



# GOVERNMENT GAZETTE

## OF THE

# REPUBLIC OF NAMIBIA

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## Government Notice

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#### OFFICE OF THE PRIME MINISTER

No. 189

1997

#### PROMULGATION OF ACT OF PARLIAMENT

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

No. 7 of 1997: Game Products Trust Fund Act, 1997.

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# ACT

**To provide for the establishment of the Game Products Trust Fund in support of the conservation and management of wildlife resources, and of rural development, in Namibia; to provide for the management and control of that Fund by the Game Products Trust Fund Board; and to provide for incidental matters.**

*(Signed by the President on 9 September 1997)*

## ARRANGEMENT OF SECTIONS

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

### Definitions

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

“Board” means the Game Products Trust Fund Board referred to in section 4;

“conservancy” means any area declared a conservancy in terms of section 24A(2)(ii) of the Nature Conservation Ordinance;

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“Fund” means the Game Products Trust Fund established by section 2(1);

“game product” means any product of -

- (a) any protected game; or
- (b) any specially protected game,

that may be produced or recovered on State land for trade through wildlife management programmes;

“grant” means a grant in the form of initial capital or like funding;

“Minister” means the Minister of Environment and Tourism;

“Nature Conservation Ordinance” means the Nature Conservation Ordinance, 1975 (Ordinance 4 of 1975);

“protected area” means any area declared a game park or a nature reserve under section 14(1) of the Nature Conservation Ordinance or any other area that may be so declared by the Minister under that section;

“protected game” means protected game as defined in section 1 of the Nature Conservation Ordinance;

“regional council” means a regional council as defined in section 1 of the Regional Councils Act, 1992 (Act 22 of 1992);

“specially protected game” means specially protected game as defined in section 1 of the Nature Conservation Ordinance;

“staff member” means a staff member as defined in section 1(1) of the Public Service Act;

“wildlife council” means a wildlife council established under section 24B(1) of the Nature Conservation Ordinance.

**Establishment of Game Products Trust Fund**

2. (1) There is hereby established a trust fund to be known as the Game Products Trust Fund, which shall be credited with -

- (a) moneys appropriated by Parliament for the Fund for the achievement of its objects;
- (b) domestic and foreign donations or contributions made for the benefit of the Fund;
- (c) interest derived from the investment of moneys standing to the credit of the Fund;

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- (d) the proceeds derived from the sale of game products belonging to the State; and
  - (e) moneys accruing to the Fund from any other source.
- (2) The Fund shall be a juristic person.

**Objects of Fund**

3. The objects of the Fund are -
- (a) to make grants to emerging conservancies and wildlife councils for the purposes of implementing and maintaining projects and programmes, approved by the Board in consultation with the Minister, regarding wildlife conservation and management and rural development;
  - (b) to allocate funds, subject to the provisions of this Act, to conservancies, wildlife councils and protected areas, and to persons, organisations and institutions approved by the Minister, to be used by those conservancies, wildlife councils, protected areas, persons, organisations and institutions in connection with projects and programmes regarding wildlife conservation and management and rural development;
  - (c) to support measures aimed at improving the relationship between people and wildlife; and
  - (d) to support improvements in the monitoring, management, protection, sustainable use and development of wildlife resources in rural areas.

**Management and control of Fund by Game Products Trust Fund Board**

4. The affairs of the Fund shall be managed and controlled by a board of trustees to be known as the Game Products Trust Fund Board, which shall exercise the powers and perform the duties and functions conferred or imposed upon the Board by or under this Act.

