

BAHAMAS PROTECTED AREAS FUND (AMENDMENT) ACT, 2019

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No. 37 of 2019

**BAHAMAS PROTECTED AREAS FUND
(AMENDMENT) ACT, 2019**

**AN ACT TO AMEND THE BAHAMAS PROTECTED AREAS FUND
ACT TO FURTHER STRENGTHEN THE PROVISIONS OF THE ACT
IN ORDER TO ENHANCE THE OPERATIONS OF THE BAHAMAS
PROTECTED AREAS FUND AND FOR CONNECTED MATTERS**

[Date of Assent - 19th December, 2019]

Enacted by the Parliament of The Bahamas

1. Short title and commencement.

- (1) This Act, which amends the Bahamas Protected Areas Fund Act, 2014 (*No. 28 of 2014*), may be cited as the Bahamas Protected Areas Fund (Amendment) Act, 2019.
- (2) This Act shall come into force on such date as the Minister may appoint by notice published in the *Gazette*.

2. Amendment of section 2 of the principal Act.

Section 2 of the principal Act is amended by the insertion, in the appropriate alphabetical order, of the following -

"biological diversity" means the variability among living organisms from all sources including terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part and also includes diversity within species, between species, and of ecosystems;

"CBF disbursement" means a disbursement to the Fund from the Caribbean Biodiversity Fund;

"investment guidelines" means the investment policy, objectives and guidelines that have been approved by Special Majority Vote, as may be amended from time to time;

"operational manual" means the operational manual approved by the Board;

"non-government organisation" includes organisations that manage protected areas, charitable environmental organisations, and academic, research and scientific institutions;

"Partnership Agreement" means the agreement between the Caribbean Biodiversity Fund and The Bahamas Protected Area Fund;

"protected area" means an area of land or sea as specified under section 3 that is especially dedicated to the protection and maintenance of biological diversity, or ecological or natural resources, and managed through legal or other effective means;

"special majority vote" means an affirmative vote of at least three-fourths of the Directors;

"sustainable finance mechanism" means a recurring funding mechanism in addition to the CBF disbursements and any funding mechanism in effect as of the date of the establishment of the Fund, which generates new, additional and recurring revenues, all of which are allocated exclusively to the Fund to be disbursed pursuant to the purpose of the Fund as set out in section 6;"

3. Amendment of section 3 of the principal Act.

Section 3 of the principal Act is amended -

- (a) by the deletion of the word "consist" and the substitution of the word "consists";
- (b) in paragraph (d), by the deletion of the word "or";
- (c) in paragraph (e), by the deletion of the full stop at the end thereof and the substitution of the words"; or"; and
- (d) by the insertion, immediately after paragraph (e), of the following
—
"(f) any other areas established by the Government of The Bahamas for the protection and maintenance of biological diversity, or ecological or natural resources, and managed through legal or other effective means."

4. Amendment of section 4 of the principal Act.

Subsection (2) of section 4 of the principal Act is amended in paragraph (a), by the deletion of the words "protected areas" and the substitution of the words "areas in accordance with section 3".

5. Amendment of section 6 of the principal Act.

Section 6 of the principal Act is amended by the deletion of the words "of Protected Areas" and the substitution of the words "of protected areas".

6. Amendment of section 7 of the principal Act.

Subsection (2) of section (7) of the principal Act is amended -

- (a) by the deletion of the words "6(2)" and the substitution of the words "5(2)"; and
- (b) by the deletion of the words "operational" and the substitution of the words "annual".

7. Repeal and replacement of section 8 of the principal Act.

Section 8 of the principal Act is repealed and replaced as follows -

"8. Acceptance of conditional contributions.

The Fund may accept donations which are subject to conditions impose by donors if doing so could not reasonably be expected to

- (a) materially impair the Fund's ability to achieve its general purpose; or
- (b) cause the Fund to violate any provision of this Act or its By-laws."

8. Amendment of section 9 of the principal Act.

Section 9 of the principal Act is amended -

- (a) by the deletion of subsection (1) and the substitution of the following -
 - "(1) In order to be considered for a grant from the Fund, the applicant for the grant must -
 - (a) be either a legally incorporated, non-governmental organisation or agency of the Government of The Bahamas; and
 - (b) fulfil any requirements as set out in the operational manual or Grants Framework."; and
- (b) in subsection (3) -
 - (i) by the insertion, immediately after paragraph (a), of the following -
 - "(aa) operating or administrative costs of Ministries, Departments or agencies of the Government of The Bahamas;"

- (ii) in paragraph (c), by the deletion of the word "or";
- (iii) in paragraph (d), by the deletion of the full stop at the end thereof and the substitution of the words "; or"; and
- (iv) by the insertion, immediately after paragraph (d), of the following-
 - "(e) any other use not consistent with the general purposes of the Fund as set out in section 6."

9. Amendment of section 10 of the principal Act.

Subsection (2) of section 10 of the principal Act is amended by the deletion of the words "or otherwise attempt to influence the passage of any legislation".

10. Amendment of section 11 of the principal Act.

Section 11 of the principal Act is amended -

- (a) in subsection (1) -
 - (i) by the insertion, immediately after the words "from the Government" of the words "of The Bahamas";
 - (ii) in paragraph (a), by the deletion of the word "six" and the substitution of the word "five"; and
 - (iii) by the deletion of paragraph (d) and the substitution of the following-
 - "(d) four members from outside the Government of The Bahamas (hereinafter referred to as "independent directors"), selected by the Board from local environmental non-governmental organisations in accordance with a fair and transparent process."; and
- (b) by the insertion, immediately after subsection (1), of the following

"(1A) In the event of a vacancy, the Board shall, until such time as the vacancy is duly filled, be deemed to be fully constituted for the purposes of this Act and any proceedings, actions and decisions of the Board shall be deemed valid."

