International Journal of Business & Law Research 14(3):382-388, July-Sept, 2026

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DOI:10.5281/zenodo.22963338

Banking Localisation, Regulatory Sovereignty And International Investment Protection In The Gambia

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ABSTRACT
The Central Bank of The Gambia issued a directive in September 2026 requiring commercial banks to replace non-Gambian employees with suitably qualified Gambian nationals by 31 December 2026. The directive raises questions about the relationship between domestic labour regulation, financial-sector supervision and international investment protection. The Labour Act 2023 establishes a statutory framework for expatriate employment through an expatriate quota system and requires the employment of Gambian understudies where expatriate positions are approved. This article examines the possible implications of the localisation policy for indirect expropriation, fair and equitable treatment, national treatment and procedural fairness. It considers the ECOWAS Common Investment Code 2019, relevant bilateral investment treaties and the AfCFTA Investment Protocol 2023. Particular attention is given to the distinction between legitimate regulation of employment and measures that may substantially interfere with protected investments. The article argues that localisation, without more, does not amount to unlawful expropriation. The legal position may be different where implementation produces substantial interference with an investment, discriminatory treatment, arbitrary administration or serious procedural deficiencies. A transparent and properly structured localisation process would allow The Gambia to pursue domestic skills development while maintaining confidence in the regulatory environment for foreign investment.
Keywords: The Gambia; banking localisation; expatriate employment; Labour Act 2023; investment protection; indirect expropriation.

1.1 INTRODUCTION

The Central Bank of The Gambia (CBG) issued a circular dated 16 September 2026 directing commercial banks to replace non-Gambian employees with suitably qualified Gambian nationals by 31 December 2026. Contemporary reports indicate that the directive followed an industry review of expatriate employment and was addressed to the country's commercial banks.[3]

The measure is significant because foreign-owned banks form an important part of the Gambian banking sector. Reports identify Access Bank (Gambia), First Bank Gambia, Guaranty Trust Bank (Gambia) and Zenith Bank Gambia as subsidiaries of Nigerian banking groups.[4] The directive therefore has implications extending beyond

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3Central Bank of The Gambia, circular dated 16 September 2026, as reported in The Guardian Nigeria, 'Gambia orders Nigerian bankers, others out, seeks local replacement' (21 September 2026).
4 Proshare Research, 'The Gambia Gives Banks 106 Days to Localise Roles; Nigerian-Owned Subsidiaries Face Transition Challenge' (20 September 2026).

employment regulation. It concerns the manner in which a host State regulates foreign-owned enterprises operating within a strategically important sector.

The domestic legal framework is principally provided by the Labour Act 2023. The Act regulates expatriate employment through an expatriate quota system. It also provides for the employment of Gambian understudies in circumstances where expatriate employment is authorised.[5]

The legal issue is not whether The Gambia possesses regulatory authority over employment within its territory. It plainly does. The more difficult question is whether the exercise of that authority, particularly its implementation against existing foreign-owned banking operations, may engage obligations arising under international investment agreements.

The answer depends upon the legal instrument applicable to the particular investment, the nature of the investment, the precise terms of the regulatory measure and the manner in which the measure is administered. It is therefore necessary to distinguish between a general localisation policy and the particular circumstances in which the policy is applied.

1.2 Localisation and Domestic Capacity Building

Localisation policies are commonly used to increase the participation of nationals in economic activities and to promote the development of domestic skills. They may address employment, managerial positions, technical expertise and professional training.

The Gambian Labour Act adopts this approach through its expatriate quota regime. The statutory framework permits expatriate employment where the relevant skills are not adequately available within the country. It also seeks to ensure that expatriate employment contributes to the development of local capacity.

Section 38 of the Labour Act requires an employer granted an expatriate quota to provide a Gambian counterpart to understudy the expatriate employee. The provision is directed towards the transfer of knowledge, skills and technology.[6]

The legislation therefore does not establish an absolute prohibition on expatriate employment. It establishes a mechanism for controlling it. Expatriate employment is permitted within a regulatory framework designed to encourage the development of Gambian personnel.

That distinction is important when considering the September 2026 directive. Reports indicate that the CBG's direction requires banks to complete the transition to qualified Gambian personnel by the end of 2026. The same reports indicate that the directive requires attention to skills transfer and continuity of banking operations.[7]

The question is whether the implementation of that policy remains within the ordinary scope of employment and banking regulation or whether particular applications may affect rights protected by an investment treaty.

