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**CHAPTER 255A****BAHAMAS PROTECTED AREAS FUND**

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**CHAPTER 255A**

## BAHAMAS PROTECTED AREAS FUND

**An Act to provide for the Establishment and Regulation of The Bahamas Protected Areas Fund and for matters connected thereto** *28 of 2014**[Assent 7th July, 2014]**[Commencement 9<sup>th</sup> July, 2014]***PART I - PRELIMINARY**

**1.** This Act may be cited as the Bahamas Protected Areas Fund Act. Short title.

**2.** In this Act, unless the context otherwise requires — Interpretation.

“Board” means the Board of Directors of The Bahamas Protected Areas Fund appointed under section 11 of this Act;

“Bye-laws” mean the Bye-laws of the Fund as enacted by the Board in accordance with section 33 of this Act, as amended from time to time;

“Caribbean Biodiversity Fund” means the regional trust fund established to finance the national protected areas trust funds in such countries as it may from time to time decide to include;

“Chairperson” means the Chairperson of the Board of Directors appointed under section 13 of this Act;

“conflict of interest” has the meaning set forth in section 20 of this Act;

“Director” means a member of the Board;

“Executive Director” means the Executive Director appointed by the Board in accordance with section 14 of this Act;

“immediate family” means the following members of the respective families of a Director —

- (a) a parent;
- (b) a spouse;
- (c) issue;

(d) any other person who stands in like relation to the Director;

“investment manager” means an investment consultant, investment manager(s) hired by the Board in accordance with the conditions set forth in this Act and the Bye-laws;

“Minister” means the Minister responsible for the environment;

“protected area” means an area of land or sea as specified in section 3 especially dedicated to the protection and maintenance of biological diversity, or of natural and associated cultural resources, and managed through legal or other effective means;

“Register” means the Register of Protected Areas established under section 4 of this Act;

“special majority vote” means an affirmative vote of at least three-fourths of the Directors then serving;

“the Fund” means the corporate body called The Bahamas Protected Areas Fund established under section 5 of this Act;

“Vertical Agreement” means the agreement between the Caribbean Biodiversity Fund and The Bahamas Protected Areas Fund, as may be amended or restated from time to time.

## PART II - PROTECTED AREAS IN THE BAHAMAS

Composition of System of Protected Areas.

Ch. 51B.

Ch. 244.

Ch. 242A.

Ch. 249.

**3.** The system of protected areas in The Bahamas consist of the following kinds of protected areas —

(a) the Clifton Heritage Park managed pursuant to section 4 of the Clifton Heritage Authority Act;

(b) declared to be protected areas pursuant to an Order made under section 13 of the Fisheries Resources (Jurisdiction and Conservation) Act;

(c) declared to be forest reserves, protected forests and conservation forests pursuant to an Order made under the Forestry Act;

(d) declared to be Wild Bird protected areas pursuant to the Wild Birds Protection Act; or

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- (e) declared to be areas of, owned or managed by The Bahamas National Trust under the provisions of The Bahamas National Trust Act. Ch. 391.
4. (1) The Board must establish and maintain a register called the Register of Protected Areas. Register of Protected Areas.
- (2) The Register must —
- (a) contain a list of all protected areas;
  - (b) indicate the kind of protected area in each case;
  - (c) identify the entity managing the protected area; and
  - (d) contain any other information determined by the Minister.
- (3) For the purposes of subsection (2)(b) a protected area declared in terms of the relevant legislation must be included in the Register as a protected area depending on the purpose for which it was declared.
- (4) The Register shall be open to inspection by any member of the public at the office of the Board during normal office hours.

### **PART III - ESTABLISHMENT, ADMINISTRATION AND PURPOSES OF THE PROTECTED AREAS FUND**

5. (1) There is hereby established a corporate body to be called The Bahamas Protected Areas Fund, with perpetual succession and a common seal, which shall be capable of doing and suffering all other lawful things that a natural person of full capacity may do and suffer. Establishment of the Fund.
- (2) The Fund shall consist of the following —
- (a) any monies as from time to time are provided by Parliament for the purpose of the Fund;
  - (b) any donation or bequests to the Fund from sources other than from public funds;
  - (c) any interest accrued to the Fund;
  - (d) any monies or other property including other revenue sources referred to under section 24 as from time to time may in any manner be lawfully paid to or vested in the Fund whether or not in respect of any matter incidental to its functions.