**Constitution of Board**

5. (1) The Board shall consist of five members appointed by the Minister, subject to the provisions of subsections (2) and (3), of whom -
- (a) one shall be a staff member of the Ministry of Environment and Tourism holding a rank or grade equal to or higher than the rank of deputy director, who shall be the chairperson;

- (b) one shall be a staff member of the Ministry of Agriculture, Water and Rural Development;
  - (c) one shall be a staff member of the Ministry of Finance; and
  - (d) two shall be representatives of community based organisations involved in sustainable wildlife resource management projects and programmes, nominated by those organisations.
- (2) The members referred to in paragraphs (b) and (c) of subsection (1) shall -
- (a) each hold a rank or grade equal to or higher than the rank of deputy director; and
  - (b) be appointed by the Minister after consultation with the Minister of Agriculture, Water and Rural Development and the Minister of Finance, respectively.
- (3) No -
- (a) member of the National Assembly, the National Council or a regional council; or
  - (b) person who is not a Namibian citizen,

shall be qualified for appointment as, or to be, a member of the Board.

(4) The members of the Board shall at their first meeting and thereafter as occasion arises, elect from among their number a vice-chairperson of the Board.

(5) When the chairperson of the Board is absent or unable to perform his or her functions as chairperson of the Board, the vice-chairperson shall act as chairperson, and shall while so acting have all the powers and perform all the duties and functions of the chairperson.

#### **Tenure and vacation of office**

6. (1) Subject to the provisions of subsection (2), a member of the Board shall hold office for a period of three years and shall, upon the expiry of his or her term of office, be eligible for reappointment.

- (2) A member of the Board shall vacate his or her office if -
- (a) his or her estate is sequestrated or he or she enters into a compromise with his or her creditors;

- (b) he or she is in terms of any law detained as a mentally disordered person;
- (c) he or she is absent from three consecutive meetings of the Board without leave of the Board;
- (d) he or she, by notice in writing addressed and delivered to the Minister, resigns as such member;
- (e) he or she is convicted of any offence and sentenced to imprisonment without the option of a fine;
- (f) in the case of a member appointed in terms of -
  - (i) paragraph (a), (b) or (c) of section 5(1), he or she ceases to be a staff member referred to in paragraph (a), (b) or (c), whichever is applicable;
  - (ii) paragraph (d) of section 5(1), he or she ceases to be a representative referred to in that paragraph;
- (g) he or she is removed from office under subsection (3) by the Minister.

(3) The Minister may at any time remove a member of the Board from office for reasons which in the opinion of the Minister render him or her unsuitable to serve on the Board.

(4) Any casual vacancy on the Board caused by the death of any member of the Board, or the removal from or vacation of office of any such member shall, with due regard to the provisions of section 5(1), be filled for the unexpired portion of the period of office of the member who has died, or has been removed from or has vacated his or her office, as the case may be.

### **Remuneration of members of Board and committees**

7. (1) The remuneration and allowances of a member of the Board, and any person appointed as a member of a committee of the Board in terms of section 11(2)(b), not being in the full-time employment of the Government shall be determined from time to time by the Minister.

(2) The remuneration and allowances referred to in subsection (1) may be paid from moneys standing to the credit of the Fund.

### **Disclosure of interest**

8. (1) A member of the Board who has or intends to acquire a direct or indirect personal interest in any negotiation, co-operation or

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agreement contemplated in section 12(b), shall in writing declare the nature, extent and particulars of such interest to the Board.

(2) A member of the Board shall not be present at or take part in any consideration or discussion of, or cast his or her vote on, a matter in which he or she has an interest as contemplated in subsection (1).

(3) A declaration made in terms of subsection (1) shall be recorded in the minutes of the meeting of the Board at which the declaration is made.

(4) Any member who contravenes or fails to comply with a provision of subsection (2) shall be guilty of an offence and on conviction be liable to a fine not exceeding N\$8 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

**Oath or affirmation by members of Board**

9. (1) Every member of the Board shall, before commencing his or her duties in terms of this Act, make and subscribe to an oath of allegiance before a commissioner of oaths in the following terms:

“I, AB, a member of the Game Products Trust Fund Board do hereby swear that I will faithfully and conscientiously to the best of my abilities perform the duties of my office and that I will not communicate or disclose directly or indirectly any matters which are by virtue of such duties entrusted to me under confidentiality. So help me God.”

