

REPUBLIC OF NAMIBIA

PARLIAMENT

**REGIONAL AND CONSTITUENCY
DEVELOPMENT FUND BILL**

ACT

To establish a Regional and Constituency Development Fund so as to financially assist with the development projects in regions and local authority areas; to provide for annual appropriation to the Fund; to establish the Board to manage the affairs of the Fund and to provide for its powers and functions; to provide for the allocation of funds to regional councils and local authorities to fund development projects approved by the Board; and to provide for incidental matters.

ARRANGEMENT OF SECTIONS

PART 1 PRELIMINARY

1. Definitions
2. Policy directives and consultation with Minister

PART 2 REGIONAL AND CONSTITUENCY DEVELOPMENT FUND

3. Establishment of Fund
4. Purpose of Fund
5. Funds of Fund
6. Bank accounts of Fund
7. Financial year
8. Auditing
9. Annual report by Board

PART 3 ADMINISTRATION OF FUND

10. Board of Fund
11. Functions and powers of Board
12. Constitution of Board
13. Alternate members of Board
14. Disqualifications for appointment as member of Board
15. Term of office
16. Vacation of office
17. Meetings of Board
18. Declaration of interest by members of Board
19. Executive committee of Board
20. Other committees of Board
21. Allowances payable to members of Board and committees
22. Designation of Fund manager and staff members

PART 4 ALLOCATION OF FUNDS TO REGIONAL COUNCILS AND LOCAL AUTHORITIES AND FUNDING OF DEVELOPMENT PROJECTS

23. Allocation of funds to regional councils
24. Allocation of funds to local authorities

25. Annual reports by regional councils and local authorities
26. Nature of development projects to be funded
27. Acquisition and disposal of assets and equipment
28. Application of Public Procurement Act
29. Provisions of Act complementary

PART 5
GENERAL PROVISIONS

30. Limitation of liability
31. Exemption from taxes, duties and levies
32. Liquidation, dissolution and winding up of Fund
33. Guidelines by Board
34. Rules by Board
35. Regulations
36. Repeal of laws
37. Transitional and saving provisions
38. Transfer of assets, rights and liabilities
39. Short title and commencement

BE IT ENACTED as passed by the Parliament, and assented to by the President, of the Republic of Namibia as follows:

PART 1
PRELIMINARY

Definitions

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

“Board” means the Board of the Regional and Constituency Development Fund constituted in terms of section 12;

“chief regional officer” means the chief regional officer as defined in section 1 of the Regional Councils Act;

“committee” means a committee of the Board established under section 20;

“community” means residents of a particular geographical area, constituency, region or local authority area having common interests;

“community based project” means a project initiated, implemented or operated at a local community level which is intended to benefit a widespread cross-section of a particular community;

“constituency” means a constituency as contemplated in section 4(2) of the Regional Councils Act;

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

“development project” means a project, an activity or a set of activities which need to be completed in order to reach a specific outcome of improving the living condition of people in a community, constituency, region or local authority area which support and is in line with the national development plans and goals;

“executive committee” means the executive committee established by section 19;

“Fund” means Regional and Constituency Development Fund established in terms of section 3;

“Fund manager” means a person designated as a Fund manager in terms of section 22;

“local authority” means a municipality council, town council or village council as defined in section 1 of the Local Authorities Act;

“Local Authorities Act” means the Local Authorities Act, 1992 (Act No. 23 of 1992);

“local authority area” means a local authority area as defined in section 1 of the Local Authorities Act;

“Minister” means the Minister responsible for regional and local government affairs;

“Ministry” means the Ministry administering matters relating to regional and local government affairs;

“prescribed” means prescribed by regulation;

“Public Procurement Act” means the Public Procurement Act, 2015 (Act No. 15 of 2015);

“region” means a region as defined in section 1 of the Regional Councils Act;

“regional council” means a regional council as defined in section 1 of the Regional Councils Act;

“Regional Councils Act” means the Regional Councils Act, 1992 (Act No. 22 of 1992);

“regulation” means a regulation made under section 35;

“rule” means a rule made under section 34;

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

“State Finance Act” means the State Finance Act, 1991 (Act No. 31 of 1991); and

“this Act” includes regulations and rules.

Policy directives and consultation with Minister

2. (1) For the purposes of promoting the objectives of this Act, the Minister may issue general or specific policy directives to the Fund which policy directives may not be inconsistent with the provisions of this Act.

(2) Despite the provisions of this Act, the Minister and Board may consult each other, at the request of the Minister or Board, on any matter that the Minister or Board may wish to consult each other.

