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NATIONAL INVESTMENT FUNDS ACT, 2022

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No. 41 of 2022

NATIONAL INVESTMENT FUNDS ACT, 2022

AN ACT TO REPEAL AND REPLACE THE SOVEREIGN WEALTH FUND ACT, 2016 AND TO PROVIDE FOR THE ESTABLISHMENT OF A NATIONAL INVESTMENT FUND FOR A PURPOSE SPECIFIED IN THE ACT

[Date of Assent - 29th December, 2022]

Enacted by the Parliament of The Bahamas

PART I - PRELIMINARY

1. Short title and commencement.

- (1) This Act may be cited as the National Investment Funds Act, 2022.
- (2) This Act shall come into force on such date to be appointed by the Minister by Notice published in the *Gazette* and different dates may be appointed for different sections or Parts.

2. Interpretation.

In this Act —

“**benefit sharing**” has the same meaning ascribed to it in the Biological Resources and Traditional Knowledge Act;

“**Biological Resources and Traditional Knowledge Act**” means the Biological Resources and Traditional Knowledge Act, 2021 (*No. 4 of 2021*);

“**blue economy**” means sustainable use of ocean resources for economic growth, improved livelihoods, and jobs while preserving the health of ocean ecosystem;

“**Board**” means a Board of Governors appointed under section 12 for a fund;

“Central Bank” means the Central Bank of The Bahamas preserved and continued under section 3 of the Central Bank of The Bahamas Act, 2020 (*No. 24 of 2020*);

“Custody Bank” or **“Custodian”** means the financial institution appointed by the Board of which an account shall be opened and maintained in respect of a national investment fund or any sub-fund in accordance with section 8;

“Custody Bank Agreement” or **“Custodian Agreement”** means the agreement between the Board and the Custody Bank or the Custodian;

“financial year” means the twelve months beginning on the 1st July in any year;

“fund” means a national investment fund established under section 4;

“green economy” means the sectors of the economy that aims at reducing environmental risks and ecological scarcities and focus on a low carbon, resource efficient and socially inclusive economy that focuses on reduced carbon emissions and pollution, enhanced energy and resource efficiency, and prevents the loss of biodiversity and ecosystem services in pursuit of sustainable economic development;

“Minister” means the Minister responsible for Finance;

“natural resource wealth” means revenue derived from the utilisation of natural resources including all natural, non-living materials, occurring on, in or beneath the soil surface, territorial waters, continental shelf or exclusive economic zone of The Bahamas;

“orange economy” means the sectors of the economy whose main purpose is the production or reproduction, promotion, dissemination and marketing of goods, services and activities that have cultural, artistic or historical content;

“Santiago Principles” means the Generally Accepted Principles and Practices for National Investment Funds endorsed by the International Forum of Sovereign Wealth Funds members.

3. Objectives of Act.

The purpose of this Act is —

- (a) to authorize the establishment of a national investment fund for a purpose specified in section 4(2) and to set forth the principles of the management and activities of a fund and any sub-funds established thereunder —

- (i) for the purpose of domestic, cultural and societal advancements in the blue, green and orange economies of The Bahamas; and
 - (ii) to provide a legacy for future generations of the citizens of The Bahamas;
- (b) to provide for the management of the natural resource wealth of The Bahamas and private investments held by the Government of The Bahamas for the present and future benefit of its people in an effective and efficient manner by —
 - (i) ensuring that investments and private share holdings of the Government are managed professionally for the long term benefit of citizens of The Bahamas;
 - (ii) ensuring that revenues from the natural resources and elements of the The Bahamas contribute to the economic certainty of the country;
 - (iii) fairly transferring natural resource wealth across generations to ensure that future generations benefit from natural resource wealth; and
 - (iv) using natural resource wealth to finance national development priorities including any initiative aimed at developing the blue, orange and green economy and infrastructure of the country.