(3) The service of any document on the Chairperson of the Board or the Executive Director shall be deemed to be service on the Fund.

Purpose of the Fund.

**6.** The general purpose of the Fund is to ensure sustainable financing into perpetuity for the management of Protected Areas in The Bahamas, including management activities under the Caribbean Challenge Initiative and the objectives of the Caribbean Biodiversity Fund, for the scientific and policy research and education, conservation and management of —

- (a) protected areas;
- (b) any system of protected areas established by the Government of The Bahamas;
- (c) programs established for the management of any area required for biodiversity conservation, the protection of any carbon sink under the Forestry Act, the conservation and protection of water resources, wetlands or blue holes, degraded or threatened ecosystems, as defined under the United Nations Convention to Combat Desertification, any area which may be designated for the purpose of giving effect to the ultimate objective of the United Nations Framework Convention on Climate Change, any other relevant multilateral environmental agreement or International Convention to which The Bahamas is a signatory, or may become a signatory for adaptation to and mitigating the adverse effects of climate change.

Ch. 242A.

Acceptance of contributions.

**7.** (1) The Fund may accept donations to achieve the general purposes set forth in section 6 of this Act.

(2) Notwithstanding section 5(2) of this Act, the Fund shall also maintain funding allocated to expenditures as specified in the operational budget, which will be established and published by the Fund.

Acceptance of conditional contributions.

**8.** The Fund may accept donations which are subject to conditions imposed by donors if doing so could not reasonably be expected to materially impair the Fund's ability to achieve its general purpose.

Grant Eligibility Criteria.

**9.** (1) In order to be considered for a grant from the Fund the applicant for the grant must be either a legally incorporated, non-governmental organisation or an agency of the Government of The Bahamas approved by the Minister.

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(2) The purpose or purposes of the grant must be in conformity, and consistent with, the general purposes of the fund as set out in section 6.

(3) The grant may not be used to pay for —

- (a) salaries for public officers of Ministries, Departments or agencies of the Government of The Bahamas;
- (b) salaries for executive officers and staff of non-governmental organisations;
- (c) recurrent costs of Ministries, Departments or agencies of the Government of The Bahamas; or
- (d) activities relating to the extraction of non-renewable natural resources.

(4) The grant must satisfy any other criteria, priorities and procedures for grants that may hereafter be established by the Board.

**10.** (1) No part of the net earnings of the Fund will inure to the benefit of any individual or be distributable to its Directors, officers or other private persons, except that the Fund is authorised and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes and activities set forth herein.

Dedication to Charitable Purpose.

(2) The Fund shall not publish any propaganda or otherwise attempt to influence the passage of any legislation and shall not participate or intervene in any political campaign by or on behalf of (or in opposition to) any candidate for political office or any political party.

(3) Notwithstanding any other provision of this Act, the Fund shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of its charitable purpose.

#### **PART IV - CONSTITUTION, POWERS AND FUNCTIONS OF THE BOARD OF DIRECTORS OF THE FUND**

**11.** (1) There shall be a Board of Directors of the Fund composed of eleven Directors from the Government and civil society, including but not limited to, representatives of national, international and local non-governmental organisations, research and scientific

Establishment and Composition of the Board.

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organisations and the private sector, and composed as follows —

- (a) six members, who shall be appointed by the Government;
- (b) one member from the Bahamas National Trust;
- (c) one member from the Nature Conservancy;
- (d) three members from outside of the Government of the Commonwealth of The Bahamas, and recommended by The Bahamas National Trust and The Nature Conservancy and approved by the Minister.

(2) Every member of the Board of Directors of the Fund shall have experience and expertise in at least one of the following fields —

- (a) ecological science,
- (b) biodiversity conservation;
- (c) finance;
- (d) law;
- (e) investment management;
- (f) fund-raising;
- (g) grant writing, or such other areas of expertise as the Board of Directors determines may be needed by the Fund.

