



REPUBLIC OF NAMIBIA

SOVEREIGN WEALTH FUND OF NAMIBIA BILL

(Introduced by the Minister of Finance)

DRAFT BILL

To establish a Sovereign Wealth Fund of Namibia – the Welwitschia Fund - and provide for its management, functions, and powers; to provide for national saving for future generations as well as fiscal and official reserve stabilization, to provide for the allocation of money to the Fund and disbursement of money from the Fund, to provide for the administration and application of the Fund; and to provide for incidental matters thereto.

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BE IT ENACTED by the Parliament of the Republic of Namibia as follows:

PART I PRELIMINARY

Definitions

1. (1) In this Act, unless the context otherwise requires -

“**Act**” means the Sovereign Wealth Fund of Namibia Act, the regulations and determinations issued under this Act and any amendments thereto;

“Bank of Namibia Act” means the Bank of Namibia Act, 2020 (Act No. 1 of 2020) and any amendments thereto;

“Bank” means the Bank of Namibia as referred to in section 2 of the Bank of Namibia Act, 2020 (Act No. 1 of 2020) and any amendments thereto;

“Fund” means the Sovereign Wealth Fund of Namibia known as the Welwitschia Fund, established in terms of section 2 of this Act;

“Governor” means the Governor of the Bank appointed under Article 32(4)(b)(bb) of the Constitution of the Republic of Namibia and section 19 of the Bank of Namibia Act 1 of 2020;

“Green energy” means energy generated from renewable resources;

“Investment fund manager” means a manager of the Fund or any portfolio of securities held by the Fund or a sub-Account of the Fund;

“Minister” means the minister responsible for finance;

“Ministry” means the ministry responsible for finance;

“Non-renewable resources” means natural resources that do not replenish naturally at similar pace by which they are exploited and consumed;

“Persons” include both juristic and natural persons;

“Renewable resources” means natural resources that replenishes naturally at similar pace by which they are generated and consumed;

“Natural Resources” means land, water and natural resources below and above the surface of the land and in the continental shelf and within the territorial waters and the exclusive economic zone of Namibia as per Article 100 of the Namibian Constitution or as defined in any other law in Namibia;

“Risk-adjusted return” means a return based on an objective measurement of how much risk is involved in producing that return.

PART II SOVEREIGN WEALTH FUND OF NAMIBIA

Establishment of the Fund

2. (1) There is established a Sovereign Wealth Fund of Namibia known as the Welwitschia Fund, responsible for administering this Act.

(2) The ownership of the Fund is vested in the people of the Republic of Namibia with the Minister acting as the trustee for the benefit of the citizens of the Republic of Namibia.

(3) The Bank must be the custodian of the Fund and must provide banking, administrative, investment and operational services to the Fund.

(4) The Fund is a juristic person and shall exercise powers and perform acts that a juristic person may lawfully perform.

Object of the Fund

3. The object of the Fund is to provide for-

- (1) national saving for future generations-
 - (a) to make secure investments to facilitate the distribution of net economic benefits from the intertemporal utilization of the country's natural resources for the benefit of the future generations of Namibians; and
- (2) fiscal and official reserve stabilization -
 - (a) to make secure investments to support fiscal or macroeconomic stabilisation by providing insulation to and stabilization of the economy, the national budget and the official reserves against business cycle, climate, and external shocks; and
 - (b) to contribute to the official reserves and net wealth of the country.

Functions of the Fund

4. (1) The functions of the Fund are-

- (a) to accept any funds bequeathed to it in accordance with the provisions of this Act;
- (b) to invest and manage any funds standing to the credit of the Fund in accordance with this Act and in a manner appropriate to achieve the objects of the Fund;
- (c) to engage the services and assistance of any such person or persons as it may consider necessary to assist in the performance of its functions;

- (d) to hire, purchase or acquire such movable or immovable property as the Fund may consider necessary for the performance of its functions, and may let, sell or dispose of any property purchased or acquired in terms of this Act;
- (e) to enter into an agreement or memorandum of understanding with any person or an institution for the performance of any specific act or function or the rendering of specific services;
- (f) to make determinations not inconsistent with this Act on the manner in which its general business may be conducted;
- (g) to monitor and supervise compliance with the provisions of this Act; and
- (h) to do anything which is necessary or expedient to perform its functions, not inconsistent with the provisions of this Act.