PART II – ESTABLISHMENT OF NATIONAL INVESTMENT FUNDS

ESTABLISHMENT OF A FUND

4. Establishment of a fund.

- (1) There may be established a national investment fund for a purpose specified in subsection (2), which shall be vested in the Government of the Commonwealth of The Bahamas on trust for the citizens of The Bahamas and may include sub-funds specified in section 5.
- (2) A fund may be established for one of the following purposes —
 - (a) the development of national infrastructure and public improvement projects;
 - (b) a public development and advancement project related to the blue, green and orange economy;
 - (c) to receive revenues derived from national assets and resources in public-private partnerships;

- (d) to receive revenues derived from share ownership of the Government in private companies;
 - (e) to receive revenues derived from royalty payments received from the exploitation of natural resources pursuant to the Biological Resources and Traditional Knowledge Act;
 - (f) to receive revenues derived from the trading of carbon credits; and
 - (g) such other sovereign assets or activities as may be specified by the Minister by order, subject to the affirmative resolution of both Houses of Parliament.
- (2) A fund shall be in a currency determined by the Board of Governors, in consultation with the Central Bank, and such determination shall be published by notice in the Gazette.

5. Establishment of sub-funds.

- (1) There may be established sub-funds of a fund.
- (2) The Minister shall by regulations prescribe the mission and purpose of each sub-fund.
- (3) Each sub fund shall be in a currency determined by the Board of Governors, and such determination shall be published by notice in the Gazette.

6. Purpose of fund.

The purpose of a fund may be—

- (a) to save and invest revenue and assets derived from activities specified in section 4(2);
- (b) to enhance sustainable long term capital growth for The Bahamas;
- (c) to service, repay or refinance sovereign debt or repay debt at a rate not exceeding fifty per cent of the fund or any sub fund thereof as the case may be, in order to strengthen the credit rating of The Bahamas; and
- (d) to support and promote the objectives of this Act and any other national development objective of The Bahamas.

7. Resources of fund.

The resources of a fund shall consist of such monies and assets as may be —

- (a) allocated by the Minister to the fund on the commencement of this Act;
- (b) derived from a sub-fund established pursuant to section 5(1); or
- (c) deposited to the fund from any other source with the approval of the Board.

NATIONAL INVESTMENT FUND ACCOUNT

8. National investment fund account.

For the purposes of this Act, the Board —

- (a) shall open and maintain a bank account in respect of a national investment fund or any sub-fund thereof with a recognised financial institution recommended by the Central Bank and approved by the Board (hereinafter referred to as the “Custody Bank”);
- (b) may open and maintain an investment account in respect of a national investment fund or any sub-fund thereof with a recognised financial institution recommended by the Central Bank and approved by the Board (hereinafter referred to as the “Custodian”).

9. Custody Bank or Custodian Agreement.

- (1) The Custody Bank or Custodian shall enter into an agreement (hereinafter referred to as “the Agreement”) with the Board, which shall be subject to the approval of the Board and a copy of the same shall be published in the *Gazette* within seven days of the execution thereof.
- (2) The Agreement shall provide for —
 - (a) the payment to the Custody Bank or Custodian of usual and customary fees and charges for the establishment, holding of assets of the fund and management of the fund, and its related advisory, audit, custodial, investment holding and similar fees and charges, by usual and customary means;
 - (b) such other matters as the parties may agree and in keeping with international best industry practices and be reasonable in the circumstances, but in a manner consistent with, and not contrary to, this Act.
- (3) The Board may transfer a national investment fund account to another recognized international financial institution recommended by the Central Bank.
- (4) Upon the transfer of the national investment fund Account pursuant to subsection (3), the Board shall, within seven days of such transfer, cause to be published a full written explanation of the reasons.

10. Deposits to, allocations of and withdrawals from a fund.

The Minister may make regulations to govern the deposits to, allocation of and withdrawals from a fund or any sub-fund established thereunder.

PART III - MANAGEMENT OF A FUND

11. Overall management of fund.

- (1) The Board shall be responsible for the overall management of the fund and shall be responsible for preparing the investment strategy taking into consideration the investment mandate and policy mandate given pursuant to section 16 and 17.
- (2) A fund shall be managed according to —
 - (a) the principles of good governance, including transparency and accountability; and
 - (b) international best practices, including the Santiago Principles.

