THAT PROPOSED THE HOLDING OF A WORKSHOP ON THOSE LAWS. THE IDEA BEHIND THE SUGGESTION WAS TO SENSITISE INTERESTED PARTIES TO THE NEW LEGISLATION WHICH HAD, BY THE TIME OF THE WORKSHOP, ALREADY BEEN TRANSLATED INTO LAW. THE VERY SUCCESS OF THAT WORKSHOP, AND THE FACT THAT A NUMBER OF VALUABLE SUGGESTIONS MADE AT THE PROCEEDINGS COULD NOT BE INCORPORATED IMMEDIATELY IN THE ACTS, THEREUPON DECIDED THE THEN MINISTER OF JUSTICE AND ATTORNEY GENERAL, THE HON. MR. HASSAN JALLOW, TO PROPOSE THAT FUTURE DRAFT LEGISLATION SHOULD FIRST BE SUBJECTED TO THE SCRUTINY OF A WORKSHOP BEFORE, NOT AFTER, ENACTMENT. THIS MEDIUM OF THE WORKSHOP WAS ACCORDINGLY RECOGNISED NOT ONLY AS USEFUL FOR SENSITISING INTERESTED PARTIES TO LEGISLATION ALREADY ENACTED, BUT ALSO AS PROVIDING A VALUABLE FORUM FOR DEBATE ON THE MERITS, CORRECTNESS AND DESIRABILITY OF THE PROPOSALS SUBMITTED BY THE CONSULTANTS IN BILL FORM FOR ENACTMENT. HENCE THIS WORKSHOP ON THE DRAFTS WE HAVE SUBMITTED AS BILLS. HAVING SAT THROUGH THE FIRST SEVEN DAYS OF THE WORKSHOP, WE ARE EVEN MORE CONVINCED NOW THAT THE DECISION INTRODUCING THE NEW

SCHEME WAS RIGHT. TO AMEND A BILL BEFORE ENACTMENT RATHER THAN AMEND IT WHEN IT HAS BECOME AN ENACTMENT IS FAR EASIER TO DO AND CONFORMS BETTER WITH GOOD SENSE.

THIS WORKSHOP HAS BROUGHT TOGETHER THE NEW MINISTER OF JUSTICE AND ATTORNEY GENERAL, THE HON. MR. FAFAMA MBAI, THE CHIEF JUSTICE, THE HON. MR. JUSTICE B. A. OMOSUN AND OTHER JUDGES OF THE COURT OF APPEAL AND THE SUPREME COURT OF THE GAMBIA, MAGISTRATES, LAWYERS BOTH IN THE ATTORNEY GENERAL'S CHAMBERS, IN QUASI-PUBLIC ORGANISATIONS AND IN PRIVATE PRACTICE, RANGING FROM THE MOST SENIOR TO THE YOUNG FLEDGLINGS FRESHLY OUT OF THE LAW SCHOOLS, AS WELL AS ACCOUNTANTS, BANKERS, MANAGERS OF CORPORATIONS AND BUSINESSMEN. WE PROBABLY COULD HAVE BEEN BETTER OFF IF WE HAD HAD MORE BUSINESSMEN AND ORDINARY CONSUMERS AMONG THE PARTICIPANTS, BUT ON THE WHOLE, REPRESENTATION WAS GOOD, COVERING A BROAD MIX OF PERSONS INTERESTED IN THE DRAFT LEGISLATION.

WE STAND TO BE CORRECTED, BUT IT CANNOT BE OFTEN THAT THIS COUNTRY SEES THAT SUCH A DISTINGUISHED AND TALENTED BAND OF PEOPLE FROM DIFFERENT DISCIPLINARY BACKGROUNDS AND EXPERIENCES COME AND HOLD THEMSELVES TOGETHER, QUITE VOLUNTARILY, FOR A WHOLE WEEK OR MORE, ACTIVELY DISCUSSING A SUBJECT OF VITAL IMPORTANCE TO THEMSELVES AND

TO THE NATION. AS IS TO BE EXPECTED, THE SHEER MIX OF TALENT AND EXPERIENCES LED TO A STIMULATING WORKSHOP. IT IS MOST ENCOURAGING TO SEE YOUNG TALENT PITTED AGAINST EXPERIENCE, HOLDING ITS OWN, REFUSING TO BE COWED BY ESTABLISHED REPUTATIONS OR HIGHER OFFICE, EACH MAKING ITS OWN CONTRIBUTION, APPROVING, CRITISING, EXPRESSING CONCERN OR RAISING A QUESTION. THE FUTURE IN THE GAMBIA OF THE PROFESSIONS PRESENT, ESPECIALLY, THE LEGAL PROFESSION SEEM, IN SO FAR AS THAT FUTURE DEPENDS ON PROFESSIONAL TALENT, WELL ASSURED.

THE WORKSHOP WAS OPENED ON MONDAY THE 19TH OF SEPTEMBER, BY SPEECHES GIVEN BY THE HON. MINISTER OF JUSTICE, MR. MBAI, AND BY THE USAID RESIDENT REPRESENTATIVE, MS. ROSE MARIE DEPP; THE ONE, WELCOMING THE PARTICIPANTS TO THE WORKSHOP, THE OTHER, AFTER DESCRIBING THE NATURE OF THE PROJECT, STATING THE POSITION UNDER THE LAWS OF THE UNITED STATES ON USAID PROJECTS AND PROGRAMS, AND THE CONDITIONS FOR CONTINUED SUPPORT FOR SUCH PROJECTS AND PROGRAMS. IN PARTICULAR, SHE DESCRIBED THE FACTORS WHICH MIGHT HELP THE GAMBIA, NOW UNDER MILITARY RULE, IN ARGUING A CASE FOR USAID TO CONTINUE ITS PRESENCE IN, AND ASSISTANCE TO, THE GAMBIA.

THEREAFTER THE BUSINESS OF THE WORKSHOP STARTED WITH A PROGRAMME WHICH DEVOTED TWO WORKING DAYS' SESSIONS.... TO A DISCUSSION OF THE

LARGEST DRAFT BILL, THAT IS BILL ON COMPANIES; ONE DAY EACH FOR THE DRAFT BILLS ON CONTRACTS AND THE CARRIAGE OF GOODS BY SEA; AND HALF A DAY TO THE OTHER BILLS; NAMELY, ON PARTNERSHIP, BUSINESS REGISTRATION, SALE OF GOODS, WHICH WAS A PROPOSED AMENDMENT OF THE EXISTING ACT, HIRE PURCHASE AND FINANCE LEASING AND NEGOTIABLE INSTRUMENTS. EACH OF THE BILLS WAS INTRODUCED BY A CHAIRPERSON, AND THE DISCUSSIONS PUT IN PERSPECTIVE AND LED BY RESOURCE PERSONS, TWO IN EACH CASE, EXCEPT ON THE FEW OCCASIONS, WHEN, DUE TO UNAVOIDABLE CIRCUMSTANCES, THE SLATED RESOURCE PERSONS WERE REDUCED TO ONE.

THE CHAIRPERSONS WERE EXCELLENT, KEEPING THE DISCUSSIONS FLOWING BUT UNDER CONTROL. WITHOUT THEIR ABLE HANDLING OF THE PROCEEDINGS THE WORKSHOP WOULD NOT HAVE BEEN COMPLETED IN THE TIME, NOR WOULD IT HAVE ACHIEVED THE SUCCESS THAT, IN OUR OPINION, IT HAS DONE. FOR THAT, WE ALL OWE THE LEARNED CHIEF JUSTICE HON. JUSTICE B. A. OMOsumN, ON THE COMPANIES BILL; MR. JUSTICE F. CHOMBA OF THE COURT OF APPEAL; ON THE PARTNERSHIP BILL, MR. JUSTICE S. F. NJAI, ON THE CARRIAGE OF GOODS BY SEA BILL; MR. JUSTICE M. O. ADIO ON THE NEGOTIABLE INSTRUMENTS BILL; MR. JUSTICE C. A. OBAYAN, ON THE HIRE PURCHASE AND FINANCE LEASING BILL; THE SOLICITOR GENERAL AND LEGAL SECRETARY, MRS. AMIE BENSoudA ON THE CONTRACT BILL, MR. OUSAINOU DARBOE, LEGAL PRACTITIONER, ON THE BUSINESS REGISTRATION BILL; AND

MR. S. J. B. MAHONEY, LEGAL PRACTITIONER, ON THE SALE OF GOODS (AMENDMENT) BILL, A HUGE DEBT OF GRATITUDE.

OUR RESOURCE PERSONS ALSO DESERVE OUR WARM THANKS FOR THEIR OPENING REMARKS, GIVING AN OVERALL EVALUATION OF EACH BILL, HIGHLIGHTING ITS FEATURES, POINTING OUT ITS DEFICIENCIES, WHICH WE ARE HAPPY TO FIND WERE NOT MANY, AND SETTING THE STAGE FOR THE ENSUING DISCUSSIONS. THE SYSTEM OF RESOURCE PERSONS ALSO PRODUCED AN UNEXPECTED, BUT TO US CONSULTANTS, A WELCOME RESULT, AS IN SOME CASES THOSE WHO HAD BEEN MOST VOCAL IN QUESTIONING ASPECTS OF BILLS WHEN THEY SPOKE FROM THE FLOOR, BECAME THE STOUTEST DEFENDERS AND THE MOST LUCID EXPLAINERS OF THE PROVISIONS OF THE BILLS THEY HAD RESPONSIBILITY FOR AS RESOURCE PERSONS.

