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Housing Finance and Development Corporation Act, 2010

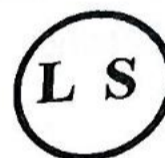


THE GAMBIA

NO. 05 OF 2010

Assented to by The President

this 26th day of May, 2010



YAHYA A. J. J. JAMMEH
President

AN ACT to establish a Corporation to develop, manage and administer housing finance and real estate activities and for connected matters.

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PART I – PRELIMINARY

Short title

1. This Act may be cited as the Housing Finance and Development Corporation Act, 2010.

Commencement

2. This Act comes into force on such day as the Minister appoints by notice in the Gazette.

Interpretation

3. In this Act, except where the context otherwise requires-

"arrears" means principal plus interest and surcharge where applicable.

"Board" means the Board of Directors of the Corporation;

"Committees" means the Committees established under section 14;

"complete housing unit" means a fully finished housing unit;

"Core housing unit" means a partially finished housing unit;

"Corporation" means the Housing Finance and Development Corporation;

"dissolved Corporation" means the former Social Security and Housing Finance Corporation;

"housing unit" means a unit of complete or core house unit in a housing project;

"Housing fund" means the main fund established under section 35;

"Minister" means the Minister responsible for housing and urban development and "Ministry" shall be construed accordingly;

"mortgage" has the same meaning assigned to it by the Mortgages Act;

"President" means the President of the Republic of The Gambia; and

"project beneficiary" means a person who has been allocated a service plot, core house or a complete housing unit under a project.

PART II - ESTABLISHMENT OF THE HOUSING FINANCE AND DEVELOPMENT CORPORATION AND ITS BOARD OF DIRECTORS

Establishment of the Corporation

4. (1) There is established by this Act, a body corporate known as the Housing Finance and Development Corporation.

(2) The Corporation is a body Corporate with perpetual succession and a common seal.

(3) The Corporation may-

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

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

(c) so far as is possible for a body corporate, exercise the rights, powers and privileges and incur the liabilities and obligations of a natural person of full age and capacity.

Functions of the Corporation

5. The Corporation shall-

(a) manage and administer all moneys, securities and other assets received by it into the Housing Fund and any other fund established under this Act;

(b) finance affordable housing development projects in The Gambia;

(c) make direct investments in housing and real estate projects either alone or in partnership with other bodies approved by the Board;

(d) develop, administer and manage real estates;

- (e) administer and manage repayment of all housing loans and grants received by the Corporation; and
- (f) provide finance for housing and real estate activities.

Board of Directors of the Corporation

6. There is established by this Act, a Board of Directors which shall consist of -

- (a) a Chairperson appointed by the President;
- (b) the Managing Director;
- (c) the Permanent Secretary of the Ministry of Local Government and Lands or his or her designated representative who is the Vice Chairperson;
- (d) the Managing Director of the Social Security Corporation;
- (e) the Permanent Secretary of the Ministry of Works Construction and Infrastructure, or his or her designated representative; and
- (f) the Permanent Secretary of the Ministry responsible for Finance or his or her designated representative.

Disqualification from Board membership

7. A person is not qualified to be appointed or elected as a member of the Board or to continue to be a member of the Board if he or she-

- (a) has been sentenced to imprisonment for a term exceeding twelve months without the option of a fine or has been convicted of an offence involving dishonesty or moral turpitude and has not been granted a pardon;

- (b) is adjudged to be a person of unsound mind;
- (c) having been declared an insolvent or bankrupt under the laws of The Gambia or another country, is an undischarged insolvent or bankrupt;
- (d) has been dismissed from the Public service of The Gambia for misconduct or his or her appointment has been terminated for inefficiency or in circumstances amounting to dishonesty; or
- (e) has been disqualified for any reason from practicing his or her profession in The Gambia or in another country.

Tenure of office of Chairperson

8. (1) The Chairperson shall serve for a period of three years, and is eligible for re-appointment after such period.

(2) The Chairperson may resign from office by notice in writing addressed to the President.

(3) Where the office of the Chairperson becomes vacant before the expiration of his or her term of office, the Managing Director shall notify the Minister of such event and the Minister shall, arrange for the appointment of some other person to replace the Chairperson for the unexpired period of his or her term of office.

Meetings of the board

9. (1) The Board shall meet for the discharge of its business at least once in every three months at such time and places as the Chairperson shall determine.