(3) Before any consultation at the request of the Board takes place, the Minister may require the Board to furnish him or her with the agenda items for the

discussion within a period determined by the Minister and communicated in writing to the Board.

PART 2
REGIONAL AND CONSTITUENCY DEVELOPMENT FUND

Establishment of Fund

3. There is established a fund to be known as the Regional and Constituency Development Fund, and which for all purposes is a juristic person and is managed by the Board.

Purpose of Fund

4. The purpose of the Fund is to –
- (a) financially assist with –
 - (i) the development of constituencies, regions and local authority areas; and
 - (ii) the implementation of the decentralisation programmes at the regional and local authority levels in Namibia through the active participation of the members of a community and in accordance with the Decentralisation Enabling Act, 2000 (Act No. 33 of 2000);
 - (b) provide funding for technical assistance, guidance and training in the identification, planning, preparation, appraisal, monitoring, evaluation, financing, implementation or management of development projects, on the initiative of the Board, regional council, local authority or on request by a constituency through a regional council, on the terms and conditions determined by the Board;
 - (c) provide mechanisms for supplementing infrastructure development at the constituency level or local authority area in matters falling within the functions of a regional council or local authority; and
 - (d) coordinate the activities of the Fund with any person who, or body which, has an interest or is actively involved in the implementation of any decentralisation programme referred to in paragraph (a) or to assist with such programme.

Funds of Fund

5. (1) The funds of the Fund consist of –
- (a) moneys appropriated by Parliament for the purpose of the Fund;
 - (b) donations or grants made to the Fund, with the approval of the Minister, for the purpose of the Fund and in compliance with the Financial Intelligence Act, 2012 (Act No. 13 of 2012) and other applicable laws;
 - (c) interest and dividends derived from moneys of the Fund invested under subsection (3); and

- (d) moneys accruing to, received by, or vested in, the Fund from any other lawful source.
- (2) Moneys received by way of donations or grants in accordance with subsection (1)(b) may be administered in accordance with any terms and conditions as may be agreed upon by a donor and the Board to achieve the objectives of the Fund.
- (3) The Board may invest any unexpended portion of its funds with –
 - (a) a banking institution as defined in section 1 of the Banking Institutions Act, 1998 (Act No. 2 of 1998);
 - (b) a building society as defined in section 1 of the Building Societies Act, 1986 (Act No. 2 of 1986);
 - (c) the Post Office Saving Bank controlled and managed by the Namibia Post Limited established by section 2 of the Posts and Telecommunications Companies Establishment Act, 1992 (Act No. 17 of 1992); or
 - (d) such other financial institutions as may be approved by the Minister in writing.

Bank accounts of Fund

- 6. (1) The Board must open and maintain one or more banking accounts in the name of the Fund with –
 - (a) a banking institution registered in terms of the Banking Institutions Act, 1998 (Act No. 2 of 1998); or
 - (b) the Post Office Savings Bank controlled and managed by Namibia Post Limited established by section 2 of the Posts and Telecommunications Companies Establishment Act, 1992 (Act No. 17 of 1992),

into which all moneys of the Fund or moneys accruing to the Fund in terms of this Act or any other law must be deposited and kept for the purposes set out in this Act.

- (2) In furtherance of subsection (1), the Board must, whether by means of internal procedures or by its rules, determine prudent financial procedures, including internal control measures and mechanisms, to guard against the improper administration of funds of the Fund.

Financial year

- 7. The financial year of the Fund commences on 1 April and ends on 31 March each year.

Auditing

- 8. (1) The Auditor-General must audit the books, revenue, expenditure, balance sheet and other accounting records of the Fund within a period of six months after the end of each financial year of the Fund.
- (2) The Auditor-General must, as soon as practicable, furnish the Minister with a written report in respect of the audit conducted in terms of subsection (1).

(3) The Minister must submit to Cabinet the balance sheet of the assets and liabilities of the Fund submitted to him or her in terms of section 11(1)(d) and the report by the Auditor-General referred to in subsection (2) within a period of three months after receipt of the last of such documents.

(4) The Minister must table the report of the Auditor-General in the National Assembly within a period of three months of receipt of the report, and if the National Assembly is not in session, within a period of three months after the commencement of the next session.

Annual report by Board

9. (1) As soon as practicable after the end of each financial year of the Fund, the Board must prepare and submit to the Minister an annual report on the activities of the Board, including reporting on the activities of the regions and local authorities in respect of funds allocated for development projects approved by the Board during that financial year.

(2) The Minister must table the annual report in the National Assembly within a period of three months of receipt of the report, and if the National Assembly is not in session, within a period of three months after the commencement of the next session.