WITH THE COMPOSITION OF THE WORKSHOP AS EARLIER INDICATED, THE MOOD OF DISCUSSION WAS BOUND TO BE, AND WAS INDEED, FRIENDLY, COURTEOUS, GOOD HUMOURED, ANIMATED, INFORMED AND INFORMATIVE. THE ATTENDANCE FLUCTUATED FROM THE HIGH WATER MARK ACHIEVED ON THE OPENING DAY, TO THE WEDNESDAY SESSION WHICH DEALT WITH PARTNERSHIP AND BUSINESS REGISTRATION, WHEN UNUSUALLY HEAVY RAINS FROM THE PREVIOUS NIGHT CONTINUING DURING THE DAY RESULTED IN A SUBSTANTIAL REDUCTION IN THE NUMBER OF PARTICIPANTS ATTENDING. BUT EVEN THEN,

THE COMPARATIVE DIMINUTION IN SIZE OF THE PARTICIPANTS WAS COMPENSATED FOR BY THE LIVELINESS OF THE DISCUSSION AND THE TENACITY WITH WHICH VIEWS WERE EXPRESSED. GENERALLY, THE DAILY ATTENDANCE WAS GOOD AND SUFFICIENT TO GENERATE SERIOUS DISCUSSION AND DEBATE. OUR ONE REGRET WAS IN RESPECT OF LAST MONDAY'S SESSION WHEN THE BANKING INSTITUTIONS WHICH HAD BEEN EXPECTED TO SEND REPRESENTATIVES TO SERVE AS RESOURCE PERSONS FAILED TO SHOW UP. THE BILL THEN UNDER DISCUSSION WAS THE NEGOTIABLE INSTRUMENTS BILL, WHICH WAS THOUGHT TO BE THE SPECIAL PRESERVE OF BANKERS. ONE BANKER, HOWEVER, DID TURN UP, CLAIMING TO BE ACTING IN HIS PERSONAL CAPACITY. THAT FACT, THAT HE REPRESENTED NO ONE BUT HIMSELF, DID NOT PREVENT HIM FROM MAKING INCISIVE CONTRIBUTIONS, NOR US FROM DERIVING BENEFIT FROM HIS KNOWLEDGE AND EXPERIENCE. ALTHOUGH COMPARISONS ARE INVIDIOUS, WE ARE FORCED TO CONTRAST THE ABSENCE OF THE BANKERS WITH THE PERFORMANCES OF THE ACCOUNTANTS ON THE COMPANIES BILL AND THE SHIPPING FRATERNITY ON THE CARRIAGE OF GOODS BY SEA BILL. EVEN WHERE THE INTERVENTIONS OF THE ACCOUNTANTS AND SHIPPING EXPERTS WERE NOT PROPOSING AMENDMENTS, THEIR CONTRIBUTIONS PROVIDED A BACKDROP OF INFORMATION AND INSIGHTS WHICH ILLUMINATED THE PROCEEDINGS OF THE WORKSHOP.

WE NOTE WITH RELIEF THAT NO ONE EXPRESSED DISAGREEMENT WITH THE PHILOSOPHY BEHIND THE DRAFTS. ALL AGREED THAT THEY WERE NECESSARY FOR THE REGULATION OF THE BUSINESS SECTOR, ESPECIALLY AS WHEN TAKEN COLLECTIVELY, THEY NOW PROVIDE FOR THE THREE MAIN VEHICLES THROUGH WHICH BUSINESS IS CONDUCTED, NAMELY, LIMITED LIABILITY COMPANIES, PARTNERSHIPS, AND SOLE PROPRIETORSHIPS. FROM EACH VEHICLE, THE NEW SYSTEM, NOW INTRODUCED, WOULD REQUIRE AN APPROPRIATE FORM OF ACCOUNTING, WHICH INCREASES IN DETAIL, WITH AN EXTRA REQUIREMENT OF AN AUDIT, WITH THE SIZE OF THE TURNOVER OF THE BUSINESS. THE AUDIT REQUIREMENT WILL ALSO HAVE TO BE COMPLIED WITH, DEPENDING ON WHETHER OR NOT THE BUSINESS IS INTENDED BY ITS OWNERS TO BE PRIVATE OR TO INVITE THE PUBLIC TO INVEST CAPITAL IN IT. THOSE WHO BELIEVE IN THE FAIRNESS OF TAXATION AND IN THE BROADENING OF THE TAX BASE OUGHT NOT TO BE DISAPPOINTED WITH OUR EFFORTS. THE WORKSHOP RECOGNISED THAT EACH OF THE BILLS, IN ITS SPHERE, THROUGH THE CERTAINTY IT CREATED, THE SIMPLIFICATION IT INJECTED INTO PROCEDURES, AND THE DESIRE OF ITS FRAMERS TO REMOVE UNNECESSARY CLOGS IN OFFICIAL REQUIREMENTS, SHOULD CONTRIBUTE, UPON ENACTMENT, TO THE DEVELOPMENT OF A BUSINESS ENVIRONMENT WHICH WOULD ENCOURAGE INVESTMENT, BOTH DOMESTIC AND FOREIGN.

WE NEED NOT ITEMISE IN DETAIL ALL POINTS MADE AT THE SESSIONS. BUT WE THINK WE SHOULD MENTION THREE EPIC BATTLES WHICH WERE FOUGHT DURING THE WORKSHOP. THEY WERE IMPORTANT FOR THE INTEREST, IN SOME CASES ONE MAY EVEN SAY, THE PASSION, WHICH THEY GENERATED, AND THE STIMULUS WHICH THEY GAVE TO THE PROCEEDINGS OF THE WORKSHOP. THE FIRST WAS THE BATTLE OF THE ACCOUNTANTS IN RESISTING THE INTRODUCTION BY THE COMPANIES BILL OF NO PAR VALUE SHARES. THE SECOND WAS THE BATTLE OF THE LAWYERS, ESPECIALLY THOSE IN PRIVATE PRACTICE, TO HAVE MEMBERS OF THE PROFESSIONS RELIEVED OF THE REGISTRATION OBLIGATION UNDER BOTH THE PARTNERSHIP AND BUSINESS REGISTRATION BILLS. LAST, BUT NOT NECESSARILY THE LEAST, WAS THE OCCASION WHEN ONE YOUNG LADY LAWYER PARTICIPANT TOOK ON THE WHOLE WORKSHOP, JUDGES OF THE HIGHEST COURTS, SENIOR COLLEAGUES FROM THE ATTORNEY-GENERAL'S CHAMBERS, SENIOR LEGAL PRACTITIONERS AND ALL, ON THE ISSUE OF PENALTIES IN RELATION TO A FUNDAMENTAL BREACH OF CONTRACT UNDER THE CONTRACT BILL.

THE FIRST TWO CASES WERE ARGUED WITH THE TENACITY AND DETERMINATION DISPLAYED BY PEOPLE IN RESISTANCE OF AN EXTERNAL ASSAULT ON AN OWN PROPERTY OF GREAT VALUE. THE THIRD BATTLE WAS MORE OVER AN ISSUE OF LAW, FOUGHT WITH ALL THE DEFERENCE TO AGE AND SENIORITY THAT LAWYERS ARE ACCUSTOMED TO, BUT NEVERTHELESS,

WITH AS MUCH DOGGEDNESS AS A FIGHT OF A CONSUMMATE BELIEVER TO PRESERVE A CHERISHED TRUTH.

WE, AS CONSULTANTS, HAD LEAST SYMPATHY THE POSITION OF THE ACCOUNTANTS. UNTIL THE INTERVENTION OF THE FORMER PERMANENT SECRETARY OF THE MINISTRY OF FINANCE, WE HAD SOME SYMPATHY FOR THE LAWYERS' CASE, HOPING FOR A RESOLUTION OF THEIR PROBLEM BY A COMPROMISE WHICH WOULD INSIST ON THEIR REGISTRATION UNDER THE PARTNERSHIP BILL, BUT RELIEVE THEM OF THE DUTY OF REGISTRAND, AND ANNUAL RENEWALS OF CERTIFICATES, UNDER THE BUSINESS REGISTRATION BILL. AFTER ALL, NOBODY ASKS LAWYERS OR OTHER MEMBERS OF THE PROFESSIONS TO PRACTICE IN PARTNERSHIPS. THEY CAN WELL PRACTICE OR EXERCISE THEIR CALLING WITHOUT USING THE PARTNERSHIP MEDIUM OF BUSINESS. IF THEY, OF THEIR OWN VOLITION, DECIDE THAT IT IS IN THEIR BUSINESS INTEREST TO PRACTICE, NOT AS INDIVIDUALS, BUT AS PARTNERSHIPS, THEN, THEY SHOULD BE OBLIGED TO COMPLY WITH THE RULES AND REGULATIONS GOVERNING PARTNERSHIPS FOUND IN A PARTNERSHIP ACT. THE IDEA OF REGULATING THE PARTNERSHIP OF EACH OF THE PROFESSIONS IN ITS OWN GOVERNING LEGISLATION, SUCH AS THE LEGAL PROFESSION ACT FOR LAWYERS, AND THE MEDICAL AND DENTAL ACT FOR DOCTORS AND DENTISTS, APPEARED TO US UNREALISTIC AND UNNECESSARILY CUMBERSOME AND REPETITIOUS. BUT WE THOUGHT THERE WAS SUBSTANCE IN THEIR ARGUMENT

