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No. 3 of 2016

SOVEREIGN WEALTH FUND ACT, 2016

AN ACT TO PROVIDE FOR THE ESTABLISHMENT AND
MANAGEMENT OF A SOVEREIGN WEALTH FUND AND FOR
MATTERS INCIDENTAL THERETO

[Date of Assent - 1st March, 2016]

Enacted by the Parliament of The Bahamas

1. Short title and commencement.

- (1) This Act may be cited as the Sovereign Wealth Fund Act, 2016.
- (2) This Act shall come into force on a day to be appointed by the Minister by notice published in the Gazette.

2. Interpretation.

In this Act—

“**Board**” means the Board of Governors appointed under section 8;

“**Central Bank**” means the Central Bank of The Bahamas established under section 3 of the Central Bank of The Bahamas Act;

“**Consolidated Fund**” means the Consolidated Fund established under Article 128 of the Constitution;

“**Custody Bank**” means the institution at which the Sovereign Wealth Fund Account is opened pursuant to this Act;

“**Custody Bank Agreement**” means the agreement between the Central Bank and the Custody Bank;

“**Fund**” means the Sovereign Wealth Fund established under section 3;

“**Governor**” means the Governor of the Central Bank;

“**Minister**” means the Minister responsible for Finance;

PART I - SOVEREIGN WEALTH FUND

ESTABLISHMENT, PURPOSE AND MANAGEMENT OF FUND

3. Establishment of Sovereign Wealth Fund.

- (1) There is hereby established a fund to be called "The Sovereign Wealth Fund".
- (2) The Fund is vested in the Government in trust for the citizens of the Commonwealth of The Bahamas.
- (3) The Fund shall be in the currency of the United States of America.

4. Purpose of Fund.

- (1) The purpose of the Fund is—
 - (a) to save and invest surplus funds derived from oil, gas, minerals and other natural resources to provide a heritage for future generations of the citizens of The Bahamas;
 - (b) to support and increase savings for future generations;
 - (c) to enhance sustainable long term capital growth for The Bahamas; and
 - (d) to support and promote any other strategic development objectives of The Bahamas.
- (2) The Fund shall not be used —
 - (a) for Government capital expenditure;
 - (b) to satisfy any debt of the Government.

SOVEREIGN WEALTH FUND ACCOUNT AND CUSTODY BANK

5. Creation of Sovereign Wealth Fund Account.

For the purposes of this Act, the Central Bank shall open and maintain an account to be called "The Sovereign Wealth Fund Account" with a recognized international financial institution recommended by the Central Bank and approved by the Board (hereinafter to be referred to as the "Custody Bank").

6. Role of Custody Bank.

The Custody Bank shall be an institution highly rated by two internationally recognised credit rating agencies.

7. Custody Bank Agreement.

- (1) The Custody Bank shall enter into an agreement (hereinafter referred to as “the Agreement”) with the Central Bank 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 Custody Bank Agreement shall provide for—
 - (a) the payment to the Custody Bank of usual and customary fees and charges for the establishment, holding 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 as may accord 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 Central Bank, with the approval of the Board and in consultation with the Minister, may in the national interest, transfer the Sovereign Wealth Fund Account to another recognized international financial institution.
- (4) Upon the transfer of the role the Sovereign Wealth Fund pursuant to subsection (3), the Central Bank shall, within seven days of such transfer, cause to be published a full written explanation of the reasons.

APPOINTMENT OF BOARD FOR FUND

8. Appointment of Board.

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

9. Functions of Board.

- (1) The Board shall—
 - (a) 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) determine the investment strategy of the Fund;
 - (c) be responsible for the management of the Fund;
 - (d) inform and educate the citizens of The Bahamas on the Fund, the workings of the Committee and the Board;
 - (e) review from time to time, the performance of the Fund; and

- (f) perform such other related duties as may be necessary to carry out the purposes of the Fund.
- (2) The Board may delegate its responsibility for the management of the Fund to the Central Bank.
- (3) The terms and conditions of the delegation shall include the matters set out in the *Second Schedule* and shall be published in the Gazette.

10. Powers of Board.

The Board shall—

- (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.

PART II - FINANCIAL PROVISIONS

RESOURCES OF FUND

11. Resources of Fund.

The resources of the Fund shall consist of—

- (a) such funds as may be allocated by the Minister to the Fund on the commencement of this Act;
- (b) such funds as may be acquired and earned from investments pursuant to section 19;
- (c) such funds as may be derived from oil, gas, minerals and other natural resources due to the Government;
- (d) such other funds as may be deposited to the Fund from any other source with the approval of the Board.