12. Appointment of Board.

- (1) The Governor-General, on the advice of the Prime Minister, shall appoint a Board of Governors for a fund.
- (2) The *First Schedule* shall have effect as to the constitution and procedures of a Board and otherwise in relation thereto.

13. Functions of Board.

The functions of the Board are —

- (a) to determine by resolution, the governance structure and the operational guidelines of the fund based on prudential standards used by the Central Bank for investments of a similar nature;
- (b) to determine the investment strategy of the fund or any sub-fund, in accordance with any directives given pursuant to section 16;
- (c) to manage the fund;
- (d) to inform and educate the citizens of The Bahamas on the fund, the workings of the Board and any committee constituted pursuant to this Act;
- (e) to review, from time to time, the performance of the fund;
- (f) to carry out the mandates of the Minister pursuant to Part IV of the Act;
- (g) to perform such other related duties as may be necessary to carry out the purposes of the fund.

14. Powers of Board.

The Board may —

- (a) monitor and seek to ensure the proper governance of the Act, as well as compliance by all persons with their obligations under and in respect of, this Act;
- (b) investigate complaints made by persons regarding the implementation of this Act or compliance by persons with their obligations under or in respect of this Act, and facilitate the making of such complaints to it;
- (c) engage administrative support staff on such terms and conditions as it thinks fit;
- (d) appoint managers and sub-committees.

PART IV - INVESTMENT OF A FUND

INVESTMENT AND MANAGEMENT MANDATE

15. Objective of investment of fund.

The objective of the investment of a fund is to attain the highest achievable acceptable return on the investment at an acceptable level of risk.

16. Investment management mandate.

- (1) The Minister may give directives in writing regarding the investment mandate on the management of a fund and the implementation of its investment functions (hereinafter referred to as the “investment mandate”) and such directives shall be published in the *Gazette*.
- (2) The investment mandate may be given generally in respect of a fund as a whole or individually, in respect of any sub-fund or combination of sub-funds.
- (3) In prescribing the investment mandate, the Minister shall give consideration to —
 - (a) maximising the return earned on the fund over the long term, consistent with international best practice(s) for institutional investment;
 - (b) directions relating to the management of credit, liquidity, operational, currency, market and other financial risks;
 - (c) directions regarding ethical and socially conscious investments;
 - (d) a prescription that a percentage of the fund that shall be invested in each eligible asset class; and
 - (e) such other matters as the Minister considers relevant.

- (4) The investment mandate may set out the policies to be pursued by the Board in relation to —
 - (a) matters of risk and return; and
 - (b) the allocation of financial assets.
- (5) A policy relating to the allocation of financial assets must not be inconsistent with a policy relating to matters of risk and return.

17. Policy mandate.

The Minister may give directives in writing regarding the use of funds of a fund and revenue mandate regulating the use of funds and revenue of the fund or any sub-fund thereunder and such directives shall be published in the *Gazette*.

APPOINTMENT OF INVESTMENT COMMITTEE

18. Investment Committee.

- (1) There shall be appointed by the Board in respect of a fund, an Investment Committee which shall comprise of seven persons, as follows —
 - (a) two members of the Board; and
 - (b) five persons (who are not members of the Board) who have acquired substantial relevant expertise and experience as described in Part A of the *Second Schedule*, and who are appointed by the Board with the consent of the Minister.
- (2) No member of administrative staff of the Board may be appointed as a member of the Investment Committee.
- (3) The Board shall appoint one of the members of the Investment Committee appointed under subsection (1)(a) as the Chairperson of the Investment Committee.
- (4) A member of the Investment Committee appointed under subsection (1) (b) shall —
 - (a) be paid such remuneration and such allowances for expenses incurred as the Board from time to time with the consent of the Minister determines;
 - (b) hold office on such terms, excluding the terms specified in paragraph (a), as the Board determines at the time of the member's nomination or appointment.
- (5) Part A of the *Second Schedule* shall have effect as to the constitution and procedures of the Investment Committee but, aside from the *Second Schedule*, the Investment Committee shall regulate its own procedure.