THAT IF ONE WAS REQUIRED TO REGISTER IN ORDER TO PRACTICE ONE'S PROFESSION, WHICH IS A FORM OF BUSINESS, UNDER A SPECIALISED ACT, THEN ONE SHOULD NOT BE REQUIRED TO REGISTER AGAIN UNDER A GENERAL LAW REQUIRING BUSINESSES TO REGISTER BEFORE CARRYING ON BUSINESS. IT WAS, HOWEVER, POINTED OUT TO THE GROUP BY THE FORMER PERMANENT SECRETARY THAT WHETHER ONE WAS REQUIRED TO REGISTER ONCE OR SEVERAL TIMES BEFORE CARRYING ON A PARTICULAR BUSINESS WAS A MATTER OF POLICY FOR THE GOVERNMENT. THE EXAMPLE WAS GIVEN OF A COMPANY WHICH WAS REQUIRED TO BE REGISTERED AS A COMPANY UNDER THE COMPANIES ACT AND AGAIN AS A BUSINESS UNDER THE BUSINESS REGISTRATION ACT BEFORE DOING ITS BUSINESS. THE FORMER PERMANENT SECRETARY SAID THAT HE WAS AWARE THAT THE DECISION, THAT LAWYERS SHOULD NOT BE EXEMPTED FROM THE REQUIREMENT TO REGISTER UNDER THE EXISTING BUSINESS REGISTRATION ACT WAS, A DELIBERATE DECISION OF GOVERNMENT. WITH THAT WE HAVE NO QUARREL, EVEN THOUGH WE THINK THAT THE ANALOGY OF THE COMPANY'S OBLIGATION TO REGISTER UNDER THE TWO ACTS REFERRED TO IS NOT QUITE APPROPRIATE. IT IS A WELL KNOWN FACT THAT COMPANIES NEED NOT NECESSARILY BE INCORPORATED TO DO BUSINESS, AND IF THEY ARE NOT, THEN THEIR OBLIGATION TO REGISTER SHOULD BE CONFINED TO REGISTRATION UNDER THE COMPANIES ACT ALONE. OUR ADVICE TO THE LAWYERS IS, READ THE BUSINESS REGISTRATION BILL AGAIN, BECAUSE ONE IMPORTANT ELEMENT FUELLING THEIR CONCERN IS ADDRESSED THEREIN.

AS SAID EARLIER, WE HAD LEAST SYMPATHY FOR THE FIGHT OF THE ACCOUNTANTS TO RESIST THE INTRODUCTION OF NO PAR VALUE SHARES. THE ACCOUNTANTS THEMSELVES ADMITTED THAT NO PAR VALUE SHARES MORE TRULY REFLECTED THE MARKET VALUE OF SHARES. THEY ACCEPTED THAT THE MODERN TREND IN COMMONWEALTH COUNTRIES WAS TO ADOPT THE NO PAR VALUE SHARE CONCEPT. BUT THEIR ORIGINAL POSITION WAS THAT THE CONCEPT WOULD ENTAIL THE RE-WRITING OF COMPANIES' BOOKS IN A MANNER DIFFERENT FROM ACCOUNTING PRACTICES IN THE UNITED KINGDOM FROM WHICH THEY DREW INSPIRATION. WHAT WOULD HAPPEN TO THE "SHARE PREMIUM" ON THE ISSUE OF SHARES, AND TO THE "SHARE PREMIUM ACCOUNT"? THEY ASKED. TRUE, THE CAPITAL OR VALUE OF THE COMPANY WOULD NOT BE DIMINISHED OR AFFECTED IN ANYWAY, BUT IF THE PROPOSED CONCEPT WERE TO BE ADOPTED, TERMINOLOGY MORE AKIN TO THAT USED IN UNITED STATES ACCOUNTS WOULD HAVE TO BE USED TO EXPLAIN MATTERS, AND THE GAMBIAN ACCOUNTANTS' CLOSE RELATIONSHIP WITH THE ACCOUNTING PRACTICES OF THE UNITED KINGDOM, FROM WHERE MOST INVESTMENT TO THE GAMBIA CAME, WOULD BE BROKEN.

WE WERE NOT IMPRESSED BY THE REASONS ADVANCED. AS WE OBSERVED THE CONDUCT OF THE DEBATE, WE WERE REMINDED OF THE RESISTANCE MOUNTED BY LAWYERS IN GHANA SOME TIME AGO AGAINST THE INTRODUCTION OF A NEW EVIDENCE CODE. THE CODE REVOLUTIONISED THE LAW OF EVIDENCE AS

RECEIVED FROM ENGLAND AND PRACTISED FOR A CENTURY IN GHANA, IN THAT, EXCEPT IN A LIMITED NUMBER OF SPECIFIED CASES, IT ABOLISHED THE HEARSAY RULE, AND MADE EVIDENCE FROM ALL SOURCES ADMISSIBLE, LEAVING IT TO THE JUDGE TO DECIDE WHAT WEIGHT TO ATTACH TO THE PARTICULAR ITEM OF EVIDENCE ADDUCED. AS THE ARGUMENT UNFOLDED, IT SUDDENLY STRUCK THE PROMOTERS OF THE CODE THAT THE LAWYERS WERE FIGHTING, NOT FOR THE PRESERVATION OF AN ANCIENT WELL-TRIED AND MUCH LOVED PRINCIPLE, BUT, AGAINST BEING OBLIGED TO LEARN AFRESH A NEW LAW OF EVIDENCE. OUR FRIENDS, THE ACCOUNTANTS, WOULD, WE HOPE, FORGIVE US FOR THINKING THAT THEIR FIGHT TO RETAIN THE CONCEPT THAT A SHARE MUST HAVE A PAR VALUE OR ELSE DISASTER WOULD ENSUE, SOUNDED VERY MUCH LIKE A BATTLE WE HAD WITNESSED BEFORE, AND THAT TO US, IT REALLY APPEARED LIKE A FIGHT TO FREE THEMSELVES FROM THE BURDEN OF LEARNING A NEW SYSTEM OF WRITING THEIR ACCOUNT BOOKS. IT IS OUR HUMBLE BELIEF THAT ACCOUNTANTS SHOULD ADAPT TO THE LAW IN FORCE RATHER THAN THE LAW BEING TAILORED TO SUIT THE PRACTICES OF THE PROFESSION. THE ARGUMENT THAT LINKS WOULD BE BROKEN WITH THE PROFESSION IN THE UNITED KINGDOM IS UNDERMINED BY THE FACT THAT THE PROFESSION IN THE UNITED KINGDOM MANAGES TO UNDERSTAND ACCOUNTS PREPARED ACCORDING TO THE STANDARDS OF THE UNITED STATES AND OF THE COMMONWEALTH COUNTRIES WHICH HAVE NO PAR VALUE SHARES. THERE SHOULD, THEREFORE, BE NO DIFFICULTY FOR ACCOUNTANTS IN THE

UNITED KINGDOM IN UNDERSTANDING ACCOUNTS PREPARED IN THE GAMBIA BASED ON NO PAR VALUE PRINCIPLES. BESIDES, IT WOULD COME AS A SURPRISE TO US IF IT WERE THE POLICY OF THE GAMBIA TO LIMIT ITS FUTURE INVITATIONS FOR INVESTMENT, SOLELY, OF EVEN PRINCIPALLY, TO INVESTMENT EMANATING FROM THE UNITED KINGDOM.

FOR THE INDIVIDUAL CRUSADE OVER THE RELATIONSHIP BETWEEN AN AGREED PENALTY IN A CONTRACT WITH A FUNDAMENTAL BREACH OF THAT CONTRACT WHICH PUTS THAT CONTRACT TO AN END, THUS, ENTITLING A JUDGE TO AWARD DAMAGES OVER AND ABOVE THE PENALTY AGREED, WE HAVE NOTHING BUT ADMIRATION AND RESPECT. THE COURAGE, DETERMINATION AND ABILITY TO DEPLOY LEGAL SKILLS EXHIBITED BY ITS PROPONENT, HAD US TRANSFIXED WITH EXCITEMENT.

IN THE END, BOTH THE FIGHT OF THE ACCOUNTANTS AND THAT OF OUR ADMIRER COLLAPSED. THE ACCOUNTANTS' FIGHT ENDED WHEN AFTER THE CONSULTANTS HAD EXERCISED THEIR RIGHT OF REPLY ON THE COMPANIES BILL, THE CHAIRMAN OF THE ACCOUNTANTS COUNCIL INTERVENED TO SAY THAT THERE SHOULD BE NO ANXIETY OVER THE ACCOUNTANTS ADOPTING ACCOUNTING PRACTICES WHICH CONFORMED TO A NO PAR VALUE SHARE SYSTEM; THAT IN HIS VIEW THE WHOLE ARGUMENT WAS OVER SEMANTICS; AND THAT HE EXPECTED TO PERSUADE THE ACCOUNTANTS TO

THAT VIEW. THAT MAGNANIMOUS CONCESSION DREW A ROUND OF APPLAUSE FROM PARTICIPANTS AT THE WORKSHOP. THE ONE- PERSON CRUSADE COLLAPSED NOT AFTER, BUT DURING THE COURSE OF THE CONSULTANTS' REPLY. THE CRUSADER THEN INTERVENED WITH THE STATEMENT THAT THE WORKSHOP SHOULD NOT THINK THAT SHE CONTINUED TO OPPOSE THE OPINION OF THE OVERWHELMING MAJORITY, BECAUSE DURING THE LUNCH BREAK SHE HAD BEEN PERSUADED THAT HER VIEW WAS WRONG. THERE COULD NOT, IN OUR OPINION, HAVE BEEN A MORE HANDSOME CONCESSION. WE HAVE ALREADY NARRATED THE MANNER IN WHICH THE LAWYERS' FIGHT WAS GIVEN ITS QUIETUS, AND WILL NOT EXPAND ON IT FURTHER.