(2) A member of the Board may, in lieu of an oath, make and subscribe to a solemn affirmation of allegiance in corresponding terms.

**Meetings and decisions of Board**

10. (1) The meetings of the Board shall be held at such times and places as the chairperson may determine.

(2) Three members shall constitute a quorum for any meeting of the Board.

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

(4) The decision of the majority of members present at any meeting of the Board shall constitute a decision of the Board, and, in the event of an equality of votes in regard to any matter, the chairperson or other member

presiding at the meeting of the Board shall have a casting vote in addition to his or her deliberative vote.

(5) The chairperson may allow any person who in his or her opinion has an interest in the activities of the Board to take part in such discussions of the Board as in the opinion of the chairperson relate to the interests represented by such person, but such person may not cast a vote in respect of any matter which is being put to the vote.

(6) No decision or act of the Board or act performed by authority of the Board shall be invalid by reason only -

- (a) of the existence of a vacancy on the Board; or
- (b) of the fact that a person who was not entitled to sit as a member of the Board sat as such a member at the time when the decision was taken or the act was performed or authorised, if the decision was taken or the act was performed or authorised by the requisite majority of the members who were present at the time and entitled to sit as members:

Provided that if such decision was taken or act performed or authorised in contravention of section 8(2), such decision or act shall -

- (i) be of no force and effect; and
- (ii) be reconsidered by the Board at a meeting where the member of the Board who contravened that section is not present.

(7) The Board shall keep proper record of the proceedings at its meetings, and the Minister may at any time request that such record be submitted to him or her by the Board for inspection.

(8) All discussions at meetings of the Board and all matters considered and decisions arrived at by the Board shall be treated as confidential and shall not be disclosed by any member of the Board, or any other person referred to in subsection (5), unless the prior approval of the Board has been obtained and entered in the minutes of the meeting.

### **Committees of Board**

**11.** (1) The Board may appoint one or more committees, consisting of not fewer than two and not more than eight members, to perform such functions as may from time to time be assigned to any such committee by the Board.

(2) A committee appointed under subsection (1) shall consist of -

- (a) at least one member of the Board, nominated by the Board for that purpose; and



- (b) such other person or persons not being a member or members of the Board as may be appointed by the Board.
- (3) The Board shall in respect of every committee designate one of the members of the committee as the chairperson of the committee.
- (4) Whenever a member of a committee nominated in terms of subsection (2)(a) is unable to act as a member on account of his or her absence or incapacity, the chairperson of the Board may nominate another member of the Board, who is not a member of the committee in question, to act as a member of that committee in the place of such member during the absence or incapacity of such member.
- (5) If consensus cannot be reached on any matter under consideration by any committee, the matter shall be referred to the Board for decision.
- (6) The chairperson of the Board may attend any meeting of a committee and shall be entitled to take part in the proceedings at such meeting.
- (7) The Board may in its discretion dissolve or reconstitute a committee.
- (8) The Board may, subject to such conditions as it may determine, delegate any power or assign any duty conferred or imposed upon it by or under this Act to a committee appointed under subsection (1), but the Board shall not thereby be divested or relieved of the power or duty so delegated or assigned.
- (9) A decision by a committee in the exercise of a power delegated to it under subsection (8), shall be subject to the approval of the Board, and the Board may at any time vary or set aside any such decision.