19. Functions of Investment Committee.

The Investment Committee shall —

- (a) make decisions about the acquisition and disposal of assets of a fund in accordance with the provisions of this Part and the investment strategy prepared under it and within any such parameters as may be set by the Board and consistent with the policy mandate prescribed pursuant to section 17;
- (b) advise the Board on the investment strategy; and
- (c) oversee the implementation of the investment strategy.

20. Special committee may be appointed in respect of sub-fund.

- (1) The Board may establish a special investment committee in respect of a sub-fund as it considers appropriate to advise the Investment Committee on matters to enable the Investment Committee to perform their functions as specified in section 19 and such committee shall be published on the website established pursuant to section 23.
- (2) A committee established under this section shall consist of members appointed by the Board and may at any time be dissolved by the Board.
- (3) A member of a special committee established under this section —
 - (a) shall be paid such remuneration and such allowances in reimbursement of reasonable expenses incurred as the Board determines; and
 - (b) shall hold office on such terms, notwithstanding the terms specified in paragraph (a), as the Board determines at the time of the member's nomination or appointment.
- (4) Part B of the *Second Schedule* shall have effect as to the constitution and procedures of a special committee but, subject to that, it shall regulate its own procedure.

21. Protection of Investment Committee members.

- (1) No action, suit, prosecution or other proceedings shall be brought or instituted personally against any member of the Investment Committee or a special committee in respect of any act done *bona fide* in pursuance or execution or intended execution of this Act.
- (2) Where any member of the Investment Committee or a special committee is exempt from liability by reason only of the provisions of this section, the Board shall be liable to the extent that it would be if the said member of the Investment Committee or a special committee was a servant or agent of the Board.

22. Engagement of external asset manager, etc..

The Board may engage an external asset manager, an investment advisor or a fund manager and fund administrator, each of whom is licensed or registered by the Securities Commission of The Bahamas, to provide management and advisory services in respect of certain types of investments as may be prescribed and the engagement of such person shall be published on the website established pursuant to section 23.

PART V - MISCELLANEOUS

23. Publication.

- (1) There shall be established an official website in respect of a national investment fund, which shall be maintained by the Board.
- (2) Any matter that is required to be published in the *Gazette* by this Act, shall be published on the website referred to subsection (1) for a minimum period of five years from the date.
- (3) There shall be published on the website —
 - (a) any legislation relating to a fund;
 - (b) details and information on the fund and any sub fund thereof;
 - (c) any other relevant information as the Board may determine.

24. Exemption from taxation.

Notwithstanding any other laws to the contrary, the income of a fund shall not be subject to any tax.

25. Confidentiality.

Except where required by a written law or in the course of proceedings in the courts of The Bahamas, no member of the Board or any person acting on behalf of the Board shall disclose any document or information pertaining to the operation or management of a fund without the approval of the Board.

26. Disclosure of interest.

- (1) Every member of the Board shall give in writing notice to the Board of all direct or indirect pecuniary interests that they have or acquired in any business or in any body corporate carrying on any business involving a fund.
- (2) A member of the Board who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Board shall —

- (a) as soon as possible after the relevant facts come to his knowledge, disclose the nature of his interest before the Board deliberates on the matter; and
 - (b) shall not solicit the support of any other member of the Board to obtain an advantage in the matter being considered.
- (3) Disclosure by a member of the Board under this section, shall be recorded in the minutes of the meetings of the Board, and after such disclosure the member shall not —
 - (a) be present during any deliberation of the Board with respect to that matter; or
 - (b) take part in any decision of the Board with respect to that matter.
- (4) A member or person referred to in this section who —
 - (a) fails to do anything required by this section; or
 - (b) unlawfully discloses any document or information pertaining to the operation or management of a fund or uses any such document or information for his personal benefit or advantage, commits an offence, and is liable on conviction to a fine of one hundred thousand dollars or to imprisonment for a term of five years or to both such fine and imprisonment.
- (5) This section shall apply to any member of —
 - (a) the Investment Committee;
 - (b) a sub committee established under section 14;
 - (c) a special committee established pursuant to section 20.

