



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

N\$2.10

WINDHOEK - 21 December 2000

No.2451

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Government Notice

OFFICE OF THE PRIME MINISTER

No. 287

2000

PROMULGATION OF ACT OF PARLIAMENT

The following Act which has been passed by the Parliament and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 22 of 2000: Trust Fund for Regional Development and Equity Provisions Act, 2000.

Act No. 22, 2000 TRUST FUND FOR REGIONAL DEVELOPMENT AND EQUITY
PROVISIONS ACT, 2000

ACT

To establish a Trust Fund for Regional Development and Equity Provisions and a Board of Trustees to manage the affairs of the Fund; to constitute the Board and define the powers, duties and functions thereof; and to provide for incidental matters.

(Signed by the President on 5 December 2000)

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

ARRANGEMENT OF SECTIONS

Section

1. Definitions
2. Establishment of the Fund and revenue thereof
3. Objects and purposes of the Fund
4. Establishment of the Board and management and control of the Fund
5. Constitution of the Board, terms of office and disqualification of members
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Definitions

1. In this Act, unless the context otherwise indicates -

“Board” means the Board of Trustees of the Fund established by section 4;

“committee” means a committee of the Board of Trustees established by or under section 12;

“decentralisation” means decentralisation as defined in the Decentralisation Enabling Act, 2000, and decentralise has a corresponding meaning;

“development” means the development or advancement of the people and of the economy, and the development of the infrastructure, of a region or of a local authority area;

“Fund” means the Trust Fund for Regional Development and Equity Provisions established by section 2;

“local authority” means a municipality, town or village, as the case may be, as defined in section 1 of the Local Authorities Act, 1992 (Act No. 23 of 1992);

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“local authority council” means a municipal council, town council or village council as defined in section 1 of the Local Authorities Act, 1992 (Act No. 23 of 1992);

“member” means a member of the Board;

“Minister” means the Minister responsible for Regional and Local Government and Housing;

“region” means a region as defined in section 1 of the Regional Councils Act, 1992 (Act No. 22 of 1992);

“regional council” means a regional council as defined in section 1 of the Regional Councils Act, 1992 (Act No. 22 of 1992); and

“staff member” means a staff member as defined in section 1 of the Public Service Act, 1995 (Act No. 13 of 1995).

Establishment of the Fund and revenue thereof

2. (1) There is established a trust fund to be known as the Trust Fund for Regional Development and Equity Provisions.

(2) The Fund shall -

(a) be a juristic person;

(b) be managed by the Board; and

(c) consist of -

(i) moneys appropriated by Parliament for regional or local authority councils;

(ii) donations or contributions made to the Fund for the purpose of the achievement of its objects;

(iii) income of the Fund;

(iv) the proceeds of any action or measure taken by the Board under section 7(1)(a), (b), (e), (f) or (g);

(v) moneys accruing to and vesting in the Fund and which the Board may accept under section 7(1)(c); and

(vi) interest and dividends derived from the investment of moneys by the Fund.

Objects and purposes of the Fund

3. The objects and purposes of the Fund are -

(a) to financially assist with -

(i) the development of regions and local authorities; and

(ii) the implementation, through the active participation of the local people and in accordance with the Decentralisation Enabling Act, 2000, of the decentralisation programmes at regional and local authority levels in Namibia;

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- (b) to provide, either at its own initiative or when so requested by a regional council or a local authority council, and on the terms and conditions to be determined by the Board, funding for -
 - (i) technical assistance, guidance and training in the identification, planning, preparation, appraisal, monitoring, evaluation, financing, implementation or management of developmental projects; and
 - (ii) the formulation of specific projects, needs or proposals in regions or local authorities;
- (c) to conduct negotiations in respect of, and to control, business ventures on behalf of regional councils and local authorities; and
- (d) to co-operate and to co-ordinate its activities with any person or body who or which has an interest, or is actively involved, in the implementation of any decentralisation programme in Namibia referred to in paragraph (a), or to assist with such programme.