(3) The Board of Directors of the Fund shall meet at least two times each year.

(4) The Executive Director shall attend all meetings of the Board, serve as the Secretary of the Board and maintain all records of the decisions of the Board.

Term of Office  
of Directors.

**12.** (1) Every member appointed under paragraphs (a) through (c) of subsection (1) of section 11, shall initially serve for three years, or until their replacement by their organisation, or until the earlier of their resignation, death or incapacity, as further provided in this Act and the Bye-laws.

(2) For reasons of continuity and institutional memory, three of the six Directors appointed by the Government in section 11 shall continue to serve for a period of one year after their initial appointment and subsequently, new Directors may be appointed to replace those who have served for a term of three years or more.



(3) Every member appointed under paragraph (d) of subsection (1) of section 11, shall serve for a period of two years and shall serve a maximum of two consecutive terms, or until the earlier of their resignation, death, incapacity or removal by the Board, as further provided in this Act and the Bye-laws.

**13.** (1) At the first meeting of the Board and at least once every two years thereafter, the Directors will elect from among themselves a Chairperson, Vice-Chairperson and Treasurer, who will each serve for a term that is concurrent with their remaining term as a Director, but that in no event is longer than two years.

Chairperson,  
Vice-Chairperson  
and Treasurer.

(2) The Chairperson, Vice-Chairperson and Treasurer will be eligible for re-election to such positions for as long as they remain voting Directors.

(3) The Chairperson's, Vice-Chairperson's and Treasurer's responsibilities are as follows —

- (a) the Chairperson of the Board shall preside over the meetings of the Board;
- (b) together with the Executive Director, the Chairperson possesses the authority to represent the Fund legally and in its relations with third parties;
- (c) the Vice-Chairperson shall replace the Chairperson and exercise all of the powers and duties of the latter in the event of temporary absence or impediment of the Chairperson;
- (d) in the case of the definitive impediment of the Chairperson, the Vice-Chairperson shall replace him until the election of a new Chairperson, and in the event of the impediment or absence of both the Chairperson and Vice-Chairperson, the members attending a Board meeting shall appoint from among themselves a Chairperson; and
- (e) the Treasurer shall supervise the Fund's financial activities.

**14.** (1) The Board may appoint and employ an Executive Director to be the chief administrative officer of the Fund responsible for carrying out its day-to-day affairs.

Appointment of  
the Executive  
Director.

(2) The Executive Director shall be responsible to the Board for the economical and efficient administration of the affairs of the Fund, as set forth in the Bye-laws.

Committees of  
the Board.

**15.** (1) The Board, in its discretion, may establish one or more committees, each to consist of one or more Directors, to advise it or to carry out specific responsibilities of the Board.

(2) Such committees may include an Executive Committee and a Finance Committee, in accordance with the procedures specified in the Bye-laws.

(3) Each committee of the Board will be presided over by a Director who reports to the Chairperson of the Board.

(4) Any committee whose function is only to advise the Board may also include outside experts who are not Directors.

Powers and  
Duties of the  
Board.

**16.** (1) The Board shall have the executive control and management of the affairs of the Fund, and shall exercise and perform the functions, powers and duties of the Fund on its behalf and shall be responsible for its effective and efficient administration.

(2) The powers of the Board shall not be affected by any vacancy in its membership.

(3) The Board shall after consultation with the Minister —

- (a) enact Bye-laws of the Fund, not inconsistent with this Act, which shall govern the affairs of the Board and the Fund;
- (b) elect from among themselves a Chairperson, Vice-Chairperson and Treasurer, who will serve in accordance with section 13 of this Act;
- (c) hire an Executive Director and establish the conditions of the Executive Director's employment in accordance with the provisions of the Bye-laws;
- (d) periodically evaluate his performance as the Executive Director, and determine whether or not to dismiss the Executive Director,
- (e) request modifications to provisions of this Act and to approve any activities deemed necessary to obtain these modifications;
- (f) approve, periodically review, and modify as required the Bye-laws and any operation manual of the Fund;

