VETTING BILL, 2023

ARRANGEMENT OF SECTIONS

Section

PART V – SECURITY CLEARANCE

PART VI – FINANCIAL PROVISIONS

PART VII – MISCELLANEOUS

VETTING BILL, 2023

A BILL ENTITLED

AN ACT to establish the National Vetting Agency to administer professional and independent security vetting on post holders and potential post holders in the security sector, public institutions and for connected matters.

[ ]

ENACTED by the President and the National Assembly.

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Vetting Act, 2023.

2. Interpretation

In this Act, unless the context otherwise requires –

"**acceptable security risk**" means an ability of a person to act in a manner that he or she does not cause classified information or material to fall into unauthorised hands, thereby harming or endangering the security or interests of the State and is measured against a person's –

(a) susceptibility to extortion or blackmail;

(b) amenability to bribes and susceptibility to being compromised due to his or her behavior; and

(c) loyalty to the State and the relevant institution;

"Agency" means the National Vetting Agency established under section 4;

"Board" means the National Vetting Agency Board established under section 16;

“candidate” means a person that is vetted by the Agency;

“Director General” means the Director General of the National Vetting Agency appointed by the President under section 5;

“Inspector General” means an Inspector General appointed by the President under section 37;

“Government” means the Government of the Republic of The Gambia;

“Minister” means the Minister responsible for Justice;

“National Assembly” means the National Assembly of the Republic of The Gambia;

“Person” means a naturally person or legal entity or public institution; and

“President” means the President of the Republic of The Gambia.

3. Application

This Act shall apply to a person who in any form may have access to sensitive government information.

PART II – ESTABLISHMENT, GOVERNANCE OF THE NATIONAL VETTING AGENCY AND OTHER CONNECTED MATTERS

4. Establishment of the National Vetting Agency

(1) There is established by this Act, the National Vetting Agency within the public service.

(2) The Agency is a body corporate with perpetual succession and a common seal and may –

(a) sue and be sued in its corporate name;

(b) enter into contracts, acquire, hold, manage and dispose of property; and

(c) do such other acts necessary for the proper performance of its functions under this Act which may lawfully be done by a body corporate.

(3) The application of the common seal of the Agency shall be authenticated by the signature of the Director General, or such other person as may be determined by the Director General.

(4) A document bearing the imprint of the common seal of the Agency is deemed to be properly sealed, unless the contrary is proved.

5. The Director General

(1) The Director General is the Voter Controller and the head of the Agency.

(2) Subject to section 11, the President shall appoint Director General after consultation with the Public Service Commission and the Board.

(3) A person is qualified for appointment as Director General if he or she –

(a) holds the relevant academic or professional qualification in the security related field;

(b) passes a security vetting process;

(c) is not known to be or having been actively involved in any illegal activities;

(d) has not been convicted of a felony or any criminal offence involving dishonesty; and

(e) is not an uncharged bankrupt.

6. Functions of the Director General

(1) The Director General shall –

(a) be responsible for the day-to-day administration Agency;

(b) supervise and ensure the implementation of the functions of the Agency;

(c) manage the employees of the Agency; and

(d) periodically report to the National Assembly Standing Committee on Defence and Security on matters relating to decisions and actions of the Agency.

(2) The Director General may sub-delegate his or her powers to an employee of the Agency for a specific period of time.

7. Removal of the Director General

(1) Subject to sub-sections (2), (3) and (4), the President may only remove the Director General from office if the Director General –

(a) is unable to perform his or her office functions arising from infirmity of mind, body or from any other cause;

(b) engages in misconduct, including failing or refusing to –

(i) participate in the work of the Agency without good cause; or

(ii) disclose an interest in a complaint made to the Agency, or

(c) does not meet the qualifications for appointment in section 5 (3).

(2) The President may only remove the Director General from office under sub-section (1) (a) following a report submitted by a Medical Board constituted by Director of Health Service, to inquire into the matter.

(3) The President may only remove the Director General from office under sub-section (1) (b) and (c) following a report submitted by a committee constituted by the Chief Justice, to inquire into the matter.

(4) The Director General may, in writing addressed to the President, resign from his or her office and the resignation shall take effect immediately upon receipt of the resignation letter by the President.