Establishment of the Board and management and control of the Fund

4. (1) There is established a Board of Trustees of the Fund, to be known as the Board.

- (2) The Board shall -
 - (a) manage and control; and
 - (b) represent the Fund in all matters relating to,

the Fund.

Constitution of the Board, terms of office and disqualification of members

5. (1) The Board shall consist of -
- (a) (i) the Permanent Secretary : Regional and Local Government and Housing, who shall be the chairperson of the Board;
 - (ii) the Permanent Secretary : National Planning Commission, who shall be the vice-chairperson of the Board;
 - (iii) the Permanent Secretary : Office of the Prime Minister; and
 - (iv) the Permanent Secretary : Finance, who shall be the secretary of the Board,
- who shall be members *ex officio*; and
- (b) (i) two members nominated by the Association of Regional Councils;
 - (ii) two members nominated by the Association of Local Authorities;
 - (iii) one member nominated by the Namibia Non-Governmental Organisation Forum; and
 - (iv) one member nominated by the Association of Physically Handicapped Persons,

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who shall be appointed as members by the Minister in writing.

- (2) The Minister shall -
- (a) invite, in such form and subject to such conditions as the Minister may determine and specify in the notice, from the associations and organisations named in subsection (1)(b), written nominations of persons for appointment by the Minister as members under that subsection; and
- (b) make known the names of the members appointed under subsection (1)(b),

by notice in the *Gazette*.

- (3) A member appointed under subsection (1)(b) -
- (a) shall hold, subject to the other provisions of this section, office for such period of time as the Minister may determine and specify in the notice published under subsection (2); and
- (b) whose period of office has expired, shall be eligible for re-nomination and re-appointment as a member.
- (4) No person -
- (a) who is not a Namibian citizen or not lawfully admitted to Namibia for permanent residence therein, and resident in Namibia; or
- (b) who is disqualified, subject to subsection (6), in terms of Article 47 of the Namibian Constitution from becoming a member of the National Assembly,

shall be appointed as a member under subsection (1)(b).

- (5) A member appointed under subsection (1)(b) shall vacate his or her office if he or she -
- (a) becomes subject to any disqualification imposed by or referred to in subsection (4);
- (b) resigns in writing as a member, which resignation shall be addressed and delivered to the chairperson of the Board; or
- (c) has been absent from more than three consecutive meetings of the Board without its leave.

(6) A member appointed under subsection (1)(b)(i) or (ii) shall be deemed, for the purposes of subsection (4), not to be a member of a Regional Council or a Local Authority Council, as the case may be.

(7) Any vacancy on the Board caused by the death of, or the vacation of office by, a member appointed under subsection (1)(b), shall be filled by means of appointment by the Minister, *mutatis mutandis* in accordance with that subsection and subsection (2) and subject to the other provisions of this section, of any person as a member for the unexpired portion of the period of office of the deceased member or the member who has vacated office.

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Duties of the Board

6. (1) The Board, acting on behalf of the Fund, shall -
- (a) apply the moneys of the Fund for the purposes of the achievement of its objects and of the defrayal of the costs pertaining to the performance of its functions;
 - (b) open, at one or more banking institutions authorised under the Banking Institutions Act, 1998 (Act No. 2 of 1998), or at one or more building societies registered under the Building Societies Act, 1986 (Act No. 2 of 1986), as the Board may determine, one or more accounts in the name of the Fund into which all moneys received by the Fund shall be deposited and from which all payments by the Fund shall be made;
 - (c) invest, at its discretion and with any financial institution which the Minister, in consultation with the Minister responsible for Finance, may approve in writing, moneys of the Fund which are not required for immediate use by, or for the day-to-day administration of, the Fund;
 - (d) keep a proper record of all the financial transactions and of all the assets and liabilities of the Fund;
 - (e) prepare, as soon as practicable after the end of each financial year, a revenue and expenditure account of the Fund relating to, and a balance sheet of the assets and liabilities of the Fund at the end of, such financial year, and shall submit such accounts and balance sheets to the Minister, together with a separate report on the activities of the Board in respect of every region during the financial year concerned;
 - (f) determine the allocation of funds from the Trust Fund to the Housing Revolving Funds established by regional councils and local authority councils in terms of section 8 of the National Housing Development Act, 2000, and the manner in which such funds shall be paid over, including the amounts to be so paid over;
 - (g) prepare, subject to subsections (2) and (3), written guidelines containing -
 - (i) the Fund's -
 - (aa) interpretation of its objects;
 - (bb) approach or policy relating to economic development in any specific or general field, form, manner or area; and
 - (cc) preferences and priorities relating to economic development; and
 - (ii) any other matter relating to the achievement of the Fund's objects which it considers necessary or useful to be determined,and shall not later than six months after the constitution of the Board in terms of section 5, submit the guidelines so prepared to the Minister; and
 - (h) cause, subject to section 8(11)(b), minutes to be kept of the proceedings at the meetings of the Board, which minutes shall be submitted to the Minister within a period of 14 days after the closing of the meeting concerned.

