

REPUBLIC OF NAMIBIA

SOVEREIGN WEALTH FUND OF NAMIBIA BILL

(Introduced by the Minister of Finance and Public Enterprises)

DRAFT

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 the benefit of current and future generations as well as fiscal and official reserves 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.

ARRANGEMENT OF SECTIONS

PART I
PRELIMINARY PROVISIONS

1. Definitions

PART II
SOVEREIGN WEALTH FUND OF NAMIBIA

2. Establishment of the Fund
3. Objects of the Fund
4. Functions of the Fund

PART III
GOVERNANCE OF THE FUND

5. Functions and Powers of the Minister
6. Constitution of the Board of Directors
7. Functions and Powers of the Board of Directors
8. Constitution of the Investment Committee
9. Functions of the Investment Committee
10. Functions of the Bank

PART IV
BANKING ACCOUNTS, DEPOSITS AND WITHDRAWALS

11. Banking Accounts
12. Deposits into and Accrual to Fund
13. Withdrawals from Fund

DRAFT

PART V
INVESTMENTS

14. Investment Policy Statement
15. Investments
16. Authorised Transactions
17. Investment Fund Managers

PART VI
FINANCIAL PROVISIONS

18. Prohibitions against using Fund Assets
19. Financial year
20. Estimates of Income and Expenditure
21. Accounting and auditing
22. Annual report
23. Monthly returns
24. Exemption from payment of tax, duty and other charges
25. Liquidation of Fund

PART VII
GENERAL PROVISIONS

26. Compliance with host country laws
27. Confidentiality
28. Immunity
29. Offences and Penalties
30. Regulations
31. Directives by the Minister
32. Rules by the Bank
33. Savings and Transitional Provisions
34. Short title and commencement

DRAFT

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;

"Annual Budget" means the appropriation Act or additional appropriation Act passed pursuant to the provisions of Article 126(2) of the Namibian Constitution;

"Asset Class" means a group of investments that have similar characteristics and behave similarly in the market place;

"Auditor General" means the Auditor General appointed pursuant to Article 127 of the Namibian Constitution;

"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;

"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;

"Investment Policy Statement" means the strategic document that outlines the investment mandate of the Fund including the investment objectives, guidelines, characteristics and horizon of the portfolios of the Fund, among others;

"Minister" means the minister responsible for finance;

"Ministry" means the ministry responsible for finance;

"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;

"Operational Management Agreement" means the operational agreement between the Board and the Bank for the purposes of managing the operations of the Fund;

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

DRAFT

"Persons" include both juristic and natural persons;

"Petroleum" means any liquid or solid hydrocarbon or combustible gas existing in a natural condition in the earth's crust and includes any such liquid or solid hydro-carbon or combustible gas which has in any manner been returned to such natural condition, but shall not include coal, bituminous shales or other stratified deposits from which oil can be obtained by destructive distillation, or gas arising from marsh or other surface deposits, as defined in the Petroleum (Exploration and Production) Act, Act No. 2 of 1991 and any amendments thereto;

"Petroleum revenues" means all Government revenues specified in section 11 of this Act;

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

"Santiago Principles" means the generally accepted principles and practices for Sovereign Wealth Funds voluntarily endorsed by the International Forum of Sovereign Wealth Funds members;

"Strategic asset allocation" means the establishment of target allocations of the Fund between different eligible asset classes with periodic rebalancing of the portfolio to bring it back in line with the target allocations due to deviations in the total returns of different eligible asset classes;

"Tactical asset allocation" means actively making changes in the allocation of the Fund between and within different eligible asset classes to take advantage of perceived temporary market anomalies in the pricing of eligible asset classes;

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.

(2) The legal ownership of the Fund is vested in the Republic of Namibia and belongs to the citizens of Namibia collectively.

(3) The Minister must act as the trustee of the Fund on behalf of the citizens of the Republic of Namibia and is responsible for administering this Act.

(4) The Board must be the custodian of Fund.

DRAFT

(5) The Bank must be the administrator of the Fund.

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

(7) The Fund shall be managed according to the principles of good governance including transparency, accountability and international best practices including the Santiago Principles.