8. Vacancies for the office of the Director General

(1) A vacancy for the position of Director General shall occur if–

(d) he or she resigns from his or her office;

(e) he or she dies; or

(f) he or she is removed from office by the President in accordance with this Act.

(2) Where a vacancy occurs for the position of Director General, the President shall fill the vacancy in accordance with section 5.

9. Directors

(1) The Director General may establish such departments within the Agency as he or she considers necessary or expedient for the effective management of the Agency.

(2) A department shall be headed by a Director, who shall be appointed by the Board after consultation with the Public Service Commission.

(3) A Director shall report directly to the Director General and be responsible for the effective operation of his or her department.

10. Other employees

(1) Subject to this Act, the Board after consultation with the Public Service Commission, shall appoint other employees for the Agency as the Director General may consider necessary for the proper performance of the Agency.

(2) Notwithstanding sub-section (1), other employees may include –

(a) officers as may, upon request by the Agency, be moved on secondment or transferred from the national security organs; and

(b) public officers as may, upon request by the Agency, be moved on secondment or transferred from other state organs.

11. Vetting of personnel of the Agency and taking of oath of office

(1) The Director General and any other employee of the Agency shall be selected from among persons of proven integrity by a security vetting committee.

(2) The Security Vetting Committee shall consist of five members appointed by the President.

(3) The person shall only be qualified to be appointed as a member of the Committee if he or she has academic or professional qualifications in security vetting and he or she is person of integrity.

(4) The Director General and any other employee of the Agency, before assuming office, shall take an oath of office.

12. Exemption of staff of the Agency from liability

The Director General, other employee or agents of the Agency, shall be exempted from civil or criminal proceedings for any act done or omitted to be done in good faith in the performance of his or her duties.

13. Independence of the Agency

The Agency shall –

(a) be impartial and fair in the performance of its functions; and

(b) not be subject to the direction or control of any person, office or authority in the administration of its powers, duties or functions.

PART III – FUNCTIONS AND POWERS OF THE AGENCY

14. Functions of the Agency

(1) The Agency shall –

(a) create and operate the central repository of security vetting cases, make decisions and issue security clearance certificates or otherwise;

(b) conduct security vetting on all current and future offices and post holders, in the security sector and public institutions;

(c) provide its decisions to the employer of the candidate or the appointing authority, in a form of a security clearance or otherwise;

(d) review and monitor the employer of the candidate or appointing authority whether they are in compliance with the decision of the Agency; and

(e) regularly report to the National Security Council and the National Assembly Standing Committee on Defence and Security, of its decisions.

(2) The Agency may engage the services of consultants where necessary to assist the Agency in the performance of its functions.

15. Powers of the Agency

(1) The Agency may –

(a) gather or request any information it considers relevant, from any source and to compel the production of such information;

(b) subject to other laws, visit any establishment or place to –

(i) obtain information,

(ii) inspect any property, or

(iii) take copies of any documents,

which may be of assistance to the Agency to carry out its functions;

(c) interview any person during vetting process;

(d) require that statements be given under oath or affirmation and to administer such oath or affirmation;

(e) request information from the relevant authorities of a foreign country;

(f) decide on the length and level of security clearances and whether or not to re-review an individual for security vetting that has previously failed; and

(g) request assistance from any security institution or public body, to exercise its powers effectively.

(2) A person shall cooperate with and provide unrestricted access to the Agency when carrying out its functions or exercising its powers under this Act.

PART IV – GOVERNING BODY OF THE AGENCY

16. Establishment of the National Vetting Agency Board

(1) There is established by this Act, the National Vetting Agency Board, which shall be the governing body for the National Vetting Agency and shall consist of –

(a) a Chairperson;

(b) the Director General; and

(c) five other persons.

(2) The Agency shall be the secretariat of the Board.

(3) The Board shall appoint a Secretary to the Board from amongst the staff of the Agency.

(4) The Secretary shall –

(a) keep the books and records, and conduct the correspondence of the Board;

(b) prepare the agenda for Board meetings after consultation with the Director General and the Chairperson of the Board;

(c) record the minutes of meetings of the Board; and

(d) perform such other functions as the Board or the Director General may assign.

17. Appointment and qualifications of the members of the Board

(1) The President shall appoint members of the Board after consultation with the Public Service Commission.