PART III GOVERNANCE

Functions and Powers of the Minister

5. (1) The Fund shall operate under the policy direction, coordination and supervision of the Minister.

(2) Subject to this Act, the functions of the Minister are-

- (a) to act as the trustee of the Fund in trust of the citizens of the Republic of Namibia;
- (b) to initiate amendments to the legal framework of the Fund;
- (c) to conclude management agreements with the Bank for the operational management of the Fund, and develop appropriate means for monitoring their performance;
- (d) to make decisions in relation to the Investment Policy Statement on the advice of the Bank. The Investment Policy Statement guides the management and investment of the assets of the Fund and outlines the investment strategy of the Fund, including the strategic asset allocation and tactical asset allocation ranges;
- (e) to oversee the transfer into and disbursements from the Fund in accordance with the prescribed conditions set in this Act; and

- (f) to take responsibility for the overall management of the Fund and perform any other function entrusted to the Minister under this Act or any other relevant law.

Functions and Powers of the Bank

6. (1) The Bank shall be responsible for the conduct of the business and affairs of the Fund and shall exercise all powers and do all acts which may be exercised or done by the Fund, including-

- (a) day-to-day operational management of the Fund assets as the primary investment manager under the terms of the Management Agreement entered into with the Minister;
- (b) determine and propose changes to the Investment Policy Statement of the Fund, including the investment guidelines, investment strategy, risk tolerance, permissible currencies, eligible assets that are most appropriate in relation to any moneys standing to the credit of the Fund in accordance with the investment mandate adopted by the Minister pursuant to section 5;
- (c) oversee the investment and management of any moneys standing to the credit of the Fund in accordance with this Act, the Investment Policy Statement approved by the Minister and in a manner the Bank deems appropriate to achieve the objects of the Fund;
- (d) ensure adequacy and effectiveness of Fund's investment management controls;
- (e) ensure appropriate systems and risk controls to safeguard the assets of the Fund against avoidable financial and operational losses;
- (f) determine the appointment and terms of reference of the investment fund managers in accordance with section 12, to ensure the assets of the Fund are managed by well-resourced and competent investment fund managers;
- (g) determine the appointment and terms of reference of other service providers including custodians and investment consultants;
- (h) reinvest the profits and proceeds of the Fund investments; and
- (i) carry out such other activities as may be required by the Minister.

- (2) Subject to the approval of the Minister, the Bank may from time to time make rules as may be necessary or expedient in relation to the administration, management, control, business, assets, and affairs of the Fund.
- (3) The Bank shall have power to do or cause to be done, either by itself or through its agents, all or any of the things specified in section 6(1) above, either absolutely or conditionally and either solely or jointly with others.
- (4) The Fund is to be managed separately from the reserves of the Bank.
- (5) In the exercise of its functions, the Bank shall not be subject to the direction or control of any other person or authority, except for the Minister.
- (6) The Bank may delegate, on such conditions or restrictions as it deems fit, some of its powers and functions to the Board, sub-committees, management and/or departments of the Bank as may be required.
- (7) The Bank is not divested or relieved of any power or function delegated or assigned under subsection (5).
- (8) The Bank may at any time –
- (a) withdraw or amend a delegation or assignment made under subsection (5); or
 - (b) set aside or vary any decision made in the exercise of a power delegated under subsection (5).

PART IV BANKING ACCOUNTS, DEPOSITS AND WITHDRAWALS

Banking Accounts

7. (1) The Fund must open and maintain banking accounts in the name of the Fund with the Bank–
- (a) into which must be deposited all moneys accruing to the Fund in terms of this Act or any other law; and
 - (b) from which must be defrayed all expenditure in connection with the performance of the functions of the Bank and be paid any amounts with which the Fund is charged in terms of this Act.