Object of the Fund

3. The objects of the Fund are to provide for-

(1) national saving for the benefit of current and 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 current and future generations of Namibians; and

(2) fiscal and official reserves stabilization -

(a) to make secure investments to support fiscal and/or macroeconomic stabilisation by providing insulation to and stabilization of the economy, the annual 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;

DRAFT

(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 Minister shall be responsible for the overall policy direction, coordination, and supervision of the Fund.

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

(a) to set the investment mandate of the Fund in the Investment Policy Statement;

(b) to appoint the Board of Directors of the Fund;

(c) to conclude performance agreements with the Board for the management of the Fund, and develop appropriate means for monitoring their performance;

(d) to oversee the transfer into and disbursements from the Fund in accordance with the prescribed conditions set in this Act; and

(e) 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.

Constitution of the Board of Directors

DRAFT

6. (1) There shall be a Board of Directors of the Fund which shall comprise of not less than five (5) and not more than seven (7) members who shall be appointed by the Minister, one of whom shall be appointed as Chairperson.

(2) The Directors shall include a Deputy Governor of the Bank, a representative of the private financial sector and a representative of the civil society.

(3) For purposes of subsection (2), the Minister must request for nominations of Directors from the Bank as well as organised bodies representing the private financial sector and civil society.

(4) For purposes of appointing persons referred to in subsection (1), the Minister must, in at least two daily newspapers circulating widely throughout Namibia or in any other form of advertisement, invite interested persons who are -

(a) fit and proper persons;

(b) of proven knowledge and experience in the field of investments, finance, law, business or commerce or other disciplines relevant to the operation of the Fund; and

(c) not disqualified from being appointed as members of the Board in terms of section (9), to apply to be considered for appointment as members of the Board.

(5) An application referred to in subsection (4) must be -

(a) made in writing; and

(b) submitted to the Minister within a period specified in the invitation referred to in that subsection.

(6) The Minister must constitute a selection committee to evaluate the applications submitted under subsection (5) and shortlist applicants who comply with subsection (4)(b) to be interviewed by an independent interviewing committee appointed by the Minister.

(7) The Directors shall be appointed for a period not exceeding three (3) years and shall be eligible for reappointment.

(8) The appointment of the Directors and every change in the appointment shall be published in the Government Gazette.

(9) A person shall not be eligible for appointment as a Director, or continue as a Director, if that person-

DRAFT

(a) is a member of Parliament;

(b) is not a Namibian citizen;

(c) is a member of the Investment Committee established under section 7;

(d) has been disqualified under any law dealing with companies to hold a position of a director of a company;

(e) is an unrehabilitated insolvent;

(f) is medically unfit for office;

(g) has been convicted of an offence in Namibia or elsewhere and sentenced to imprisonment without an option of a fine;

(h) has been convicted of an offence involving dishonesty in Namibia or elsewhere;

(i) has been disqualified or suspended from practising a profession on the ground of unprofessional conduct or dismissed from a position of trust due to misconduct; or

(j) has, due to personal or close family interests and investments, a conflict of interest.

Functions and Powers of the Board of Directors

7. (1) Subject to the relevant provisions of this Act, the Board of Directors shall be responsible for-

(a) advising the Minister on the Investment Policy Statement of the Fund;

(b) the management of the Fund in accordance with this Act and the Investment Policy Statement;

(c) reviewing and approving the operational policies of the Fund and ensuring compliance thereof;

(d) concluding the Operational Management Agreement with the Bank for the management of the Fund, and develop appropriate means for monitoring performance;

(e) monitoring the performance of the Fund;

DRAFT

(f) appointing members of the Investment Committee;

(g) exercising oversight over the operations of the Fund;

(h) appointment of the investment fund managers and other service providers including custodians and investment consultants, in accordance with section 17; and

(i) perform any other function entrusted to the Board under this Act or any other relevant law.

(2) The Board of Directors shall, in the discharge of their functions, report to the Minister and shall provide such information and reports as prescribed in this Act and as the Minister may require.

(3) The Directors shall be paid remuneration in respect of their office as the Minister may determine from time to time.

