

ENVIRONMENTAL INVESTMENT FUND OF NAMIBIA ACT 13 OF 2001
[ASSENTED TO 6 DECEMBER 2001] [DATE OF COMMENCEMENT: TO BE PROCLAIMED]

(Signed by the President)

ACT

To provide for the establishment of an Environmental Investment Fund of Namibia in support of sustainable environmental and natural resources management in Namibia; to constitute the Board to manage and control the Fund, and to define its powers and functions; and to provide for incidental matters.

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PART I

PRELIMINARY PROVISIONS (s 1)

1 Definitions

In this Act-

"**auditor**" means the auditor of the Fund appointed in terms of section 24;

"**Board**" means the Environmental Investment Fund of Namibia Board referred to in section 5;

"**Chief Executive Officer**" means the Chief Executive Officer of the Fund appointed in terms of section 21;

"**Fund**" means the Environmental Investment Fund of Namibia established by section 2;

"**Minister**" means the Minister responsible for environmental affairs;

"**Ministry**" means the Ministry responsible for the administration of environmental affairs; and

"**this Act**" includes any regulation made under section 26.

PART II

ENVIRONMENTAL INVESTMENT FUND OF NAMIBIA (ss 2-20)

2 Establishment of Environmental Investment Fund of Namibia

(1) There is established a fund to be known as the Environmental Investment Fund of Namibia.

(2) The Fund is a juristic person.

3 Moneys of Fund

The Fund consists of-

- (a) moneys appropriated by Parliament for the Fund;
- (b) moneys collected in respect of levies imposed under this Act;
- (c) moneys donated or accruing to the Fund from any source; and
- (d) interest and other income derived from the investment of moneys standing to the credit of the Fund.

4 Objects of Fund

The objects of the Fund are to procure moneys for the maintenance of an endowment fund that will generate income in perpetuity and to allocate such income to activities and projects aimed at promoting-

- (a) the sustainable use and management of environmental and natural resources;
- (b) the maintenance of the natural resource base and ecological processes;
- (c) the maintenance of biological diversity and ecosystems for the benefit of all Namibians; and
- (d) economic improvements in the use of natural resources for sustainable rural and urban development.

5 Management and administration of Fund

The Fund is managed and administered by the Board to be known as the Environmental Investment Fund of Namibia Board.

6 Powers and functions of Board

The powers and functions of the Board are to accountably, efficiently and properly manage and control the affairs and properties of the Fund and, for that purpose and in furtherance of the objects of the Fund-

- (a) to determine the criteria for accepting grants and donations made to the Fund;
- (b) to deposit all moneys into the Fund's banking account opened with a bank or building society registered under the laws governing banking institutions and building societies

- in Namibia;
- (c) to invest moneys standing to the credit of the Fund with a banking institution or building society referred to in paragraph (b), the Post Savings Bank established in terms of the Posts and Telecommunications Act, 1992 (Act 19 of 1992), or any other financial institution as defined in section 1 of the Financial Institutions (Investment of Funds) Act, 1984 (Act 39 of 1984), taking into account security, capital growth, and interest and dividends to be earned from such investment;
 - (d) subject to this Act or any other law, to negotiate, co-operate or enter into agreements with any person, organisation or institution with regard to any matter which is directly or indirectly aimed at the achievement of the objects of the Fund;
 - (e) to conduct a periodical strategic review of the Fund to come up with a strategic plan to guide the future operations of the Fund;
 - (f) to allocate moneys through grants, loans, bursaries, scholarships or other financial aid to governmental and non-governmental organisations and institutions, private organisations and individual persons in accordance with section 25;
 - (g) to utilize during the first five years of the Fund the income and not the principal sum of the endowment fund, except under special circumstances as determined by the Board in consultation with the Minister, in which case not more than 10 per cent of the principal sum may be used in any one year;
 - (h) to determine additional requirements for projects and activities to qualify for grants, loans or any other aid;
 - (i) to employ persons as may be required and necessary to perform the functions and conduct the affairs of the Fund; and
 - (j) to investigate and inquire into any misconduct, mismanagement and maladministration by any person employed in terms of this Act and to maintain discipline.

7 Constitution of Board

(1) The Board consists of five members who are, as far as practicable, gender representative, and appointed by the Minister, as follows-

- (a) a staff member employed in connection with the administration of environmental affairs in the Ministry;
- (b) a staff member of the Ministry of Agriculture, Water and Rural Development designated by the Minister of that Ministry;
- (c) a staff member of the Ministry of Mines and Energy designated by the Minister of that Ministry;
- (d) a person representing community based organisations having the sustainable environmental and natural resources and community based tourism management as their main object; and
- (e) a person, having expertise in financial matters, representing financial institutions.