- (2) The Fund shall consist of-

- (a) the Intergenerational Account for the purpose contemplated in section 3(1) of this Act; and
- (b) the Stabilisation Account for the purpose contemplated in section 3(2) of this Act.

(3) No payment contemplated in subsection (1)(b) may be made as a charge to the Fund, except by authorization of the Bank as expressed through the approved annual budget of income and expenditures or other instruments of the Fund as issued by the Bank.

Deposits into and Accrual to Fund

8. (1) Subject to the Government of the Republic of Namibia achieving the public revenue ratio of 30.5 percent of Gross Domestic Product, there must be paid into-

(a) The Intergenerational Account-

- (i) a minimum of xx percent ($\geq xx\%$) of the public revenues associated to oil and gas resources, including taxes, royalties, and dividends;
- (ii) a minimum of 50 percent ($\geq 50\%$) of public revenues associated to any other yet to be discovered natural resources, including taxes, royalties, and dividends;
- (iii) a minimum of 15 percent ($\geq 15\%$) of the royalties from non-oil non-renewable minerals;
- (iv) a minimum of 33 percent ($\geq 33\%$) of the proceeds from divestiture from government asset holding, properties and entities; and
- (v) the excess funds invested by the Government, Government agencies and/or other institutions or natural persons for the sole management and benefit of the fund.

(b) The Stabilisation Account-

- (i) the excess over the three-year moving average of the Southern African Customs Union (SACU) revenues as a ratio of Gross Domestic Product;

- (ii) the excess over the three-year moving average of royalties from non-oil non-renewable minerals, net of the funds accruing to the Intergeneration Account;
- (iii) the excess over the three-year moving average in public revenues associated oil, gas and any other yet to be discovered natural resources, net of the funds accruing to the Intergeneration Account and
- (iv) a minimum of 10 percent ($\geq 10\%$) of public revenues associated to renewable resources, including taxes, royalties, and dividends, inclusive of income from green energy sources.

(2) Subject to meeting the funding rules outlined in subsection (1) above, funds will be transferred to the Fund on a quarterly basis.

Withdrawals from Fund

9. (1) In pursuance of the objects contemplated in section 3, at the request of the Minister and with the approval of Cabinet, the Bank may make withdrawals from the Fund subject to the following conditions-

- (a) From the Intergenerational Account-
 - i. the account must reach a financial accumulation equivalent to 20 percent of Gross Domestic Product;
 - ii. withdrawal from this account shall not exceed 10 percent ($\leq 10\%$) of the total assets value of the Intergenerational Account each year; and
 - iii. withdrawal can only be made against the real returns accruing from investments in the reporting currency terms, net of population growth of the previous year.
- (b) From the Stabilisation Account-
 - i. the Southern African Customs Union revenues for the year as a percentage of GDP should be below the three-year moving average; or
 - ii. the royalties from oil and non-oil non-renewable minerals for the year as a percentage of GDP should be below the three-year moving average, net of the funds accruing to the Intergenerational Account; or

- iii. domestic revenue for the year as a percentage of GDP should be below the three-year moving average.

(2) Upon declaration of a State of Emergency in terms of Article 26(1) of the Namibian Constitution, withdrawal can be made from the Intergenerational Account or the Stabilisation Account to defend the currency in the event of a balance of payments shock or any other extraordinary circumstance with significant impact on the economy.

(3) All funds withdrawn under subsection (1) and (2) must be appropriated by Parliament by means of the Annual or an Amendment Appropriation Bill, and accounted for in either of the following ways, depending on the purpose of the withdrawal-

- (a) if the withdrawal is from the Intergenerational Account, the amount of the withdrawal must be itemised under the Estimates of Expenditure and included as part of the beneficiary Vote in the Appropriation Bill concerned; and
- (b) if the withdrawal is from Stabilisation Account, the amount of the withdrawal must be itemised under the Vote for the Ministry in the Estimates of Expenditure and included as part of that Vote in the Appropriation Bill concerned.

