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GAMBIA REVENUE AUTHORITY ACT, 2004

Arrangement of sections

Section

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THE GAMBIA

NO. 13 OF 2004.

Assented to by The President,

this [illegible] day of [illegible], 2004.

L S

YAHYA A.J.J JAMMEH
President.

AN ACT to provide for the establishment of the Gambia Revenue Authority to administer, assess and collect revenue, to provide for the efficient and effective administration of the revenue collecting system, and for matters connected therewith.

[see section 1]

ENACTED by the President and the National Assembly.

PART I – PRELIMINARY

Short title and commencement

1.This Act may be cited as the Gambia Revenue Authority Act, 2004 and shall come into force on such date as the Secretary of State may, by Order in the Gazette, appoint.

Interpretation

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

"Authority" means The Gambia Revenue Authority established by section 3;

"Board" means the Board of Directors of the Authority established under section 5 (1);

"Commissioner-General" means the Commissioner-General of the Authority;

"customs laws" includes this Act and any other legislative enactment relating to customs, and any regulation, rule, order or proclamation made under any Act relating to customs;

"excise laws" includes this Act and any other legislative enactment relating to excise duties, and any regulation, rule, order or proclamation made under any Act relating to excise;

"revenue" means taxes, duties, fees, levies, fines or other monies charged or collected pursuant to any revenue law;

"revenue laws" means any Act on taxes, customs or excise or any regulations made under any of those Acts;

"revenue officer" means any person employed by the Authority in any capacity whatsoever;

"Secretary of State" means the Secretary of State responsible for finance;

"tax laws" includes this Act and any legislative enactment relating to taxes, and any regulation, rule, order or proclamation made under any Act relating to revenue.

PART II – ESTABLISHMENT OF THE GAMBIA REVENUE AUTHORITY

Establishment of the Gambia Revenue Authority

3. (1) There is hereby established an authority to be known as the Gambia Revenue Authority which is an agent of the Government of The Gambia, and is under the general supervision of the Secretary of State.

(2) The Authority is a body corporate with perpetual succession and a common seal.

(3) The Authority may –

(a) enter into contracts;

(b) hold, purchase, or otherwise acquire and dispose of any property, real or personal, for the purposes of, or in the course of carrying out its functions;

(c) sue and be sued in its corporate name

(d) do or perform all other acts and things that a body corporate may do or perform and

(e) exercise the rights, powers and privileges and incur the liabilities and obligations of a natural person of full age and capacity.

Seal of the Authority

4. The application of the common seal of the Authority shall be authenticated by the signature of the Chairperson or any other person authorised by the Authority to sign on its behalf, and every document bearing the imprint of the seal of the Authority is deemed to be properly sealed unless the contrary is proved.

PART III – ADMINISTRATIVE PROVISIONS

The Board

5 (1) There shall be for the Authority a Board of Directors, which shall be the governing body of the Authority.

(2) The Board shall consist of –

(a) a Chairperson;

(b) a Vice-Chairperson;

(c) the Commissioner-General;

(d) the Permanent Secretary of the Department of State for Finance and Economic Affairs or his or her representative;

(e) the Permanent Secretary of the Department of State for Trade, Industry and Employment or his or her representative;

(f) two members from the private sector.

(3) The persons appointed to the Board, under paragraph (f) of subsection (2), shall be persons with experience in revenue matters.

(4) The President shall appoint the members of the Board on the recommendation of the Secretary of State, after consultation with the Public Service Commission.

(5) The Board is responsible for monitoring the performance of the Authority and determining policies relating to staffing and procurement of the Authority.

(6) Other than the *ex-officio* members of the Board, a member shall hold office for a term of three years commencing on the date of appointment and may be re-appointed for one further term of three years.

(7) A member who is not an *ex-officio* member may resign his or her office by giving not less than one month's notice in writing to the President.