(2) A person is not eligible for appointment as a member, if he or she-

- (a) is not a Namibian citizen or the holder of a permanent residence permit issued under the laws relating to immigration;
- (b) is a member of the National Assembly or of a regional council established under section 2 of the Regional Councils Act, 1992 (Act 22 of 1992);
- (c) is an unrehabilitated insolvent;
- (d) is under the age of 21 years; or
- (e) has been convicted of an offence, other than a political offence committed before the

date of Namibia's independence, for which he or she has been sentenced to a term of imprisonment without the option of a fine for a period of 12 months or more.

(3) For the purposes of appointment as members of the Board, the Minister must in writing invite the organisations and institutions referred to in subsection (1)(d) and (e) to nominate persons.

(4) If the nomination referred to in subsection (3) is not received by the Minister within the period specified in the invitation referred to in that subsection, the Minister may appoint such person as the Minister thinks fit.

(5) The Minister must appoint one member as chairperson and another as vice-chairperson of the Board.

(6) The Board may co-opt persons with special or technical expertise to act in an advisory capacity.

(7) After appointments and elections in terms of subsections (1) and (5), respectively, the Minister, by notice in the *Gazette*, must announce the names, positions and nationalities of the members of the Board.

8 Term of office of member of Board

Subject to section 9, a member of the Board holds office for a term of three years and is eligible for re-appointment at the expiration of that term.

9 Vacation of office and filling of casual vacancies

(1) A member of the Board vacates office, if the member-

- (a) is convicted of an offence and sentenced to imprisonment without the option of a fine;
- (b) resigns from the Board after giving the Minister 30 days' written notice of such member's intention to resign;
- (c) has been absent for three consecutive meetings of the Board without permission of the chairperson of the Board;
- (d) in the case of a person appointed in terms of section 7(1)(a), (b) or (c), ceases to be a staff member of the Ministry;
- (e) is removed by the nominating body after giving the Minister 30 days' written notice of its intention to remove the member; or
- (f) is removed by the Minister under subsection (2).

(2) The Minister may remove a member of the Board from office, if the member-

- (a) is guilty of misconduct;
- (b) fails to comply with or contravenes this Act; or
- (c) is by reason of physical or mental illness or for any other reason incapable of acting as member of the Board.

(3) If a member of the Board dies or vacates office, the vacancy must be filled for the unexpired portion of office of that member in the manner contemplated in section 7.

10 Committees of Board

(1) The Board may establish one or more committees of the Board to exercise such powers and perform such functions as the Board, under subsection (4), may delegate or assign.

(2) A committee established under subsection (1) consists of such members of the Board, and may include such other persons not being members of the Board, as the Board may appoint to the committee.

(3) The Board must designate a member of the Board to be the chairperson of a committee.

(4) The Board may delegate any power or assign any function conferred or imposed upon

the Board by or under this Act to a committee subject to such conditions as it may determine.

(5) The Board is not divested or relieved of the power or function delegated or assigned under subsection (4).

(6) A decision by a committee in the exercise of a power delegated to it under subsection (4), is subject to the approval of the Board, and the Board may at any time vary or set aside any such decision.

(7) The Board may dissolve or reconstitute a committee at any time.

11 Technical Advisory Panel

(1) The Board must establish a committee under section 10 to be known as the Technical Advisory Panel to advise the Board on technical matters as required by the Board or this Act.

(2) The Technical Advisory Panel must-

- (a) draw up and submit to the Board for its approval and publication in the *Gazette*, a list of priorities and criteria for the funding of projects and activities;
- (b) assess and appraise proposals of technical nature under consideration before the Board and make recommendations to the Board in connection therewith; and
- (c) monitor and evaluate progress and performance of activities, projects, institutions, organisations and individuals receiving money from the Fund and report to the Board.

(3) The list and criteria referred to in subsection (2)(a) may be reviewed from time to time as the Board may determine.

(4) The Board must-

- (a) determine the constitution of the Technical Advisory Panel and the terms and conditions for membership; and
- (b) appoint the members of the Panel who must be selected from experienced professionals and academics in the fields of biological science, economics, management, natural resource management, social science, agriculture, rural development and tourism, and who represent the Government, private sector and non-governmental organisations.

12 Meetings and decisions of Board

(1) The first meeting of the Board must be held at a place and time as the chairperson of the Board may determine and, subject to subsection (2), any meeting of the Board thereafter must be held at a place and time as the Board may determine.