PART 3 ADMINISTRATION OF FUND

Board of Fund

10. The Fund must have a Board, constituted in terms of section 12, which is responsible for –

- (a) managing and overseeing the operation of the Fund;
- (b) representing the Fund in all matters relating to the Fund; and
- (c) performing and exercise such functions and powers as conferred or imposed on the Fund or Board by or under this Act.

Functions and powers of Board

11. (1) The functions of the Board are to –
- (a) utilise moneys of the Fund to achieve the purpose of the Fund and defray costs pertaining to the functions of the Fund;
 - (b) invest moneys of the Fund which are not required for immediate use or day-to-day administration of the Fund;
 - (c) keep proper records of the financial transactions, assets and liabilities of the Fund;
 - (d) prepare revenue and expenditure account of the Fund and a balance sheet of the assets and liabilities of the Fund at the end of each financial year and submit the account and balance sheet to the Minister;

- (e) prepare and submit to the Minister the annual report on the activities of the Board during the financial year concerned;
 - (f) allocate moneys to assist with the development projects at constituencies, regions and local authority areas;
 - (g) prepare guidelines in accordance with section 33;
 - (h) keep or cause to be kept minutes of the proceedings of the meetings of the Board;
 - (i) receive and address complaints and disputes pertaining to the activities of the Fund; and
 - (j) perform such other functions as the Minister may, in writing, determine as necessary or expedient to achieve the objectives of the Fund.
- (2) The Board, on behalf of the Fund –
- (a) with the approval of the Minister, must determine the criteria for accepting and receiving of grants and donations made to the Fund;
 - (b) must investigate or cause to be investigated any matter relating to the objectives of the Fund in line with the State Finance Act and Treasury Instructions;
 - (c) may purchase, acquire, hold or alienate, lease, let, hire or charter movable or immovable property, with prior written consent of the Minister and the authorisation of the Treasury in terms of the State Finance Act;
 - (d) may enter into an agreement with any other person or body for the benefit of the Fund on such terms and conditions as the Board considers appropriate;
 - (e) makes rules;
 - (f) may co-opt a person to advise or assist the Board, the executive committee or a committee in the exercise or performance of its powers and functions; and
 - (g) exercises and performs such other powers and functions as the Minister may, in writing, determine as necessary or expedient to achieve the objectives of the Fund.

Constitution of Board

- 12.** (1) The Board consists of –
- (a) the Executive Director of the National Planning Commission, who is the chairperson of the Board;
 - (b) the Executive Director of the Ministry, who is the deputy chairperson of the Board; and

- (c) the Executive Director of the Ministry responsible for finance;
- (d) one person representing local authorities nominated by an association representing local authorities;
- (e) one person representing regional councils nominated by an association representing regional councils;
- (f) one person nominated by the National Youth Council;
- (g) one person nominated by a civil society organisation which the Minister reasonably believes that the organisation represents civil society and is relevant to the functions of the Board; and
- (h) one person nominated by the organisation of persons with disabilities as defined in section 1 of the National Disability Council Act, 2004 (Act No. 26 of 2004).

(2) For the purposes of nominating a person for appointment in terms of subsection (1)(d) to (h), the Minister must, in writing, invite the institution or organisation referred to in that subsection to, in writing and within a specified period, nominate a person for appointment as a member of the Board, subject to such conditions as the Minister may determine and specify in the invitation, which conditions may include conditions relating to qualifications or expertise a person nominated must possess.

(3) If no nomination is submitted as contemplated in subsection (2), the Minister, subject to this section, may appoint a suitable person as member of the Board.

(4) A person appointed as a member of the Board under subsection (3) is considered as having been properly appointed as a member of the Board under subsection (1)(d) to (h).

(5) The Minister must, as soon as possible after appointing the members of the Board in terms of subsection (1) and alternate members in terms of section 13, make known in the *Gazette* –

- (a) the name of every person appointed as a member of the Board;
- (b) the period for which the appointment is made; and
- (c) the date from which the appointment takes effect.

Alternate members of Board

- 13.** (1) A member of the Board referred to in –
- (a) section 12(1)(a) must, in writing to the Minister, designate a staff member of the National Planning Commission;
 - (b) section 12(1)(b) must, in writing to the Minister, designate a staff member of the Ministry;

- (c) section 12(1)(c) must, in writing to the Minister, designate a staff member of the Ministry responsible for finance,

for appointment to serve as an alternate member to that member.

(2) The Minister must, in respect of a member of the Board referred to in subsection (1)(d) to (h) of section 12 and in the invitation to an institution and organisation referred to in subsection (2) of that section, request the institution and organisation to nominate a person to be appointed as an alternate member to the member nominated in terms of subsection (2) of that section.