- (2) The Chairperson shall, at the written request of not less than three members of the Board convene a special meeting of the Board to transact an extra-ordinary business on a date specified in the request.
- (3) A written notice of a special meeting of the Board shall-
- be sent to each member not later than forty-eight hours before the meeting; and
 - specify the business for which the meeting is being convened.
- (4) The quorum of the Board at a meeting is three, including the Chairperson or Managing Director.
- (5) The Board shall take decisions by a simple majority of the votes of members present and, where there is an equality of votes, the person presiding shall have a casting vote.
- (6) The Chairperson shall preside at a meeting of the Board at which he or she is present, and in his or her absence the Vice Chairperson shall preside and where both of them are absent,, the members present shall appoint one of their number to preside at the meeting.
- (7) The minutes of a meeting of the Board shall be recorded by the Secretary and signed by the Chairperson or the person who presided at the meeting, after confirmation by the members who were present.
- (8) The Board may at any time invite a person to its meeting as an adviser, but a person so invited is not entitled to vote at the meeting.

- (9) The validity of a proceeding of the Board shall not be affected by-
- a vacancy in its membership;
 - a defect in the appointment of a member; or
 - reason that a person not entitled to do so, took part in the proceeding.
- (10) Subject to this section, the Board may regulate its own meeting procedure.
- of 10. (1) A member of the Board who has an interest in a company or an undertaking with which the Corporation or Board proposes to enter into a contract shall-
- disclose to the Board the nature of his or her interest; and
 - not participate in the deliberation and voting of the Board in respect of the contract.
- (2) The President may, on the recommendation of the Minister remove from the Board a member who contravenes subsection (1).
- Transaction of business without meeting 11. A resolution is a valid resolution of the Board if-
- it is signed or assented to by a simple majority of the members; and
 - notice of the proposed resolution was given to each member,
- notwithstanding that it was not passed at a meeting of the Board.

Protection
members

of 12. (1) An action, a suit, prosecution or other proceeding shall not be brought or instituted against a member personally in respect of any thing done in good faith in pursuance, execution or intended execution of this Act.

(2) Except as otherwise provided in this Act, a member of the Board shall not be personally liable for a debt or obligation of the Corporation.

Allowances to
members of the
Board

13. The members of the Board and persons co-opted into the Board shall be paid such allowances as the Minister approves.

Committees of
the Board

14. (1) There is established by this Act the following Committees of the Board-

- (a) Mortgage and Estate Management Committee;
- (b) Housing Finance and Loans Committee; and
- (c) Projects Committee.

(2) The Mortgage and Estate Management Committee shall consist of-

- (a) the Managing Director who shall be the chairperson;
- (b) a representative from the Ministry of Justice;
- (c) the Director of the Estate Department of the Corporation; and
- (d) a representative from the Department of Lands and Surveys.

(3) The Housing Finance Loans Committee shall consist of-

- (a) the Managing Director who shall be the chairperson;
- (b) the Director of Finance of the Corporation;
- (c) a representative from the Social Security Corporation; and
- (d) a person of proven expertise in finance.

(4) The Projects Committee shall consist of-

- (a) the Managing Director who shall be the chairperson;
- (b) the Director of operations of the Corporation;
- (c) a person of proven expertise in the construction industry;
- (d) a representative from the National Water and Electricity Company;
- (e) a representative from the National Roads Authority;
- (f) a representative from the Department of Physical Planning and Housing; and
- (g) a representative from the Local Government Authorities.

(5) The Committees established under this section shall advise the Board on all technical and financial matters relating to the operations of the Corporation.

(6) The Committees may also study and advise Management and the Board on

subsidiary legislation and all other matters affecting the operations of the Corporation.

PART III- MANAGEMENT AND ADMINISTRATION OF THE CORPORATION

Directives of the Minister

15. The Minister may give general directives in writing to the Board on matters of policy, and the Board is bound to comply with such directives.

Control of general policy

16. The formulation of the general policy of the Corporation is vested in the Board.

Managing Director

17. The President shall, in consultation with the Public Service Commission appoint a Managing Director who shall be the chief executive of the Corporation.

Duties of the Managing Director

18. (1) Subject to this Act and the regulations and rules made under it, the Managing Director is responsible for-

- (a) the execution of the policies and directives of the Board;
- (b) the day to day business of the Corporation; and
- (c) the administration and supervisory control over the activities of the Corporation.