WE HAVE TAKEN SO MUCH TIME OVER THESE THREE DEBATES, NOT BECAUSE THEY WERE OVER THE MOST IMPORTANT ISSUES RAISED, BUT BECAUSE THEY ILLUSTRATE THE SPIRIT OF THE DISCUSSIONS AND DEBATES IN THEIR HIGHEST FORM, AND CAPTURE THE MOOD IN WHICH THEY WERE CONDUCTED. WHERE OPINIONS WERE STRONGLY HELD, THEY WERE VIGOROUSLY PRESENTED, ABLY ARGUED AND PERSISTED IN UNTIL A POSITION BECAME UNTENABLE. WHERE CONCESSIONS HAD TO BE MADE, THEY WERE GRACIOUSLY PREFERRED, HOWEVER LONG THE TIME DURING WHICH THE POINT YIELDED HAD BEEN MAINTAINED. WHERE A TACTICAL WITHDRAWAL BECAME NECESSARY, THAT MANOEUVRE WAS ADOPTED. BUT WHERE A PARTICIPANT WAS NOT PERSUADED

BY THE SOUNDNESS OF CONTRARY OPINION, THE TWO COMPETING OPINIONS WERE LEFT TO THE JUDGEMENT OF THE REST OF US TO ASSESS.

WE, AS CONSULTANTS, LEARNT A GREAT DEAL FROM THE PROCEEDINGS. THERE WERE SEVERAL SUGGESTIONS PUT FORWARD, BOTH ON SUBSTANCE AND ON FORM, WHICH WE READILY AGREED TO. THESE SUGGESTIONS WILL BE REFLECTED IN OUR AMENDMENTS. THERE WERE SUGGESTIONS WHICH WE FELT UNABLE TO ACCEPT. IN EVERY SUCH CASE, WE SAID SO, AND EXPLAINED WHY, WHEN WE WERE CALLED UPON AT THE END OF THE DISCUSSION OF A BILL, AS BECAME THE PROCEDURE ADOPTED, TO REPLY TO THE GENERAL DEBATE. AND, OF COURSE, WHENEVER WE WERE STUMPED BY A QUESTION, WHICH WAS NOT OFTEN BUT DID HAPPEN AT LEAST ONCE WHEN WE WERE ASKED, INCIDENTALLY BY THAT SAME LADY CRUSADER, FOR THE RATIONALE FOR OUR DECISION TO ELEVATE THE STATUS OF A VOID CONTRACT TO THAT OF A VOIDABLE CONTRACT IN ONE INSTANCE WHEN THE SALE OF GOODS (AMENDMENT) BILL WAS BEING DISCUSSED, WE ASKED TO BE GIVEN TIME TO CONSIDER THE MATTER FURTHER. NO DOUBT OUR RESPONSES WOULD HAVE BEEN MORE READY, FULLER, AND MORE FOCUSED, IF WE HAD HAD MORE TIME TO CONSIDER QUESTIONS IN ADVANCE. BUT THE UNAVOIDABLE TIGHTNESS OF THE WORKSHOP PROGRAMME, COULD NOT, UNDERSTANDABLY, PERMIT THIS.

WE WERE FILLED WITH NOSTALGIA WHEN PARTICIPANTS RELATIVELY FRESHER FROM LAW SCHOOL REMINDED US OF THE OLD LANDMARK CASES WE ALL LEARNT ABOUT AT SCHOOL: HADLEY V. BAXENDALE; DICKINSON V. DODDS RANG THROUGH THE HALL, CLANGING THEIR ANCIENT CHAINS; AND WE WERE DELIGHTED BY THE RECALL OF THOSE LATIN PHRASES WE HAD ALMOST FORGOTTEN, LIKE NON EST FACTUM, AND LOCUS CLASSICUS, WHICH FEATURED IN THE CONTRIBUTIONS. AND WHEN IN ONE INSTANCE IT WAS POINTED OUT THAT WE HAD WRITTEN A TEXTBOOK ON A SUBJECT, WE TOOK IT AS A COMPLIMENT, HAVING REGARD TO THE NATURE OF THE SUBJECT, RATHER THAN A CRITICISM.

ONE ISSUE ON WHICH WE FEEL SOMEWHAT RELUCTANT TO ADOPT A DOGMATIC STANCE IS THAT OF FEES AND PENALTIES PROVIDED FOR IN THE LEGISLATION. ON OCCASION, IT WAS POINTED OUT BY PARTICIPANTS THAT THE FEES OR MONETARY PENALTIES WE HAD SET WERE TOO LOW, OR THAT WE HAD NOT SET ANY AT ALL. WHERE WE HAD NOT SET ANY FEES OR PENALTIES AT ALL, THAT WAS BECAUSE WE FELT OURSELVES AT A LOSS TO SUGGEST AN APPROPRIATE FIGURE AND WE WANTED THIS WORKSHOP, OR THE APPROPRIATE GAMBIAN AUTHORITIES, TO FIX IT. ALTHOUGH GOVERNMENTS DO NOT OFTEN CONFORM TO THE PURPOSES THAT WE HAVE PUT FORWARD, FEES, IN OUR OPINION, ARE PRIMARILY EXACTED IN ORDER TO MAINTAIN THE ORGANISATION PROVIDING SERVICES IN GOOD RUNNING ORDER. BUT, IT IS NOT UNKNOWN FOR

GOVERNMENTS TO USE THE IMPOSITION OF FEES AS A DEVICE FOR RAISING GENERAL REVENUE. ON THE OTHER HAND, PENALTIES, LIKE ALL PUNISHMENT, ARE IMPOSED TO DETER PROSCRIBED CONDUCT AND TO ENCOURAGE COMPLIANCE. WHATEVER THE PURPOSES TO WHICH FEES AND PENALTIES ARE PUT, THEY SHOULD BE REALISTIC WITHIN THE CONTEXT OF THE TIME WHEN PAYMENT IS TO BE MADE. FAR TOO OFTEN, FEES AND PENALTIES ARE FIXED BY LEGISLATION AND NEVER REVISED. IN DUE COURSE, THEY BECOME MUCH MORE COSTLY TO COLLECT OR ENFORCE THAN TO SIMPLY IGNORE. WE THINK THAT THERE SHOULD ALWAYS BE IN PLACE A MECHANISM FOR PERIODIC REVIEW OF FEES AND MONETARY PENALTIES FIXED BY STATUTE. WE ARE, IN THIS REGARD, REMINDED OF THE CASE OF THE GHANA COMPANIES CODE, WHICH WAS ACCLAIMED WHEN IT WAS ENACTED IN 1963 AS THE MOST PROGRESSIVE IN THE COMMONWEALTH. IT COULD NOT BE OTHERWISE, AS IT WAS DRAFTED BY PROFESSOR L. C. B. GOWER, AT THAT TIME THE MOST RADICAL AUTHORITY ON COMPANIES IN ENGLAND, BUT WHOSE VIEWS, EXCEPT ON SHARES OF NO PAR VALUE WHICH FOR OTHER REASONS THE UNITED KINGDOM HAS NOT ADOPTED, ARE TODAY PART OF THE ACCEPTED DOGMA ON COMPANIES. INDEED, UNLESS YOU ARE OF A CERTAIN MATURE VINTAGE, YOU PROBABLY WOULD NOT KNOW NOR EVER HAVE HEARD OF GOWER AS A RADICAL, CRYING IN THE WILDERNESS. HE RECOMMENDED IN HIS REPORT, A PERIODIC REVIEW OF FEES AND PENALTIES. BUT THE RECOMMENDATION WAS NOT ACTED UPON. AT THE TIME OF THE ENACTMENT OF THE CODE FIXING THE

FEEES AND PENALTIES, THE GHANA CURRENCY, THE CEDI, WAS AT PAR WITH THE UNITED STATES DOLLAR, THAT IS, THEY WERE CONVERTIBLE ONE FOR ONE. TODAY THE RATE OF EXCHANGE IS DCOMPLETELY OUT OF ALIGNMENT WITH REALITY. WITHOUT REVISION THE FEEES AND PENALTIES HAVE BECOME DERISORY. THAT SHOULD NEVER BE ALLOWED TO HAPPEN. THE FACTORS TO BEAR IN MIND IN FIXING OR REVISING FEEES IS THAT, EVEN IF THEY ARE IMMEDIATELY RETIRED INTO GOVERNMENT CHEST AS GENERAL REVENUE, THEY SHOULD HAVE SOME CORRELATION WITH THE COST OF SERVICES PROVIDED BY THE COLLECTING AGENCY, OTHERWISE GOVERNMENT WOULD BE SUBSIDISING ITS SERVICES FROM REVENUE DERIVED FROM OTHER SOURCES. WITH RESPECT TO PENALTIES, THE OBJECTIVE SHOULD BE THAT THEY SHOULD SERVE AS A SUFFICIENT DETERRENT AND PUNISHMENT FOR THE PROSCRIBED ACT OR ACTIVITY, WITHOUT BEING OPPRESSIVE. WHENEVER FEEES AND PENALTIES GET OUT OF ALIGNMENT WITH THESE FACTORS, IT IS TIME FOR CHANGE. AND A MECHANISM TO EFFECT THIS CHANGE ON A CONTINUOUS BASIS SHOULD BE ESTABLISHED.

