

THE NATIONAL SOVEREIGN WEALTH FUND BILL, 2014

ARRANGEMENT OF CLAUSES

Clause

PART 1—PRELIMINARY

- 1—Short title and commencement
- 2—Interpretation

PART II—ESTABLISHMENT OF THE NATIONAL SOVEREIGN WEALTH FUND

- 3—Establishment of the National Sovereign Wealth Fund
- 4—Object and purpose of the Fund
- 5—Initial start-up and subsequent capital
- 6—Stabilization Fund
- 7—Infrastructure and Development Fund
- 8—Future Generations Fund

PART III—THE NATIONAL SOVEREIGN WEALTH FUND COUNCIL AND BOARD

- 9—Establishment of the Council
- 10—Administration of the Council
- 11—Establishment of the Board of Trustees
- 12—Composition of the Board
- 13—Appointment and qualifications of members of the Board
- 14—Term of Office
- 15—Vacation of Office
- 16—Filling of vacancy
- 17—Functions of the Board
- 18—Powers of the Board
- 19—Headquarters of the Board
- 20—Meetings of the Board
- 21—Values and principles of public service

- 22—Appointment of chief executive officer
- 23—Vacation of office by the chief executive office
- 24—Committees of the Board
- 25—Delegation by the Board
- 26—Staff of the Board
- 27—Investment and Fund managers
- 28—Common Seal
- 29— Role of the Cabinet Secretary
- 30—Investment guidelines
- 31—General Investment strategies
- 32—Investment plans for the Future Generations Fund
- 33—Preservation of the reserves of the Fund

PART IV—FINANCIAL PROVISIONS

- 34—Annual Estimates
- 35— Operational costs
- 36—Accounts and audit
- 37— Annual report and publication
- 38—Financial year

PART V—MISCELLANEOUS PROVISIONS

- 39— Misconduct by officers of the Fund.
- 40—Exemption
- 41— Compliance with host countries laws and regulatory principles
- 42—Protection of members of the Board and staff from liability
- 43—Regulations

**SCHEDULE—PROVISIONS AS TO THE CONDUCT OF BUSINESS
AND AFFAIRS OF THE BOARD**

THE NATIONAL SOVERIGN WEALTH FUND BILL, 2014

A Bill for

AN ACT to establish Kenya’s National Sovereign Wealth Fund to undertake diversified portfolio of medium and long-term local and foreign investment to build a savings base for purposes of national development, stabilization the economy at all times, enhance intergenerational equity in Kenya, to give effect to the provisions of Article 201 of the Constitution of Kenya, and for connected purposes

ENACTED by the Parliament of Kenya as follows—

PART 1—PRELIMINARY

Short title and commencement

1.(1) This Act may be cited as the National Sovereign Wealth Fund Act, 2014 and shall come into operation on such date as the Cabinet Secretary, National Treasury, may, by notice in the Gazette, appoint.

(2) For purposes of subsection (1), the Cabinet Secretary may appoint different dates for different provisions of the Act.

Interpretation

2. (1) In this Act, unless the context otherwise requires—

“Board” means the National Sovereign Wealth Fund Board established under section 20;

“Cabinet Secretary” means the Cabinet Secretary to the National Treasury;

“Chief Executive Officer” means the Chief Executive Officer appointed under section 31;

“financial year” means the financial year of the Board as provided for under section 41;

“Fund” means the National Sovereign Wealth Fund established under section 5;

PART II—ESTABLISHMENT OF THE NATIONAL SOVEREIGN WEALTH FUND

Establishment of the National Sovereign Wealth Fund

3.(1) There is established a special-purpose investment fund to be known as the Kenya National Sovereign Wealth Fund.

(2) The Fund shall be a public fund and shall be vested in the Republic of Kenya and belong to the people of Kenya collectively.

(3) The Fund shall be characterized as a mixed Commodity and Non-commodity fund consisting—

- (a) the Stabilization Fund;
- (b) the Infrastructure and Development Fund;
- (c) the Future Generations Fund; and
- (d) any other account of the Fund established under this law.