(2) The chairperson of the Board may at any time convene a special meeting of the Board.

(3) The chairperson of the Board or, in the absence of the chairperson, the vice-chairperson, presides at all meetings of the Board.

(4) The majority of the members of the Board or a committee form a quorum for any meeting of the Board or committee.

(5) The decision of the majority of the members present at any meeting of the Board or a committee constitutes a decision of the Board or committee, and in the event of any equality of votes the member presiding has a casting vote in addition to a deliberative vote.

(6) The Board may determine rules of the Board governing meetings and procedure at meetings of the Board and committees.

13 Disclosure of interest

(1) A member of the Board or committee must not take part in the deliberations or vote on any matter which is the subject of consideration at a meeting of the Board or a committee if in relation to such matter, the member has any interest, whether direct or indirect, which precludes the member from performing the functions of a member in a fair, unbiased and proper manner.

(2) If at any stage during a meeting of the Board or a committee it appears that a member has or may have any interest which may cause a conflict of interests to arise, that member must forthwith fully disclose the nature of such interest and leave the meeting so as to enable the remaining members to discuss the disclosure and determine whether the member is precluded from taking part in the meeting by reason of a conflict of interests.

(3) A disclosure by a member in accordance with subsection (2), and the decision taken by the members in connection therewith, must be recorded in the minutes of that meeting.

(4) A decision on a matter taken by the Board or committee must be cancelled and the matter be reconsidered at an ensuing meeting of the Board or committee, if a member of the Board or committee takes part in the deliberations or votes on the matter or fails to disclose fully the nature of his or her interest in the matter and leave the meeting in contravention of subsection (1) or (2).

(5) A member who contravenes subsection (1) or fails to comply with subsection (2) commits an offence and is liable to a fine not exceeding N\$20 000 or to imprisonment not exceeding two years or to both such fine and imprisonment.

14 Payment of allowances to members of Board and committees

(1) Members of the Board or committees who are not in the full-time employ of the State must be paid such allowances, including travel and subsistence allowances as the Board, with the concurrence of the Minister, may determine.

(2) The expenses relating to the functions of the Board must be defrayed from money of the Fund.

15 Banking account

(1) The Board must open and maintain a banking account in the name of the Fund with a banking institution or building society registered in terms of the laws governing banking institutions and building societies in Namibia-

- (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 Board and be paid any amounts with which the Fund is charged in terms of this Act.

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

(3) The Board must apply any donation contemplated in section 3(c) in accordance with the terms and conditions, if any, as agreed upon by the donor and the Board.

16 Financial year, accounts and auditing

(1) The financial year of the Fund ends on 31 March in each year.

(2) The Chief Executive Officer is the accounting officer of the Fund and is charged with accountability in respect of all moneys received and all payments made by the Fund.

(3) The Chief Executive Officer must keep proper accounts of, and financial information relating to, all affairs of the Fund so as to at all times present fairly and reflect correctly all the financial transactions and the financial position of the Fund.

(4) As soon as practicable after the end of each financial year, the Board-

- (a) must cause to be prepared-
 - (i) financial statements in respect of the financial year concerned; and
 - (ii) a report on the affairs and activities of the Fund during the financial year

concerned; and

- (b) must submit all financial accounts and statements to the auditor for audit.

17 Annual report of Fund

(1) As soon as practicable but not later than six months after the end of each financial year of the Fund, the Board must submit to the Minister an annual report on the affairs and activities of the Fund, which must include-

- (a) all financial accounts and statements of the Fund duly audited and certified by the auditor; and
(b) the report of the auditor relating to the accounts and statements referred to in paragraph (a).

(2) The Board must submit such other reports and particulars relating to the affairs and activities of the Fund as the Minister, at any time, may require.

(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 open to inspection by interested persons at the head office of the Fund.

18 Estimate of income and expenditure

The Board-

- (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.

19 Exemption from payment of tax, duty and other charges

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.

20 Liquidation of Fund

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

PART III

CHIEF EXECUTIVE OFFICER, STAFF OF FUND AND AUDITOR (ss 21-24)

21 Chief Executive Officer

(1) The Board must appoint a person approved by the Minister as Chief Executive Officer of the Fund, who-

- (a) subject to the control and directions of the Board, is responsible for the day to day administration of the Fund;
(b) unless the Board decides otherwise, must attend meetings of the Board and may take part in discussions on any matter under consideration before the Board; and
(c) serves as secretary to the Board performing such administrative functions as may be assigned to the secretary by the Board or any committee of the Board, and providing all technical support required by the Board or any committee of the Board.