PERMIT US TO REVISIT THE ISSUE OF POLICY DECISIONS. OUR DESIRE TO DO SO IS DUE TO THE FACT THAT AFTER THE DISCUSSION OF THE CONTRACT BILL AND THE CLOSE OF THE CONSULTANTS' REPLY ON THE USE AND LOCATION OF THE ILLUSTRATIONS PROPOSED FOR THE PROVISIONS, WE OVERHEARD A REMARK THAT WHETHER OR NOT THE ILLUSTRATIONS WERE RETAINED, AND IF SO,

WHERE, WAS A MATTER OF POLICY FOR THE GOVERNMENT. WE THINK THAT IS RIGHT. AND ORDINARILY, WE WOULD NOT HAVE REFERRED TO THIS REMARK AGAIN. WE, HOWEVER, DO SO, BECAUSE IT AFFORDS US THE OPPORTUNITY TO REDEFINE OUR ROLE AS CONSULTANTS AS WE SEE IT. AS CONSULTANTS, WE DO NOT CONSIDER THAT THE DRAFTS WE LEAVE BEHIND OBLIGES THE GOVERNMENT OF THE GAMBIA TO ENACT THE BILLS AS DRAFTED, OR AT ALL. TO THINK OTHERWISE WOULD BE PRESUMPTUOUS ON OUR PART. WE SINCERELY HOPE THAT THE BILLS WILL BE ENACTED INTO LAW. BUT THAT IS ONLY THE NATURAL SENTIMENT OF PEOPLE WHO HAVE LABOURED TO ACHIEVE A RESULT WHICH REQUIRES FURTHER ACTION BY OTHERS FOR IMPLEMENTATION. WE DO NOT DENY THAT WE HOLD SUCH SENTIMENT. BUT WE FULLY EXPECT THAT THE MINISTRY OF JUSTICE MAY WANT TO MAKE ITS OWN CHANGES. THAT IS ITS PRIVILEGE AND ITS RIGHT. OUR DUTY IS TO MAKE RECOMMENDATIONS WHICH MAY OR MAY NOT BE ACCEPTED. GOVERNMENT'S RIGHT IS TO DECIDE. WE MERELY COMMEND OUR EFFORTS TO GOVERNMENT WITH FULL KNOWLEDGE OF THAT FACT. THE CLAIM OF GOVERNMENT POLICY PRIVILEGE SHOULD NOT IN OUR VIEW, BE USED AS A MEANS OF WITHDRAWING AN ISSUE FROM DEBATE. AS WAS SAID BY MR. MAHONEY WHEN CHAIRING THE SESSION ON THE SALE OF GOODS (AMENDMENT) BILL, DURING WHICH GOVERNMENT POLICY WAS AGAIN RAISED, POLICY IS NOT LAW. IF LAW TODAY IS NOT SET IN STONE OR UNALTERABLE LIKE THE PROVERBIAL LAWS OF THE MEDES AND THE PERSIANS, BUT MAY BE CHANGED IN ACCORDANCE WITH

PROCEDURES LAID DOWN, HOW MUCH MORE POLICY WHICH CAN BE CHANGED THROUGH LESS FORMAL CHANNELS? IF POLICY IS TO REMAIN FOREVER SACRED AND SACROSANCT, GOVERNMENTAL ADMINISTRATION WOULD BECOME OSSIFIED. WE DO NOT CLAIM THAT WE ARE ENTITLED TO DETERMINE POLICY, AND NOTHING THAT WE SAY OR DO SHOULD BE TAKEN AS INTENDED TO USURP THE POWERS AND PRIVILEGES OF GOVERNMENT IN THAT RESPECT.

WHILE ON OUR UNDERSTANDING OF OUR ROLE, WE SHOULD MENTION THAT WE WERE TOLD BY OUR EMPLOYER THAT THE EXPECTATION OF USAID WAS THAT WE SHOULD PRODUCE THE AMENDMENTS AGREED ON AT EACH DAY'S SESSION AT THE END OF THAT DAY. WE HAVE NOT DONE SO, BECAUSE APART FROM THE AMENDMENTS WHICH REQUIRED THE INSERTION OR DELETION OF A WORD OR A PHRASE, THE MAJORITY OF AMENDMENTS WERE PROPOSED IN THE FORM OF IDEAS; THE EXACT WORDING TO BE USED TO TRANSLATE THOSE IDEAS INTO ACCEPTABLE DRAFT AMENDMENTS WERE NOT, EXCEPT IN ONE CASE, GIVEN. AS A GENERAL RULE, INSTANT DRAFTING, BY WHICH WE MEAN DRAFTING ON ONE'S FEET OR AS ONE GOES ALONG, IS BAD. APART FROM ENACTMENTS REQUIRED AS A MATTER OF URGENCY, WHICH ARE USUALLY COMPARATIVELY SHORT, THE TYPE OF DRAFT STATUTES WE HAVE BEEN DEALING WITH, WHICH IN MOST CASES ARE QUITE LARGE, AND CRAFTED, WITH THE AIM OF UNIFORMITY OF WORDING AND WITH A CERTAIN BALANCE IN THE PROVISIONS, REQUIRES MORE TIME IN PHRASING INSERTIONS OF NEW IDEAS OR IN

CALCULATING THE EFFECT OF A DELETION ON THAT UNIFORMITY AND CONSEQUENTIAL BALANCE OF THE DRAFT. WE ARE SURE THAT THE MINISTRY OF JUSTICE APPRECIATES THIS POINT. AND THE CONTRACT UNDER WHICH WE ARE OPERATING, ITSELF, GIVES US TIME AFTER THE WORKSHOP TO MAKE THE AMENDMENTS. AS OUR TEAM IS EXPECTED TO WORK CLOSELY WITH THE MINISTRY ON THESE DRAFTS, THE MANNER IN WHICH WE WOULD DEAL WITH THE AMENDMENTS, THE ESSENCE OF WHICH WILL BE REFLECTED IN THE WORKSHOP REPORT WOULD, WE HOPE, BE ACCEPTABLE TO THE MINISTRY. FROM THE REPLIES THAT WE GAVE DURING THE SESSIONS, PARTICIPANTS WOULD REALISE THAT WE TOOK A CAREFUL NOTE OF SUGGESTIONS. BUT WE WOULD HAVE FELT EVEN MORE CONFIDENT IF OUR NOTES HAD BEEN BACKED UP BY A RECORDING OF THE PROCEEDINGS. SUCH RECORDING, HOWEVER, IS EXPENSIVE AND DEPENDS ON MONEY WHICH IS NOT AVAILABLE IN THE WORKSHOP BUDGET.

APART FROM THAT, WE ARE MOST IMPRESSED WITH THE ORGANISATION OF THE WORKSHOP. THE ARRANGEMENTS AND DECORATION OF THE ROOM, THE PUBLIC ADDRESS SYSTEM, THE SECRETARIAL BACK-UP, THE REFRESHMENTS AND LUNCHES, HAVE BEEN EXCELLENT. FOR THAT WE HAVE OUR EMPLOYER, HERON LIMITED, ESPECIALLY ITS MANAGING DIRECTOR, MR. MOUSA BALA GAYE, AND HIS SUPPORTING CAST, TO THANK. FOR THE FIRST TIME DURING THE EXECUTION OF THESE PROJECTS, THE FINANCIAL SPONSORS, USAID, HAVE

SELECTED A GAMBIAN CONTRACTOR TO ORGANISE AND EXECUTE A CONTRACT UNDER THE PROGRAM, THUS ENABLING THE CONSULTANTS, THE MINISTRY AND PARTICIPANTS TO REACH THE CONTRACTOR'S PERSONNEL WITH SUGGESTIONS AND REQUESTS ON A DAILY BASIS, AS THEY ARISE. FOR US THE ADVANTAGES OF THIS CHOICE HAVE BEEN ENORMOUS. FOR THE FIRST TIME SINCE WE BEGAN WORK ON THE USAID FUNDED PROJECTS IN THE GAMBIA, WE HAVE HAD THE PRIVILEGE OF ACTUALLY SETTING EYES ON OUR EMPLOYER, HAD DAILY CONTACT WITH ITS AGENTS, INSTEAD OF COMMUNICATING WITH THE EMPLOYER, LONG DISTANCE, ONLY THROUGH LETTERS, TELEPHONES AND FAXES. THE DAILY INTERACTION BETWEEN MR. BALA-GAYE AND OURSELVES HAS BEEN CLOSE, AND THE FACT THAT HE HIMSELF HAS BEEN OBSERVING THE PROGRESS OF THE WORKSHOP AND WHAT NEEDS TO BE DONE TO KEEP IT ON COURSE, HAS BEEN OF IMMENSE BENEFIT NOT ONLY TO OURSELVES BUT TO THE WORKSHOP ITSELF. INDEED, WE HAVE OBTAINED AN ADDITIONAL BENEFIT, IN THAT, MR. BALA-GAYE, FOR A LONG TIME A MEMBER, ENDING AS A PERMANENT SECRETARY, OF THE MINISTRY OF FINANCE, HAS SAT IN AND MADE VALUABLE PERSONAL CONTRIBUTIONS TO THE DISCUSSIONS OF THE WORKSHOP. WE CONGRATULATE AND THANK HIM AND HIS SUPPORTING STAFF.