Object and purpose of the Fund.

4. The object and purpose of the Fund shall be to—

- (a) build a savings base for the people of Kenya;
- (b) protect and stabilize the budget and economy from excess volatility in revenues or exports;
- (c) provide a mechanism for the diversification from non-renewable commodity exports;

- (d) assist monetary authorities dissipate unwanted liquidity;
- (e) increase savings for future generations;
- (f) fund social and economic development;
- (g) enhance sustainable long term capital growth; and
- (h) support and promote any other strategic objectives of the country.

Initial start-up and subsequent capital.

5.(1) The initial start-up capital of the Fund shall comprise of ten billion shillings to be provided in the annual estimates.

(2) Subsequent and additional funding shall be provided in accordance with the provisions of this Act or any other written law.

(3) Without prejudice to the generality of subsection (2), there shall be paid into the Fund—

- (a) capital from privatization proceeds;
- (b) dividends from state corporations;
- (c) all oil, gas and minerals revenues due to the national government;
- (d) revenue from other natural resources; and
- (e) funds from any other source.

Stabilization Fund.

6.(1) The objective and purpose of the Stabilization Fund shall be to facilitate leveling current spending in a sustainable way, insulating the national Budget and the economy from the

impact of volatility in revenues, including mineral and petroleum revenues.

(2) Where moneys are standing to the credit of the Stabilization Fund, withdrawals shall be through the national budget and shall not exceed the limit to be determined by the Cabinet Secretary under Investment Guidelines issued by the Cabinet Secretary

(3) The Cabinet Secretary may, with consultation with the Board shall issue guidelines on deposits to the Stabilization Fund.

(4) Withdrawals shall be made from the Stabilization Fund shall be made in accordance with this Act.

Infrastructure
and
Development
Fund.

7.(1) The purpose of the Infrastructure and Development Fund is to provide definite and ongoing funding for sectors and infrastructure for economic and social development in accordance with national government plans.

(2) The Cabinet Secretary may, with consultation with the Board, issue guidelines on deposits to the infrastructure and development Fund.

(3) Withdrawals shall be made from the Infrastructure and Development Fund shall be made in accordance with this Act.

Future
Generations
Fund.

8.(1) The Future Generations Fund to be used for the purposes of—

- (a) providing for definite and ongoing funding for future generations of Kenya with a solid savings base from revenue accruing from minerals, petroleum reserves and exploitation of other exhaustible natural resources;

(b) transforming future generations into different sectoral economy;

(c) environmental protection.

(2) The Cabinet Secretary may, with consultation with the Board, issue regularly issue guidelines on deposits to the Future Generations Fund.

(3) Withdrawals shall be made from the Infrastructure and Development Fund shall be made in accordance with this Act.

**PART III— THE NATIONAL SOVEREIGN WEALTH
FUND COUNCIL AND BOARD**

Establishment
of the Council.

9.(1) There shall be the National Sovereign Wealth Fund Council which shall comprise of—

(a) the President;

(b) the Cabinet Secretary to the National Treasury;

(c) the Cabinet Secretary responsible for Economic Planning;

(d) the Cabinet Secretary responsible for Mining

(e) the Cabinet Secretary responsible for Energy and Petroleum;

(f) the Attorney-General;

(g) the chairperson of the Board; and

(h) the Chief Executive Officer of the Board who shall be the Secretary.

(2) The Council shall—

(a) provide advice and general direction to the Board having due regard to the objects of this Act;

(b) receive and approve the investment guidelines prepared by the Cabinet Secretary to the National Treasury before their issuance to the Board;

receive and reviewed the reports submitted by the Board and provide advice and general directions, where necessary;

(c) independently evaluate the Fund, the performance of the Board or any other matter relating to the Fund that the Council considers necessary.