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

(4) An appointment under subsection (1) or (2) is for such period as the Minister may determine and specify in the appointment.

Disqualifications for appointment as member of Board

14. A person is disqualified from being appointed as a member of the Board or an alternate member, if the person –

- (a) is not a Namibian citizen or lawfully admitted to Namibia for permanent residence;
- (b) does not reside in Namibia;
- (c) is a member of the National Assembly, National Council, local authority or regional council;
- (d) fails to disclose prior to his or her appointment that he or she has been convicted of any offence in terms of any laws dealing with companies or insolvency;
- (e) has not attained the age of 21 years;
- (f) is an unrehabilitated insolvent;
- (g) has been convicted of an offence in Namibia or elsewhere and sentenced to imprisonment without an option of a fine; or
- (h) has under any law been declared by a competent court to be mentally ill.

Term of office

15. Except for a member of the Board referred to in section 12(1)(a) to (c), a member of the Board holds an office for a term of three years and is eligible for re-appointment at the expiration of that term.

Vacation of office

- 16.** (1) A member of the Board vacates office, if he or she –
- (a) becomes subject to any of the disqualifications referred to in section 14;
 - (b) resigns from his or her office, after giving the Minister 30 days written notice of his or her intention to resign;
 - (c) has been absent from three consecutive meetings of the Board without leave of the Board; or
 - (d) is removed from office under subsection (2).

(2) The Minister may, by notice in writing to a member of the Board, remove the member from office before the expiry of the term of the member if the Minister is satisfied, after giving such member a reasonable opportunity to be heard, that the member –

- (a) is physically or mentally unfit or unable to effectively perform his or her functions as a member;
- (b) neglects his or her functions as a member; or
- (c) acts in a manner that prejudices or conflicts with the functions of the Board or Fund.

(3) If a member of the Board dies or vacates office before the expiration of his or her term, the Minister must appoint a person to fill the vacancy for the remainder of such term in accordance with section 12.

Meetings of Board

17. (1) The first meeting of the Board takes place at a time, date and place determined by the Minister as soon as practicable after the appointment of the Board members, and after the first meeting the Board may meet as often as is necessary and must hold at least one meeting per quarter at a time and place determined by the chairperson of the Board.

(2) The chairperson of the Board must preside at a meeting of the Board and in his or her absence, the deputy chairperson must preside over the meeting of the Board.

(3) In the absence of both the chairperson and deputy chairperson, the members of the Board may only hold a meeting of the Board with the prior consent of the chairperson or deputy chairperson, and the members present must elect from their number a member to preside at that meeting.

(4) In addition to ordinary meetings of the Board, the chairperson of the Board may convene a special meeting of the Board at any time if he or she considers it necessary, and must convene a special meeting of the Board on the written request of at least one third of members of the Board or by the Minister.

- (5) The request to hold a special meeting under subsection (4) must clearly

state the purpose for convening the special meeting and the place, the agenda of the meeting and such other matters as may be necessary for the special meeting.

(6) Subject to this section, the Board conducts its proceedings in such manner and according to such procedure as the Board determines by its rules, including procedures relating to the convening of meetings of the Board and voting.

(7) At any meeting of the Board the majority of all members of the Board present at any meeting of the Board forms a quorum.

(8) Subject to subsections (9) and (10), a decision of the majority of the members of the Board present and voting at a meeting of the Board constitutes a decision of the Board.

(9) A decision by the Board on any development project or programme which involves the allocation of funds to such project or programme must be taken by a two-thirds majority of the members present and voting at a meeting of the Board.

(10) In the event of an equality of votes, the member of the Board presiding at a meeting of the Board has a casting vote in addition to his or her deliberative vote.

(11) The Board may, in writing, invite a person who has special knowledge or skills in any relevant field or discipline to attend its meeting and advise the Board, but such person has no voting right.

(12) A decision taken by the Board or an act performed under the authority of the Board is not invalid merely by reason of –

- (a) a vacancy in the membership of the Board; or
- (b) the fact that a person who is not entitled to attend a meeting of the Board was in attendance 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 present and entitled to sit and vote as members of the Board.

(13) Where a member of the Board does not, for good cause, attend a meeting of the Board, the secretary to the Board must as soon as practicable furnish the member with the minutes of the meeting for the member to keep up to date with any new development of matters relating to the Fund.

(14) The chairperson of the Board must keep or cause minutes of the proceedings of every meeting of the Board to be kept in such form and manner as the Minister may determine in writing, and must submit the minutes to the Minister within 14 days of the meeting concerned.

(15) The Board may co-opt not more than five persons to advise or assist the Board on or in respect of any matter as the Board may consider necessary, but a co-opted person has no voting right.