Regulatory Authority and International Investment Protection

International investment law does not deprive States of the power to regulate activities within their territories. Regulation of employment, banking supervision and economic activity remains an important aspect of governmental authority.

The relationship between regulation and expropriation was considered in Saluka Investments BV v Czech Republic, a dispute involving investment in the Czech banking sector. The tribunal accepted that States do not ordinarily incur an obligation to compensate foreign investors merely because bona fide, non-discriminatory regulation adopted in the public interest causes economic loss.[8]

The tribunal nevertheless recognised that the distinction between permissible regulation and compensable expropriation depends upon the circumstances of the particular case. It emphasised that the context in which a measure is adopted and applied is important.[9]

The principle has particular relevance to the Gambian banking sector. A requirement that banks employ qualified Gambian personnel is, in substance, a regulatory requirement concerning employment and domestic

5 Labour Act 2023 (The Gambia), Part V.

[6]Labour Act 2023 (The Gambia), s 38.

[7] Proshare Research (n 2).

[8] *Saluka Investments BV v Czech Republic*, UNCITRAL, Partial Award, 17 March 2006, para 262.

[9] Ibid, paras 263–265.

capacity. It does not transfer ownership of a bank to the State. It does not, without more, deprive a foreign investor of its shares or other proprietary interests.

This does not mean that every form of localisation is immune from investment-law scrutiny. The effect of the measure, its duration, its application and the treatment of comparable investors remain relevant.

2.1.1 Indirect Expropriation

Indirect expropriation concerns State conduct that does not formally transfer ownership but substantially interferes with the use, value or enjoyment of an investment.

The severity of the interference is important. Regulatory measures that affect the profitability or operation of an investment do not automatically amount to expropriation.

The reasoning in Saluka is particularly relevant because the investment concerned a bank and the challenged measures were imposed by financial regulators. The tribunal concluded that the regulatory measures in question did not amount to an unlawful expropriation.[10]

The reported Gambian localisation policy concerns employment rather than ownership. Banks remain able to conduct their business, subject to the applicable regulatory requirements. The replacement of expatriate employees with qualified Gambian employees may impose costs, require restructuring and affect particular areas of management or technical operations. Those consequences do not, by themselves, establish substantial deprivation of the investment.

The analysis could change if the implementation of the policy made it practically impossible for a bank to maintain essential operations or if the State required the removal of personnel possessing skills for which no realistic local replacement existed. Such circumstances would require examination of the actual impact of the measure upon the particular investment.

The appropriate conclusion is therefore not that localisation can never constitute expropriation. Rather, a claim based solely on the replacement of expatriate personnel would require evidence of a substantially more serious interference with the protected investment.

2.1.2 Fair and Equitable Treatment

Fair and equitable treatment must be considered by reference to the particular investment treaty applicable to the investor.

The ECOWAS Common Investment Code 2019 does not contain a standalone fair and equitable treatment clause. UNCTAD's treaty database identifies national treatment and most-favoured-nation treatment as standards contained in the Code but records no standalone FET provision. It also records that indirect expropriation is not expressly mentioned.[11]

Accordingly, an FET claim cannot properly be based upon ECOWIC 2019 as though the Code contained an express FET obligation.

Where a bilateral investment treaty contains an FET clause, the conduct of the regulatory authorities may become relevant. In Waste Management Inc v United Mexican States (No 2), the tribunal described the minimum standard of treatment as being breached by conduct of a sufficiently serious character, including arbitrary, grossly unfair, unjust or discriminatory conduct and serious failures of due process.[12]

The standard does not convert an investment tribunal into an appellate body reviewing every administrative decision. A regulatory decision with which an investor disagrees is not necessarily an international-law violation.

The manner in which the Gambian localisation policy is administered may nevertheless become important. A process based upon clear criteria, consistent treatment and reasons for decisions would be materially different from a process in which existing approvals are withdrawn without explanation or comparable banks are subjected to different requirements.

The legal assessment must therefore focus not only on the policy itself but also on the conduct of the authorities responsible for its implementation.

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[10] Ibid, paras 265 and 275–276.