(8) The appointment of a member who is not an *ex-officio* member may be terminated if he or she -

(a) has been absent from four consecutive meetings of the Board without the permission of the Secretary of State;

(b) has become bankrupt;

(c) is incapacitated by physical or mental illness;

(d) is otherwise unable or unfit to discharge the functions of a member of the Board; or

(e) is convicted of a felony or an offence involving moral turpitude.

(9) No salary shall be paid to a member in respect of his or her membership of the Board, but a member may be paid such reasonable allowances as may be determined by the Secretary of State.

Board Meetings

6. (1) The Board shall meet at least once in every month of the year.

(2) The quorum for a meeting of the Board is four members.

(3) The Chairperson or, in his or her absence the Vice-Chairperson, may convene a meeting of the Board on giving at least three working days notice in writing to its members of the meeting.

(4) The Chairperson may, at any time, if four other members request in writing, convene an emergency meeting of the Board, provided that not less than forty-eight hours notice is given to members for the meeting.

(5) At a meeting of the Board --

(a) the Chairperson, and in his or her absence, the Vice-Chairperson, shall preside and, in the absence of both of them, the members present at the meeting shall appoint one of their number to preside;

(b) each member has one vote on each matter for deliberation; and

(c) a decision of the Board shall be by a simple majority of the votes of those present and if there is an equality of votes the Chairperson, Vice-Chairperson or member presiding, as the case may be, shall have a casting vote.

(6) The validity of a proceeding of the Board shall not be affected by a vacancy in the membership or by any defect in the appointment of a member.

(7) Subject to the provisions of this Act, the Board and any of its committees may regulate its own procedure.

Disclosure of interest by Board member

7. (1) A member who has a direct or indirect personal interest in the outcome of the deliberations of a meeting of the Board in relation to a matter shall disclose the nature of the interest at that meeting.

(2) The disclosure of the interest shall be recorded in the minutes of the meeting; and

(3) The member shall withdraw from the deliberations of the Board in respect of that matter and shall not vote on the matter.

(4) A member who contravenes provisions of section (1) may be removed from office.

Transaction of business without Board meeting.

8. A resolution of the Board is valid, even though it is not passed at a meeting of the Board, if –

(a) it is signed or assented to by a majority of members of the Board; and

(b) the notice in writing of the proposed resolution was given to each member.

Appointment of Commissioner-General

9. (1) The chief executive of the Authority shall be the Commissioner-General who shall be appointed by the President on the recommendation of the Secretary of State, after consultation with the Board and the Public Service Commission.

(2) The Commissioner-General shall be appointed on such terms and conditions of service as may be stated in his or her letter of appointment.

(3) Subject to the general supervision and control of the Board, the Commissioner-General is responsible for-

(a) the day-to-day operations of the Authority;

(b) the management of the funds, property, and business of the Authority;

(c) the administration, organisation, and control of the officers and staff of the Authority; and

(d) the effective administration and implementation of the provisions of this Act.

(4) The Commissioner-General shall hold office for a period of three years and is eligible for re-appointment.

(5) The appointment of the Commissioner-General may be terminated by the President for–

(a) proven misconduct;

(b) inability or incapacity in the performance of the duties of office; or

(c) proven incompetence in the performance of the duties of office.

Delegation

10. The Commissioner-General may delegate to any revenue officer any duty, power, or function conferred or imposed on the Commissioner-General under this Act and revenue laws, other than the power delegated to him or her.

Appointments of Commissioner of Taxes, Commissioner of Customs and Excise, Directors and other staff

11. (1) The Secretary of State shall, in consultation with the Commissioner-General and the Board, appoint a Commissioner of Taxes, a Commissioner of Customs and Excise, and other Directors of the Authority.

(2) The Commissioner-General may, on such terms and conditions as the Board may determine, appoint such other officers and staff of the Authority as may be required for the performance of the functions of the Authority.

Secretary to the Board

12. (1) The Board shall appoint a Secretary to the Board.