(16) The Board may determine, vary or extend the period for which a person has been co-opted under subsection (15).

(17) The Minister may, at the invitation of the Board, attend a meeting of the Board, but may not vote at such meeting.

Declaration of interest by members of Board

18. (1) A member of the Board who –
- (a) has financial interest or other interest, whether direct or indirect, in an agreement which is to be entered into by the Fund;
 - (b) intends to acquire such financial interest or other interest in the agreement referred to in paragraph (a); or
 - (c) obtains such financial interest or other interest in an agreement referred to in paragraph (a) after the agreement has been entered into,

must declare the nature, extent and full particulars of his or her interest in such agreement –

- (i) in case of interest referred to in paragraphs (a) and (b), at the meeting of the Board at which that agreement is to be discussed; or
- (ii) in the case of interest referred to in paragraph (c), to the Board.

(2) The member of the Board presiding at the meeting of the Board must record or cause to be recorded in the minutes of the meeting of the Board full particulars of a declaration by a member of the Board, and if a declaration relates to an interest referred to in subsection (1)(c) the Board must discuss the declaration, as soon as possible, after the declaration is made.

(3) The member of the Board referred to in subsection (1) must withdraw from the meeting when the concerned agreement or declaration is to be discussed by the members of the Board and the member may not participate in any voting in connection with such agreement or declaration.

(4) A member of the Board may not approach or in any way lobby any other member of the Board in respect of an agreement in which the members has any financial interest or other interest or discuss such agreement with any such other member of the Board.

(5) A member of the Board who contravenes or fails to comply with subsection (1), (3) or (4) commits an offence and on conviction is liable to a fine not exceeding N\$30 000 or to imprisonment for a period not exceeding three years or to both such fine and such imprisonment.

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

Executive committee of Board

19. (1) There is established an executive committee of the Board consisting of –

- (a) the Executive Director of the National Planning Commission who is the chairperson of the committee;
 - (b) the Executive Director of the Ministry who is the deputy chairperson of the committee;
 - (c) the Executive Director of the Ministry of Finance;
 - (d) a local authority representative referred to in section 12(1)(d); and
 - (e) a regional council representative referred to in section 12(1)(e).
- (2) The executive committee –
- (a) is responsible for the execution of the resolutions of the Board;
 - (b) has such other powers and functions as the Board may delegate or assign to it; and
 - (c) must keep written records of the proceedings of its meetings.
- (3) The Board may determine the procedures relating to the convening and conducting of the meetings of the executive committee, including procedures relating to quorum of the members of the executive committee.

Other committees of Board

20. (1) In addition to the executive committee, the Board may establish one or more other committees to exercise and perform such powers and functions as the Board may delegate or assign to such committee.

(2) A committee established under subsection (1) must consist of two or more members of the Board designated by the Board and the Board may –

- (a) appoint persons who are not members of the Board to be members of a committee; or
- (b) co-opt any other person to advise the committee on or in respect of any matter as the Board considers necessary, but a co-opted person has no voting right.

(3) The Board must appoint from the members of a committee established under subsection (1) the chairperson of that committee.

(4) The functions of a committee established under subsection (1) are to advise the Board on any matter that the Board refers to that committee.

(5) The chairperson of the Board may attend a meeting of a committee established under this section and may take part in the proceedings of the committee, but has no voting right.

(6) The Board may, in connection with the performance or exercise of a function or power by a committee established under subsection (1), issue directives to the committee.

(7) The Board, in respect of a committee established under subsection (1), may –

- (a) amend, substitute or set aside a recommendation of the committee; and
- (b) dissolve or reconstitute the committee.

(8) Section 19(3) applies with the necessary changes to a committee established under this section.

Allowances payable to members of Board or committees

21. (1) A member of the Board, the executive committee or a committee who is not in full-time employment of the State is paid such allowance as determined in terms of subsection (2).

(2) The Minister, with the concurrence of the Minister responsible for finance, determines allowances payable to a member of the Board, executive committee or a committee in respect of –

- (a) a meeting of the Board, executive committee or committee attended by the member; and
- (b) reasonable expenses incurred by the member in connection with the exercise or performance of the powers or functions of the Board, executive committee or committee.

(3) All expenditure related to the exercise and performance of the powers and functions of the Board are defrayed from funds of the Fund.

Designation of Fund manager and staff members

22. (1) The Minister must, in writing, designate from the staff members of the Ministry a person to serve as the Fund manager who is –

- (a) the accounting officer of the Fund;
- (b) responsible for the administrative affairs of the Fund subject to the direction and control of the Board; and
- (c) accountable to the Board.