[11] UNCTAD, 'ECOWAS Common Investment Code (ECOWIC) (2019)'.

[12] Waste Management Inc v United Mexican States (No 2), ICSID Case No ARB(AF)/00/3, Award, 30 April 2004, para 98.

2.1.3 National Treatment

National treatment requires foreign investors to receive treatment no less favourable than that accorded to domestic investors in comparable circumstances, subject to the terms of the applicable treaty.

The ECOWAS Common Investment Code contains a national-treatment obligation. Article 6 requires treatment no less favourable than that accorded to investors of another Member State in like circumstances.[13] The Code also recognises circumstances in which regulatory measures directed towards legitimate public-welfare objectives may be treated differently under its national-treatment provisions.[14]

The fact that several banks operating in The Gambia are subsidiaries of Nigerian banking groups does not, by itself, establish discrimination. The reported CBG directive is directed at commercial banks generally.[15]

The issue would be different if foreign-owned banks were subjected to requirements that were not imposed upon comparable Gambian-owned institutions. Evidence of such differential treatment would be necessary before a national-treatment claim could properly be assessed.

The ECOWAS Common Investment Code 2019

The ECOWAS Common Investment Code was adopted in 2019 and is recorded by UNCTAD as having entered into force on 22 December 2019.[16]

The Code is relevant because The Gambia is an ECOWAS Member State and the banking sector includes investments originating from other West African States.

Its provisions should nevertheless be used with precision. The Code contains national-treatment and most-favoured-nation obligations but does not contain a standalone FET clause. It also does not expressly define indirect expropriation.[17]

The Code therefore cannot be used as a general source of every investment protection normally found in contemporary bilateral investment treaties.

The applicable treaty framework must be established in relation to the particular investor and investment. This is especially important where an investment is held through a locally incorporated subsidiary. The nationality and ownership requirements of the relevant treaty must be satisfied before treaty protection can be invoked.

3.1 Bilateral Investment Treaties

The Gambia has concluded bilateral investment treaties with a number of States. UNCTAD records, among others, the Gambia–Switzerland BIT of 1993 as having entered into force on 30 March 1994 and the Gambia–Morocco BIT of 2006 as having entered into force on 12 October 2011.[18]

The existence of these treaties does not mean that every foreign investor in The Gambia can rely upon them. Treaty protection depends upon the nationality of the investor, the definition of investment and the other jurisdictional requirements contained in the particular instrument.

This point is important in relation to Nigerian-owned banks. The existence of a Nigerian parent company does not, without more, establish the applicability of a particular treaty. The corporate structure of the investment and the relevant treaty provisions must first be examined.

The legal analysis should therefore be undertaken on an investor-by-investor basis rather than by assuming that all foreign-owned banks possess identical treaty rights.

3.1.1 The AfCFTA Investment Protocol

The Protocol to the Agreement Establishing the African Continental Free Trade Area on Investment was adopted on 19 February 2023. The Protocol expressly recognises the right of State Parties to regulate within their territories in pursuit of public-policy objectives. It identifies matters including labour standards and the integrity and stability of the financial system among legitimate public-welfare concerns.[19]

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[13] ECOWAS, Common Investment Code (2019), art 6.
[14] Ibid, art 7.
[15] Proshare Research (n 2).
[16] UNCTAD, 'ECOWAS Common Investment Code (ECOWIC) (2019)'.
[17] Ibid.
[18] UNCTAD, 'The Gambia–Switzerland BIT (1993)'; UNCTAD, 'The Gambia–Morocco BIT (2006)'.
[19] Protocol to the Agreement Establishing the African Continental Free Trade Area on Investment (2023), Preamble.

3.1.2 The Protocol also contains provisions addressing expropriation.[20]

The Protocol should not, at present, be treated as a directly enforceable source of obligations in relation to the September 2026 CBG directive. The instrument has not yet entered into force in full.[21] Its provisions are nevertheless relevant to the development of African investment law and demonstrate an effort to reconcile investment protection with the regulatory responsibilities of African States.

The Protocol is particularly significant for present purposes because it recognises regulatory space rather than treating investment protection as an absolute restriction upon governmental action.

3.1.3 Procedural Fairness

The administration of the localisation policy may be as important as the policy itself.