(2) The remuneration and other conditions of service of the Chief Executive Officer are determined by the Board.

(3) The Chief Executive Officer is appointed for a term of three years, subject to a six months probational period, and is eligible for re-appointment upon the expiration of that term.

(4) Whenever the office of the Chief Executive Officer becomes vacant or the Chief Executive Officer is for any reason unable to perform his or her functions, the Board must designate any staff member of the Fund to act as Chief Executive Officer.

(5) A person designated in terms of subsection (4) has all the powers and performs all the functions of the Chief Executive Officer.

22 Delegation and assignment

(1) The Board may delegate or assign, either in general or in particular, any power or function conferred or imposed upon the Board by or under this Act to the Chief Executive Officer subject to such conditions and restrictions as it may determine.

(2) The Board is not divested or relieved of any power or function delegated or assigned under subsection (1).

(3) The Board may at any time-

- (a) withdraw or amend a delegation or assignment made under subsection (1); or
- (b) set aside or vary any decision made in the exercise of a power delegated under subsection (1).

23 Staff of Fund

The Board may employ, upon such terms and conditions as to remuneration and otherwise as the Board may determine, such persons as the Board may consider necessary to perform the functions and conduct the affairs of the Fund.

24 Auditor

(1) The Board, in consultation with the Auditor-General, must appoint a person who is registered in terms of the Public Accountants' and Auditors' Act, 1951 (Act 51 of 1951), as auditor of the Fund.

(2) The auditor must undertake such examinations of the affairs and activities of the Fund as may be requested by the Minister or by the Board for the purposes of this Act.

PART IV GENERAL (ss 25-28)

25 Allocation of moneys

Subject to this Act, the Board may allocate moneys as contemplated in section 6(f), for-

- (a) the conservation, protection and management of natural resources, the conservation of biological diversity, or the maintenance of ecosystems;
- (b) the improvement in the management of natural resources for the benefit of those whose livelihoods directly depend on natural resources or are most directly affected by protected areas for the promotion of diversified sustainable rural development;
- (c) the training and education of Namibians in environmentally sustainable practices and promoting general public environmental awareness;
- (d) the development and implementation of environmental policies and strategies;
- (e) the broadening of the knowledge base of Namibia's environmental resources through the production, monitoring, management, use, and dissemination of environmental information;
- (f) the management and operations of conservancies, game parks and nature reserves declared or established under the Nature Conservation Ordinance, 1975 (Ordinance 4 of 1975); and
- (g) any other related activities which promote the objects of the Fund.

26 Regulations

(1) The Minister, with the concurrence of the Minister of Finance and on the recommendation of the Board, may make regulations relating to-

- (a) the determination and imposition of levies payable by-
 - (i) visitors to the national parks, reserves and other places of national importance and tourist attraction, the amount of which may differ between local and foreign visitors and between categories of persons;
 - (ii) persons engaged in wildlife, forestry, wild plants or other natural resources for commercial purposes;
 - (iii) persons engaged in any activities on environmental and natural resources management for commercial purposes; or
 - (iv) any other categories of persons or sources of revenue deemed by the Minister to be in support of the objectives and purposes of the Fund;
- (b) the exemption of any category of persons from paying levies when visiting certain places where levies are payable;
- (c) the form of any application for a grant, loan, bursary, scholarship or other assistance permitted to be made in terms of this Act and the manner in which such application must be made;
- (d) the fees payable for any application and the charges payable for any application form or any other documents;
- (e) the allocation of moneys through grants, loans, bursaries, scholarships and other financial aid to governmental and non-governmental organisations and institutions, private organisations and individual persons, and the conditions in respect of such grants, loans, bursaries, scholarships and other financial aid; and
- (f) generally, any matter necessary or expedient to achieve the objects of this Act.

(2) A regulation made under subsection (1) may prescribe a penalty, not exceeding a fine of N\$2 000 or imprisonment for a period of two years, or both such fine and imprisonment, for any contravention of or failure to comply with any provision thereof.

27 Indemnity

A member of the Board or committee of the Board or any person employed in terms of this Act is not personally liable for any damage or loss arising out of any act done in good faith under this Act unless such damage or loss is due to his or her wilful misconduct, dishonesty, gross negligence or failure to comply with any provision of this Act.

28 Short title and commencement

This Act is called the Environmental Investment Fund of Namibia Act, 2001, and comes into operation on a date to be determined by the Minister by notice in the *Gazette*.

INCOME TAX