(4) The funds withdrawn from the Fund to the Budget shall be allocated through the Annual Budget, in compliance with the provisions of the State Finance Act, 1991 (Act No. 31 of 1991) and any amendments made thereto.

(5) The Ministry shall publish in the Government Gazette the amount and reasons for withdrawal from the Fund within 30 days.

PART V INVESTMENTS

Investment Policy Statement

10. (1) The investment practices of the Fund should be aligned and guided by the Investment Policy Statement of the Fund, as approved by the Minister, and which-

- (a) define the investment strategy of the Fund, including-
 - (i) defining the investment objectives, characteristics and investment horizon of the portfolios of the Fund;

- (ii) defining the appropriate eligible asset classes and appropriate investment benchmarks;
- (iii) the strategic asset allocation and tactical asset allocation ranges; and
- (iv) any other relevant matter which is necessary to fulfil the obligations in accordance with the provisions of this Act.

Investments

11. (1) The Fund must invest any moneys standing to the credit of the Fund in any currency or instrument that is approved by the Minister.

(2) The Fund must manage any moneys standing to the credit of the Fund prudently, in line with the Investment Policy Statement.

(3) The primary investment objectives for the Fund should be-

- (a) for the Intergenerational Account to achieve capital growth and enhance investment returns; and
- (b) for the Stabilisation Account to maintain sufficient liquidity in line with the stabilisation mandate.

(4) The assets of the Fund shall be invested in assets and securities geared towards generating market-related returns, in line with the Investment Policy Statement.

(4) The Bank may utilize the services of investment consultants to assist with the strategic asset allocation, selection of investment fund managers and to determine the portfolio benchmarks and setting performance targets.

(5) The Fund shall not invest in securities issued by the Government of the Republic of Namibia.

(6) All investment returns, and income earned by the Fund shall be reinvested in terms of 11 (1).

(7) The Fund is restricted from undertaking domestic instruments as follows--

- (a) a maximum of 2.5 percent of the Intergenerational Account can be invested in domestic assets purely in support of long-term productive capital projects for the benefit of future generations. This amount is not obligatory, and the Bank shall determine the relevant mix of listed and unlisted investments based on the risk-return analysis; and

- (b) the Stabilisation Account of the Fund is not permitted to invest in domestic assets to avoid correlation with the domestic economy in line with its stabilization mandate.

Authorised Transactions

12. (1) The Fund may, subject to provisions of applicable laws in Namibia -

- (a) buy, sell or deal in gold coins or bullion or other precious metals and minerals;
- (b) buy, sell or deal in foreign exchange using any of the instruments commonly used by sovereign wealth funds;
- (c) purchase and sell securities that have been authorised by the Bank at market prices;
- (d) open and maintain accounts with any foreign central bank, monetary authority or any banking institution or other financial institution outside Namibia or any foreign government, agent of such government or any international financial organisation;
- (e) insure itself against any loss, damage, risk or liability which it may suffer or incur; or
- (f) enter into any other transaction authorised in writing by the Bank in pursuance of the objects of the Fund.

(2) Subject to this Act, the Fund when exercising or performing any power or function under subsection (1) must only deal with-

- (a) the Government or Government institutions;
- (b) banking institutions or other financial institutions in Namibia;
- (c) foreign governments or their agencies;
- (d) international financial organisations;
- (e) central banks or monetary authorities;
- (f) banking institutions or other financial institutions outside Namibia; or
- (g) other institutions or bodies as may be approved by the Bank

Investment Fund Managers

13. (1) The Bank is entrusted with the management of the Fund assets as the primary investment fund manager.

(2) The Bank may, through an open, competitive, and transparent process, appoint such number as are necessary of fit and proper persons with the requisite qualifications or experience to be investment fund managers, as independent contractors.