(2) Where the Managing Director is unable to perform his or her functions the Board may authorise an officer of the Corporation, not below the rank of a Director to perform the functions of the Managing Director for the duration of the incapacity, up to a maximum period of twelve months

(3) Subject to this Part and the directives of the Board, the Managing Director may delegate his or her functions to an employee of the Corporation on such terms as he or she thinks fit.

(4) The Managing Director is ultimately responsible for an act done by a person he or she delegates a responsibility in pursuance of such delegation.

Departments of the corporation

19. (1) There is established by this Act, three main Departments within the Corporation each of which shall be under the control of a Director-

- (a) Operations and Projects Department;
- (b) Finance and Investment Department; and
- (c) Estates and Mortgages Department.

(2) A Director of a Department shall be appointed by the Board and shall, except as otherwise provided in this Act, exercise his or her functions in accordance with the directives of the Managing Director.

Functions of the Departments

20. The functions of the Departments set up under section 19 are as follows -

- (a) the Department of Operations and Projects is responsible for-
 - (i) the acquisition of land for housing development;
 - (ii) the development of housing and real estates;
 - (iii) facilitating the development of housing and real estates activities; and
 - (iv) conducting the research activities of the Corporation.
- (b) the Finance and Investment Department is responsible for-

- (i) the preparation of accounts and financial statements of the Corporation;
 - (ii) keeping books of accounts and proper records in relation to the financial transactions of the Corporation;
 - (iii) the administration and management of the investment portfolio including loans for housing projects;
 - (iv) the appraisal of investment proposals and advising management on the viability of such proposals;
 - (v) the assessment of opportunities for the diversification of the investment portfolio; and
 - (vi) fostering public-private partnership initiatives to partner-derive equitable returns;
- (c) the Estates and Mortgages Department is responsible for-
- (i) processing of applications and loan forms of customers and making recommendations and to management;
 - (ii) the preparation and execution of all legal documents and contracts; and
 - (iii) supervision and monitoring of the repayments of loans.

Staff of the corporation
21. (1) The Board shall appoint a Deputy Managing Director, and may from time to time engage such employees and agents as it

- Engagement of Professional advisers
 of 22. The appointment of a person to a post above the grade of a supervisor and the terms and conditions of service of such person, is subject to the approval of the Board.
- Transfer of public officers
 of 23. A public officer may, at the request of the Managing Director, be transferred or seconded to the Corporation or may otherwise give assistance to the Corporation.
- Secretary of the Board
 of 24. (1) The Board shall designate an officer from amongst the staff of the Corporation to be the Secretary to the Board.
 (2) The functions of the Secretary are to-
- (a) keep the books and records and conduct the correspondences of the Board;
 - (b) prepare the agenda and record the minutes of a meeting of the Board; and
 - (c) perform such other functions as may be assigned to him or her by the Board or Managing Director.
- Board to make rules for employees
 of 25. Subject to this Act, the Board may make rules and regulations relating to the terms and conditions of service of employees of the Corporation, and in particular regulations governing-

- (a) the appointment, discipline, remuneration and security of such employees;
- (b) the procedure relating to disciplinary

action against employees of the Corporation;

(c) appeals and petition filed by employees aggrieved by a decision of the Corporation and other claims against the Corporation;

(d) the procedure for application for leave, resignation, and retirement;

(e) employees' medical care and the contribution to be made by the Corporation to employees.

Execution contracts

of **26.** (1) The seal of the Corporation shall be affixed on all contractual and other binding documents entered into by the Corporation.

(2) A contract entered into by the Corporation shall be authenticated by the signature of-

(a) the Managing Director; and

(b) the Director of a Department; or

(c) the Secretary to the Board;

(3) The Corporation may, by instrument in writing under its seal, empower a person either generally or in respect of a specified matter to act as its attorney to execute deeds on its behalf outside The Gambia.

(4) A deed signed by such attorney on behalf of the Corporation shall be binding on the Corporation and have the same effect as if it were under the seal of the Corporation.

PART IV - FINANCIAL PROVISIONS

Sources funds of Corporation

of **27.** The sources of funds for the Corporation include -

(a) loans and grants received by the Corporation for purposes of housing

and real estate development;

(b) borrowings by the Corporation from both external and local sources for carrying out its functions under section 5;

(c) returns from investments; and

(d) moneys received from borrowers in respect of the repayment of loans.