(3) The Council may recommend removal of a member of the Board if the member—

(a) has been absent from three consecutive meetings of the Board without the permission of the chairperson and is unable or has neglected to furnish any plausible reason for his absence;

(b) is adjudged bankrupt or enters into a composition or arrangement with his creditors;

(c) is disqualified under any provision of the Constitution or any other written law from holding a public office;

(d) is convicted of a criminal offence, which brings to question his capacity or integrity to serve as a Board, and sentenced to imprisonment for a term of six months or more;

- (e) is incapacitated by prolonged physical or mental illness;
or
- (f) is otherwise unable or unfit to discharge his responsibilities under section of this Act.

Administration
of the Council.

10.(1) The Council shall meet at least two times in every financial year.

(2) The Council may constitute an advisory committee on any technical matter and such committee may include experts on the subject at hand.

Establishment
of the Board of
Trustees.

11.(1) There is established a board of trustees to be known as the National Sovereign Fund Board of Trustees which shall be vested with the responsibility of managing the Fund.

(2) The Board shall be a body corporate with perpetual succession and a common seal and shall be capable in its corporate name of—

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging and or disposing of movable and immovable property in and outside Kenya;
- (c) borrowing and lending money; and
- (d) doing or performing all such other things or acts necessary for the proper performance of its functions under this Act, and which may lawfully be done or performed by a body corporate.

Composition of
the Board

12.(1) The Board shall consist of—

- (a) a chairperson appointed by the President, with the approval of Parliament;

- (b) the Principal Secretary in the Ministry for the time being responsible for the National Treasury;
- (c) the Principal Secretary in the Ministry for planning;
- (d) three persons appointed by the President;
- (e) the chief executive officer; and
- (f) the Corporation Secretary who shall be the secretary to the Board.

(2) The Board members under paragraphs subsection (1)(a) and (c) may, in writing, appoint another public officer to attend meetings of the Board as the member's alternate in the member's absence and the alternate member appointed shall, when attending a meeting, be deemed for all purposes to be a member of the Board.

(3) An alternate member appointed under subsection (2) shall not delegate or appoint an alternate to attend the meetings of the Board on the alternate member's behalf.

(4) The appointment of the chairperson under subsection (1)(a) and members under subsection (1)(d) shall be by notice in the Gazette, following a competitive recruitment process.

(5) A member of the Board of Trustees appointed under this section shall, in relation to the Fund, have the duties and obligations of a trustee, and be accountable in accordance with the provisions of the Trustee Act.

Cap. 167

Appointment
and
qualifications
of the
chairperson and
members of the

13.(1) The appointment and qualification of the chairperson and members of the Board under section 12 shall be in accordance with the provisions of this section.

Board.

(2) A person shall be qualified for appointment as a chairperson if such person—

- (a) holds a minimum of a degree from a university recognized in Kenya;
- (b) has experience in a senior management position in either the private or public sector;
- (c) holds at least ten years relevant post-qualification professional experience;
- (d) is a member of a professional body; and
- (e) satisfies the requirements of Chapter six of the Constitution.

(3) A person shall be qualified for appointment as a member of the Board if such person—

- (a) holds a minimum of a degree in a relevant field from a university recognized in Kenya;
- (b) has a distinguished career in finance, fund management or banking;
- (c) has at least eight years' post-qualification professional experience in matters relating financial management, venture capital fund management; and
- (d) satisfies the requirements of Chapter Six of the Constitution.

(4) A person shall not be qualified for appointment as the chairperson or a member of the Board if the person—

- (a) is a member of Parliament or county assembly;
- (b) is a member of a governing body of a political party;
- (c) is an undischarged bankrupt;
- (d) has been removed from office for contravening the Constitution or any other law; or
- (e) has, in the conduct of his affairs, not met any statutory obligations.

Term of office.

14.(1) The chairperson and members of the Board appointed under section 22 (1) (d) shall hold office for a term of three years and shall be eligible for reappointment for one further term.

(2) The term of office of the chairperson and members of the Board as first constituted and at every re-appointment or change in membership shall commence on the date of publication in the Gazette.