(2) The guidelines referred to in subsection (1)(g) shall be in such form as the Minister may determine in writing.

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(3) A decision by the Board to rescind or amend any guideline prepared under subsection (1)(g) shall require a two-thirds majority of the members present and voting at a meeting of the Board.

(4) The Minister shall designate in writing one or more staff members in the Ministry of Regional and Local Government and Housing to assist the Board in the performance of any of its duties or functions, or in the execution of any of its powers.

Powers of the Board

7. (1) On behalf or in the name of the Fund, and subject to subsection (2), the Board may -

- (a) raise money in Namibia or elsewhere on such terms and conditions as may be agreed upon between the Board and the provider or providers of the money so raised;
- (b) issue, grant, make, draw, accept, endorse, guarantee or cause to be guaranteed the payment of, or the repayments relating to, any bond, debenture, security, bill of exchange or other negotiable instrument, or any other payment, as the case may be;
- (c) accept donations and receive moneys offered or due to it;
- (d) conduct such investigations into any matter relating to its objects as it may deem necessary;
- (e) purchase or otherwise acquire, or hold or alienate or hypothecate any movable property, or, with the prior written consent of the Minister granted subject to such conditions as the Minister may determine in each particular case, any immovable property;
- (f) lease, let, hire or charter movable or immovable property;
- (g) enter, for the purpose of the promotion of any of the objects of the Fund, and on such terms and conditions as it may consider appropriate, into an agreement with any other person or body;
- (h) determine, in writing, the procedures and the policies relating to -
 - (i) subject to section 8(12)(a), the convening and conducting of meetings of the Board;
 - (ii) the signing of correspondence, agreements and other documentation relating to the Fund;
 - (iii) the conducting of any business venture referred to in section 3(c);
 - (iv) the administration of the Fund's banking or building society accounts;
 - (v) the bookkeeping of the Fund; and
 - (vi) any other matter which it may consider necessary for the sound and efficient administration and functioning of the Fund;
- (i) co-opt, subject to section 14, not more than five additional members to advise or assist the Board on or in respect of certain specified matters, and may from time to time determine, vary or extend the period of time for which such members are so co-opted; and

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- (j) exercise such other powers as the Minister may in writing determine as necessary or expedient for, or incidental to, the achievement of the objects of the Fund.
- (2) The Board shall -
 - (a) take into account, in the exercising of any of its powers or in the allocation of funds to regional councils or local authority councils, the respective needs and other relevant factors pertaining to the different regions or to the different local authorities, as the case may be, including infrastructure, general development and population;
 - (b) exercise in consultation with the Minister any power referred to in subsection (1) involving the obtaining of moneys by way of a loan,; and
 - (c) submit to the Minister a copy of the procedures and policies determined in terms of subsection (1)(h), or any amendment made thereto, within a period of 30 days after the determination or amendment, as the case may be, of or to such procedures and policies.

(3) For the purposes of this section, "donation" includes any donation made in kind or any services rendered for the benefit or on behalf of the Fund.