Banks affected by the directive should be able to determine the legal basis for the replacement of particular expatriate employees. The authorities should distinguish between positions for which qualified Gambian personnel are readily available and positions involving specialised skills that may not yet be sufficiently available within the country.

The treatment of existing expatriate approvals also requires clarity. An employee whose appointment was never authorised under the applicable regulatory framework presents a different case from an employee whose appointment was lawfully approved under an existing expatriate quota.

A valid approval would not necessarily create a permanent right to employ a particular expatriate. It would, nevertheless, make the process by which the approval is withdrawn, limited or allowed to expire legally significant.

Reasoned administrative decisions would promote transparency and reduce uncertainty. They would also provide a clear record should an affected investor later challenge the measure under domestic law or an applicable investment treaty.

4.1 Banking Operations and Skills Transfer

The banking sector presents particular operational considerations. Some positions require specialist expertise in information technology, cybersecurity, risk management, treasury, compliance, internal audit and financial-crime controls.

A localisation programme that does not take account of these functions could create operational difficulties. The objective of developing Gambian skills must therefore be pursued alongside the responsibility of maintaining the stability and effective operation of the financial system.

The reported CBG directive recognises the need for skills transfer and continuity of operations.[22] A transition based on identified positions, qualified replacements, training and defined handover periods would provide a more orderly means of achieving localisation.

Where a particular skill is genuinely unavailable locally, a temporary arrangement may be appropriate, provided that the arrangement is directed towards the development of a Gambian successor.

5.1 CONCLUSION

The September 2026 CBG directive is situated within a domestic legal framework that permits the regulation of expatriate employment and promotes the development of Gambian skills. The Labour Act 2023 provides for expatriate quotas and requires employers granted such quotas to provide Gambian understudies.[23]

The localisation policy does not, merely because it affects foreign-owned banks, constitute indirect expropriation. The measure concerns employment and domestic capacity development rather than the transfer of ownership of banking assets. The relevant question would be whether implementation produces an interference with a protected investment sufficiently serious to engage an applicable expropriation provision.

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[20] Ibid, arts 19–20.

[21] AfricanLII, Protocol to the Agreement Establishing the African Continental Free Trade Area on Investment (2023), indicating that the Protocol has not yet come into force in full.

22Proshare Research (n 2).

23Labour Act 2023 (The Gambia), ss 2 and 38.

Investment protection may become more significant where implementation is discriminatory, arbitrary or procedurally defective. Any assessment must begin with the particular investment treaty relied upon. ECOWIC 2019 provides national-treatment and most-favoured-nation protection but does not contain a standalone FET provision.[24] The AfCFTA Investment Protocol provides an important indication of contemporary African treaty practice but has not yet entered into force in full.[25]

The most important legal safeguard is therefore disciplined implementation. The localisation policy should be based upon identifiable statutory authority, objective criteria and consistent treatment. Existing expatriate approvals should be properly assessed, genuine skills shortages should be recognised and affected banks should receive sufficient information to comply with the requirements.

A localisation programme implemented in that manner would allow The Gambia to pursue domestic capacity development without unnecessarily creating disputes concerning international investment protection.

6.1 RECOMMENDATIONS

The CBG and the relevant labour authorities should publish clear criteria for identifying positions that may continue to require expatriate expertise.

Existing expatriate quotas should be reviewed individually, with a distinction drawn between authorised appointments and appointments that do not comply with the Labour Act 2023.

A transparent and time-limited process should be established for positions involving skills that are not reasonably available within The Gambia.

Banks should prepare documented succession and skills-transfer plans for expatriate positions that are being localised.

The authorities should provide written reasons for decisions refusing, withdrawing or declining to renew expatriate employment arrangements.

The same criteria should be applied to domestic and foreign-owned banks in comparable circumstances.

The implementation timetable should take account of critical banking functions, including cybersecurity, information technology, risk management, treasury, compliance and financial-crime controls.

The CBG should maintain records of quota decisions, skills assessments, exemptions and enforcement measures. Banks should maintain corresponding records of their localisation and skills-transfer programmes.

The policy should be reviewed periodically to determine whether it is achieving its employment and skills-development objectives without undermining the effective operation of the banking sector.

24 UNCTAD, 'ECOWAS Common Investment Code (ECOWIC) (2019)'.

25 Protocol to the Agreement Establishing the African Continental Free Trade Area on Investment (2023).