

THE OFFICIAL GAZETTE 23RD JANUARY, 2019
LEGAL SUPPLEMENT — A



GUYANA
ACT NO. 12 OF 2019
NATURAL RESOURCE FUND ACT 2019

I assent.

A handwritten signature in black ink, appearing to read "David Granger".

David Granger,
President.

2019.01.23

ARRANGEMENT OF SECTIONS

SECTION

PART I

PRELIMINARY

1. Short title and commencement.
2. Interpretation.

PART II

NATURAL RESOURCE FUND

3. Establishment of Natural Resource Fund.
4. Transparency.

PART III

PUBLIC OVERSIGHT OF THE FUND

5. Public Accountability and Oversight Committee.
6. Functions of Public Accountability and Oversight Committee.
7. Membership of Public Accountability and Oversight Committee.
8. Remuneration of members of Public Accountability and Oversight Committee.
9. Budget of Public Accountability and Oversight Committee.
10. Reporting of Public Accountability and Oversight Committee.

PART IV

MANAGEMENT OF THE FUND

11. Minister responsible for overall management of Fund.
12. Bank responsible for operational management of Fund.
13. Investment Committee.
14. Functions of Investment Committee.
15. Senior Investment Adviser and Analyst.
16. Functions of Senior Investment Adviser and Analyst.
17. Investment Advisory Services Company.
18. Private managers.
19. Custodians.
20. Macroeconomic Committee.

PART V

DEPOSITS AND WITHDRAWALS

21. Deposits into Fund.
22. Withdrawals from Fund.
23. Direct charges on Fund.

PART VI

DETERMINATION OF WITHDRAWAL AMOUNTS

24. Economically and Fiscally Sustainable Amount.
25. Economically Sustainable Amount.
26. Fiscally Sustainable Amount.
27. Emergency Financing.

PART VII

PARLIAMENTARY APPROVAL FOR WITHDRAWALS

28. Approval of withdrawals from Fund.
29. Contents of annual budget proposal.
30. Contents of supplementary Appropriation Bill for emergency financing.

A.D. 2019]

TAX (AMENDMENT) ACT 2017

[No. 12

PART VIII

ELIGIBLE INVESTMENTS

31. Eligible asset classes.
32. Minimum investment in very safe investments.
33. Investment for long-term savings.
34. Fund to remain unencumbered.
35. Passive investment management.
36. Investment Mandate.

PART IX

ACCOUNTING, REPORTING AND AUDITING

37. Accounting.
38. Reports and Financial Statements.
39. Internal audit.
40. External audit.
41. Annual report.
42. Publication of reports.

PART X

CONFIDENTIALITY

43. Confidentiality.

PART XI

PENALTIES AND OFFENCES

44. Misleading information.
45. Failure to publish information.
46. Hindering exercise of powers of external auditor.
47. Disclosing confidential information.
48. Liability of legal entities.
49. Scope of this Part.

PART XII

MISCELLANEOUS

50. Codes of conduct.
51. Secretariats to Committees.
52. Delegation of functions.
53. Regulations.
54. Act prevails where inconsistencies with it exist.
55. Consequential Amendment.

FIRST SCHEDULE

SECOND SCHEDULE

AN ACT to establish the Natural Resource Fund to manage the natural resource wealth of Guyana for the present and future benefit of the people and for the sustainable development of the country, and for connected matters.

A.D. 2019

Enacted by the Parliament of Guyana:-

**PART I
PRELIMINARY**

Short title and commencement.

1. This Act may be cited as the Natural Resource Fund Act 2019 and shall come into operation on a date the Minister may by order appoint.

Interpretation.

2. In this Act –

Cap. 73:02

“annual budget” has the same meaning as assigned to it in the Fiscal Management and Accountability Act;

“annual budget proposal” has the same meaning as assigned to it in the Fiscal Management and Accountability Act;

“asset class” means a group of investments that have similar characteristics and behave similarly in the market place;

Cap. 1:01

“Auditor General” means the Auditor General appointed pursuant to article 223(1) of the Constitution;

“Barclays Global Treasury Index” refers to the Bloomberg Barclays Global Treasury Index that tracks fixed-rate local currency government debt of investment grade countries, including both developed and emerging markets;

“Barclays Global Aggregate Corporate Index” refers to the Bloomberg Barclays Global Aggregate Corporate Index that tracks global investment grade, fixed-rate corporate debt from both developed and emerging markets within the industrial, utility and financial sectors;