Expenses of the Corporation

28. The following expenses may be defrayed from the moneys received by the Corporation under section 27-

(a) the cost of administration of the Corporation;

(b) the reimbursement to members of the Board or a committee appointed by the Board for such expenses as may be authorised by the Board, in accordance with the rates approved by the Minister;

(c) the payments of allowances and other amounts payable to Board members, employees of the Corporation, and experts, professionals or agents appointed by the Corporation; and

(d) meeting such other expenses as may be approved by the Board for the purposes of this Act.

Bank accounts

29. The Corporation shall operate bank accounts with a commercial bank established in The Gambia or abroad.

Books of account

of **30.** The Corporation shall keep books of account and proper records in relation to its financial transactions.

Financial year

31. The financial year of the Corporation extends from the first day of January to the thirty-first day of December of the same year.

Estimates,
accounts and
audit

32. (1) The Corporation shall, not later than three months before the end of each financial year, prepare and submit to the Minister for approval, estimates of the income and expenditure of the Corporation for the ensuing year.

(2) The Corporation shall keep proper records and books of accounts of its income, expenditure and transfers.

(3) The Corporation shall prepare, in respect of each financial year, a statement of accounts.

(4) The Corporation shall, within three months after the end of each financial year, submit its statement of accounts to the Auditor General for audit.

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

Annual report

33. (1) The Board shall within two months after the end of each financial year, submit to the Minister, an annual report dealing generally with the activities and operations of the Corporation within that financial year.

(2) The report under subsection (1) shall include-

(a) a statement on the income, source of income and application of the moneys of the Corporation;

(b) information with regard to the operation of the Corporation; and

(c) such other information as the Minister may request.

(3) The Minister shall, not later than three

months after the end of the financial year, cause the report to be laid before the National Assembly.

(4) The Board shall also provide the Minister with such information relating to the affairs of the Corporation as the Minister may request.

Valuation
exercises

34. (1) The Corporation shall, for the purpose of establishing the correct value of the investment properties at any point in time and in keeping with best accounting practices, undertake a valuation of these properties every three years.

PART V - THE HOUSING FUND

The
Fund

Housing

35. The Corporation shall establish a Fund known as the Housing Fund, into which shall be paid moneys derived from section 27.

Accounts of the
Fund

36. (1) The Housing Fund shall operate the following Accounts-

(a) Loans Account;

(b) Mortgage Account;

(c) Income and Expenditure; and

(d) Project Account for each specific project.

(2) The moneys received or paid out by the Corporation shall be recorded in the relevant books of accounts of the Housing Fund specified under subsection (1).

Reserve Fund

37. (1) The Board shall also create a Reserve Fund into which shall be paid-

(a) fines and penalties charged or exacted under this Act or the Regulations made under it;

(b) an unidentified mortgage repayment;

(c) the annual net surplus from operations.

(2) Moneys in the Reserve Account shall only be appropriated with the authority of the Board.

Investment Fund by the Corporation

38. (1) The Corporation may from time to time and with the approval of the Minister, invest-

(a) in a property held by it and forming part of the Housing Fund or sell such property if it thinks fit;

(b) moneys forming part of the Housing Fund in shares, debentures or debenture stock of a Statutory Corporation, Society or Company Registered in The Gambia or by way of loans at such interest to such Corporation as the Board thinks fit.

(2) Notwithstanding subsection (1) the Corporation may-

(a) invest a sum not exceeding thirty five per cent of its investable funds in a viable venture;

(b) invest moneys forming part of the Housing Fund in Government securities such as Gambia Government Treasury Bills and stocks;

(3) The Corporation may also deal with a property held by it or forming part of the Fund in a manner it thinks fit.

Accounts of the Funds

39. The Corporation shall maintain proper accounts and records of the Funds established under this Act.

Deposit Funds of

40. The Board may retain or place moneys forming part of its Funds on a deposit or current account.

PART VI - MISCELLANEOUS

Claims against defaulters

41. A Mortgage repayment due to the Corporation along with interest or a monetary penalty payable or imposed for failure to pay in time may be recovered by action as a debt owing to the Corporation, at any time within ten years from the date when the arrears or penalty became due.

Regulations

42. (1) The Board may, with the approval of the Minister make regulations for the proper execution and efficient management of the Corporation.