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- (g) approve, periodically review, and modify as required the organisational structure and personnel procedures of the Fund;
  - (h) review, as necessary, the hiring or termination of staff by the Executive Director;
  - (i) periodically review, and modify as required guidelines for the investment of the Fund's assets, and the appointment and performance of the Investment Manager;
  - (j) periodically evaluate and review the performance of the Fund;
  - (k) review and approve the annual budget and financial reports of the Fund in accordance with the Bye-laws;
  - (l) periodically review the Vertical Agreement between the Fund and the Caribbean Biodiversity Fund, as well as any other financial arrangements for accepting and remitting funds between them;
  - (m) amend, restate or replace the Vertical Agreement;
  - (n) create representative offices of the Fund;
  - (o) appoint or replace the Auditors;
  - (p) rule on issues concerning the Directors and the Executive Director, including their dismissal, reimbursement of expenses, and conflicts of interest;
  - (q) periodically engage in strategic planning for the Fund in accordance with the Bye-laws;
  - (r) appoint officers of the Fund;
  - (s) apply for tax-exempt status in any jurisdiction;
  - (t) seek and accept donations for the Fund, including acceptance of donations with restrictions on the use of these donations; and
  - (u) do all other things which the Board determines necessary for the administration and operation of the Fund in order to enable the Fund to achieve its general purposes.
- (4) The Board may, from time to time, in respect of any particular matter or class of matters, delegate to any Director, officer or to the Executive Director of the Fund, in writing, any of its functions under this Act except this

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power of delegation and those powers and functions set forth above.

(5) The following action shall require the affirmative vote of at least three-fourths of the Directors —

- (a) approval and hiring of the Investment Manager(s);
- (b) approval and modification of the guidelines for investment of the Fund's assets;
- (c) any action taken in an effort to effect a merger of the Fund with another entity or to dissolve the Fund;
- (d) adoption of, or amendment to, the Bye-laws;
- (e) appointment or replacement of any representative from the Fund to the board of directors of Caribbean Biodiversity Fund; and
- (f) any action taken with respect to the removal of a Director.

(6) The Board may not, unless approved by a special majority vote, do any of the following —

- (a) authorise the Fund to take out any loan or engage in borrowing of any kind;
- (b) authorise the Fund to offer or make any guarantees on behalf of any person or any protected area; or
- (c) authorise the Fund to mortgage, pledge or otherwise hypothecate the assets of the Fund as security for any purpose.

Policy  
Directions.

**17.** (1) The Minister, after consultation with the Board, may give to the Board such directions whether of a general or specific character as to the exercise and performance of its powers and duties under this Act as appear to the Minister to be requisite in the public interest and the Board shall give effect to any such directions.

(2) The Board shall afford to the Minister facilities for obtaining information regarding the property and activities of the Board and furnish him with returns, accounts, and other information with respect thereto and afford to him facilities for the verification of information furnished in such manner and at such times as he may require.

Standard of Care.

**18.** The Directors shall be Fiduciaries of the Fund.

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**19.** (1) No Director or officer, and no organisation appointing such Director or officer, shall be personally liable to the Fund or any other person or entity for any action taken or omitted to be taken by such Director, officer, the Fund, the Board, or any other person: Limited Liability.

Provided, however, that this limitation of liability shall not extend to conduct —

- (a) taken or omitted to be taken in bad faith;
- (b) which constitutes fraud or malfeasance; or
- (c) from which the Director or officer knowingly derived an improper personal benefit.

(2) Further, the Bye-laws may, in the discretion of the Board, provide for indemnification of Directors and officers, including the advancement of expenses:

Provided, however, that no indemnity shall be permitted to the extent that the Director or officer's conduct —

- (a) was taken or omitted to be taken in bad faith;
- (b) which constitutes fraud or malfeasance; or
- (c) was conduct from which the Director or officer knowingly derived an improper personal benefit.

**20.** (1) Whenever there is a reasonably foreseeable possibility that any Director, or a member of such Director's immediate family, may benefit or suffer loss financially from any decision to be made by the Board on any matter, the Director shall disclose to the Board the material facts relating to any possibility of a conflict of interest. Conflict of interests.