(2) Except for the Director General, a person may only be appointed as a member of the Board if he or she –

(a) in the case of a chairperson, has at least ten years professional experience in security;

(b) in the case of other members, has at least five years professional experience in security;

(c) has relevant academic or professional qualifications;

(d) has not been convicted of an offence involving fraud or dishonesty;

(e) is not declared bankrupt;

(f) is of sound mind and body;

(g) has not been dismissed from the public service of The Gambia for misconduct; and

(h) has not been disqualified for any reason from practicing his or her profession in The Gambia.

18. Functions of the Board

The Board shall –

(a) ensure that the Agency perform its functions properly and effectively;

(b) oversee the development and implementation of a strategic plan of the Agency;

(c) oversee the development and implementation of human resource policies and strategies;

(d) approve corporate plans and budgets;

(e) ensure the affairs of the Agency are conducted in a transparent and accountable manner;

(f) monitor and evaluate the performance of the Director General and the employees of the Agency;

(g) perform any other functions incidental to the execution of their mandate.

19. Tenure of office of members of the Board

(1) The members of the Board shall hold office for a period not exceeding four years and may be re-appointed only once.

(2) A member of the Board may resign from office by giving one month's written notice to the President through the Minister.

(3) A member of the Board who is absent from three consecutive meetings of the Board without sufficient cause may be removed from the Board.

(4) Where a member of the Board is disqualified or unable to continue in office for any reason, the Minister shall declare his or her position vacant and arrange for a replacement member to be appointed by the President.

20. Meetings of the Board

(1) The Board shall meet, at least once every three months, at such time and at such place as the Chairperson shall determine.

(2) The Chairperson shall preside at meetings of the Board, and in his or her absence, members present shall nominate a person among them to preside.

(3) The Board may invite any person with the appropriate knowledge or skills to participate in its deliberations.

(4) A person invited to participate in the deliberations of the Board shall not vote on any matter for decision before the Board.

(5) The Chairperson, on the request of not less than one-third of the membership of the Board, shall convene a special meeting of the Board.

(6) The quorum at a meeting of the Board is five members.

(7) The decisions of the Board shall be by a simple majority of the vote of the members present, but in the case of equality of vote, the presiding Chairperson shall have a casting vote.

(8) The validity of the proceedings of the Board shall not be affected by a vacancy among its members or by a defect in the appointment or qualification of a member.

(9) The Board may co-opt a person in the Board but such person is not entitled to vote on any issue for decision by the Board.

(10) Subject to this section, the Board shall regulate the procedure at its meetings.

21. Disclosure of interest

(1) A member of the Board who has a direct or an indirect interest in –

(a) the affairs of any company or enterprise being deliberated upon by the Board; or

(b) any contract proposed to be entered into by the Agency,

shall, as soon as possible after relevant facts have come to his or her knowledge, disclose the nature of his or her interest at the meeting of the Board.

(2) A disclosure made under sub-section (1) shall be recorded in the minutes of the meeting and the member concerned shall recuse himself or herself from the proceeding of the meeting on the matter.

(3) A non-ex-officio member who breaches sub-sections (1) or (2) shall be removed from office by the President.

(4) An ex-officio member who breaches sub-sections (1) or (2) shall be disciplined by the Public Service Commission appropriately.

22. Board Committees

(1) The Board may establish a committee to assist it in performing any of its functions.

(2) The delegation by the Board of its functions shall not prevent the Board from exercising those functions.

23. Allowances

The members of the Board, its committee and persons invited to attend the meetings of the Board or its committee shall be paid for allowances as may be approved by the Minister responsible for finance.

PART V – SECURITY CLEARANCE

24. Security vetting process

(1) Personnel of the Agency shall conduct security vetting on candidates in accordance with policies and procedures set by the Director General and approval of the Board.

(2) The Director General of the Agency shall not participate in any initial security vetting process of the Agency on candidates.

25. Security clearance and certificate

(1) The Agency shall only issue a security clearance certificate to a person if that person is considered as an acceptable security risk.

(2) The security clearance certificate shall clearly indicate the level of classified information to which the person issued with the certificate may have access.

(3) The employer or the appointing authority of the candidate shall not employ or appoint the candidate if he or she is not issued with security clearance certificate.

(4) A person who contravenes sub-section (3) commits an offence.