27. Reports to Minister.

- (1) The Board shall submit both quarterly and annually to the Minister —
 - (a) an investment report;
 - (b) a balance sheet; and
 - (c) a report detailing any withdrawals from a fund or any sub-fund thereof.
- (2) The Board shall report to the Minister within one month of a request made by him, on the operation and performance by the fund.

28. Audit.

- (1) The Board shall engage an independent auditor to conduct an audit of the fund on an annual basis.
- (2) On completion of any audit of a fund, the auditor shall immediately draw the attention of the Minister and the Board to any irregularity disclosed by

the audit which, in the opinion of the auditor, is of sufficient importance to justify doing so.

- (3) The auditor shall send a copy of the audited financial statements and a report to the Minister immediately following the completion of the audit.

29. Financial statements to be laid in Parliament.

- (1) Within six months of the end of the financial year, the Minister shall cause the audited financial statements in respect of a fund to be laid in Parliament and published on the website.
- (2) Financial statements shall be prepared in accordance with generally accepted accounting practices and international accounting standards adopted by The Bahamas Institute of Chartered Accountants.

30. Preservation of reserves of fund.

- (1) The Board shall no later than seven working days after the announcement of a general election of members of Parliament, certify in writing the amounts then standing to the credit of the fund; and such communication shall be published on the website.
- (2) The amounts standing to the credit of a fund shall be the reserves of the fund to be preserved until the new Parliament is sworn in.

31. Regulations.

- (1) The Minister may make regulations generally for the purpose of carrying this Act into effect and for the better carrying out of the objects and purposes of this Act and, in particular, but without prejudice to the generality of the foregoing, for or with respect to —
 - (a) governing the conduct of the business of the Board to ensure accountability and transparency consistent with the highest ethical standards;
 - (b) determining the appropriate aggregate risk level of a fund;
 - (c) monitoring standards for investments;
 - (d) funding, withdrawal and spending rules;
 - (e) setting the eligibility requirements for engaging an asset manager pursuant to section 22;
 - (f) setting the eligibility requirements for the designation of a body pursuant to sections 18 and 20;
 - (g) establishing the eligible asset classes limitation on investment and risk management policies;
 - (h) any other matter relevant to the operations of a fund.

- (2) The provisions of sections 31 and 32 of the Interpretation and General Clauses Act shall not apply in relation to any regulations or orders made by the Minister under this Act, but instead all such regulations or order shall be subject to affirmative resolution of both chambers of Parliament.

32. Code of conduct.

The Minister shall establish a code of conduct for good governance for members of the Board and such code shall be published on the website referred to in section 23 within thirty days of the formation of a respective fund.

33. Repeal.

The Sovereign Wealth Fund Act, 2016 (*No. 3 of 2016*) is hereby repealed.

FIRST SCHEDULE

(section 12)

CONSTITUTION AND PROCEDURES OF A BOARD

1. Constitution of a Board.

- (1) A Board shall consist of five members, to be selected from among persons of proven competence in matters of finance, investment, economics, business management or law, namely —
- (a) a representative of the Central Bank of The Bahamas;
 - (b) a counsel and attorney-at-law who has regulatory experience in investment funds; and
 - (c) three persons from the private sector with extensive experience in asset and fund management or fund accounting.
- (2) The Minister shall appoint a member to be the Chairman of the Board.
- (3) Members of the Board shall be appointed for a term of three years and shall not be eligible for reappointment until three years after the expiration of their term.
- (4) A person is not eligible for appointment as a Board member if the person is —
- (a) a public officer or an officer on contract in the public service;
 - (b) an employee of a statutory body of the Government of The Bahamas; or
 - (c) an employee of a government business enterprise or agency.