(2) The Secretary shall be responsible for –

(a) arranging the business of the Board's meeting;

(b) keeping a record of the proceedings of the Board; and

(c) such other duties as the Board or the Commissioner-General may direct.

Secrecy

13. (1) A revenue officer shall treat as secret and confidential any document, return, assessment list and copy of any list relating to the income or item of the income of any person or information coming into the officer's possession or knowledge in connection with the performance of his or her duties under this Act or any revenue law.

(2) A revenue officer shall not disclose any document, return, assessment, list and copy of any list relating to the income or item of the income of any person, or information referred to in subsection (1) to any person except-

(a) to the minimum extent necessary for the performance of his or her duties under this Act or any revenue law; or

(b) otherwise authorised by the Secretary of State.

(3) A revenue officer shall not be required to-

(a) produce in any court, without the consent of the Secretary of State, any return, document or assessment; or

(b) divulge or communicate to any court any matter or thing coming to his or her knowledge in the performance of his or her duties under this Act or any other tax law or customs law,

except for the purposes of instituting or defending legal action.

(4) Nothing in subsection (2) prevents the disclosure of any document or information to –

(a) the Tax Tribunal or any court in respect of proceedings under this Act or any revenue law;

(b) any person in the service of the Government of The Gambia in a revenue or statistical department, if the disclosure is necessary for the performance of the person's official duties;

(c) the Auditor-General or any person authorised by the Auditor-General, if the disclosure is necessary for the performance of official duties; or

(d) the competent authority of the Government of another country with which The Gambia has entered into a tax treaty, to the extent permitted under that treaty.

(5) A person who receives any document, return, assessment, list and copy of any list relating to the income or item of the income of any person or information under subsection (4) shall-

(a) keep the document or information secret and confidential; and

(b) not disclose the document or information, except to the minimum extent necessary for the purpose for which the disclosure is permitted.

(6) A person who contravenes this section commits an offence and is liable on conviction to a fine not exceeding twenty-five thousand dalasis or imprisonment for a term not exceeding one year, or to both the fine and imprisonment.

(7) A proceeding for the commission of an offence under this section shall be taken by or in the name of the Commissioner-General and not by any other person, except with the consent of the Attorney General.

PART IV – FUNCTIONS AND POWERS

Functions of the Authority

14. (1) The functions of the Authority are to -

(a) assess, charge, levy and collect all revenue due to the Government;

(b) ensure that all revenue collected is, as soon as reasonably practicable, paid into the Consolidated Fund.;

(c) administer and enforce this Act and the revenue laws;

(d) promote full compliance with tax laws;

(e) take such measures as may be required to improve the standards of service provided to taxpayers with a view to improving efficiency and effectiveness in administration, and maximising revenue collection;

(f) take such measures as may be required or considered necessary to prevent tax fraud and other forms of tax evasion;

(g) advise the Secretary of State on matters relating to the administration and collection of revenue under this Act and the revenue laws; and

(h) perform such other functions, in relation to revenue, as the Secretary of State may direct.

(2) The Authority shall perform its functions-

(a) in a most cost efficient and effective manner possible;

(b) under the revenue policy set by the Secretary of State; and

(c) subject to such orders, directions, directives, and guidelines on policy, financial or administrative matters as may be issued by the Secretary of State, from time to time.

Powers of the Authority

15. The Authority shall have such powers as are necessary to enable it to perform its functions and do such other things as are necessary or incidental to the proper performance of those functions under this Act.

PART V – FINANCIAL PROVISIONS

Funds

16. (1) The funds of the Authority consist of –

(a) a subvention from the Department of State for Finance and Economic Affairs.

(b) such monies as the Secretary of State may, after consultation with the Board, allocate as bonus for exceeding performance goals;

(c) loans or grants received by the Authority with the approval of the Secretary of State; and

(d) any other moneys as may, with the approval of the Secretary of State, be received by or made available to the Authority for the purpose of performing its functions.