26. Unacceptable security risk

(1) A person shall be considered as an unacceptable security risk, if he or she –

(a) is not loyal to The Gambia and its constitutional orders and values;

(b) has a preference or may be manipulated, induced or blackmailed to help a group, person, organization or foreign government in a manner detrimental to the interests of The Gambia; or

(c) displays conduct that indicates –

(i) a personality of emotional or mental disorder;

(ii) lack of judgment or discretion;

(iii) dishonesty;

(iv) lack of self-control or willingness to comply with rules in a manner that raises doubts about that person's reliability,

(v) untrustworthiness; or

(vi) lack of ability to protect classified information.

(2) A person may equally be considered as an unacceptable security risk if his or her spouse or other close associate, falls within sub-section (1).

27. General rules on security vetting

(1) A person who refuses or is incapable to fully participate in the security vetting procedure shall be considered as an unacceptable security risk.

(2) The Agency, before concluding that a person is an unacceptable security risk, shall take the following factors into account –

(a) the nature, extent, and seriousness of the conduct;

(b) the circumstances surrounding the conduct;

(c) the frequency and regency of the conduct;

(d) the age and maturity of the person at the time of the conduct;

(e) the extent to which participation is voluntary;

(f) the presence or absence of rehabilitation and other permanent behavioural changes;

(g) the motivation for the conduct;

(h) the potential for pressure, coercion, exploitation or duress; and

(i) the likelihood of continuation or recurrence.

(3) The Agency shall obtain the consent of a candidate in writing before vetting him or her or it.

(4) The Agency may only vet a person if he or she reach eighteen years or older.

(5) The Agency shall obtain the consent of the spouse or the close associate of the candidate before conducting any ancillary security vetting on the spouse or the close associate of the candidate.

(6) The Agency may deny the candidate a security clearance if his or her spouse or close associate refused to participate in the security vetting procedure.

(7) A security officer or a post holder of a public body, who is without a security clearance certificate may be-

(a) transferred to another position in which no security clearance is required; or

(b) his or her contract of employment be terminated.

28. Rights of candidate during security vetting

(1) Where the Agency believes that a candidate is considered to be an unacceptable security risk, the candidate -

(a) shall be given the opportunity to be heard before the Agency make any final decision; and

(b) may be assisted by an authorised person during such hearing.

(2) The Agency shall uphold the principle of natural justice and the right to privacy of the candidate when conducting any hearings on the candidate.

29. Revocation of a security clearance

(1) The Agency shall revoke a security clearance at any time if –

(a) the Agency conducted a new security vetting on the candidate and concluded that the candidate is no longer considered as an acceptable security risk;

(b) the candidate has resigned or has been transferred to a new duty or mission where the candidate will not access classified information; or

(c) the candidate has been convicted of a felony or offence involving dishonesty.

(2) The Agency may suspend previous security clearance certificate issued to the candidate, pending the completion of a new security vetting on the candidate.

(3) Revocation of a security clearance shall result to the termination of employment of the candidate.

30. Internal Review Committee

(1) An employer or the appointing authority of the candidate who is not satisfied with the decision of an officer of the Agency may appeal the decision to the Director General for review.

(2) The Director General, upon appeal by a candidate, shall constitute an Internal Review Committee to review the decisions of the officer of the Agency.

(3) The Board shall develop a review procedure for the Internal Review Committee.

(4) A review procedure made in sub-section (3) shall be consistent with law and relevant policy.

(5) The decision of the Committee shall be binding on the Agency subject to the court order.

(6) The Agency shall, at least once every year, report to the National Assembly Standing Committee on Defence and Security regarding the complaints received and how such complaints were dealt with by the Internal Review Committee.

PART VI – FINANCIAL PROVISIONS

31. Funds of the Agency

(1) The funds of the Agency for its operational and administrative expenses shall include –

(a) moneys appropriated to it by the National Assembly; and

(b) monies received by the Agency from a lawful source to perform any of its functions.

(2) Notwithstanding sub-section (1) (b), the Agency shall not accept other lawful source of monies if the terms and conditions attached to such monies would compromise the work of the Agency.

(3) Monies provided to the Agency shall be disclosed and reported on, in accordance with the Public Finance Act and other legislation dealing with public finance.

32. Annual estimates

(1) The Director General shall submit to the Board the estimates of the income and expenditure of the Agency for the following financial year.

(2) An expenditure shall not be made out of the funds of the Agency unless the expenditure has been approved by the Board and the State-owned Enterprises Commission in the budget.