(3) When appointing an investment fund manager, the Bank may have regard to the following considerations, among other relevant considerations-

- (a) the Bank may utilize services of both domestic and international investment fund managers;
- (b) the relative qualifications and experience of the persons competing to be appointed as investment fund managers;
- (c) the expertise of a person competing to be appointed as an investment fund manager in the area of investment concerned;
- (d) the professional record of a person competing to be appointed as an investment fund manager in controlling operational and financial risk with respect to assets that the person has previously managed or is managing in the capacity of investment fund manager;
- (e) the level of remuneration or fees expected to be paid to any person competing to be appointed as an investment fund manager; and
- (f) consider any other matter which is necessary to fulfil its obligations in accordance with the provisions of this Act.

PART VI FINANCIAL PROVISIONS

Prohibition against using Fund assets

14. (1) Except as otherwise provided for in this Act, the Fund and the assets of the Fund shall not be used to-

- (a) borrow and/or issue securities in its own name and for its own account;

- (b) grant secured or unsecured loans and advances or provide credit to the Government, public enterprises, or any other persons or entities;
 - (c) as collateral or guarantee for debts, loans, advances and commitments or other liabilities of the Government or Government controlled institutions or any other institutions or person, whether public or private, and
 - (d) enter into insurance contracts, except in the ordinary course of its business.
- (2) Any contract, agreement or arrangement, to the extent that it purports to encumber the assets referred to in subsection (1), whether by way of guarantee, security, mortgage or any other form of encumbrance, is null and void.

Financial year

15. (1) The financial year of the Fund shall begin on 1 January and end on 31 December each year.

Estimate of income and expenditure

16. The Fund -

- (a) must annually submit to the Minister an estimate of income and expenditure during the ensuing financial year, and such other particulars as the Minister may require; and
- (b) may at any time during any financial year submit to the Minister such other supplementary estimates of income and expenditure for that financial year as are necessary.

Accounts and audit

17. (1) The Fund shall keep full and proper accounts and records of all moneys received or expended from the Fund and of all assets, liabilities and financial transactions of the Fund during the financial year of the Fund, separate from the accounts of the Bank.

(2) The Bank must cause the accounts and records referred to in subsection (1) to be audited annually by the Auditor-General or a person appointed by the Bank and registered as an accountant and auditor under section 23 of the Public Accountants' and Auditors' Act, 1951 (Act 51 of 1951) and any amendments made thereto.

(3) Without prejudice to subsection (1), the Minister may, if there are reasonable grounds to do so, direct that the Auditor-General or a person appointed

by the Bank and registered as an accountant and auditor under section 23 of the Public Accountants' and Auditors' Act, 1951 (Act 51 of 1951) and any amendments made thereto, investigate into and report on the accounts of the Fund or any matter relating to the affairs of the Fund and the Bank must provide the Auditor-General with information or facilities that the Auditor General may request.

(4) The report of the Auditor-General referred to in subsection (3) must be in accordance with the directives of the Minister and in accordance with relevant accounting practises and must be submitted to the Minister.

Annual report

18. (1) The Bank shall as soon as possible, but not later than three months, after the end of each financial year, submit to the Minister in respect of a financial year—

- (a) audited financial statements and a report of the auditor on those statements; and
- (b) a report on the activities of the Fund during that financial year.

(2) The audited financial statements referred to subsection (1)(a) must:

- (a) contain detailed particulars of moneys received by the Fund and expenditure incurred by the Fund during and its assets and liabilities at the end of the financial year in question;
- (b) fairly present the state of affairs of the Fund; and
- (c) such other additional matter as the Minister may determine.

(3) The Minister must lay on the Table of the National Assembly the annual report submitted to him or her in terms of subsection (1), within 30 days from the date of receipt, if the National Assembly is then in ordinary session, or, if the National Assembly is not then in ordinary session, within 14 days after the commencement of its first ensuing ordinary session.