(2) There shall be paid from the funds of the Authority-

(a) the salaries, allowances and benefits of the staff of the Authority;

(b) such reasonable traveling, transport and subsistence allowance for members of the Board or any of its committees when engaged on the business of the Board at such rates as the Board may determine; and

(c) any other expenses incurred by the Authority in the performance of its duties.

(3) The Board may invest in such manner as it thinks fit such of its funds not immediately required for the performance of its functions.

Accounts and audit

17. (1) The Authority shall keep proper records and books of accounts of its income, expenditure and transfers.

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

(3) The accounts of the Authority shall, in respect of each financial year, be subject to audit by the Auditor General.

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

(5) The audited accounts of the Authority 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 reports

18. The Commissioner-General shall prepare and submit to the Secretary of State, not later than 31st March in each year, a report on the activities of the Authority during the preceding year, and the Secretary of State shall, as soon as possible after receiving the annual report, cause it to be laid before the National Assembly.

PART VI –MISCELLANEOUS PROVISIONS

Dissolution of Departments

19. The Central Revenue Department and the Department of Customs and Excise are hereby dissolved.

References

20. (1) A reference in any other legislation, regulation, order or other enactment or in any agreement, deed, instrument, application, notice or other document whatsoever to the Commissioner charged with the responsibility of administering laws relating to taxes or to the Director General of Customs and Excise shall be read, interpreted and construed as a reference to the Commissioner-General of the Authority.

(2) A reference in any other legislation, regulation, order or other enactment or in any agreement, deed, instrument, application, notice or other document whatsoever to the Central Revenue Department or to the Department of Customs and Excise shall be read, interpreted and construed as a reference to the Gambia Revenue Authority.

Vesting of assets

21. All real and personal property, whether in or outside The Gambia, except as the Secretary of State may determine, which immediately before the commencement of this Act was vested in or belonged to the Central Revenue Department or to the Department of Customs and Excise-

(a) is hereby vested in the Authority without conveyance, transfer or assignment; and

(b) subject to the purposes of this Act, shall be held by the Authority for the same purposes as it was held immediately before the commencement of this Act.

Vesting of rights and liabilities

22. Subject to the provisions of this Act, all rights, obligations and liabilities which immediately before the commencement of this Act were vested in or imposed on the Central Revenue Department or the Department of Customs and Excise are deemed to be the rights, obligations and liabilities of the Authority and may be enforced by or against the Authority.

Legal proceedings

23. (1) Without prejudice to the other provisions of this Act, where any right, liability or obligation vests in, or subsists against the Authority by virtue of this Act, the Authority and all other persons concerned shall, as from the commencement of this Act, have the same rights, powers and remedies (and in particular the same rights as to the instituting or defending of legal proceedings or the making or resisting of applications to any authority) for ascertaining, perfecting or enforcing that right, liability or obligation as they would have had if it had at all times been a right, liability or obligation of the Authority.

(2) Any legal proceedings or applications to any authority pending immediately before the commencement of this Act by or against either of the Commissioner of Income Tax under the tax laws or the Director General of Customs and Excise may be continued by or against the Authority.

(3) After the commencement of this Act, proceedings in respect of any right, liability or obligation which was vested in, held, enjoyed, incurred, suffered by, or subsisted against the Central Revenue Department or the Department of Customs and Excise may be instituted by or against the Authority.

24. Subject to the provisions of this Act, any right of a person, including a right of appeal, subsisting against the Commissioner of Taxes, the Commissioner of Sales Tax or the Director General of Customs and Excise immediately before the commencement of this Act shall, after the commencement of this Act, be treated as subsisting against the Commissioner-General in so far as that right relates to the duties of the Commissioner-General under this Act.

Regulations

25. The Secretary of State may, on the advice of the Authority, make regulations for the better carrying out of the provisions of this Act.

PASSED in the National Assembly this 24th day of August, in the year of Our Lord Two Thousand and Four

M. S. JALLOW
Clerk of the National Assembly.

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

M. S. JALLOW
Clerk of the National Assembly.