(4) The Board may delegate, on such conditions or restrictions as it deems fit, some of its functions to sub-committees as may be required.

Constitution of the Investment Committee

8. (1) There shall be an Investment Committee which shall comprise of five (5) members who shall be appointed by the Board, one of whom shall be appointed as Chairperson.

(2) The Investment Committee shall consist of-

(a) a representative of the Bank; and

(b) not more than four (4) other persons appointed in accordance with subsection (3).

.

(3) In appointing members of the Investment Committee referred to in subsection (2), the Board may have regard to the following considerations, among other relevant considerations-

(a) persons must be appointed following an open, competitive, and transparent process;

(b) persons must have extensive knowledge and experience on matters relating to international financial investments and portfolio management;

DRAFT

(c) the professional record of the persons being considered for appointment with regard to ethical matters; and

(d) any other matter which is necessary for the Investment Committee to fulfil its obligations in accordance with the provisions of this Act.

(4) The members of the Investment Committee shall be paid such remuneration in respect of their office as the Minister may determine from time to time.

(5) The members shall be appointed for a period not exceeding three (3) years and shall be eligible for reappointment.

Functions of the Investment Committee

9. The Investment Committee shall be responsible for advising the Board of Directors on the review and implementation of the Investment Policy Statement, including-

(a) making recommendations on the appropriateness of the investment strategy to achieve the objectives of the Investment Policy Statement;

(b) making recommendations to the Board on the appointment or removal of external investment fund managers as well as developing the terms of reference for such investment fund managers;

(c) advising the Board on the fees charged by investment fund managers; and

(d) any other relevant activities.

Functions of the Bank

10. (1) The Bank shall be responsible for providing banking, administrative, investment, and operational services to the Fund, including-

(a) day-to-day operational management of the Fund as under the terms of this Act, the Investment Policy Statement, and the Operational Management Agreement;

(b) providing the secretariat function for the Board of Directors and the Investment Committee and any support required by the Board and the Committee to carry out its functions;

DRAFT

(c) establishing adequate and effective risk management systems and controls as well as necessary internal managements systems for the operational management of the Fund; and

(d) carry out such other activities as may be required under this Act and by the Board.

(2) The Fund is to be managed separately from the reserves of the Bank.

(3) The Bank may be remunerated for the operational management of the Fund as per the terms agreed with the Board in the Operational Management Agreement.

PART IV
BANKING ACCOUNTS, DEPOSITS AND WITHDRAWALS

Banking Accounts

11. (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 Fund 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 Board as expressed through the approved annual budget of income and expenditures or other instruments of the Fund as issued by the Board.

Deposits into and Accrual to Fund

12. (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-

DRAFT

(a) The Intergenerational Account-

Petroleum Revenues

(i) petroleum revenues, as follows:

Until the 5th year of the exploitation of petroleum resources-

- xx percent of petroleum revenues shall be channelled to the Annual Budget for utilisation pursuant to the provisions in subsection (3) below; and

- xx percent of petroleum revenues shall be deposited into the Intergenerational Account.

From the 6th year of the exploitation of petroleum resources-

- all petroleum revenues shall be deposited into the Intergenerational Account.

Petroleum revenues shall include all revenue from-

- royalties due and payable by the holder of a petroleum licence;

- the Government's share of profits received under the terms of a Petroleum Agreement or any other agreement;

- any petroleum income tax, additional profit tax or any future tax levied on the profits of companies or individuals undertaking petroleum production operations;

- receipts realised from the sale of Government shares or equity in petroleum production operations or the national oil company; and

- any other current or future fiscal instruments levied solely or mainly on companies or individuals involved in petroleum production operations.

Petroleum revenues shall not include revenue from–

- value added tax collected on inputs or outputs from petroleum production operations;

- customs duties collected on inputs into petroleum production operations;

DRAFT

- applicable statutory fees collected by regulatory agencies; and

- withholding tax on services or payments made to contractors by companies or individuals undertaking production operations.