Meetings of the Board

8. (1) The Board shall not, without the written consent of the Minister, hold less than four meetings during any year.

(2) The Minister shall determine the date and time of, and the venue and agenda for, the first meeting of the Board, and shall inform, in writing and not less than 14 days prior to the date of such meeting, the chairperson of the Board of such date, time, venue and agenda.

(3) The chairperson of the Board -

- (a) shall determine, subject to subsection (2), the date and time of, and the venue and agenda for, a meeting of the Board, and may at any time adjourn or postpone a meeting so convened or convened in terms of that subsection;
- (b) may convene, at any time and at the written request of the Minister or of not less than three members of the Board, a special meeting of the Board in addition to the meetings held in terms of subsection (1).

(4) The chairperson of the Board, or in his or her absence, the vice-chairperson, shall preside at the meetings of the Board.

(5) If both the chairperson and the vice-chairperson of the Board are absent from, or for any other reason unable to preside at, any meeting of the Board, the members present shall elect one of their number to act as chairperson at that meeting.

(6) The majority of the constituting members of the Board present at any meeting of the Board shall constitute a quorum.

(7) A decision of the Board shall be taken, subject to section 6(3) and to the other provisions of this section, by a majority of the members present at a meeting of the Board.

(8) A decision by the Board on any project or programme which involves the provision of money to any person or organisation, shall be taken by a two-thirds majority of the members present at a meeting of the Board.

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(9) The chairperson shall have, in the event of an equality of votes and in addition to his or her deliberative vote, a casting vote.

(10) No decision taken by, or act performed under the authority of, the Board shall be invalid by reason only of -

- (a) a vacancy on the Board; or
- (b) the fact that a person who was not entitled to sit as a member sat as such a member at the meeting when the decision was taken or the act was authorised,

if the decision was taken or the act was authorised by the required majority of the members who were present and entitled to vote at such meeting.

(11) The secretary of the Board referred to in section 5(1)(a)(iv) shall -

- (a) inform the Minister in writing of a meeting convened in terms of subsection (3) within a period of three days after the date of the convening of such meeting; and
- (b) keep minutes of the proceedings at every meeting of the Board in such form and manner as the Minister may determine in writing.

(12) The Minister may -

- (a) determine in writing the procedures relating to the convening and conducting of meetings of the Board, including notice of a meeting to be given to members and the procedures relating to the taking of a vote; and
- (b) attend, at the invitation of the Board, any meeting of the Board, but may not vote at such meeting.

Financial year and auditing of books, accounts and balance sheets

9. (1) The financial year of the Fund shall commence on the first day of April and end on the last day of March of each year.

(2) Annually and within a period of six months after the end of each financial year of the Fund, the Auditor-General, shall -

- (a) conduct an audit of the books, revenue and expenditure account and balance sheet of the Fund in respect of the financial year concerned; and
- (b) furnish the Minister, as soon as practicable, with a written report in respect of the audit conducted in terms of paragraph (a).

Powers and duties of Minister

10. The Minister -

- (a) after consultation with the Cabinet and for the purpose of enabling the Board to attain the objects of the Fund, may -
 - (i) guarantee the payment or repayment of the principal or the interest payable by the Fund in respect of any bond, debenture, security, bill of exchange or other negotiable instrument referred to in section 7(1)(b), including any costs or other fees or disbursements relating thereto; and

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- (ii) enter into such agreements and perform such functions as may be necessary for or incidental to the carrying out of any of the provisions of this section;
- (b) may grant to the Fund in consultation with the Minister responsible for Finance, and subject to such conditions as the Minister may determine, at any time out of moneys appropriated by Parliament for such purpose, such financial assistance as the Minister may consider necessary for the purpose of achieving the objects and purposes of the Fund; and
- (c) shall -
 - (i) submit to Cabinet the revenue and expenditure account, the balance sheet and the report of activities referred to in section 6(1)(e), and the report by the Auditor General referred to in section 9(2)(b), within a period of 21 days after receipt of the last of such documents; and
 - (ii) table the documents referred to in subparagraph (i) in the National Assembly within a period of 30 days after the submission of such documents to Cabinet in terms of that subparagraph, if the National Assembly is then in ordinary session, or if the National Assembly is not then in ordinary session, within a period of 30 days after the commencement of its next ordinary session.