[s.83 (1) of the State-owned Enterprises Act, 2023]

33. Accounts and Audit

(1) The Agency shall keep proper books of accounts of all its income and expenditure and proper records in relation to the accounts in respect of each financial year.

(2) The Agency, three months after the end of each financial year, shall prepare and submit to the Auditor General, a statement of accounts for audit.

(3) The audited accounts of the Agency and the Auditor General's report on those accounts shall form part of the Auditor General's overall annual report to the National Assembly.

34. Annual report

The Agency, within three months of the end of each financial year, shall submit an annual report to the National Assembly on its business and operations during the preceding year.

PART VII– MISCELLANEOUS

35. Rules of procedure

The Board shall make rules of procedure which are consistent with related laws and policies, for the –

(a) filing of complaints against post holders to be vetted;

(b) admissibility of such complaints;

(c) conduct of investigations; and

(d) administration of security vetting decisions and denial of security clearances.

36. Duty of confidentiality

(1) The Director General and other employees of the Agency shall not publish or disclose the contents of any confidential document, communication, or information which has come to his or her knowledge in the discharge of his or her duties.

(2) Notwithstanding sub-section (1), the Director General may permit the disclosure of information to –

(a) a police officer or other person in the public service who has authority to investigate an alleged contravention of law, if the information is required by him or her for an investigation;

(b) the Attorney General and Minister of Justice, if the information is required by him or her for a criminal prosecution;

(c) the Minister responsible for foreign affairs, if the information related to the conduct of the international affairs of The Gambia;

(d) the Minister responsible for defence, if the information is relevant to the defence of The Gambia;

(e) the Chief Justice, if the information is required by a competent court of jurisdiction; or

(f) the Speaker of the National Assembly, if the information is required by the National Assembly.

(3) An employee of the Agency shall not be required to produce or disclose any evidence or content of a document before any person or body, if such production or disclosure will be injurious to the public interest.

(4) A person who contravenes sub-section (1) commits an offence.

37. Inspector General of the Agency

(1) The President, after consultation with the Minister and the Public Service Commission, shall appoint an Inspector General of the Agency.

(2) The Inspector General shall be independent and shall report directly to the National Assembly Standing Committee on Defence and Security and to the Minister.

(3) The Inspector General shall review the performance of the Agency to ensure its compliance with –

(a) this Act,

(b) any Regulations, guidelines, policies, processes and manuals made under this Act, and

report on such compliance, or non-compliance, to National Assembly and Minister.

38. Disclosure of interest by the Director General and other personnel of the Agency

(1) The Director General or other personnel of the Agency, who has direct or indirect interest in any decision of the Agency on security vetting, shall –

(a) in the case the Director General, disclose the fact and the nature of interest to the Board;

(b) in the case of other personnel of the Agency, disclose the fact and the nature of the interest to the Director General; and

(c) not take part in any decision making of the Agency relating to such interest.

(2) A disclosure of interest by the Director General or any personnel of the Agency shall be recorded and filed.

(3) A person who contravenes sub-section (1) may be removed from the Agency.

39. General Offences

A person who commits an offence under this Act for which no penalty has been prescribed is liable on conviction to a fine not more than fifty thousand dalasi or to imprisonment not more than six months or to both.

40. Regulations

The Minister may make Regulations generally for the effective implementation of this Act and for any other matter, which is consistent with the purposes of this Act.

OBJECTS AND REASONS

This Bill seeks to implement security vetting in The Gambia as an important part of the government's reform of the security sector which will play a critical role in restoring trust and integrity across the security sector.

Further, this Bill has taken cognizance of the fact that the process of applying security vetting to the individuals acting within the security sector, and elsewhere within and for the government requiring access to sensitive information, supports the government's aim to build institutions of high integrity that are accountable and transparent to the people of The Gambia.

In addition to the above, this Bill also seeks to unify the approach to security vetting in The Gambia with the establishment of an independent government body in the form of an Agency to administer, perform and control the process of security vetting in The Gambia and issuance and depository of security clearances.

It also seeks to increase both external and internal trust in the individuals granted access to sensitive government information and mitigate risks associated with such access.

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HON. DAWDA A. JALLOW
ATTORNEY GENERAL AND MINISTER OF JUSTICE