(3) The chairperson or a member of the Board may resign from office by written notification addressed to the Cabinet Secretary.

Vacation from office.

15. A person shall cease to be a member of the Board if such person—

- (a) resigns in writing, to the President;
- (b) is convicted of a criminal offence;
- (c) is declared bankrupt;
- (d) is unable to perform the functions of his or her office by reason of mental or physical infirmity; or

(e) is removed by the President on the recommendation of the Council;

(f) dies.

Filling of vacancy.

16. Where a vacancy occurs in the membership of the Board under section 15, the President shall, appoint a new member in accordance with the provisions of this Act.

Functions of the Board

17.(1) The Board shall oversee the investment and management of the Fund in accordance with this Act and shall, in that regard—

(a) determine investment strategies in accordance with this Act;

(b) appoint investment managers in accordance with section 27;

(c) provide guidelines to the investment fund managers in relation to investment priorities of the Fund;

(d) determine clear guidelines on the relationship between the fund managers and third parties;

(e) determine the functions of the technical team in addition to the functions set out under this Act;

(f) establish such committees as are necessary to assist the Board carry out its mandate;

(g) submit a report to the Cabinet Secretary after every three months on the performance of the Fund;

(h) appoint such other persons as are necessary to assist the Board carry out its functions;

- (i) ensure and confirm that that requests for withdrawals from the Fund are consistent with this Act and any other relevant law; and
- (j) do all things incidental to or conducive to the performance of its mandate.

(2) The Board shall be responsible and accountable to the Council in the performance of its functions and the exercise of its powers and for the proper management of the Fund.

Powers of the Board

18.(1) The Board shall have all the powers necessary for the proper performance of its functions under this Act.

(2) Without prejudice to the generality of the provisions of subsection (1), the Board shall have power to—

- (a) enter into contracts;
- (b) manage, control and administer the assets of the Fund in such manner and for such purposes as ambest promotes the purpose for which the Fund is established;
- (c) receive and consider all requests and applications from eligible persons;
- (d) approve or reject such applications in accordance with the provisions of this Act;
- (e) subject to the provisions of this Act, exercise discretion in the application of the Fund;
- (f) receive any grants, gifts, donations or endowments;
- (g) open a bank account for the Fund into which all moneys received by or on behalf of the Fund shall be paid in the

first instance and out of which all payments made by the Fund shall be made;

(h) undertake any activity necessary for the fulfillment of any function of the Fund under Act or other law.

(3) The Board may, if it considers it necessary, partner with any person for purposes of achieving its objectives under this Act.

Headquarters
of the Board

19. The headquarters of the Board shall be in Nairobi but the Board may establish offices at any other place.

Meetings of the
Board

20.(1) The business and affairs of the Board shall be conducted in accordance with the Schedule.

(2) Without prejudice to subsection (1), the Board may regulate its own procedure.

(3) The Board may invite any person to attend any of its meetings and to participate in its deliberations, but such person shall not have a vote in any decision of the Board.

(4) A member of the Board who has a material personal interest in a matter that relates to the affairs of the Board or operation of the Fund shall, at the meeting and as soon as reasonably practicable after the commencement thereof, disclose his or her interest in the matter and shall not take part in the deliberations over, or vote on, the matter.

(5) A disclosure of interest made under subsection (4) shall be recorded in the minutes of the meeting at which it is made.

(6) A member of the Board who contravenes subsection (4) commits an offence and is liable, on conviction, to imprisonment for a term not exceeding three years or to a fine not exceeding one million shillings or both.

Values and principles of public service

21.(1) The office of the chairperson and member of the Board is declared to be an office in the public service to which the values and principles of public service set out under Article 232 of the Constitution applies.

(2) There shall be developed a Code of conduct for the members of the Board and staff of the Board.

Appointment of chief executive officer.

22.(1) There shall be a chief executive officer of the Fund who shall be appointed by the Board.