(2) The Minister must, in writing, designate one or more staff members in the Ministry to –

- (a) assist the Board in the performance and exercise of its functions and powers;
- (b) assist the Fund manager in the performance and exercise of his or her functions and powers; and
- (c) serve as secretariat to the Board.

PART 4
ALLOCATION OF FUNDS TO REGIONAL COUNCILS AND LOCAL
AUTHORITIES AND FUNDING OF DEVELOPMENT PROJECTS

Allocation of funds to regional councils

23. (1) To financially assist with the development in the regions, the Board must allocate moneys to regional councils to meet the development needs of constituencies in the regions on the basis of equity after taking into account different levels of development and needs of various constituencies in the regions.

(2) The Fund may only allocate funds to a regional council for purposes of subsection (1) if a development project has been identified, submitted to the Fund and approved by the Board in accordance with the provisions of this Act.

(3) For the purpose of subsection (1), a regional council must –

(a) open and maintain an account to be known as the Regional and Constituency Development Fund Bank Account in accordance with section 28(1)(l) of the Regional Councils Act subject to such conditions as the Board may impose; and

(b) create an account line for each constituency under its jurisdiction bearing the name of such constituency, and all moneys which have been allocated and accrued to that constituency must be kept and maintained under its unique account line.

(4) A regional council must keep and maintain all funds allocated for a development project under the control of the chief regional officer as the accounting officer of the regional council.

(5) A chief regional officer must only authorise payments from the account referred to in subsection (3) for development projects approved by the Board.

(6) The Auditor-General must audit the books, revenue, expenditure, balance sheet and other accounting record of the Regional and Constituency Development Fund Bank Account referred to in subsection (3) in accordance with section 38 of the Regional Councils Act.

(7) The Board must ensure that the money allocated in terms of subsection (1) is exclusively used for the intended purpose and the Board may vary the money allocated to a development project or scope of development project if the Board considers it necessary, but where the varying involves a major variation, the Board must consult with the regional council that submitted the development project.

(8) If for any reason a development project is cancelled or discontinued during a particular financial year, the Board must ensure that moneys not spent on that development project is re-allocated to any other approved on-going or approved new development project in a constituency concerned.

(9) Funds allocated to a regional council to fund development projects under this Act may not be used for the purposes of supporting or funding –

(a) political or religious bodies;

- (b) political or religious activities; or
- (c) other prescribed bodies or activities.

Allocation of funds to local authorities

24. (1) To financially assist with the development in the local authority areas, the Board must allocate moneys to local authorities to meet the development needs of local authority areas on the basis of equity after taking into account different levels of development and needs of various local authorities.

(2) The Fund may only allocate funds to a local authority for purposes of subsection (1) if a development project has been identified, submitted to the Fund and approved by the Board in accordance with the provisions of this Act.

(3) For the purposes of subsection (1), the Fund must transfer money into a bank account opened by a local authority in terms of section 30(1)(y) of the Local Authorities Act subject to such conditions as the Board may impose.

(4) A local authority must keep and maintain all funds allocated for a development project under the control of the accounting officer of a local authority referred to in section 81 of the Local Authority Act.

(5) An accounting officer of a local authority must only authorise payments from the account referred to in subsection (3) for development projects approved by the Board.

(6) The Auditor-General must audit the books, revenue, expenditure, balance sheet and other accounting record of the bank account of the local authority referred to in subsection (3) in accordance with section 85 of the Local Authorities Act.

(7) The Board must ensure that the money allocated in terms of subsection (1) is exclusively used for the intended purpose and the Board may vary the money allocated to a development project or scope of development project if the Board considers it necessary, but where the varying involves a major variation the Board must consult with the local authority that submitted the development project.

(8) If for any reason a development project is cancelled or discontinued during a particular financial year, the Board must ensure that money not spent on that development project is re-allocated to any other approved on-going or approved new development project in a local authority area concerned.

(9) Funds allocated to local authorities to fund development projects under this Act may not be used for the purposes of supporting or funding –

- (a) political or religious bodies;
- (b) political or religious activities; or
- (c) other prescribed bodies or activities.

Annual reports by regional councils and local authorities

25. (1) As soon as practicable after the end of each financial year, a regional council and local authority to whom funds are allocated for a development

project in accordance with section 23 or 24 must prepare and submit to the Board an annual report on the utilisation of the funds so allocated in terms of this Act.

(2) The chairperson of the Board must receive and table the annual report referred to in subsection (1) at the meetings of the Board and must ensure that proper records and reports from the regional councils and local authorities are kept by the Board.