(2) A Director shall not take part in any decision in respect of which he has a conflict of interest.

**21.** A Director may be dismissed by the Board if he — Removal of Directors.

- (a) fails to notify the Board of a conflict of interest;
- (b) fails to attend three consecutive meetings of the Board:

Provided that the member received notification of such meetings, and the Board, within its reasonable discretion, does not accept the cause of such absence;

- (c) acts in a way that is detrimental to the mission, the reputation or operation of the Fund.

Remuneration of  
Directors.

**22.** (1) The Directors shall serve on a voluntary basis and shall not receive any sitting fee or other form of remuneration for serving as Directors.

(2) Reasonable out-of-pocket travel expenses and other incidental expenses incurred for attending Board meetings or conducting other business of the Board will be reimbursed to the Director incurring the expense, subject to any cap set forth in the Bye-laws.

## **PART V - FINANCIAL PROVISIONS, ACCOUNTS AND AUDIT**

Fund Assets.

**23.** (1) The assets of the Fund shall be exclusively dedicated to the charitable purposes and activities of the Fund as set forth in this Act.

(2) The monies belonging to the Fund shall, subject to additional direction by the Board —

- (a) be deposited in any onshore or offshore bank or savings bank; and
- (b) be invested in accordance with specific investment guidelines adopted by the Board in accordance with the Bye-laws and managed by an Investment Manager(s) hired by the Board in accordance with the Bye-laws.

(3) No monies shall be paid out of the Fund's assets except with the authority, and in accordance with any general or special directions, of the Board.

Revenue of the  
Fund.

**24.** (1) The revenue of the Fund may be generated from the following sources —

- (a) the Caribbean Biodiversity Fund;
- (b) gifts and bequests;
- (c) public and private donations from national and international sources;
- (d) budgetary allocations from the Government of The Bahamas;
- (e) investments;
- (f) proceeds from the sale, lease or transfer of tangible and intangible property;
- (g) other fees, levies, taxes and fines that are specifically allocated to the Fund;
- (h) proceeds from services provided by the Fund;

- (i) exceptional and miscellaneous income or gains; and
- (j) any other appropriate source of revenue.

(2) The Board is entitled to reject any gifts, bequests, donations, revenue, proceeds or income that may be offered to the Fund or otherwise accrue to it.

(3) Any unspent revenue from the regional Caribbean Biodiversity Fund shall be returned to the Caribbean Biodiversity Fund in accordance with the Vertical Agreement.

**25.** (1) Regardless of the source of the Fund's assets, such assets shall be considered private funds separate from the Consolidated Fund. Treatment of Fund Assets.

(2) The Fund shall have to apply to the Central Bank of The Bahamas for the right to transfer funds of the Fund in and out of The Bahamas and the right to maintain foreign currency accounts.

- (3) The Board may divide the Fund's assets into —
  - (a) an endowment fund;
  - (b) a sinking fund;
  - (c) a revolving fund; and
  - (d) such other funds or special accounts as the Board may from time to time determine.

(4) No part of the endowment's capital may be disbursed as grants, used to cover the fund's administrative and operating costs, or transferred to a sinking fund unless this is approved by the unanimous vote of all Board members.

**26.** (1) The capital of the Fund's endowment shall be invested by an Investment Manager hired by the Board through a transparent and competitive public tender process, subject to the approval of a special majority vote of the Board. Investment of Fund Assets.

(2) All investments shall be made in accordance with investment guidelines that have been approved by a special majority vote of the Board.

**27.** At the beginning of each financial year of the Fund, the Board shall cause to be prepared and approved a Budget setting forth the total annual budget for the Fund. Annual Budget.

**28.** (1) The Board shall, as soon as practicable after the end of each financial year, cause to be made and Annual Report.

transmitted to the Minister a report in such form as the Minister may, from time to time, direct dealing generally with the activities of the Board during the preceding year.

(2) The Minister shall cause a copy of every such report to be laid on the table of both Houses of Parliament.

Limits of  
Administrative  
Expenses.