NOW THAT THE WORKSHOP IS OVER, THE QUESTION IS WHAT NEXT? WE WOULD IN ACCORDANCE WITH THE CONTRACT UNDER WHICH WE OPERATE, MAKE THE NECESSARY AMENDMENTS AND FORWARD THE CLEANED-UP BILLS TOGETHER

WITH CONSEQUENTIALLY AMENDED EXPLANATORY NOTES TO THE MINISTRY OF JUSTICE FOR APPROVAL. WE EXPECT THAT AT THAT STAGE, THE MINISTRY WOULD CONSIDER THE BILLS IN THE LIGHT OF ITS OWN DRAFTING STYLE, WHAT HAS EMERGED FROM THE WORKSHOP, AND GENERALLY, OF CONSIDERATIONS OF THE BEST NEEDS AND INTERESTS OF THE GAMBIA. IT IS THEN, THAT WE EXPECT THAT CONSIDERATIONS OF PUBLIC POLICY WOULD BE APPLIED. WE HOPE THAT THESE CHANGES WOULD NOT BE TOO MANY, BECAUSE, BY KIND PERMISSION OF THE MINISTRY AND USAID, WE WERE LUCKY TO HAVE THE PERSONAL ASSISTANCE AND COOPERATION OF THE LEGAL DRAFTSMAN OF THE GAMBIA HIMSELF, MR. CHERNO JALLOW, IN THE DRAFTING OF THESE BILLS. HIS IMMENSE CONTRIBUTION IS REFLECTED IN THE FACE, AND IN THE PHILOSOPHY, OF THE BILLS. WE OWE HIM A GREAT DEBT OF THANKS FOR HIS COOPERATION, INTEREST, INVOLVEMENT AND ENCOURAGEMENT. HIS ORGANISATION OF THE FORMAT AND PERSONNEL FOR THIS WORKSHOP, AND THE SUCCESS WE BELIEVE IT HAS ACHIEVED, A TRIBUTE TO HIS COMMITMENT. WE ARE PROUD TO BE ASSOCIATED WITH HIM.

IF THE BILLS ARE APPROVED, WITH WHATEVER CHANGES THE MINISTRY THINKS FIT, IT IS OUR FERVENT PRAYER THAT THEY BE TRANSLATED INTO LAW IN THE SHORTEST POSSIBLE TIME. THE MOMENTUM OF LAW REFORM MUST BE CONSCIOUSLY MAINTAINED, OTHERWISE REFORM IDEAS AND PROJECTS TEND TO BE SHELVED. PLEASE PERMIT US TO ILLUSTRATE THIS POINT BY THE RECENT HISTORY OF THE PROJECT TO CODIFY THE ENGLISH LAW OF CONTRACT.

WHEN THE ENGLISH LAW COMMISSION WAS SET UP IN 1965, AND IT ANNOUNCED ITS FIRST PROGRAMME, THE VERY FIRST ITEM IN IT WAS THE LAW OF CONTRACT. MR. HARVEY MCGREGOR, Q.C., D.C.L., S.J.D., WARDEN OF NEW COLLEGE, OXFORD, WAS ASKED AT THE BEGINNING OF 1966 TO PREPARE A DRAFT CODE, TO SERVE AS A BASIS FOR DISCUSSION. A LITTLE LATER THE SCOTTISH LAW COMMISSION BECAME INVOLVED IN THE PROJECT. THE PREPARATION OF THE DRAFTS, DISCUSSIONS WITH COMMISSIONERS AND OUTSIDE EXPERTS LASTED SIX YEARS. THEN THE SCOTTISH LAW COMMISSION BECAME UNHAPPY ABOUT THE CODE AND EVENTUALLY WITHDREW FROM THE PROJECT, LEAVING THE RESPONSIBILITY FOR IT WITH THE ENGLISH LAW COMMISSION. THE ENGLISH LAW COMMISSION THEREAFTER ANNOUNCED THAT IT WOULD FROM THEN ON DEAL WITH THE LAW OF CONTRACT NOT AS A WHOLE BUT IN PARTS. THE CODE DRAFTED BY MR. HARVEY MCGREGOR WAS NEVER PUBLISHED. IT WAS NEXT RESURRECTED IN 1990 AT A CONFERENCE OF ACADEMIC LAWYERS FROM MEMBER STATES OF THE EUROPEAN UNION, IN PAVIA, ITALY, WHICH WAS INVESTIGATING THE POSSIBILITY OF A COMMON LAW OF CONTRACT FOR THE UNION. IT IS NEARLY THIRTY YEARS NOW. THE PROJECT TO PRODUCE AN ENGLISH CODE OF CONTRACT LAW IS NOWHERE NEAR FRUITION, AND MAY NEVER BE ACHIEVED.

THE GAMBIA, IN OUR HUMBLE OPINION, HAS NEITHER THE TIME NOR THE RESOURCES TO INDULGE IN THAT TYPE OF PROTRACTED EXERCISE IN

LEGISLATIVE REFORM. WE SUBMIT THAT ONCE THE FINAL TEXTS ARE AGREED BY GOVERNMENT, THE BEST COURSE WOULD BE FOR STEPS TO BE TAKEN TO ENACT THEM.

WE HOPE THAT SOME OF YOU PRESENT WILL NOW TAKE THE OPPORTUNITY OFFERED BY THESE BILLS AND ACCOMPANYING LIBRARY AND FIELD STUDY REPORTS AND EXPLANATORY NOTES AS A BASIS FOR WRITING SUITABLY COMPREHENSIVE MONOGRAPHS ON THESE LAWS; WHAT THEY COVER, AND THE DEPARTURES, IF ANY, MADE FROM THE COMMON LAW OR PREVIOUS EXISTING LEGISLATION IN THE AREA FOR THE GAMBIA. OUR FIRST REPORT MADE RECOMMENDATIONS FOR SUCH MONOGRAPHS, WHICH BECAUSE OF GENERAL INACCESSIBILITY OF REQUISITE TEXTBOOKS ON A SUBJECT AT TIMES, MADE SUCH MONOGRAPHS NECESSARY AND DESIRABLE FOR SERIOUS USERS OF THE LAW. WE RECEIVED SUPPORT FOR THE MONOGRAPHS, BUT NOT THE MONOGRAPHS ENVISAGED. NEVERTHELESS, WE FELT GRATIFIED AND TOUCHED TO HEAR ONE OF THE DISTINGUISHED JUDGES GRACING THIS WORKSHOP THAT HE HAD USED OUR SIMPLE MONOGRAPHS WRITTEN FOR THE FIRST BATCH OF LEGISLATION IN ONE OF HIS JUDGEMENTS. WE WISH WE COULD HAVE ENRICHED HIS JUDGEMENT MORE.

AFTER MAKING THE NECESSARY AMENDMENTS TO THE DRAFT BILLS, OUR CONTRACT CALLS FOR MONOGRAPHS ON THE BILLS. WE SHALL PROVIDE THEM.

BUT WITH THE BEST WILL IN THE WORLD, WE CANNOT PRODUCE MONOGRAPHS OF THE COVERAGE, STANDARD AND QUALITY WHICH THESE BILLS OR THEIR SERIOUS USERS IN OR OUTSIDE THE GAMBIA, DESERVE, IN THE TIME ALLOWED US. EVERYBODY WILL RECALL THE SIZE OF THE VOLUME OF OUR DOCUMENTS ON THE COMPANIES BILL. IN CASE THE WORKSHOP HAS FORGOTTEN, WE HAVE BROUGHT OUR COPY TODAY TO REFRESH ITS MEMORY. THE BILL ITSELF IS 284 PAGES, WITHOUT COUNTING THE PAGES OF EXPLANATORY NOTES, THE BOOK STUDY AND FIELD RESEARCH REPORTS. THE DRAFT COMPANIES BILL TAKES A TOTALLY NEW AND DIFFERENT APPROACH TO THE LAW IN EXISTENCE TODAY. WE CANNOT WRITE A MONOGRAPH OF THE SIZE, DEPTH AND QUALITY WE HAD IN CONTEMPLATION WHEN WE FIRST MADE THE PROPOSAL FOR MONOGRAPHS IN THE FIVE DAYS OF WRITING AND ONE DAY OF EDITING TIME ALLOWED US UNDER THE CONTRACT. INDEED, WE BELIEVE, NOBODY CAN. THE SAME APPLIES TO THE REST OF THE BILLS, WHICH, WITH THE EXCEPTION OF THE CONTRACT BILL, HAVE BEEN ALLOCATED EVEN LESS TIME, BY THE CONTRACT. THAT IS WHY WE EXTEND THIS INVITATION AND CHALLENGE TO YOU TO WRITE DESERVING MONOGRAPHS FOR THE LEGISLATION WHEN ENACTED IN YOUR OWN TIME.

IT HAS BEEN SUGGESTED BEFORE, AND WE RE-ITERATE THAT SUGGESTION, THAT AFTER EXPERIENCING THE OPERATION OF ALL THESE LAWS OVER A PERIOD OF TIME, SAY FIVE YEARS, THERE SHOULD BE A REVIEW TO SEE WHAT

IMPROVEMENTS COULD BE EFFECTED TO REDRESS SHORTCOMINGS AND EXCESSES. THE SUGGESTION WAS FIRST MADE AFTER THE FIRST WORKSHOP ON THE THREE PIECES OF LEGISLATION SUPPORTED BY USAID IN 1992, WHEN AMENDMENTS WERE PROPOSED AFTER ENACTMENT OF THE LEGISLATION. THE CONSENSUS ARRIVED AT AT THE WORKSHOP, UPON THE SUGGESTION OF THE THEN MINISTER OF JUSTICE, WAS, LET US GIVE THE ACTS A TRY AS THEY STAND FOR SOMETIME BEFORE AMENDMENT, BECAUSE IT IS AFTER SUCH TRIAL THAT WE WOULD KNOW WHAT ACTUALLY TO AMEND. WE THINK THAT THAT DECISION SHOULD APPLY NOT ONLY TO THOSE THREE PIECES OF LEGISLATION DISCUSSED AFTER ENACTMENT, BUT TO THE EIGHT BILLS WE HAVE JUST DISPOSED OF AT THIS WORKSHOP.