Nature of development projects to be funded

26. (1) A development project to be funded under this Act must be –
- (a) identified, submitted and approved by the Board in accordance with the provisions of this Act; and
 - (b) a community-based project to ensure that the prospective benefits are available to a widespread cross-section of the inhabitants of a community, constituency or local authority area.
- (2) The Minister, on the recommendation of the Board, may prescribe –
- (a) a person who may make an application for a development project to be funded under this Act;
 - (b) the conditions to be complied with before an application is made in respect of a development project to be funded under this Act;
 - (c) the application form to be used when making an application under this Act;
 - (d) the procedure to be followed when making an application for a development project to be funded under this Act;
 - (e) examination, evaluation, comparison and acceptance or non-acceptance of a development project proposal;
 - (f) the nature, identification and submission of a development project to be funded under this Act;
 - (g) the criteria to be used in the selection of a development project to be funded under this Act;
 - (h) the approval of a development project by the Board under this Act;
 - (i) the allocation formula or manner in which the Fund must allocate funds for a development project to a regional council and local authority to ensure equity; and
 - (j) the criteria to be used in the allocation of funds to a development project and the implementation of the development project.

Acquisition and disposal of assets and equipment

27. (1) Where a development project in a constituency or local authority area involves the purchase of an asset or equipment, the asset or equipment

must be for use by that constituency or local authority, but the –

- (a) regional council under which the constituency falls, after consultation with the constituency, may allow any other constituency to use that asset or equipment for a development project approved by the Board; or
 - (b) Board, in the case of an asset or equipment for use by the local authority, after consultation with the local authority, may allow any other local authority to use that asset or equipment for a development project approved by the Board.
- (2) An asset or equipment bought under this Act for use by –
- (a) a constituency is a property of the regional council under which that constituency falls; or
 - (b) a local authority is a property of that local authority,

and must be registered in the name of that regional council or local authority.

(3) A regional council or local authority may only dispose of an asset or equipment acquired under this Act after consultation with the Minister and with the authorisation of the Treasury in terms of the State Finance Act.

(4) Despite any law to the contrary, any proceeds that may accrue from the disposal of an asset or equipment under this section must be credited to the –

- (a) account line referred to in section 23(3)(b) of the constituency whose funds the asset or equipment was purchased from; or
- (b) bank account referred to in section 24(3) of the local authority which purchased the asset or equipment,

and such funds must be reflected and declared as part of the allocation of that constituency or local authority fund allocation for the following year.

Application of Public Procurement Act

- 28.** The Public Procurement Act, 2015 (Act No. 15 of 2015) applies to the –
- (a) procurement of goods, works and services undertaken by the Board, regional council or local authority;
 - (b) disposal of assets or equipment undertaken by the Board, regional council or local authority; and
 - (c) contract management of goods, works and services procured or disposed of by the Board, regional council or local authority,

in connection with a development project under this Act.

Provisions of Act complementary

29. (1) The provisions of this Act are complementary to any other development efforts by the government or any other agency, and nothing in this Act must be considered or interpreted to mean that an area may be excluded from any other developmental projects or programmes.

(2) For the avoidance of doubt, normal government development allocation must continue alongside the development projects funded under this Act.

PART 5
GENERAL PROVISIONS

Limitation of liability

30. The Minister, a member of the Board or committee, a regional council or a local authority, a Fund manager, a staff member or any other person contracted or performing or exercise any function or power on behalf of the Fund is not personally liable for damage or loss arising out of an act or omission committed in good faith by the Minister, member, regional council, local authority, Fund manager, staff member or person while performing or exercising the powers or function under or in terms of this Act, except if such damage or loss is caused as a result of the gross negligence, dishonesty or unlawful conduct by the Minister, member, regional council, local authority, Fund manager, staff member or person.

Exemption from taxes, duties and levies

31. Despite anything to the contrary in any law, no tax or charge on income of the Fund is payable by the Fund and no transfer duty, stamp duty or levy imposed under any law is payable by the Fund.

Liquidation, dissolution and winding up of Fund

32. The Fund may not be liquidated, dissolved or wound up, except by or under the authority of an Act of Parliament.

Guidelines by Board

33. (1) The Board may prepare written guidelines containing –

- (a) the interpretation of the objectives of the Fund;
- (b) policies relating to economic development in any specific or general field or area of the Fund;
- (c) preferences and priorities relating to economic development of the Fund; and
- (d) any other matter relating to the achievement of the objectives of the Fund which the Board considers necessary.

(2) The Board must submit the guidelines to the Minister not later than six months after the constitution of the Board in terms of section 12 and the guidelines must be in such form as the Minister determines in writing.