11. Amendment of section 12 of the principal Act.

Section 12 of the principal Act is amended -

- (a) in subsection (1), by the insertion, immediately after the words ""for three years", of the words "(hereinafter referred to as the "initial appointment")";

- (b) in subsection (2), by the deletion of the words "three of the six Directors appointed by the Government in section 11" and the substitution of the words "three of the five Directors appointed pursuant to section 11(1)(a)"; and
- (c) by the deletion of subsection (3) and the substitution of the following-
 - "(3) Every independent director shall serve -
 - (a) a maximum of two consecutive terms of two years each; or
 - (b) until his resignation, death, incapacity or removal by the Board,whichever is earlier."

12. Amendment of section 13 of the principal Act.

Section 13 of the principal Act is amended by the insertion immediately after subsection (1) of the following new subsection-

"(1A) The Chairperson elected in accordance with subsection (1) must be an independent director."

13. Amendment of section 16 of the principal Act.

Section 16 of the principal Act is amended -

- (a) in subsection (3) -
 - (i) by the deletion of the words "The Board shall after consultation with the Minister" and the substitution of the words "The Board may, by majority vote";
 - (ii) by the deletion of paragraph (a);
 - (iii) by the deletion of paragraph (d) and the substitution as follows-
 - "(d) periodically evaluate the performance of the Executive Director, and determine whether or not to dismiss or retain the Executive Director;"
 - (iv) by the insertion, immediately after paragraph (e) of the following-
 - "(ee) determine the organisational structure and personnel procedures of the Fund in accordance with the By-laws;"
 - (v) by the deletion of paragraph (f);
 - (vi) in paragraph (l), by the deletion of the words "Vertical Agreement" and the substitution of the words "Partnership Agreement";

- (vii) by the deletion of paragraph (m);
 - (viii) by the deletion of paragraph (p); and
 - (ix) in paragraph (u), by the deletion of the words "do all" and the substitution of the words "Subject to subsection (5), do such"; and
- (b) in subsection (5) -
- (i) by the deletion of the words "the affirmative vote of at least three fourths" and the substitution of the words "a special majority vote";
 - (ii) in paragraph (b), by the deletion of the words "guidelines for investment of the Fund's assets" and substitution of the words "investment guidelines";
 - (iii) in paragraph (f), by the deletion of the full stop and the substitution of a semi-colon; and
 - (iv) by the insertion, immediately after paragraph (f), of the following new paragraphs -
 - "(g) rule on issues concerning the Directors and the Executive Director, including their dismissal, reimbursement of expenses, and conflicts of interest;
 - (h) authorising the Fund to take out any loan or engage in borrowing of any kind;
 - (i) authorising the Fund to offer or make guarantees on behalf of any person or protected area;
 - (i) authorising the Fund to mortgage, pledge or otherwise hypothecate the assets of the Fund as security for any purpose;
 - (k) authorising payment of expenditure pursuant to section 26A."

14. Repeal and replacement of section 17 of the principal Act.

Section 17 of the principal Act is repealed and replaced as follows -

"17. Board to provide information to Minister.

- (1) The Board shall afford to the Minister reasonable facilities for obtaining information regarding the property and activities of the Board during normal business hours and, at the Minister's request, furnish him with returns, accounts, and other information with respect thereto and afford to him facilities for the verification of information furnished in such manner and during normal business hours as soon as reasonably practicable.

- (2) The Board shall provide the Minister with quarterly updates of its activities."

15. Repeal and replacement of section 19 of the principal Act.

Section 19 of the principal Act is repealed and replaced as follows -

"19. Protection of Directors.

No action, suit prosecution or other proceedings shall be brought or instituted personally against any Director in respect of any act done *bona fide* in pursuance or execution or intended execution of this Act or the Bye-laws."

16. Amendment of section 21 of the principal Act.

Section 21 of the principal Act is amended -

- (a) in paragraph (a), by the deletion of the word "Interest" and the substitution of the word "interest";
- (b) in paragraph (c), by the deletion of the full stop at the end thereof and the substitution of a semi-colon; and
- (c) by the insertion, immediately after paragraph (c), of the following
—
"(d) is convicted of any criminal offence involving fraud or dishonesty."

17. Amendment of section 24 of the principal Act.

Subsection (1) of section 24 of the principal Act is amended by the insertion, immediately after paragraph (f), of the following -

- "(ff) proceeds from sustainable finance mechanisms;"

18. Amendment of section 25 of the principal Act.

Section 25 of the principal Act is amended -

- (a) by the insertion, immediately after subsection (2), of the following
—
"(2A) The Fund shall not be subject to any laws governing public or government funds.";
- (b) in subsection (3), by the deletion of the words "The Board may divide" and the substitution of the words "Subject to the provisions of other agreements entered into by the Board in respect of the Fund"; and
- (c) in subsection (4), by the deletion of the words "of all Board members" and the substitution of the words "of the Board".

19. Amendment of section 28 of the principal Act.

Subsection (1) of section 28 of the principal Act is amended -

- (a) by the insertion, immediately after the words "The Board shall, as soon as", of the words "is reasonably"; and
- (b) by the deletion of the words "in such form as the Minister may, from time to time, direct".

20. Repeal and replacement of section 29 of the principal Act.

Section 29 of the principal Act is repealed and replaced as follows -

"29. Administrative expenses.

Administrative expenses shall be approved by the Board as a part of the annual budget."

21. Amendment of section 31 of the principal Act.

Section 31 of the principal Act is amended -

- (a) in subsection (1), by the insertion immediately after the words "duties, excise" of the words ", value added tax"; and
- (b) in subsection (2), by the insertion immediately after the words "from stamp duty" of the words "and value added tax".