(2) A person shall qualify for appointment under subsection (1) if such person—

(a) holds a masters degree in business, economics, engineering, law or other relevant field from a university recognized in Kenya;

(b) has at least ten years' experience in finance, fund management;

(c) is a member of the relevant professional body; and

(d) meets the requirements of Chapter six of the Constitution.

(3) The Chief Executive Officer shall—

(a) subject to the direction of the Board, be responsible for the day-to-day management of the Board of Trustees;

(b) in consultation with the Board, be responsible for the direction of the affairs and transactions of the Fund, the discharge of the functions and exercise of powers of the Board; and

(c) be responsible for general administration of the Fund.

(4) The Chief Executive Officer shall—

(a) hold office for a period of four years and be eligible for re-appointment for one further term; and

(b) serve on such terms and conditions of employment as the Board may determine.

Vacation of office by the chief executive officer.

23. The Chief Executive Officer may—

(a) at any time resign from office by notice in writing to the Board;

(b) be removed from office by the Cabinet Secretary on the recommendation of the Board if the officer—

(i) commits a serious violation of the Constitution or any other law including a contravention of Chapter Six of the Constitution;

(ii) is convicted of a criminal offence that amounts to a felony under the law;

(iii) is incapacitated by prolonged physical or mental illness for a period exceeding six months; or

(iv) is otherwise unable or unfit to discharge his functions.

Committees of the Board.

24.(1) The Board may establish such Committees it may consider necessary for the performance of its functions and the exercise of its powers under this Act.

(2) The Board may co-opt into the membership of a

committee established under subsection (1), other persons whose knowledge and skills are found necessary for the functions of the Board.

Delegation by the Board.

25.(1) The Board may, in writing generally or in any particular case, delegate to a member, an employee, a committee or agent, the exercise on any of its powers or the performance of any of the functions under this Act except—

- (a) this power of delegation; and
- (b) the function of determining investment strategies.

(2) Every delegation under subsection (1) is revocable, in writing and at will, and no delegation affects the exercise of a power or the performance of a function of the Board.

Staff of the Board.

26. The Board may appoint such officers or members of staff as may be necessary for the proper discharge of the functions of the Board under this Act or any other written law, on such terms and conditions of service as the Board determine.

Investment managers.

27.(1) The Board shall, through an open, competitive and transparent process recruit and appoint such number of investment fund managers as may be necessary for the proper discharge of its functions.

(2) The function of an investment fund manager is to implement the strategies and directions of the Board in relation to the investment of funds.

(3) The Board may, by regulations, prescribe the qualifications of fund managers from time to time.

Common seal.

28. (1) The seal of the Fund shall—

- (a) be authenticated by the signatures of the Chairperson

and the Chief Executive Officer; and

- (b) where the Chairperson or Chief Executive Officer is absent, be authenticated by any Officer of the Fund and Member of the Board duly appointed by the Board for that purpose, on behalf of either the Chairperson or the Chief Executive Officer.

(2) The common seal of the Board shall be kept in the custody of the Corporation Secretary or such other person as the Board may direct, and shall not be used except upon the order of the Board.

Role of Cabinet Secretary

29. The Cabinet Secretary shall, with the approval of the Council,—

- (a) annually issue Investment Guidelines, in writing, to with respect to the investment function of the Board to the Board in accordance with section 30; and
- (b) periodically review the Investment Guidelines issued as may be necessary;
- (c) receive and consider reports from the Board in order to ascertain the Board's compliance with the provisions of this Act and any Guidelines issued.

Investment guidelines.

30.(1) The investment guidelines issued under section 29 shall have regard to the national interest and the overall macro-economic and fiscal stability and shall include—

- (a) directions regarding the strategic allocations to the about the allocations to the Stabilization Fund, The Infrastructure and Development Fund and the Future Generations Fund and any other funds established under this Act;

- (b) investment targets based on the asset class investment horizon and asset composition in which the Fund may be invested and the selection criteria for investments within the classes;
- (c) information on the level of risk or returns, or acceptable balance between risk and return in the overall Fund portfolio;
- (d) ethical investment policies, including directions on—
 - (i) any restricted or prohibited investments;
 - (ii) investment constraints or limits; and
 - (iii) standards and procedures for retaining Kenya’s reputation as a responsible member of the world community and international protocols promoting good practices;
- (e) directions relating to the management of credit, liquidity, operations, currency, market and other financial risk or return choices; and
- (f) the extent to which the Board may invest in domestic assets.

