

BILL

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

(Introduced by the Minister of Regional and Local Government and Housing)

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

Definitions

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

"Board of Trustees" means the Board of Trustees of the Fund referred to in section 4;

"committee" means a committee of the Board of Trustees as contemplated in section 12;

"decentralisation" means the allocation of certain powers and functions by central government to regional and local authority councils by or under any law;

"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 23 of 1992);

"local authority council" means a municipal council, town council or village council as defined in section 1 of the Local Authorities Act, 1992 (Act 23 of 1992);

"Minister" means the Minister of Regional and Local Government and Housing;

"region" means a region as defined in section 1 of the Regional Councils Act, 1992 (Act 22 of 1992); and

"regional council" means a regional council as defined in section 1 of the Regional Councils Act, 1992 (Act 22 of 1992).

Establishment of Fund

2. (1) There is hereby established a fund, to be known as the Trust Fund for Regional Development and Equity Provisions, and the Fund shall consist of -

- (a) moneys appropriated by law for regional and local authority councils in accordance with the provisions of Article 108(c) of the Namibian Constitution;
- (b) moneys conditionally or unconditionally donated for the objects of the Fund by third parties, including but not limited to, the public, other governments, organisations or development bodies;
- (c) income of any nature earned by or accruing to the Fund;
- (d) the proceeds of any action by the Board of Trustees by virtue of the powers vested in it in terms of section 7(a), (b), (e) and (g); and
- (e) moneys accruing to and vesting in the Fund for any other reason and which the Board of Trustees has the power to accept in terms of section 7(c).

(2) The Fund shall be a juristic person.

Objects and purposes of Fund

3. The objects and purposes of the Fund shall be -

- (a) to provide sufficient financial resources for the development of regions and local authorities, and for the implementation of the decentralisation process in Namibia through the active participation of the local people at regional and local levels;
- (b) to provide funding for technical assistance, guidance and training in the identification, planning, preparation, appraisal, monitoring, evaluation, financing, implementation and management of developmental actions, as well as the study of priorities and the formulation of specific projects, needs or proposals in regions and local authorities, whether on its own initiative or when so requested by a regional council or local authority council, and on terms and conditions to be decided by the Board of Trustees;
- (c) to co-operate and co-ordinate its activities with other public or private entities interested or actively involved in the implementation of the decentralisation process in Namibia; and
- (d) to positively assist with the implementation of the decentralisation programmes.

Board of Trustees

4. (1) The Fund shall be managed and controlled solely by a board to be known as the Board of Trustees of the Trust Fund for Regional Development and Equity Provisions.

(2) The Board of Trustees shall represent the Fund in all matters.

Composition of Board of Trustees and provisions in regard to membership thereof

5. (1) The Board of Trustees shall consist of -

- (a) the Permanent Secretary: Regional and Local Government and Housing, who shall be the chairperson;

- (b) the Permanent Secretary: National Planning Commission, who shall be the vice-chairperson;
- (c) the Permanent Secretary: Finance, who shall be the secretary;
- (d) the Permanent Secretary: Office of the Prime Minister;
- (e) the Permanent Secretary: Trade and Industry;
- (f) the Permanent Secretary: Agriculture, Water and Rural Development;
- (g) the Permanent Secretary: Lands, Resettlement and Rehabilitation;
- (h) the Permanent Secretary: Works, Transport and Communication;
- (i) three members of the Association of Regional Councils, nominated by the said Association and appointed by the Minister;
- (j) three members of the Association of Local Authorities, nominated by the said Association and appointed by the Minister; and
- (k) one member of -
 - (i) the Namibia National Chamber of Commerce and Industry;
 - (ii) the Bankers Association of Namibia;
 - (iii) the Namibia Non-Governmental Organisations Forum; and
 - (iv) the National Union of Namibian Workers,

nominated by the organisation or body concerned, and appointed by the Minister.

(2) A member of the Board of Trustees -

- (a) referred to in subsection (1)(a) to (j) shall hold office for such period as he or she is the incumbent of the post concerned referred to therein;
- (b) referred to in subsection (1)(k) shall, subject to the provisions of subsections (4) and (6), hold office for such period, but not exceeding three years, as the Minister may determine at the time of the appointment of the member concerned.

(3) A member of the Board of Trustees referred to in subsection (1)(k) whose period of office has expired shall be eligible for re-appointment as such a member.

(4) The Minister may, if there are reasonable grounds for so doing, revoke the appointment of a member of the Board of Trustees referred to in subsection (1)(k) at any time before the expiration of such member's period of office.

(5) A member of the Board of Trustees referred to in subsection (1)(k) may be paid such remuneration and allowances by the Fund as the Minister may determine.

(6) A member of the Board of Trustees referred to in subsection (1)(k) shall vacate his or her office if -

- (a) he or she is a person contemplated in Article 47(1) of the Namibian Constitution;
- (b) he or she, by writing under his or her hand, addressed and delivered to the chairperson, resigns as member of the Board of Trustees;
- (c) he or she has been absent from more than three consecutive meetings of the

Board of Trustees without leave of such Board; or

- (d) he or she is removed from office in terms of subsection (4).