DEPOSITS, ALLOCATIONS AND WITHDRAWALS

12. Deposits to Fund.

Deposits to the Fund in accordance with section 11 shall be made in a manner as may be prescribed.

13. Allocation of deposits to Fund.

- (1) A minimum of sixty percent of the aggregate of the excess revenues shall be deposited to the Fund during a financial year.
- (2) All revenues to be deposited into the Fund shall be a charge on the Consolidated Fund.

14. Withdrawals from Fund.

- (1) Subject to the provisions of this Act, where revenues from any source in accordance with section 11 collected in any financial year fall below the estimated revenues for that financial year by at least ten percent, withdrawals may be made from the Fund as follows, whichever is the lesser amount—
 - (a) either sixty percent of the amount of the shortfall of revenues for that year; or
 - (b) twenty-five percent of the balance standing to the credit of the Fund at the beginning of that year.
- (2) The amount withdrawn from the Fund in accordance with subsection (1), shall be deposited into the Consolidated Fund within forty-eight hours of such withdrawal.
- (3) Notwithstanding subsection (1), no withdrawal may be made from the Fund in any financial year, where the balance standing to the credit of the Fund would fall below twenty-five per cent of the balance standing to the credit of the Fund at the beginning of that year, if such withdrawal were to be made.
- (4) Where there is a withdrawal made pursuant to this section, notification of such shall be published in the Gazette.

15. Exceptional withdrawals from Fund.

- (1) For the purposes of this section, “**exceptional circumstances**” means —
 - (a) devastation caused by man-made environmental disasters or natural disasters including hurricane, earthquake, famine, drought, or caused by civil turmoil and acts of war;
 - (b) circumstances which, in the opinion of the Government, affect a significant proportion of the population; and
 - (c) circumstances from which, in the opinion of the Government, The Bahamas cannot recover without the financial support, inter alia, of the transfer and application of an additional amount from the Fund.
- (2) Notwithstanding section 14, where exceptional circumstances arise, the Central Bank may withdraw an additional amount to the permissible

amount that may be withdrawn from the Fund in a financial year in accordance with sections 14 (1), (2) and (3).

- (3) The additional amount referred to in subsection (2) may only be transferred pursuant to the passage of an Act of Parliament authorizing such.
- (4) On the passage of an Act referred to in subsection (3), the Central Bank shall instruct the Custody Bank, in the manner provided therefor in the Custody Bank Agreement, immediately to transfer in United States Dollars an amount other than the permissible amount in accordance with subsections (1), (2) and (3) from the Sovereign Wealth Fund Account to the Consolidated Fund.

16. Audit.

- (1) The Fund shall be audited annually by the Auditor-General or by an Auditor authorized by the Auditor-General in writing for that purposes.
- (2) On completion of any audit of the Fund, the Auditor-General or the Auditor referred to in subsection (1), as the case maybe, 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-General or the Auditor, is of sufficient importance to justify doing so.
- (3) The Auditor-General shall send a copy of the audited financial statements and a report to the Minister immediately following the completion of the audit.

PART III – INVESTMENT OF FUND

INVESTMENT STRATEGY

17. Investment strategy.

- (1) The Board shall not later than four months after its first meeting, determine the investment strategy of the Fund and the Board shall review its strategy not less than once a year.
- (2) Where the Board fails to determine a strategy in accordance with subsection (1), the Minister on the advice of the Central Bank, shall decide the investment strategy of the Fund in accordance with the provisions of the Act.
- (3) The Minister shall within one month of the determination of the strategy, lay a copy thereof before Parliament.

18. Implementation of investment strategy.

- (1) The Central Bank shall implement the investment strategy by written instruction to the Custody Bank in accordance with the Agreement.
- (2) The Central Bank shall appoint a reputable fund manager, with the necessary skills and experience appropriate to the mandate —
 - (a) to advise on the implementation of the strategy;
 - (b) at its discretion, to make investments of the Fund, in accordance with the investment strategy.

PERMITTED AND PROHIBITED INVESTMENTS

19. Investments of Fund.

- (1) The investments of the Fund shall be in the currency under which the Fund is denominated or such other currency of comparable stability and convertibility.
- (2) Subject to section 20, up to ten per cent of the Fund may be invested in any international debt security of the Government with the prior approval by resolution of Parliament.
- (3) Every international debt security for which any percentage of the Fund is invested in pursuant to subsection (2) shall be highly rated by at least two international credit rating agencies.
- (4) For the purposes of this section, an “international credit rating agency” is an internationally recognised company that rates the creditworthiness of an entity and its ability to satisfy a debt obligation.