(4) After the annual report having been laid on the Table of the National Assembly in terms of subsection (3), a copy thereof must at all times be published on the websites of the Ministry and the Bank, and open to inspection by interested persons.

Monthly statements

19. (1) The Bank must within 15 business days after the last business day of each month-

- (a) prepare and publish in the Gazette a statement of assets and liabilities of the Fund as at the close of business on that day; and
- (b) deliver a copy of the statement referred to in paragraph (a) to the Minister.

(2) The statement referred to in subsection (1)(a) must be signed by the Governor and the chief financial officer of the Bank.

Exemption from payment of tax, duty and other charges

20. Despite anything to the contrary in any law -

- (a) no tax or charge on income is payable by the Fund; and
- (b) no transfer duty, stamp duty or other moneys is payable by the Fund.

Liquidation of Fund

21. The Fund may not be liquidated except by or under the authority of an Act of Parliament.

PART VII GENERAL PROVISIONS

Compliance with host country laws

22. (1) The Fund shall operate in accordance with the laws of the country in which the Fund has made an investment.

(2) The Fund is a “financial institution” for the purposes of the Financial Intelligence Act, 2012 (Act No. 13 of 2012).

Confidentiality

23. (1) No director, officer, employee of the Bank or any person dealing with the affairs of the Fund shall, during and after his relationship with the Fund, disclose directly or indirectly to any person confidential information relating to the affairs of the Fund, which he has acquired in the performance of his duties or the exercise of his functions.

(2) Nothing in this section shall preclude the exchange or disclosure of any information, under conditions of confidentiality, pursuant to any agreement or memorandum of understanding entered into with the Bank or such other relevant bodies performing duties of similar nature or any public agency or law enforcement agency, where the Scheme is satisfied that the public agency or law enforcement agency has the capacity to protect the confidentiality of the information imparted.

Immunity

24. (1) Any person acting on behalf of the Fund shall not be personally liable for any loss or damages arising out of any act done or omitted to be done in good faith under this Act, unless such loss or damage is due to his or her negligence.

Offences and penalties

25. (1) Any person who contravenes or fails to comply with any provision of this Act shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding N\$500,000 or 5 years' imprisonment, or to both such fine and imprisonment.

Regulations

26. (1) The Minister may make regulations on any matter which the Minister considers necessary or expedient to prescribe in order to achieve the purposes of this Act.

(2) Without derogating from the generality of subsection (1), the Minister may make regulations relating to-

- (a) The deposit of money into the Fund; and
- (b) The disbursement of money from the Fund;

(3) A regulation made under subsection (1) may prescribe a penalty for any contravention of or failure to comply with any provision thereof.

Directives

27. (1) The Minister, when he or she thinks it necessary or expedient, may direct the Bank in writing to attend to any aspect or matter of general application relating to the assets or affairs of the Fund in order to achieve the objects of this Act.

(2) After having considered the directive under subsection (1), the Bank must give effect to or cause the policy directive to be implemented.

Rules by the Bank

28. (1) Subject to the approval of the Minister, the Bank may from time to time make rules as may be necessary or expedient in relation to the administration, management, control, business, assets and affairs of the Fund.

Savings and Transitional Provisions

29. (1) The Fund established in terms of section 72(2) and section 73(1)(a) of the Bank of Namibia Act, 2020 is deemed to have been established in terms of section 2 of this Act.

(2) The accounts of the Fund opened before the commencement of this Act are deemed to have been opened in terms of this Act.

(3) A determination, appointment, rule, directive, guideline, circular, notice, or anything done before the commencement of this Act that—

- (a) is in effect at the commencement of this Act; and
- (b) could be made, issued or done under a corresponding provision of this Act, is deemed to have been made, issued or done under a corresponding provision of this Act.

Short title and commencement

30. (1) This Act shall be called the Sovereign Wealth Fund of Namibia Act, 2022, and shall come into operation on a date to be determined by the Minister by notice in the *Gazette*.

(2) Different dates may be determined under subsection (1) in respect of different provisions of this Act.