Duties of Board of Trustees

6. The Board of Trustees shall, on behalf of the Fund -

- (a) apply the moneys of the Fund to the achievement of its objects and to the defrayal of the costs in connection with the performance of its functions;
- (b) open at a banking institution registered in terms of the Banks Act, 1965 (Act 23 of 1965), or a building society registered under the Building Societies Act, 1986 (Act 2 of 1986), one or more accounts in the name of the Fund into which all moneys received by it shall be paid and from which all payments of money by it shall be made;
- (c) invest in its discretion all moneys of the Fund which are not required for immediate use or for the day-to-day administration of the Fund;
- (d) keep -
 - (i) a proper record of all its financial transactions; and
 - (ii) a proper list of all its assets;
- (e) as soon as possible after the end of each financial year, prepare accounts of its revenue and expenditure for such year and a balance sheet of its assets and liabilities at the end thereof and submit them to the Minister, together with a report of its activities during the year in question in regard to every region; and

- (f) cause a written record to be kept of the proceedings at the meetings of the Board of Trustees which shall be available for inspection by the Minister at any time.

Powers of Board of Trustees

7. (1) The Board of Trustees may, subject to the provisions of subsection (3), on behalf of the Fund -

- (a) raise money in Namibia or elsewhere on such terms and conditions as may be agreed upon;
- (b) issue, make, draw, accept, endorse, guarantee or cause to be guaranteed bonds, debentures, securities, bills of exchange and other negotiable instruments;
- (c) accept donations and receive moneys offered or due to it;
- (d) make 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 and, with the prior written approval of the Minister in each particular case, any immovable property;
- (f) hire or let movable or immovable property;
- (g) enter into any agreement relating to the objects of the Fund on such terms and conditions as it may deem fit;
- (h) make rules for the holding of meetings; the procedure at meetings; the signing of correspondence, agreements and other documentation; transactions in relation to the Fund's banking or building society accounts, as the case may be, and make

any other rules which are considered necessary for the sound and efficient administration and functioning of the Fund;

- (i) prepare a manual governing its interpretation of its objects, its approach to economic development in any specific or general form, its preferences and priorities as to what constitutes economic development and such other matters as are necessary or useful to be determined for the achievement of its objects, and the generality of this provision shall not be limited by the provisions of the preceding and following paragraphs, and any decision to make, change, amplify, cancel or in any other way vary such manual shall require a two-thirds majority (rounded up to the next number if it works out to a fraction), of the members of the Board of Trustees present at any meeting having a quorum;
- (j) co-opt up to five additional members onto the Board of Trustees, whether to advise the Board of Trustees specifically on certain matters or to render general assistance, and may determine, vary, extend or terminate the period for which they are to be co-opted from time to time; and
- (k) exercise such other powers as may be necessary or expedient for or incidental to the achievement of its objects.

(2) The Board of Trustees may in the exercising of any of its powers and in the allocation of money to regional and local authority councils differentiate between regions and local authorities according to their various needs and other factors, including infrastructure development, population and overall general development.

(3) The Board of Trustees shall, if the exercising of any power referred to in subsection (1) involves the obtaining of money by way of loans or the expenditure thereof, exercise the power concerned in consultation with the Minister.

Meetings of Board of Trustees

8. (1) (a) Any meeting of the Board of Trustees shall be held at a time and place to be determined by the chairperson.

- (b) The Board of Trustees shall hold at least four meetings in every year.

(2) The chairperson of the Board of Trustees or, in his or her absence, the vice-chairperson, shall preside at the meetings thereof, and if both the chairperson and the vice-chairperson are absent from, or for any other reason unable to preside at, any meeting, the members present shall elect one of their number to act as chairperson at that meeting.

(3) The majority of the members constituting the Board of Trustees shall form a quorum for a meeting thereof.

- (4) (a) A decision on any project or programme which involves the provision of money to regional or local authority councils, has the effect of so doing or commits the Fund to the extent that an outlay of funds will, may, or could follow, shall, if consensus cannot be reached, require a two-thirds majority (rounded up to the next number if it works out to a fraction), of the members of the Board of Trustees present at any meeting, before it shall be the decision of the Board of Trustees, but if consensus cannot be reached on any decision other than those provided for in section 7(i) and this subsection, a simple majority of the members present at that particular meeting shall suffice for a decision of the Board of Trustees.

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

Financial year and auditing of books, accounts and balance sheets

9. (1) The financial year of the Fund shall end on 31 March in each year.

(2) The books, accounts and balance sheets of the Fund shall annually be audited by the Auditor-General.

Powers and duties of Minister

10. The Minister -

- (a) may, after consultation with the Cabinet, for the purpose of enabling the Board of Trustees to attain the objects of the Fund -
 - (i) guarantee the interest on and the principal of any bonds, debentures, securities, bills of exchange and other negotiable instruments issued under section 7(b) and the charges attaching to such issue; and
 - (ii) enter into such agreements and do such things as may be necessary for or incidental to the carrying out of the provisions of this section; and
- (b) shall, after he or she has received the revenue and expenditure accounts, the balance sheet and the report of activities referred to in section 6(e), submit same to the Cabinet and thereafter table it in Parliament within 30 days after receipt thereof, if Parliament is then in ordinary session or, if Parliament is not then in ordinary session, within 30 days after the commencement of its next ordinary session.