2. Meetings.

- (1) The Board shall meet electronically or otherwise at such times and places as may be necessary or expedient for the efficient performance of its functions save that the Board shall meet at least once in every two successive months.
- (2) The Chairman may at any time call a special meeting of the Board and shall call the meeting of the Board within seven days of receiving a request in writing addressed to him by three or more members.
- (3) The Chairman shall preside over meetings of the Board, but where the Chairman is unable to preside, the members present and forming a quorum may appoint a member to preside over that meeting.
- (4) A meeting shall not be held without at least one member appointed in accordance with paragraph 1(1)(a) or (b) of the *First Schedule* being present.
- (5) Four members shall constitute a quorum.
- (6) The decision of the Board shall be a majority of votes of members present and in the event an equality of votes, the Chairman, or in his absence, the member presiding, shall have a second or casting vote.
- (7) The Board may, subject to the approval of the Minister, make rules to regulate its own procedure for the conduct of its business; these rules shall be subject to review and approval by Parliament.

3. Resignation of members.

- (1) The Chairman may resign his office by letter addressed to the Minister.
- (2) A member may resign his office by letter addressed to the Minister through the Chairman.

4. Termination of appointment.

The Minister may terminate the appointment of a member where the member—

- (a) becomes of unsound mind or is incapable of carrying out his duties;
- (b) becomes bankrupt;
- (c) discloses information contrary to section 25, or fails to disclose an interest under section 26;
- (d) is absent, except on leave granted by the Board, from three consecutive meetings of the Board.

5. Publication of members.

The names of the members of the Board as first constituted and every change in the membership or the termination thereof whether by death, resignation or effluxion of time or for any other reason shall be published in the *Gazette*.

SECOND SCHEDULE

PART A

(sections 18)

INVESTMENT COMMITTEE

1. Qualifications of members of the Investment committee.

The five members of the Investment Committee appointed pursuant to section 18 shall be persons with extensive knowledge and experience, namely —

- (a) one person shall have experience in multi asset class portfolio management;
- (b) one person shall have experience in financial accounting;
- (c) one person shall have experience in capital markets;
- (d) one person shall be a representative of the Ministry of Finance; and
- (e) one person shall have experience in the investment objective of the the fund or sub-fund.

2. Meetings.

- (1) The Committee shall meet at such times and places as may be necessary or expedient for the efficient performance of its functions, save that the Board shall meet at least once every two months.
- (2) The Chairman may at any time call a special meeting of the Committee and shall call the meeting of the Committee within seven days of receiving a request in writing addressed to him by three or more members.
- (3) The Chairman shall preside over meetings of the Committee, but where the Chairman is unable to preside, the members present and forming a quorum may appoint a member to preside over that meeting.
- (4) A meeting shall not be held without at least one member appointed in accordance with paragraph 1(a) of the *Second Schedule* being present.
- (5) Four members shall constitute a quorum.
- (6) The decision of the Committee shall be a majority of the votes.
- (7) The Committee may, subject to the approval of the Board, make rules to regulate its own procedure for the conduct of its business; and these rules shall be subject to review and approval by Parliament.

3. Resignation of members.

- (1) The Chairman may resign his office by letter addressed to the Board.
- (2) A member may resign his office by letter addressed to the Minister through the Chairman.

4. Termination of appointment.

The Board may terminate the appointment of a member where the member —

- (a) becomes of unsound mind or is incapable of carrying out his duties;
- (b) becomes bankrupt;
- (c) discloses information contrary to section 25, or fails to disclose an interest under section 26;
- (d) is absent, except on leave granted by the Board, from three consecutive meetings of the Board.

5. Publication of members.

The names of the members of the Committee as first constituted and every change in the membership or the termination thereof whether by death, resignation or effluxion of time or for any other reason shall be published in the *Gazette*.

PART B

(section 20)

SPECIAL COMMITTEE

1. Qualifications of members of the Special committee.

The seven members of the Special Committee appointed pursuant to section 20 shall be persons with extensive knowledge and experience, namely —

- (a) two persons shall have experience in multi asset class portfolio management;
- (b) one person shall have experience in financial accounting;
- (c) one person shall have experience in capital markets;
- (d) one person shall have expertise in the specific policy mandate of a particular sub-fund.

2. Meetings, resignation of members, etc.

Paragraphs 2, 3, 4 and 5 of the *First Schedule* shall apply *mutatis mutandis* to the procedures of the Special Committee.