(3) The Board may only rescind or amend the guidelines prepared in terms of subsection (1) if two-thirds majority of the members of the Board present and voting at a meeting of the Board agree to the rescind or amendment.

Rules by Board

34. (1) The Board may make rules relating to –
- (a) the procedure for the convening and conducting of meetings of the Board and the manner in which minutes of the meetings must be kept;
 - (b) the manner in which agreements are entered into on behalf of the Fund and the procedure relating to the signing of correspondence and other documents relating to the Fund;
 - (c) the administration of any banking, saving or building society account of the Fund;
 - (d) the handling and bookkeeping of the funds of the Fund;
 - (e) any matter which is required or permitted to be prescribed by the rules; or
 - (f) any other matter which the Board considers necessary for the sound and efficient administration and functioning of the Fund.

(2) The Board must submit to the Minister a copy of the rules referred to in subsection (1) or any amendment made to the rules within 30 days after the making or amendment of the rules.

Regulations

35. (1) The Minister, on the recommendation of the Board, may make regulations relating to –

- (a) the performance of administrative functions of the Board;
- (b) the funding of technical assistance relating to development projects as contemplated in section 4(b);
- (c) the coordination of activities in the implementation of any decentralisation programmes as contemplated in section 4(d);
- (d) the handling of complaints and disputes pertaining to the activities of the Fund;
- (e) any matter which in terms of this Act is required or permitted to be prescribed; or
- (f) generally any matter which the Minister considers necessary or expedient in order to achieve the objectives of this Act.

(2) A regulation made under this section may provide a penalty not exceeding N\$30 000 or imprisonment for a period not exceeding three years, or both such fine and such imprisonment for any contravention or failure to comply with the regulation.

Repeal of laws

36. Subject to sections 37 and 38, the Trust Fund for Regional Development and Equity Provisions Act, 2000 (Act No. 22 of 2000) is repealed.

Transitional and saving provisions

37. (1) Anything done under a provision of the law repealed by section 36 and which could have been done under a corresponding provision of this Act is deemed to have been done under the corresponding provision of this Act.

(2) A project contract existing at the date of commencement of this Act continues to be administered in terms of, and governed by, the law repealed by section 36 as if this Act has not been enacted, but where a project contract has not yet been awarded before the commencement of this provision the project must be dealt with in terms of this Act and the Public Procurement Act.

(3) An agreement entered into by the Trust Fund established by the law repealed by section 36 and which is still valid at the commencement of this provision is deemed to have been entered into under the corresponding provision of this Act.

Transfer of assets, rights and liabilities

38. (1) In this section –

“asset” includes immovable and movable properties and other real rights; and

“liability” includes a mortgage bond and monies owed and payable to a person or entity.

(2) Despite any law to the contrary –

(a) ownership or other rights relating to the assets that vested in the Trust Fund established by the law repealed by section 36; or

(b) an obligation or liability incurred by the Trust Fund established by the law repealed by section 36,

before the commencement of this provision passes to the Fund on the date of commencement of this provision.

(3) A certificate signed and issued by the Minister stating that an asset, right, obligation or liability specified by or referred to in that certificate, has passed, in accordance with subsection (2), from the Trust Fund established by the law repealed by section 36 to the Fund, is sufficient proof that the asset, right, obligation or liability so specified or referred to vests in the Fund.

(4) On submission of the certificate of the title deed or other proof of ownership relating to the assets, rights or liabilities specified or referred to in that certificate to –

(a) the Registrar of Deeds in terms of the Deeds Registries Act, 1937 (Act No. 47 of 1937); or

- (b) any other person in charge of any other office or place where any deed, register or record relating to the ownership of, or entitlement to, an asset or right or liability is kept,

the Registrar or the other person must make an endorsement on, or an entry into, the title deed, register or record in his or her office, or submitted to him or her, as may be necessary to effect the transfer of any asset, right, obligation or liability into the name of the Fund.

(5) Despite any other law to the contrary, no stamp duty, transfer duty, value added tax, or any other duty, tax, levy or registration fees payable to the State, regional council, local authority or other authority in respect of or relating to the acquisition or transfer of assets, rights, obligation or liabilities is payable in respect of –

- (a) an entry or endorsement made; or
- (b) the transfer of ownership of an asset, right, obligation or liability to the Fund,

in terms of subsection (4) pursuant to subsection (2).

Short title and commencement

39. (1) This Act is called the Regional and Constituency Development Fund Act, 2023 and comes into operation on a date to be determined by the Minister by notice in the *Gazette*.

(2) The Minister may, under subsection (1), determine different dates in respect of different provisions of this Act.

Certified correct as passed by
PARLIAMENT

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Speaker

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Assented to -

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President
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