Alternate members

11. (1) The Minister may, on the recommendation of the Board of Trustees, designate a person to act as alternate member in the place of any member of the Board of Trustees during his or her absence or his or her incapacity and to attend meetings for a given period not exceeding six months, provided that in the case of a member of the Board of Trustees referred to in section

5(1)(i), (j) and (k), an alternate member has been designated by the Association, organisation or body, as the case may be, which nominated the member for appointment.

(2) An alternate member who acts in the place of a member of the Board of Trustees referred to in section 5(1)(k) may, for the period during which he or she acts as such, be paid by the Fund the same remuneration and allowances and in the same way as ordinary appointed members of the Board of Trustees referred to in section 5(1)(k).

Committees

12. (1) The Board of Trustees -

- (a) shall establish a Finance Committee which shall consist of the Permanent Secretary: Regional and Local Government and Housing as chairperson, the Permanent Secretary: National Planning Commission as vice-chairperson, the Permanent Secretary: Office of the Prime Minister, the Permanent Secretary: Finance, the Permanent Secretary: Trade and Industry and one member each of the Board of Trustees referred to in section 5(1)(i) and (j), designated by the Board of Trustees, which shall be responsible for the execution of the resolutions of the Board of Trustees and the administration of the affairs of the Fund;
- (b) may establish one or more other committees which shall consist of two or more members of the Board of Trustees nominated for such purpose by the Board of Trustees,

and may assign to any such committee such duties and give such directives in connection therewith as the Board of Trustees may deem expedient.

(2) If a member of a committee referred to in subsection (1) is unable to act as such on account of his or her absence or incapacity, the chairperson of the Board of Trustees may designate another member of the Board of Trustees who is not a member of the committee in

question to act as a member of that committee in the place of such member during the absence or incapacity of such member.

(3) The Board of Trustees may appoint a chairperson for each committee referred to in subsection (1)(b).

(4) If in any committee consensus cannot be reached and a matter needs to be decided by a vote, such decision shall be taken on a simple majority of those members present, but in the event of an equality of votes or there only being two members present, such committee shall reconvene with the chairperson of the Board of Trustees.

(5) The chairperson of the Board of Trustees may attend any meeting of a committee and shall be entitled to take part in the proceedings.

Declaration of interest

13. (1) Any member of the Board of Trustees who -

- (a) has in any way, whether directly or indirectly, any financial interest in a contract or agreement which has been or is to be entered into by the Fund; or
- (b) who obtains such interest in any such contract or agreement after it has been entered into,

shall declare his or her interest and full particulars thereof before or at the meeting of the Board of Trustees at which the entering into of the contract or agreement is considered or at the first meeting of the Board of Trustees held thereafter at which it is possible for him or her to do so, and if such contract or agreement is discussed by the Board of Trustees during a meeting thereof, such member shall withdraw from that meeting during the discussion and he or she shall not participate in any voting in connection therewith.

(2) A declaration whereby a member of the Board of Trustees declares an interest as contemplated in subsection (1) shall be recorded in the minutes of the meeting of the Board of Trustees at which such declaration is made.

(3) A member of the Board of Trustees shall not approach or in any way lobby the other members of the Board in respect of a contract or agreement in which he or she has any financial interest.

Rights of co-opted members and restrictions applicable to them

14. Members co-opted by the Board of Trustees by virtue of the provisions of section 7(j)

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- (a) who are not in the full-time service of the State may be paid by the Fund the same remuneration and allowances and in the same way as ordinary appointed members of the Board of Trustees referred to in section 5(1)(k);
- (b) shall have no voting rights on the Board of Trustees and shall not count as members constituting the Board of Trustees for the purposes of section 8(2), (3) and (4);
- (c) shall be subject to the provisions of section 5(6) and (7); and
- (d) shall be eligible to serve on committees established in terms of section 12.

Compliance with Tender Board Regulations and procedures

15. The Board of Trustees shall in the calling for any tender comply with Tender Board Regulations and the procedures prescribed therein.

Submissions to Minister for decision

16. The Minister may require the Board of Trustees to submit to him or her for decision any matter relating to the powers of the Board of Trustees, and the Board of Trustees may of its own volition submit any matter to the Minister for decision.

Exemption from taxes and import duties

17. (1) No -

- (a) tax or charge on income; or
- (b) import duty on material for construction or machinery for the development of regions and local authorities as contemplated by this Act,

imposed by or under any law shall be payable by the Fund.

(2) No transfer duty, stamp duty or other moneys claimed as State Revenue shall be payable in respect of the transfer of property to the Fund.

Short title and commencement

18. This Act shall be called the Trust Fund for Regional Development and Equity Provisions Act, 1999, and shall come into operation on a date determined by the Minister by notice in the *Gazette*.