(3) The Cabinet Secretary shall integrate the investment guidelines with the relevant national economic policies; and publish and publicize the investment guidelines issued under this section.

General investment strategies.

31.(1) The Board shall determine the investment Policy and strategies in respect of monies standing in the credit of the Fund based on the investment guidelines issued by the Cabinet Secretary.

(2) In determining the investment Policy and strategies, the Board shall take into account the following considerations—

- (a) investments shall be consistent with the investment guidelines issued by the Cabinet Secretary;
- (b) investments shall be directed to both local and foreign markets except to the extent restricted under this Act or under the investment Guidelines;
- (c) The Board shall issue periodic reports on performance of the Fund and in so reporting shall demonstrate compliance with the Investment Guidelines issued by the Cabinet Secretary.

Investment
plans for the
Future
Generations
Fund.

32.(1) The Board shall each year develop a rolling five-year investment plan for the Future Generations Fund pursuant to such strategies, regulations, policies and guidelines as it may determine from time to time to be most effective to achieve the objective of providing future generations with due regard to macroeconomic factors.

(2) In order to preserve the effectiveness of its ability to make investments, the Board may, make the investments plans referred to in subsection (2) subject to strict short-term, tailored confidentiality restrictions and temporarily limit their publication until such investments are made or as may otherwise be considered appropriate by the Board.

(3) The Board shall publish all its investment plans, policies and procedures, in the manner prescribed under this section.

(5) Where moneys are standing to the credit of the Future Generations Fund, withdrawals shall be in accordance with the

provisions of this Act.

(6) The Cabinet Secretary may, with consultation with the Board, make regulations, not inconsistent with this Act on investments to the Future Generations Fund.

(7) The Cabinet Secretary and the Board shall ensure that withdrawals from the Fund for current expenditures are capped and restricted for purposes of giving full benefits to the future generations.

Preservation of the reserves of the Fund.

33. The Fund shall be managed in a such manner that, prior to any change or periodic 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 Incoming parliament and the incoming President by the Outgoing President as the Reserves of the Fund to be preserved over the life of the new administration, save as may have been approved by Parliament, upon formal application by of the Cabinet Secretary to the National Treasury, in writing.

PART IV—FINANCIAL PROVISIONS

Annual estimates.

34.(1) At least three months before the commencement of each financial year, the Board shall cause to be prepared estimates of the revenue and expenditure of the Fund for that year.

(2) The annual estimates referred to under sub-paragraph (1) shall—

(a) differentiate between recurrent and development expenditure; and

(b) itemize every activity that the Board intends to undertake in the coming financial year under a separate vote head.

(3) The chief executive officer shall lay the proposed estimates before the Board for review and approval.

(4) The Board may make alterations to the estimates and shall thereafter submit them to the Cabinet Secretary for transmission to the National Assembly for approval.

(5) Upon approval of the estimates by the National Assembly, all monies from time to time required for purposes of the Act shall be paid into the Fund.

(6) If after approval of the budget the amount appropriated for any purpose under the Appropriation Act is insufficient or a need has arisen for expenditure for a purpose for which no amount has been appropriated by that Act as contemplated under Article 223 (1) (a) of the Constitution, the Board shall prepare supplementary estimates of revenue and expenditure in the manner specified under subsection (2).

(7) Supplementary estimates referred under subsection (6) shall not exceed the ten percent of the sum appropriated by Parliament for that financial year unless special circumstances exist as contemplated under Article 223(5).

(8) If there are any special circumstances to warrant exceeding the limit stipulated under subsection (7), the supplementary estimates shall contain a description of the circumstances and a justification for requesting for more funds.