Cap. 85:02

“Bank” means the Bank of Guyana established under section 3 of the Bank of Guyana Act;

First Schedule

“Benchmark Petroleum Revenues” means the Benchmark Petroleum Revenues specified in the First Schedule;

“Benchmark Price for Crude Oil” means the Benchmark Price for Crude Oil specified in the First Schedule;

A.D. 2019]

TAX (AMENDMENT) ACT 2017

[No. 12

“corporate bonds” means debt issued by a corporation which is repaid over one or more years;

“custodian” means a financial institution that holds customers’ investments for safekeeping, appointed under section 19;

“custodian agreement” means the custodian agreement provided for under section 19(3);

“Economically and Fiscally Sustainable Amount” means the amount specified in section 24;

“Economically Sustainable Amount” means the amount specified in section 25;

“eligible asset class” means an –

- (i) eligible bank deposit;
- (ii) eligible commodity;
- (iii) eligible corporate bond;
- (iv) eligible equity;
- (v) eligible derivative;
- (vi) eligible treasury bill; and
- (vii) eligible sovereign bond,

as defined in section 31.

“emergency financing” means the amount needed for ameliorating major natural disasters as specified in section 27;

“equity” means a stock or any other security representing an ownership of interest in a company;

“external auditor’s report” means the report of the external auditor for the Fund required under section 40;

“fiscal year” has the same meaning as assigned to it in the Fiscal Management and Accountability Act;

“Fiscally Sustainable Amount” means the amount specified in section 26;

“Fitch” refers to Fitch Rating Inc, a credit rating agency;

“Fund” means the Natural Resource Fund established under section 3;

Cap. 97:03

“inclusive green economy” means an economy that improves human well-being and builds social equity while reducing environmental risks and scarcities;

“Institute of Chartered Accountants of Guyana” has the same meaning as assigned to it in the Institute of Chartered Accountants of Guyana Act;

“International Financial Reporting Standards” means the international financial reporting standards set by the IFRS Foundation and the International Accounting Standards Board;

“major natural disaster” includes an earthquake, flood or hurricane or other disaster caused by the natural processes of the earth that has such a severe impact on the environment and the living conditions of the population or part of the population that, in the opinion of the Minister, additional public spending in excess of the amount that can be financed by the Economically and Fiscally Sustainable Amount and non-petroleum revenues is required to ameliorate the impact on the population and the environment;

“Minister” means the Minister responsible for finance;

“MSCI World ESG Leaders Index” means the MSCI World ESG Leaders Index published by Morgan Stanley Capital International World Index;

“MSCI World Ex Fossil Fuels Index” means the MSCI World Ex Fossil Fuels Index published by Morgan Stanley Capital International World Index;

“MSCI World Index” means the MSCI World Index published by Morgan Stanley Capital International World Index;

“Moody’s” refers to Moody’s Investor Service, a credit rating agency;

“non-petroleum revenues” means all Government revenues excluding petroleum revenues and the total return of the Fund;

“petroleum licence” means a petroleum prospecting licence or a petroleum production licence issued under the Petroleum (Exploration and Production) Act;

“petroleum revenues” means all Government revenues specified in section 21;

“private manager” means an asset management company or other financial institution, that manages assets on behalf of investors

A.D. 2019]

TAX (AMENDMENT) ACT 2017

[No. 12

appointed under section 18;

Cap. 65:04

“production operations” has the same meaning assigned to it in the Petroleum (Exploration and Production) Act;

“Public Accounts Committee” means the Public Accounts Committee established by Order 82 of the Standing Orders of the National Assembly;

“Santiago Principles” means the generally accepted principles and practices for Sovereign Wealth Funds voluntarily endorsed by the International Forum of Sovereign Wealth Funds members;

“sovereign bonds” means debt issued by a sovereign or supranational organisation which is repaid over one or more years;

“Special Drawing Rights” means the international reserve asset created by the International Monetary Fund;

“Standard and Poor’s” means Standard and Poor’s (S&P) investment ratings services;

“strategic asset allocation” means the establishment of target allocations of the Fund between different eligible asset classes with periodic rebalancing of the portfolio to bring it back in line with the target allocations due to deviations in the total returns of different eligible asset classes;

“tactical asset allocation” means actively making changes in the allocation of the Fund between and within different eligible asset classes to take advantage of perceived temporary market anomalies in the pricing of eligible asset classes;

“total return” means the return of an investment or a pool of investments over a given evaluation period, including interest, capital gains, dividends and distributions realised over a given period of time net of all fees; and

“treasury bills” means debt issued by a sovereign or supranational organisation which is repaid within one year or less.