Non-petroleum Revenues

(ii) all public revenues associated to any other yet to be discovered non-renewable natural resources;

(iii) a minimum of 15 percent (≥15%) of the royalties due and payable by holders of mining licences for non-petroleum non-renewable minerals;

(iv) a minimum of 33 percent (≥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-petroleum non-renewable minerals, net of the funds accruing to the Intergeneration Account; and

(iii) a minimum of 10 percent (≥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.

(3) The share of the petroleum revenues channelled to the Annual Budget over the 5 years, shall be used only to finance-

(a) debt redemptions to improve the creditworthiness of the country;

DRAFT

(b) the construction of critical national infrastructure; and

(c) the provision of health, education, and other critical social services.

Withdrawals from Fund

13. (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) withdrawal from this account shall not exceed xx percent (≤xx%) of the total assets value of the Intergenerational Account each year; and

(ii) 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 petroleum and non-petroleum 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.

(iv) the withdrawal from the fund shall not exceed a third (1/3) of the account's total asset value in a given year.

(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

DRAFT

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 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

14. (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

DRAFT

15. (1) The Fund must invest any moneys standing to the credit of the Fund in any currency or instrument that is approved in the Investment Policy Statement.

(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 Fund 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.

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

(a) a maximum of 2.5 percent of the Intergenerational Account may 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 shall be invested in line with the relevant mix of listed and unlisted investments approved in the Investment Policy Statement; 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

16. (1) The Fund may, subject to provisions of applicable laws in Namibia and the Investment Policy Statement-

DRAFT

(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 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 Board.

Investment Fund Managers

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

(2) The Board 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.

DRAFT

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

(a) the Board 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

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

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

(b) to 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) to enter into insurance contracts, except in the ordinary course of its business.

DRAFT

(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

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

Estimate of income and expenditure

20. 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

21. (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 Fund 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 Board 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 Board 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 Board 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.

DRAFT

Annual report

22. (1) The Board 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

23. (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 Chairperson of the Board and the chief financial officer of the Bank.

Exemption from payment of tax, duty, and other charges

DRAFT

24. 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

25. 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

26. (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

27. (1) No director, officer, employee of the Bank or any person dealing with the affairs of the Fund shall, during and after his/her relationship with the Fund, disclose directly or indirectly to any person confidential information relating to the affairs of the Fund, which he/she has acquired in the performance of his/her duties or the exercise of his/her 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 Board or such other relevant bodies performing duties of similar nature or any public agency or law enforcement agency, where the Board is satisfied that the public agency or law enforcement agency has the capacity to protect the confidentiality of the information imparted.

Immunity

28. (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/her or her negligence.

Offences and penalties

DRAFT

29. (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$100,000,000 or 30 years' imprisonment, or to both such fine and imprisonment.

Regulations

30. (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

31. (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

32. (1) Subject to the approval of the Minister, the Board 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

33. (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.

DRAFT

(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.

(4) Despite section 2(4) of this Act, for the first five years after the commencement of this Act, or upon the Fund reaching an asset base equivalent to ……., whichever occurs later, the Bank shall be the custodian of the Fund.

(5) The Bank shall assume all the functions of the Fund, the Board and the Investment Committee under the Act and shall remain the custodian of the Fund until the Board and the Investment Committee have been appointed in terms of this Act.

(6) Subject to subsection (4), at least six months before the end of the fifth year, or within six months after the Fund has achieved the asset base equivalent to ……., the Minister must appoint the Board in accordance with section 6 of the Act.

(7) Once appointed, the Board must, within six months of its appointment, appoint the Investment Committee in accordance with section 8 of the Act.

(8) Once the Board and the Investment Committee have been duly appointed, the Bank shall, within two months, hand over the custodianship of the Fund to the Board after which the Bank shall cease to be the custodian of the Fund.

(9) The Cooperation Agreement between the Government of the Republic of Namibia and the Bank of Namibia on the Interim Operation of the Sovereign Wealth Fund of the Government of the Republic of Namibia signed on 12 May 2022 shall remain in operation until the date when the Bank has ceased to be the custodian of the Fund, upon which date the Agreement shall also cease to operate.

Short title and commencement

34. (1) This Act shall be called the Sovereign Wealth Fund of Namibia Act, 2024, 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.

DRAFT