WITH THE ENACTMENT OF THESE BILLS, THE REGULATORY SYSTEM AND INVESTMENT CLIMATE FROM THE POINT OF VIEW OF THE BUSINESS COMMUNITY WOULD, MORE OR LESS, BE SET. AN ACCEPTABLE INVESTMENT LEGISLATION WOULD CERTAINLY FURTHER ENHANCE THE INVESTMENT STATUTE. AN INVESTMENT HOUSE, NOT NECESSARILY PART OF GOVERNMENT, AS AN INSTITUTION TO WHICH BUSINESSMEN FROM GAMBIA AND ABROAD COULD TURN FOR INFORMATION AND GUIDANCE ON BUSINESS MATTERS, WAS PROPOSED. THOUGH NOT PART OF OUR MANDATE, WE THINK THE PROPOSAL HAS MERIT AND OUGHT TO BE EXPLORED. IT IS OUR VIEW THAT HAVING IN SUBSTANCE COMPLETED THE LEGISLATION IN SUPPORT OF THE FINANCIAL

SECTOR FROM THE POINT OF VIEW OF THE BUSINESSMAN AND INVESTOR, CONSIDERATION SHOULD NOW BE GIVEN TO THE LARGE BUT UNCOVERED AREA OF CONSUMER PROTECTION; THE SETTING-UP OF STANDARDS AND QUALITY CONTROL FOR THE SUPPLY OF GOODS AND SERVICES; ENSURING THAT THOSE ALLOWED TO SUPPLY THESE ITEMS FOR THE PUBLIC DO NOT OVER-REACH THEMSELVES IN THEIR DESIRE FOR GAIN AT PUBLIC EXPENSE. OTHER RELATED OR SUPPORTING LEGISLATION TO MAKE THE SYSTEM OPERATE EFFICIENTLY AND TO IMPROVE ITS LEGAL ADMINISTRATION WOULD HAVE TO BE PUT IN PLACE. BUT THIS IS NOT THE TIME OR PLACE TO DILATE UPON THAT SUBJECT. IT IS A LARGE PROGRAMME WHICH WOULD REQUIRE RESOURCES BOTH HUMAN AND FINANCIAL TO ORGANISE AND IMPLEMENT.

MY LORDS, LADIES AND GENTLEMEN, WE BELIEVE OUR WORK AT THIS JUNCTURE IS DONE. BEFORE WE END, WE WOULD LIKE TO THANK THE MINISTRY OF JUSTICE AND USAID FOR GIVING US THE OPPORTUNITY TO CONTRIBUTE TO THIS VITAL, IMAGINATIVE AND EXCITING PROGRAMME OF LAW REFORM FOR THE GAMBIA, AND FOR THE FULL SUPPORT THAT EACH IN ITS RESPECTIVE CAPACITY HAS GIVEN US THROUGHOUT THESE PROJECTS. WE WOULD LIKE TO REMEMBER THE FORMER MINISTER OF JUSTICE, MR. JALLOW. HE IS NOT WITH US AT THIS WORKSHOP, BUT HIS VISION AND INITIATIVE IN THE PROMOTION OF, AND DETERMINED SUPPORT GIVEN TO, THE PROJECT WAS INVALUABLE. WE SHOULD NOT FORGET THAT WITHOUT HIM, THIS PROJECT

WOULD NOT HAVE MATERIALISED. WE WISH HE HAD BEEN HERE TO PARTICIPATE AND TO WITNESS THE SUCCESS WHICH THE PROJECT, WITH WHICH HE HAS BEEN ASSOCIATED FOR SO LONG, HAS ACHIEVED. WE WOULD LIKE TO THANK THE HON. MINISTER OF JUSTICE MR. FAFA MBAI, AND THE RESIDENT REPRESENTATIVE OF USAID, MS. ROSE MARIE DEPP, FOR THE VERY KIND WORDS THAT THEY SAID ABOUT US AT THE OPENING OF THIS WORKSHOP. THE COMPLIMENTARY REMARKS OF PARTICIPANTS ON OUR EFFORTS ARE BOTH WELCOME AND APPRECIATED. WE THANK THEM, THE PARTICIPANTS, FOR GIVING THEIR TIME TO ATTENDING THE WORKSHOP, FOR THEIR VALUABLE CONTRIBUTIONS, AND FOR ENRICHING THE PROCEEDINGS GENERALLY. WE HAVE BEEN GENEROUSLY TREATED BY ALL. WE HAVE RECEIVED UNSTINTED SUPPORT FROM ALL SOURCES FROM WHICH WE HAVE SOUGHT SUPPORT. OUR GENERAL VIEW OF THE SUCCESS OF THE WORKSHOP, AS FAR AS WE ARE CONCERNED, IS ENCAPSULATED IN THE REMARK OF THE SOLICITOR GENERAL AND LEGAL SECRETARY, MRS. AMIE BENSOUA, THE GREAT IMPLEMENTOR OF THE PROJECT AND PROBABLY OUR MOST ARDENT SUPPORTER. WE CANNOT ADEQUATELY EXPRESS OUR THANKS TO HER. IT SOUNDS ALMOST FLAT TO SAY THAT SHE HAS BEEN MOST SUPPORTIVE OF OUR EFFORTS THROUGHOUT AND A PILLAR OF STRENGTH ON WHICH WE HAVE LEANT AS OCCASION REQUIRED. WE HAD ALWAYS FELT WITH HER, THAT WITHIN REASON, OUR REQUESTS, WHICH WERE NOT INFREQUENT, WOULD BE ACCOMMODATED. WE HAPPILY RECALL THAT TURNING TO US AFTER CHAIRING THE SESSION ON THE CONTRACT BILL,

SHE SAID WITH A BEAMING SMILE, "I HAVE NOT ENJOYED MYSELF SO MUCH FOR A LONG TIME." THAT, MUTATIS MUTANDIS, IS ALSO THE VIEW OF YOUR HUMBLE CONSULTANTS ON THE WORKSHOP AS A WHOLE.

THANK YOU.

DELIVERED ON WEDNESDAY, SEPTEMBER 28, 1994.

## APPENDIX VI

### CLOSING ADDRESS AT THE WORKSHOP ON BUSINESS ORGANISATIONS AND BUSINESS TRANSACTIONS LEGISLATION (19.8.94 - 28.9.94)

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Mr Chairman

Your Lordship The Chief Justice

My Lords JJ of Supreme Court and Court of Appeal

Hon Consultants, Justice Amissah And Dr. Fiadjoe

Ladies and Gentlemen

It is my humble duty to address you on this auspicious occasion of closing this week-long Workshop on Draft Legislation on Business Organisations and Business Transactions. In the course of the workshop participants have successfully and extensively considered and discussed the following Bills:

The Companies Bill

The Partnership Bill

The Contract Bill

The Business Registration Bill

The Sale of Goods (Amendment) Bill

The Negotiable Instruments Bill

The Hire Purchase and Finance Leasing Bill, and

The Carriage of Goods by Sea Bill

While some of these Bills aim to revise the existing Gambian Law in order to bring it in line with modern trends in the business world, other Bills are directed at breaking new ground statute-wise in the field of business in The Gambia. Indeed some of the Bills are intended to plug lacunae which have existed for a long time; forcing legal practitioners to make adaptations which have lacked legal force. A case in point is in the field of partnership law.

Practitioners have been formed and enabling instruments have been printed and lodged with the Registrar-General. Those doing so have been operating on the fiction that the English Partnership Act of 1890 had legal application in The Gambia. But clearly the Law of England (Application) Act, Cap 5 of the Laws of The Gambia, states that only statutes in existence and operating in England in 1888 have legal application in The Gambia. Fortunately, as it was disclosed during the deliberations and as stated by the consultants in the basic documentation, the English Partnership Act, 1890, is an embodiment of the common law which is applied to The Gambia as a common law country.

When the Partnership Bill becomes law it will close the existing hiatus. The Companies Act, Cap. 95:01 of the laws was enacted in 1955. In all these almost forty (40) years of existence it has seen no substantive updating. This phenomenon has caused inconvenience to the practitioner and businessman alike. The Companies Bill will therefore put paid to these and other clogs which have been experienced in the application of the outmoded Cap 95:01.

Although by their very nature the Bills you have been discussing will when enacted into law serve separate purposes, they have one common factor and aim to collectively achieve one common goal.

According to his address when he came to open this workshop, The Hon Minister of Justice and Attorney-General, Mr. Fafa M'Bai, all these pieces of draft legislation included in the deliberations at the workshop were designed to create an enabling environment for economic development.

I cannot therefore overstate the importance and appropriateness of the Bills particularly in the circumstances in which this country finds itself presently. It is an open secret that this country's partners in economic development are reconsidering, not the level to which they should reduce their collaboration with us, but the very need to continue in that collaboration.

There is therefore a crying necessity for the Government to create another strategy in its endeavour to uplift the welfare and well-being of Gambians. An enabling environment has to be put in place so that both foreign and local entrepreneurs possessed of financial muscle can be attracted to invest their capital either to start new industries or re-invigorate existing ones in this country. If they do so they will induce economic development by not only ameliorating the face of the country, but also by creating new jobs for the many hapless unemployed persons.

If when the various Bills are turned into statutes they are going to contribute to the attainment of that envisaged economic development, then the time participants have spent at this workshop will not have been dissipated or spent in vain.