### **Powers, duties and functions of Board**

**12.** The Board shall be accountable and responsible for the proper management and control of the affairs of the Fund, and may for that purpose and in furtherance of the objects of the Fund -

- (a) invest moneys standing to the credit of the Fund which are not required for immediate use or as a reasonable working balance with a banking institution registered otherwise than provisionally in terms of the Banks Act, 1965 (Act 23 of 1965), or a building society registered otherwise than provisionally in terms of the Building Societies Act, 1986 (Act 2 of 1986);
- (b) subject to the provisions of any law, negotiate, co-operate or

- enter into agreements with any person, organisation or institution approved by the Minister with regard to any matter which is directly or indirectly aimed at the achievement of the objects of the Fund;
- (c) upon an application made under section 13 and on such conditions as the Board may determine, make grants to emerging conservancies and wildlife councils for the purposes of implementing and maintaining projects and programmes, approved by the Board in consultation with the Minister, regarding wildlife conservation and management and rural development;
- (d) allocate funds, in accordance with the provisions of section 14, to -
- (i) conservancies, wildlife councils and protected areas; and
- (ii) such other persons, organisations and institutions as the Minister may from time to time approve,

for the purposes of the achievement of the objects of the Fund.

### **Application for grants**

**13.** (1) An application for a grant referred to in paragraph (c) of section 12 -

- (a) shall -
- (i) be made in such form; and
- (ii) be submitted to the Board in such manner,
- as the Board may determine; and
- (b) shall be accompanied by -
- (i) full particulars of the purposes of the project or programme for which the grant is required; and
- (ii) such documents and other information as the Board may require in the particular case.

(2) The provisions of section 14(3) shall apply *mutatis mutandis* in respect of grants made by the Board.

**Allocation of funds**

**14.** (1) In allocating funds as contemplated in paragraph (d) of section 12, the Board shall give effect to priorities determined, and reviewed at least once in each year, by the Board, based primarily -

- (a) on the principle of -
  - (i) returning funds to areas of origin of game products;
  - (ii) supporting measures aimed at improving the relationship between people and wildlife;
  - (iii) supporting improvements in the monitoring, management, protection, sustainable use and development of wildlife resources in rural areas; and
  - (iv) striking a balance between the allocation of funds for rural development and for wildlife resource monitoring, conservation and protection; and
- (b) on technical assessments and advice on the feasibility and suitability of projects and programmes regarding wildlife resource management and rural development obtained from the Ministry of Environment and Tourism, or any other ministry, or any competent person or body of persons.

(2) The Board may allocate funds only upon an application made by a conservancy, wildlife council or protected area, or any other person, organisation or institution referred to in section 12(d)(ii), as the case may be, which application shall -

- (a) be submitted to the Board in such manner and form; and
- (b) contain such particulars,

as the Board may determine.

(3) Recipients of funds allocated by the Board in terms of this Act, shall properly account for and report to the Board on the use of any such funds -

- (a) in such manner and form; and
- (b) at such times,

as the Board may determine.

**Banking account**

**15.** (1) The Board shall open and maintain a banking account in the name of the Fund with a banking institution or building society referred to in paragraph (a) of section 12 -

- (a) into which shall be deposited all moneys accruing to the Fund in terms of this Act or any other law; and
- (b) from which shall be defrayed all expenditure in connection with the performance of the functions of the Board and be paid any amounts with which the Fund is charged in terms of this Act.

(2) No payment contemplated in paragraph (b) of subsection (1) shall be made as a charge to the Fund except by authority of the Board.

(3) The Board shall apply any donation or contribution contemplated in paragraph (b) of section 2(1) in accordance with the conditions, if any, prescribed by the donor or contributor concerned.

**Financial year, bookkeeping and accounting, and unexpended balances**

**16.** (1) The financial year of the Fund shall extend from 1 April in any year to 31 March in the next ensuing year, the first such financial year commencing on the first day of the month immediately following the month during which the Fund was established.

(2) The Board shall keep or cause to be kept proper accounts and records of all moneys accrued to or paid from the account of the Fund so as to at all times present fairly or reflect correctly all the financial transactions and the financial position of the Fund.

(3) Any unexpended balance in the account of the Fund at the close of any financial year, including accrued interest on investment balances and other receipts, shall be carried forward as a credit in such account to the next ensuing financial year.