(9) Supplementary estimates shall be presented to the Cabinet Secretary for submission to Parliament for approval.

Operational costs.

35.(1) Payments may be made out the Fund to—

- (a) pay any fees that is payable an investment manager, independent probity audit or other agents in respect of the Fund;

- (b) meet any other obligation that is directly related to the operation of the Fund;
- (c) pay taxation liabilities arising in respect of the Fund;
- (d) any other lawful expenditure.

(2) Payments under subsection (1) shall be made in accordance with a determination by the Board, subject to annual budgetary process.

Accounts and
audit.

36.(1) The Board shall cause to be kept such books of accounts and other books in relation thereto of all its undertakings, funds, activities and property as the Cabinet Secretary may from time to time approve and shall, within a period of three months after the end of the financial year, cause to be prepared, signed and forwarded to the Auditor-General—

- (a) a balance sheet showing in detail the assets and liabilities of the Board; and
- (b) such other statements of accounts as the Cabinet Secretary may approve.

No. 12 of 2003.

(2) The accounts of the Board shall be examined, audited and reported upon annually by the Auditor-General in accordance with the Public Audit Act and any other law relating to the management of public funds.

(3) The Board shall submit to the Auditor-General all books, statements of accounts and such other documents as the Auditor-General may require.

(4) The expenses incurred in and incidental to the auditing of the accounts of the Board shall be met by the Board.

Annual report
and
publication.

37.(1) The Board shall cause an annual report to be prepared for each financial year which shall be submitted to the President and the Parliament within three months after the end of the financial year to which it relates.

a report of the operations of the Board during such year, and the yearly balance sheet and such other statements of account as the Cabinet Secretary shall require, together with the Auditor-General's report.

(2) The Board shall publish and make public the report, balance sheet and statements submitted under subsection (1) in such manner as the Cabinet Secretary may specify.

(3) The report and statements referred to in subsection (2) shall contain details of—

(a) investment strategies and policies determined by the Board;

(b) financial performance of the Secretariat;

(c) performance of the fund including—

(i) all payments into the Fund during the year;

(ii) all investments made during the year;

(iii) total income received from investments during the year;

(d) any other information that—

(i) the Board considers relevant to the operational management of the Fund; or

(ii) the Cabinet Secretary directs to be included.

(3) The Cabinet Secretary shall lay before the National Assembly the reports, balance sheet and statements submitted under subsection (1), and such statements of accounts as may be approved, within a period of fourteen days of the receipt of the reports and statements, or, if the National Assembly is not sitting, within fourteen days of the commencement of its next sitting.

Financial year. **38.** The financial year of the Board shall be the period of twelve months ending on the thirtieth June in each financial year.

PART V—MISCELLANEOUS PROVISIONS

Misconduct by officers of the Fund. **39.** (1) An officer of the Fund who, while performing duties assigned to him by the Board—

- (a) directly or otherwise solicits for, or receives a payment or other reward, whether or not he is entitled to claim;
- (b) enters into any agreement to do, abstain from doing, permit, conceal or conspire at any act whereby the Fund is or may be defrauded, or which is contrary to the provisions of this Act or the power of execution of the duty of that officer;
- (c) discloses, except for the purposes of this Act or when required to do so by any written law or as a witness in a court of law or with the approval of the Fund, information acquired by him in the performance of his duties relating to a member, benefit or any information relevant to the purposes of this Act; or

- (d) uses his position to improperly enrich himself or others,

commits an offence and is liable, on conviction, to a fine not exceeding two million shillings or to imprisonment for a term not exceeding five years or both and any money, property or reward obtained fraudulently shall be forfeited to the Fund.

(2) Any person who, with the intention of defrauding the Fund or in any way defeating the successful enforcement of this Act—

- (a) directly or indirectly offers to give an officer of the Fund a payment or reward, or
- (b) promises or enters into an agreement with any officer of the Fund in order to induce the officer to do, abstain from doing, permit, conceal or connive at any act as a result of which the purposes of this Act are defeated, or which is contrary to the provisions of this Act for the proper execution of the duty of that officer,

commits an offence and is liable, on conviction, to a fine not exceeding two million shillings or to imprisonment for a term not exceeding two years, or both and any money, property or reward obtained fraudulently shall be forfeited to the Fund.