Alternate members

11. (1) Every member referred to in paragraph (a) of section 5(1) shall designate in writing and addressed to the Minister, any staff member in his or her Ministry to act as the alternate member to such member.

(2) In respect of a member referred to in paragraph (b) of section 5(1), the Minister may appoint in writing, on a recommendation made by the Board in consultation with the association or organisation which nominated the member for appointment in terms of that paragraph and subject to the other provisions of this section, any person to act as the alternate member to such member.

(3) An alternate member referred to in subsection (1) or (2), as the case may be, shall act in the place of, or shall attend meetings on behalf of, the member concerned during such member's temporary absence or temporary incapacity to so act as a member or to attend meetings.

(4) An appointment under subsection (2) shall be for such period of time as the Minister may determine and specify in the appointment.

Committees of the Board

12. (1) There is established an Executive Committee of the Board, which Committee shall, subject to the other provisions of this section, consist of -

- (a) the Permanent Secretary : Regional and Local Government and Housing, who shall be the chairperson of the Committee;
 - (b) the Permanent Secretary : National Planning Commission, who shall be the vice-chairperson of the Committee; and
 - (c) the Permanent Secretary : Finance.
- (2) The Executive Committee referred to in subsection (1) shall -

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- (a) be responsible for the execution of the resolutions of the Board and the administration of the affairs of the Fund; and
- (b) have such other powers, duties and functions as the Board may delegate to it in writing from time to time.
- (3) The Board may -
 - (a) establish, in addition to the Executive Committee established by subsection (1), one or more committees, which committees shall each consist of two or more members designated by the Board; and
 - (b) delegate to any committee established under paragraph (a) such powers, duties and functions, and give such directives in connection therewith, as the Board may determine.
- (4) The Board shall appoint, from amongst the members of every committee established under subsection (3)(a), a chairperson for the committee concerned.
- (5) The alternate members designated or appointed, as the case may be, in terms of section 11 in respect of any member of the Board shall act as the alternate members to the respective members of the Executive Committee and of a committee established under subsection (3)(a).
- (6) The Board may determine the procedures relating to the convening and conducting of meetings, including the determining of a quorum and the taking of a vote, by or in respect of the Executive Committee or of any other committee established under subsection (3)(a), as the case may be.
- (7) The chairperson of the Board may attend any meeting of a committee established under subsection (3)(a) and may take part in the proceedings of the committee, but shall not vote at any such meeting.
- (8) The Board may at any time dissolve, subject to the conditions the Board may determine, any committee established under subsection (3)(a).

Declaration of interest

13. (1) Any member who -
- (a) has in any way, whether directly or indirectly, any financial interest in any agreement which has been or is to be entered into by the Fund, or intends to acquire such an interest; or
 - (b) obtains an interest in any agreement as contemplated in paragraph (a) after such agreement had been entered into,

shall declare the nature, extent and full particulars of his or her interest in such agreement to the meeting of the Board at which the entering into of such agreement is considered, or at the first meeting of the Board at which it is possible for him or her to declare such interest.

(2) Full particulars of a declaration by a member in terms of subsection (1) shall be recorded in the minutes of the meeting of the Board at which such declaration is made.

(3) If an agreement referred to in subsection (1), or any part of such agreement, is discussed by the Board at any meeting thereof, the member referred to in that subsection shall withdraw from that meeting during such discussion, and he or she shall not participate in any voting in connection with such agreement.

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(4) A member shall not approach or in any way lobby any other member in respect of an agreement in which he or she has any financial interest, or discuss such agreement with any such other member.