**29.** The Fund shall use no more than fifteen percent of its annual budget to pay for administrative expenses of the Fund, including salaries and other recurring costs, except that for the first three financial years of the Fund's existence, the Fund may use twenty-five percent of its annual Budget for such expenses of the Fund.

Accounts and  
Audit.

**30.** (1) The Board shall keep or cause to be kept full and correct accounts on a regular basis of all monies received and expended by the Fund.

(2) The Board shall subject to the approval of the Minister, appoint an independent auditor of recognised standing and competence to audit the financial accounts of the Fund on an annual basis.

(3) The auditor shall verify the Fund's balance sheet and other financial accounts for each financial year and shall prepare a comprehensive, detailed written report that shall be presented to the Board no later than four months after the conclusion of the Fund's financial year.

(4) The Board shall make the auditor's completed annual report publicly available.

(5) The Minister shall ensure the auditor's annual report is laid before Parliament annually.

Exemption from  
taxation.

**31.** (1) Subject to the approval of the Minister of Finance, the Fund shall be exempt from the payment of customs duties, excise and real property taxes or levies.

(2) All instruments executed by or on behalf of the Fund shall be exempt from stamp duty.

## **PART VI - METHODS OF DISSOLUTION OF THE FUND AND BYE-LAWS OF THE BOARD**

Dissolution of  
the Fund.

**32.** (1) The Minister, upon the advice of the Board, may seek the approval of Parliament for an application to be made to the Supreme Court for the dissolution of the Fund under the following circumstances —

(a) in the event of bankruptcy of the Fund;



- (b) if it has become impracticable to achieve the objectives of the Fund;
- (c) upon a special majority vote of the Board; or
- (d) if its tax exemptions under section 31 are revoked.

(2) Upon receipt of such request, the Parliament may vote for an application to be made to the Supreme Court for the Fund to be dissolved by a resolution of each House of Parliament in the manner prescribed under the Constitution.

(3) The winding-up provisions of the Companies Act shall apply *mutatis mutandis* to such dissolution proceedings as has been approved by Parliament. Ch. 308.

(4) In the event of dissolution of the Fund, the assets of the Fund shall be distributed first, to pay all liabilities of the Fund, and second, in the discretion of the Supreme Court, to one or more organisations having charitable purposes similar to those of the Fund:

Provided, that all assets of the Fund will be used exclusively for charitable, educational or scientific purposes.

**32A.** The winding-up provisions of the Companies Act shall apply *mutatis mutandis* upon an application of a petitioner or creditor of the Fund. Involuntary dissolution of the Fund. Ch. 308.

**33.** (1) The Board shall after consultation with the Minister have power to make Bye-laws not inconsistent with the provisions of this Act for the regulation of its affairs and the conduct of its business. Bye-laws.

(2) Sections 31 and 32 of the Interpretation and General Clauses Act shall not apply to any Bye-laws duly made by the Board under the provisions of this section. Ch. 2.

- (3) The Board, may make Bye-laws for —
  - (a) the regulation of its proceedings, inclusive of the following —
    - (i) the times at which the Board shall meet as may be necessary or expedient for the transaction of its business and the places, times and days of such meetings;
    - (ii) the quorum of the Board for such meetings;
    - (iii) the majority of votes required for the decisions of the Board, and, in addition to

an original vote, the Chairman or other person who shall preside at a meeting of the Board who shall have a second or casting vote in any case in which the voting is equal;

- (b) the establishment of an Executive Committee;
- (c) the establishment of a Finance Committee;
- (d) the Executive Director to administer the affairs of the Fund;
- (e) indemnifying the Directors and officers of the Fund in a manner consistent with the provisions under this Act;
- (f) the rules of practice and professional conduct to which all directors and officers of the Board shall comply with;
- (g) reviewing and approving the annual budget and financial reports of the Fund;
- (h) prescribing policy guidelines for dealing with the strategic planning for the Fund;
- (i) investing the assets of the Fund;
- (j) developing and governing fund-raising activities of the Fund;
- (k) formulating guidelines for the criteria for grant applicants; and
- (l) approving, denying and reviewing grant applications.