(3) Where an employee of the Fund conspires or aids and abets any other person in the commission of any offence specified in subsection (1), such employee shall, on conviction, be liable to a fine not exceeding two million shillings or to imprisonment for a term not exceeding two years or both and any money, property or reward obtained fraudulently shall be forfeited to the Fund.

(4) Any penalty imposed on an employee or officer of the Fund under this section shall not prejudice any other

disciplinary action the Board may decide to take against that employee or officer for that offence.

(5) The provisions of this section shall apply to the Trustees with such modifications as may be necessary.

Exemption.

40. The provisions of the law relating to the management and governance of government owned entities shall not apply to the Fund.

Compliance with host countries laws and regulatory principles.

41. Where the Board invests in a foreign country, it shall operate in accordance with the laws of the host country where the investment is situated.

Protection of members of the Board and staff from liability

42. The Board or any member of the Board of Trustees shall not be liable for loss or damage incurred by such person as a result of any act or omission done or made in good faith and without negligence in the performance or exercise or the intended performance or exercise of any duty or power imposed by or conferred under this Act.

Regulations.

43.(1) The Cabinet Secretary may, on the recommendation of the Board, make regulations generally for the better carrying out of the objects of this Act taking into account the generally accepted principles and practices on Sovereign Wealth Funds as contained in the Santiago principles.

(2) Without prejudice to subsection (1) regulations may prescribe—

(a) the conduct of the business and operations of the Board in a manner that fosters accountability and good corporate governance, is transparent and consistent with the highest ethical standards and further ensures the maintenance of best practices;

(b) an environmental, health and safety policy that is

designed to ensure compliance with all applicable legislation and industry standards in order to minimize the impact on the environment of its activities;

(c) monitoring standards for investments;

(d) risk management;

(e) treasury and cash management; and

(f) funding, withdrawal and spending rules;

(g) any other matter relevant to the operations of the Fund.

(2) The power to make regulations conferred under subsection (1) shall be—

(a) for the purpose and objective of giving effect to the Constitution and this Act;

(b) limited to the nature and scope specifically stipulated in the Constitution and this Act;

(c) based on the general principles and standards contained in the Constitution and this Act.

SCHEDULE

s. 20

PROVISIONS AS TO THE CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD

Meetings of the Board.

1. The Board shall meet not less than four times in every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting.

Convening of meetings.

2.(1) The Chairperson shall convene the ordinary meetings of

the Board.

(2) Despite the provisions of paragraph 1, the Chairperson shall, upon a written request by at least five members of the Board, convene a special meeting of the Board at any time where he considers it expedient for the transaction of the business of the Board.

(3) Unless three quarters of the total number of the members of the Board otherwise agree, at least fourteen days written notice of every meeting of the Board shall be given to every member of the Board by the chief executive officer.

Quorum.

3. The quorum for the conduct of the business of the Board shall be two-thirds of the total number of members including the Chairperson or the person presiding.

Presiding on meetings.

4. The Chairperson shall preside at every meeting of the Board at which he is present and in his absence, the members of the Board present shall elect one person from their number to preside over the meeting of the Board and he shall have all the powers of the Chairperson.

Decisions of the Board.

5. Unless a unanimous decision is reached, a decision on any matter before the Board shall be by a majority of the votes of the members present and voting and in the case of an equality of votes, the Chairperson or person presiding over the meeting shall have a casting vote.

Validity of proceedings.

6. The proceedings of the Board shall not be invalidated by reason of a vacancy within its membership.

Regulation of procedure.

7. Subject to provisions of this Schedule, the Board may determine its own procedure and the procedure for any committee of the Board and for the attendance of other persons at its meetings thereof.

DRAFT 2