**Annual statements and auditing**

**17.** (1) The Board shall as soon as practicable, but not later than six months after the end of each financial year referred to in section 16(1), prepare and submit, subject to the provisions of subsection (2), to the Minister -

- (a) annual financial statements in respect of the financial year in question;
- (b) a statement of the estimated income and expenditure during the next ensuing financial year; and

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- (c) a report on its activities during that financial year.
- (2) The statements referred to in subsection (1) shall -
  - (a) be prepared in such form and contain such particulars as the Minister may determine after consultation with the Auditor-General; and
  - (b) be examined and audited by the Auditor-General before being submitted to the Minister.
- (3) The Minister shall lay upon the Table of the National Assembly -
  - (a) all the statements of the Fund received in terms of subsection (1); and
  - (b) the report of the Auditor-General relating to such statements,

within 30 days from the date of receipt thereof, if the National Assembly is then in ordinary session, or, if the National Assembly is not then in ordinary session, within 14 days after the commencement of its next ensuing ordinary session.

**Submission of matters by Board to Minister for decision**

- 18.** (1) The Board -
- (a) shall at the request of the Minister;
  - (b) may of its own accord,

submit for decision to the Minister any matter relating to the exercise or performance by the Board of any of its powers or functions in terms of this Act.

- (2) In regard to any matter submitted to the Minister in terms of subsection (1), the Minister -
  - (a) shall give his or her decision after consultation with the Board;
  - (b) may, either in general or in particular, determine such conditions as he or she may think fit to impose,

and every such decision given or condition determined shall for all purposes be deemed to be a decision given or condition determined by the Board, and no such decision or condition may be varied or set aside by the Board except with the prior written approval of the Minister.

**Administrative work and administration of Fund on behalf of Board**

19. (1) All administrative work, including the receipt and payment of moneys, in connection with the exercise of the powers and the performance of the functions of the Board, shall, subject to the control and directions of the Board, be performed by staff members designated by the Permanent Secretary: Environment and Tourism from among the staff of that ministry.

(2) Notwithstanding the provisions of subsection (1), the Board may, in consultation with the Minister and upon such conditions as may be mutually agreed upon, appoint any person or body of persons outside the Public Service to administer the Fund, in accordance with the provisions of this Act and subject to the control, directions and decisions of the Board, on behalf of the Board, and to in particular be responsible for the collection and receipt of all moneys due or accruing to the Fund and for the making of payments from the Fund.

(3) The Chairperson of the Board, or any other member of the Board designated in writing by the Board, shall be competent to represent the Board and to execute any document on behalf of the Board.

(4) All expenditure in connection with the administration of the Fund shall be defrayed from moneys standing to the credit of the Fund.

**Indemnity**

20. A member of the Board or any staff member referred to in section 19(1) shall not be liable in respect of anything done *bona fide* under this Act.

**Exemption of Fund from certain taxes, duties and levies**

21. No income tax or any other tax or duty or levy shall be payable by the Fund in terms of any law.

**Rules of Board**

22. (1) The Board may make rules for the proper control and conduct of its affairs.

(2) A rule of the Board shall not be amended, substituted or withdrawn unless at least two-thirds of the members of the Board present at a meeting convened for the purposes of considering such amendment, substitution or withdrawal, have voted in favour thereof.

**Liquidation of Fund**

23. (1) The Fund shall not be wound up except by or under the authority of an Act of Parliament.

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(2) In the event of a dissolution of the Fund, any assets of the Fund remaining after all the obligations of the Fund have been met, shall be distributed in such manner and among such bodies, organisations and institutions in Namibia having similar objects to those of the Fund, as the Minister may approve on the recommendation of the Board.

**Short title and commencement**

24. This Act shall be called the Game Products Trust Fund Act, 1997, and shall come into operation on a date to be fixed by the Minister by notice in the *Gazette*.

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