(2) The regulations made under this Act may relate to

(a) a matter that is required to be prescribed under this Act;

(b) the inspection of premises, and the Mortgage Statements and returns to be furnished by or under this Act;

(c) the fees charged and fines that may be imposed for the purposes of this Act; and

(d) any other matter, the carrying out of which is consistent with the purpose of this Act.

Exemption from capital gains tax and import duties

43. The Corporation is exempt from the payment of capital gains tax and import duties

Offences and penalties

44. (1) The Penalty for late payment of arrears exceeding forty-five days shall attract a surcharge of ten per cent per month on the arrears, except in exceptional circumstances where the Managing Director may exercise his or her discretion to reduce the rate.

(2) For the purposes of this Act late payment means a payment received after the fifteenth day of the following month.

(3) A person who-

- (a) obstructs or assaults any officer or employee of the Corporation or discharges of his or her duties, or
- (b) fails to comply with a regulation made under this Act,

commits an offence, and is liable on conviction to a fine not exceeding ten thousand Dollars or to imprisonment for a term not exceeding three years, or to both the fine and imprisonment.

(4) An employee of the Corporation who conspires with, or aids and abets another person in the commission of an offence specified in subsection (1) is liable to imprisonment for a term not exceeding three years.

(5) The court may, in addition to a sentence passed under this Act, order a person convicted to pay to the Housing Fund the payments together with interest or penalties from such person at the date of conviction.

(6) The amount ordered to be paid under subsection (5) may be recovered in the same manner as a fine and shall be paid into the Housing Fund for the benefit of the accounts of the beneficiaries concerned.

(7) Where an offence is committed under this Act by a body of persons-

(a) which is a body corporate, each Director and officer of that body corporate shall be deemed to be guilty of the offence; and

(b) which is a partnership firm each partner of that firm, shall be deemed to be guilty of the offence.

(8) A person shall not be deemed to be guilty

of an offence under sub-section (7) if he or she proves that the offence was committed without his or her knowledge or that he or she exercised due diligence and care to prevent the commission of the offence.

45. The Mortgages Act shall apply to mortgages made under this Act.

Foreclosures

Savings transitions

and

46. As from the commencement of this Act-

(a) the assets, rights, obligations and liabilities existing under the Housing Fund of the dissolved Corporation are transferred to the Corporation established under this Act;

(b) an action, order, a proceedings, or judgement related to the Housing Fund pending immediately before the commencement of this Act to which the dissolved Corporation was a party, may be continued and enforced by or against the Corporation established under this Act;

(c) the purchases and acquisitions made in relation to the Housing Fund under the dissolved Corporation are considered to have been made under this Act;

(d) all persons employed under the Housing Fund immediately before the commencement of this Act, shall continue to be employed by the Corporation established under this Act on the same terms and conditions, without a break in the employment because of the enactment of this Act;

(e) a licence, permit, certificate, or any other authorisation issued under the Housing Fund of the dissolved Corporation is considered to be issued under this Act;

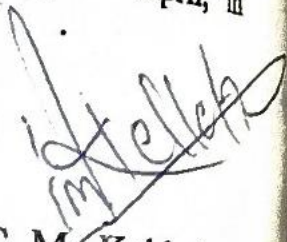
(f) the regulations, orders, by-laws or notices made or issued under the

Housing Fund of the dissolved Corporation in so far as they are not inconsistent with this Act, shall remain in force until they elapse or are revoked;

(g) an application made in relation to the Housing Fund of the dissolved Corporation and wholly or partly heard by the Board of the dissolved Corporation when this Act comes into force is considered to have been made under this Act;

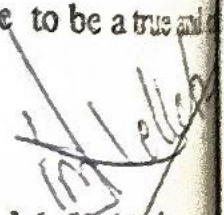
(h) where a period of time specified in relation to the Housing Fund of the dissolved Corporation is current at this Act's commencement, the Act has effect as if the provision corresponding to that enactment had been in force when that period began to run.

PASSED in the National Assembly this Sixth day of April, in the year of Our Lord Two Thousand and Ten


D. C. M. Kebbeh

Clerk of the National Assembly

THIS PRINTED IMPRESSION has been carefully compared by me with the copy which has passed in the National Assembly, and found by me to be a true and correct copy of the said Bill.


D. C. M. Kebbeh

Clerk of the National Assembly