(5) Any member who contravenes or fails to comply with any provision of subsection (1), (3) or (4), shall be guilty of an offence and on conviction be liable to a fine not exceeding N\$20 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

(6) For the purposes of this section, a financial interest of a member in any agreement includes a financial interest of such member's spouse, parent, child or business partner, as the case may be, in such agreement.

Rights of and restrictions applicable to co-opted members

14. Members co-opted by the Board under section 7(1)(i) -
- (a) who are not full-time staff members may be paid by the Fund the remuneration and allowances as the Minister, in consultation with the Minister responsible for Finance, may determine and advise the Board in writing;
 - (b) may attend, but shall not have the right to vote at, any meeting of the Board; and
 - (c) shall -
 - (i) be subject to section 5(4) and (5)(a) or (b); and
 - (ii) not be, for the purposes of section 8(5), (6), (7) or (8), as the case may be, members of the Board.

Application of the Tender Board of Namibia Act

15. The Minister may apply, by notice in the *Gazette*, to the Fund or to the Board any of the provisions of the Tender Board of Namibia Act, 1996 (Act No. 16 of 1996) subject to such conditions, restrictions or amendments as the Minister may determine and specify in such notice.

Submissions to Minister

16. (1) The Minister may require the Board to submit to him or her for decision, within such period of time as the Minister may determine and specify in a written notice addressed and delivered to the chairperson of the Board, any matter relating to the powers, duties or functions of the Board.

(2) The Board may submit, *ex mero muto*, to the Minister for decision any matter referred to in subsection (1).

(3) The Minister shall furnish in writing, within a period of 30 days after the submission to him or her of a matter in terms of subsection (1) or (2), as the case may be, the Board with his or her decision in respect of such matter.

(4) The Board shall be bound by a decision taken by the Minister under this section.

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Limitation of liability

17. The Minister, the Fund or the Board, or any member, as the case may be, shall not be liable in respect of anything done or omitted in good faith and not attributable to negligence in the performance of any function under or by virtue of this Act, or in respect of anything that may result from such act or omission.

Exemption from taxes, duties and levies

18. (1) No -

- (a) income tax payable in terms of the Income Tax Act, 1981 (Act No. 24 of 1981) in respect of any income of the Fund; or
- (b) customs and excise duty payable in terms of the Customs and Excise Act, 1998 (Act No. 20 of 1998), additional sales levy payable in terms of the Additional Sales Levy Act, 1993 (Act No. 11 of 1993), sales tax payable in terms of the Sales Tax Act, 1992 (Act No. 5 of 1992) or value added tax payable in terms of the Value Added Tax Act, 2000, in respect of the purchase or import of materials, machinery or equipment for construction or for the development of regions or local authority areas, as the case may be, by the Fund as contemplated in this Act,

shall be payable by the Fund .

(2) The acquisition by, or the transfer in the name of, the Fund of any immovable property pursuant to any provision of this Act, or in terms of any agreement entered into under this Act, shall be exempt from the payment of transfer duty payable in terms of the Transfer Duty Act, 1993 (Act No. 14 of 1993).

(3) Any agreement, including an agreement of lease, or any mortgage bond, notarial bond, power of attorney, surety, promissory note or form entered into or registered, granted, given or made pursuant to any provision of this Act shall be exempt from the payment of stamp duties payable in terms of the Stamp Duties Act, 1993 (Act No. 15 of 1993).

(4) The Minister may exempt, in consultation with the Minister responsible for Finance and by notice in the *Gazette* -

- (a) from the payment of any other tax, duty or levy payable in terms of any law, the Fund or any other person in respect of any transaction pursuant to; or
- (b) from stamp duties payable in terms of the Stamp Duties Act, 1993 (Act No. 15 of 1993), any document or category of documents required for the purposes of,

this Act, subject to such conditions as the Minister may determine and specify in such notice.

Winding-up and judicial management

19. The fund shall not be wound up, dissolved or placed under judicial management except by or under the authority of an Act of Parliament.

Short title and commencement

20. (1) This Act shall be called the Trust Fund for Regional Development and Equity Provisions Act, 2000, 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.