20. Prohibited investments.

No investment of the Fund is to be, directly or indirectly, made in—

- (a) The Bahamas,
- (b) any entity (whether or not incorporated) conducting any of its business whether directly or indirectly through another such vehicle or entity in The Bahamas; or
- (c) any entity (whether or not incorporated) controlled by a citizen or citizens of The Bahamas or any person or persons resident in The Bahamas, or any combination thereof, and whether or not, in any case, formally or informally, acting in concert.

21. Duty of Central Bank to inform Board.

- (1) The Central Bank shall inform the Board in writing of the investments of the Fund as soon as practicable.
- (2) In accordance with section 9, the Board shall widely inform and educate the citizens of The Bahamas of the investments of the Fund.

PART IV - MISCELLANEOUS

22. Exemption from taxation.

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

23. 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 the Fund without the approval of the Board.

24. 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 the 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 and section 14 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 the 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.

25. Reports to Minister.

The Board shall submit to the Minister—

- (a) a quarterly investment report;
- (b) an annual investment report; and
- (c) a report, within one month of a request made by him, on the operation and performance by the Fund.

26. Financial statements to be laid in Parliament.

- (1) Within four months of the end of the financial year, the Minister shall cause the audited financial statements in respect of the Fund to be laid in Parliament.
- (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.

27. Preservation of reserves of Fund.

The Fund shall be managed in a such manner that, prior to any change of administration, the amounts then standing to the credit of the Fund as of midnight on the day prior to the change of administration, shall be certified and communicated to the incoming Speaker of House of Assembly as the Reserves of the Fund to be preserved over the life of the new administration.

28. 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 the Fund;
 - (c) monitoring standards for investments;
 - (d) funding, withdrawal and spending rules;
 - (e) any other matter relevant to the operations of the 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.

FIRST SCHEDULE

(section 8)

1. Constitution of Board.

- (1) The Board shall comprise of five members, to be selected from among persons of proven competence in matters of finance, investment, economics, business management or law, including a representative of—
- (a) the Central Bank;
 - (b) the Ministry of Finance;
 - (c) the Ministry responsible for petroleum matters;
 - (d) The Bahamas Investment Authority; and
 - (g) the Ministry responsible for mineral resource matters.
- (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.

2. Meetings.

- (1) The Board 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 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) being present.
- (5) Three 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 and these rules shall be subject to review and approval by Parliament .

3. Resignation of members.

The Chairman may resign his office by letter addressed to the Governor-General and a member may resign his office by letter addressed to the Governor-General through the Chairman.

4. Termination of appointment.

The Governor-General on the advice of 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 14, or fails to disclose an interest under section 15;
- (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

(section 9)

1. Responsibilities of Central Bank.

The responsibilities of the Central Bank as Manager of the Fund shall include but not be limited to—

- (a) the management of the assets and other resources of the Fund in accordance with this Act and the prudent investor standard of an investment manager, engaged in the asset management profession;
- (b) the investment of the assets and other resources of the Fund in accordance with this Act and the operational and investment guidelines developed by the Board;

- (c) the selection and retention on behalf of the Fund appropriate third-party service providers, such as, attorneys-at-law, auditors and advisers in order to carry out competently, the mandate specified in the instrument of delegation;
- (d) the selection of an appropriate global custodian for the Fund;
- (e) the maintenance of records and documentary support for all investments, receipts, disbursements and other transactions relating to the management of the Fund in accordance with prevailing accounting practice;
- (f) the submission of quarterly reports to the Board on the holdings, performance and risk of the Fund no later than one month after the end of each quarter;
- (g) the submission of an Annual Report of the Fund to the Board no later than two months after the end of the financial year; and
- (h) the Report shall contain audited financial statements and an investment report on the performance of the Fund.

2. Liability of Central Bank.

- (1) The Central Bank as Manager of the Fund shall not be liable for any error of judgment or for any act or omission or any loss suffered in connection with the matters to which the delegation relates, except for loss resulting from gross negligence or wilful misconduct in the performance of its obligations under the delegation nor for any loss incurred by reason of any act or omission of the custodian, external managers or any third party.
- (2) The Government shall indemnify the Central Bank against any and all losses, claims, damages, liabilities and expenses (including reasonable attorneys fees and expenses) arising from its duties and obligations as manager of the Fund except those arising from gross negligence or wilful misconduct on the part of the Central Bank.

3. Fees.

- (1) There must be specified in the instrument of delegation the annual management fee charged by the Central Bank as Manager of the Fund.
- (2) That fee is to be a percentage of the market value of the Fund as agreed between the Board and the Central Bank.
- (3) The management fee is exclusive of any custodian fees, broker fees, current account fees or any other third party fees that may accrue incidental to the management of the Fund.