The participants in the workshop have worked diligently and selflessly for upwards of one week, the resource persons undoubtedly worked a longer period because before the workshop started they inevitably undertook exhaustive research into their respective subjects. By the nature of the drafting they did together with accompanying explanatory notes, it is evident that the consultants spent long hours and days to prepare for this workshop.

Those who were called upon to assume the chair at the various sessions controlled the debate with outstanding competence.

The result of the combined efforts of everybody who has had to do with the proceedings is that the work on hand has been completed in record time. The programme of work as drafted originally shows that the workshop was to have ended at noon today. Instead this closing address is taking place long before that time.

May I therefore, on behalf of the Minister of Justice and Attorney-General congratulate you all on work commendably done. I should also thank you all for your public-spiritedness in setting aside your busy schedules at your respective places of work in order to make this workshop the success it is.

I will be failing in my responsibility if I do not thank that the USAID for sponsoring the project which has entailed the holding of this workshop. We may now know the cost they have had to incur to consummate this project, but it is evident that not an inconsiderable level of funding is involved. We are truly grateful to them for this gesture.

I reckon that the next task the consultants will undertake after this occasion will be to prepare a report for presentation to those who contracted them to undertake this project and to prepare the necessary documentation which participants have used as basic information. Since the discussions during the workshop were candid, serious and expressive, where appropriate, of the genuine professional concerns of the participants, who included not only Jurists but also Accountants and possibly members of other professions, I hope that the consultants' report will be appropriately reflective of the salient aspects of those discussions. For only if that is done can we expect the enactments which will surely result from this workshop to lay a solid foundation for the proclaimed enabling environment.

Before concluding my remarks, let me give a word of advice to the wider audience. We all have faith in laws. They are a foundation stone of every well ordered and civilised society. Laws are the light of Nations. Without them life would be intolerable; crime would be committed with impunity; those in the leadership of communities could choose without fear or hesitation to run the affairs of society autocratically, nay dictatorially. One can think of many other abominations that could befall mankind without the existence of laws.

However law cannot by itself do everything to ensure the well-being of society. Law is a mere instrument which, in combination with other factors, can be used to serve the best interests of mankind. But it can also be abused if placed in wrong hands or if society fails to live up to the high standards of discipline which the law demands.

We are talking about the business legislation which we have been discussing in the last week as a vehicle to be used towards the creation of an enabling environment for economic development. However, unless when the necessary laws are made from the drafts you have considered

Gambians who believe in hard work, are dedicated to the ideals of the country, are honest, democratic and believe in accountability and transparency can come forward to participate in the implementation of those laws, the enabling environment will not serve any meaningful purpose.

On a note of further thanks, may I, on behalf of all of you, thank the management of Novotel Kombo Beach Hotel for the excellent facilities they made available to conduce to a successful accomplishment of your deliberations. Further I cannot thank them enough for the timely refreshment and other sustenance they provided.

Once again I thank you, the participants, all for the hard work you have - rendered to the Nation. I have no doubt that your collective efforts will in due course be crowned with success.

It is now my humble honour and pleasure to declare the workshop on Business Organisations and Business Transactions legislation closed. Thank you.

F M CHOMBA  
JUSTICE OF APPEAL

## APPENDIX VII

**WORKSHOPS ON BUSINESS TRANSACTIONS AND  
BUSINESS ORGANISATION LEGISLATION  
SEPTEMBER 19-23 AND 26-28, 1994  
NOVOTEL KOMBO BEACH HOTEL  
THE GAMBIA**

### LIST OF PARTICIPANTS

1. Hon. Fafa E. Mbai, Attorney General and Minister of Justice
2. Hon. Justice B. A. Omosun, Chief Justice
3. Justice Frederick M. Chomba, Justice of Appeal
4. S. F. Njie, Justice of Appeal
5. G. A. Obayan (JP) Judge of The Supreme Court
6. Patricia E. Macauley, Judge of The Supreme Court
7. Mashood O. Adio, Judge of The Supreme Court
8. Essa M. Faal, Public Prosecutor, Ministry of Justice
9. Musa Y. Gassama, Magistrate
10. Yvette De Almeida, Magistrate
11. Ousman A. S. Jammeh, Master of the Supreme Court
12. Alh. Bello Abubakar Sadiq, Principal Magistrate
13. Baba Aziz, Legal Practitioner, Assets Management and Recovery Corporation
14. Sydney Riley, Legal Practitioner
15. Kevin Kingsley-Williams, Meridien Bank (Gambia) Ltd.
16. Muhamad A. Sosseh, Legal Practitioner, Central Bank of The Gambia
17. Hawa K. Sisay, Assistant Legal Draftsman, Ministry of Justice
18. Abdul Karim Savage, State Counsel, Ministry of Justice
19. Howsoon B. Semega-Janneh, State Counsel, Ministry of Justice

20. Isatou Combeh Njai, Principal State Counsel, Ministry of Justice
21. Ida D Drameh, Legal Practitioner
22. S. J. B. Mahoney, Legal Practitioner
23. IDA M. E. Jallow, Public Prosecutor, Ministry of Justice
24. Rougie Thomasi, State Counsel, Ministry of Justice
25. Aminatta L. R. N'gum, Legal Practitioner
26. Mariam Denton, Legal Practitioner, Central Bank of The Gambia
27. Baboucar F. Sagnia, Managing Director, Inter-State Shipping Co. Ltd.
28. Ibrahima D. K. Jagana, Ag. Managing Director, Gambia Ports Authority
29. Veronic Wright, Senior State Counsel, Ministry of Justice
30. Henry D. R. Carrol, Public Prosecutor, Ministry of Justice
31. Augustus Prom, Chartered Accountant
32. Alhaji Kabba M. A. Jallow, Chartered Accountant
33. Ismaila B. Ceesay, Managing Director, Gambia Public Transport Corporation
34. Alhaji A. M. Drameh, Legal Practitioner
35. Jodi Lis, USAID
36. Cathy Lienhart, USAID
37. Nancy McKay, USAID
38. Ousainou Darboe, Legal Practitioner
39. A. O. Conteh, Legal Practitioner
40. Albert Fiadjoe, Consultant
41. Austin Amissah, Consultant
42. Rose Marie Depp, USAID Representative
43. Amina Coker, Senior State Counsel, Ministry of Justice
44. Haddijatou Kah, State Counsel, Ministry of Justice
45. Moustapher Marong, Ag. Senior State Counsel, Ministry of Justice
46. Fatou Bom Bensouda, Deputy Director of Public Prosecutions, Ministry of Justice
47. Amie Bensouda, Solicitor General & Legal Secretary, Ministry of Justice
48. S. S. Batchilly, Senior Magistrate
49. Chernob S. Jallow, Parliamentary Counsel, Ministry of Justice

59. A. R. Bah, Harbour Master, Gambia Ports Authority
51. Fola H. Allen, Registrar of Companies, Ministry of Justice
52. Penda Dibba, Legal Practitioner
53. M. A. Ceesay, Registrar General, Ministry of Justice
54. Pa Alieu Sillah, State Counsel, Ministry of Justice
55. Alhaji Marong, State Counsel, Ministry of Justice
56. Haddy C. Roche, Legal Practitioner
57. Remie Joiner, Meridien Bank, (Gambia) Ltd.
58. P. C. O. Secka, Legal Practitioner
59. Mary Samba, Legal Practitioner
60. J. D. Amartey, Legal Practitioner
61. Ann Rivington, Legal Practitioner
62. H. Thomasi, Legal Practitioner, Assets Management and Recovery Corporation
63. Pa M. Njie, Meridien Bank (Gambia) Ltd.
64. Gebou B. S. Janneh, Legal Practitioner
65. Isatou Jallow Sey, State Counsel, Ministry of Justice
66. Bola Carrol, Legal Practitioner
67. Yatou Sarr Ceesay, Meridien Bank (Gambia) Ltd.
68. Abou B. Jallow, Director of Operations, Gambia Ports Authority

**APPENDIX VIII**  
**PRESS RELEASE**

The Attorney General and Minister of Justice, Mr. Fafa E. Mbai, on Monday 19th September, 1994 opened a Workshop on business organisations and business transactions at the Kombo Beach Novotel. The Workshop, which relates to the consideration of draft legislation on Business Organisations and Business Transactions lasts for a period of eight days, and is jointly organised by the Ministry of Justice and the United States Agency for International Development.

In addressing the participants, the Attorney General and Minister of Justice underlined the significance of the Workshop in relation to the legal environment affecting the private sector in The Gambia. He noted that the need for a responsible regulatory framework that would facilitate the development of The Gambia's financial sector, promote investment, and encourage the growth of a vibrant private sector is one of the fundamental objectives of government's economic policies. This therefore calls for the creation of a balance between public and private sector interests, and the removal of legal obstacles to the efficient conduct of commercial transactions and the creation of equitable contractual relationships. In this context, the Attorney General urged the participants to review in great detail the provisions of the draft legislation in order to determine their adequacies and to what extent they take into account the limitations within our legal and regulatory environment which hinder the growth and development of the private sector.

In her address to the Workshop participants, the USAID representative, Rose Marie Depp, among other things, reminded the participants that a well administered legal system which enforces the timely, efficient and impartial settlement of claims is also necessary to instil investor confidence in the legal system and is therefore one of the most important factors in deciding whether to invest or not. It is in The Gambia's best interest to encourage private investment and accelerated growth of private enterprises by creating a legal and regulatory framework that supports modern business practices.

Participants at the Workshop are drawn from members of the legal and accountancy professions, and the banking and business communities.

Ministry of Justice  
Marina Parade  
Banjul

21st September, 1994