PART II NATURAL RESOURCE FUND

Establishment of
Natural Resource
Fund.

3. (1) There is established a fund to be known as the Natural Resource Fund.

(2) The purpose of the Fund is to manage the natural resource wealth of Guyana for the present and future benefit of the people in an effective and efficient manner by -

No. 12]

LAWS OF GUYANA

[A.D. 2019

- (a) ensuring that volatility in natural resource revenues do not lead to volatile public spending;
- (b) ensuring that natural resource revenues do not lead to a loss of economic competitiveness;
- (c) fairly transferring natural resource wealth across generations to ensure that future generations benefit from natural resource wealth; and
- (d) using natural resource wealth to finance national development priorities including any initiative aimed at realising an inclusive green economy.

(3) The Fund shall be a public fund and shall be held in the name of the Bank on behalf of the Government and people of Guyana.

(4) All investments made pursuant to this Act, including those managed by private managers, shall be held in the name of the Bank on behalf of the Government and people of Guyana.

(5) The Fund shall be managed separately from the reserves of the Bank.

Transparency.

4. The Fund shall be managed according to the principles of good governance including transparency and accountability, and international best practices including the Santiago Principles.

PART III PUBLIC OVERSIGHT OF THE FUND

Public
Accountability and
Oversight
Committee.

5. There is established a committee to be known as the Public Accountability and Oversight Committee.

Functions of Public
Accountability and
Oversight
Committee.

6. The Public Accountability and Oversight Committee shall be responsible for –

- (1) monitoring and evaluating the compliance of the Government and other relevant persons with the provisions of this Act;
- (2) monitoring and evaluating whether the Fund has been managed in accordance with the principles of transparency, good governance and international best practices including the Santiago Principles;
- (3) providing independent assessment of the management of the Fund and utilisation of withdrawals from the Fund; and

A.D. 2019]

TAX (AMENDMENT) ACT 2017

[No. 12

(4) facilitating public consultations on the management of the Fund and utilisation of withdrawals from the Fund.

Membership of
Public
Accountability and
Oversight
Committee.

7. (1) The Public Accountability and Oversight Committee shall consist of twenty-two members nominated in accordance with this section and appointed by the President as follows –

- (a) a representative nominated by a consortium of civil-society organisations and community-based organisations;
- (b) a nominee to represent women nominated by a consortium of civil-society organisations and community-based organisations which represent women;
- (c) a nominee to represent youth nominated by a consortium of civil-society organisations and community-based organisations which represent youth;
- (d) a nominee of the Bar Associations of Guyana;
- (e) a nominee of the Guyana Consumers Association;
- (f) a nominee of the Guyana Extractive Industries Transparency Initiative;
- (g) a nominee of the Transparency Institute of Guyana Inc;
- (h) a nominee of the Guyana Press Association;
- (i) a nominee of the most representative associations of trade unions;
- (j) a nominee of the Institute of Chartered Accountants of Guyana;
- (k) a nominee of the Private Sector Commission;
- (l) one nominee from each of the ten Regional Democratic Councils; and
- (m) a nominee from academia nominated by the governing council of the University of Guyana.

(2) A person shall not be eligible for appointment as a member, or continue as a member, of the Public Accountability and Oversight Committee, if that person –

- (a) is a member of the Parliament;
- (b) is an employee of the Ministry;

- (c) is an employee or owner of an organisation engaged by the Minister or Governor of the Bank to assist with the management of the Fund;
- (d) is a member of the Investment Committee established under section 13 or the Macroeconomic Committee established under section 20;
- (e) is insolvent or is, or has been, declared bankrupt;
- (f) is of unsound mind or otherwise medically unfit for office;
or
- (g) has been convicted of any offence not minor in nature.

(3) The President may, after consultation with the relevant nominating entity, terminate the appointment of any member of the Public Accountability and Oversight Committee -

- (a) who contravenes or fails to comply with the provisions of this Act;
- (b) where information relating to the conduct of the member, which could have precluded that member's appointment if it had been made available to the President, is brought to the attention of the President;
- (c) for incompetence;
- (d) for misbehaviour or misconduct;
- (e) for inability to perform as a member arising from infirmity of body or mind; or
- (f) for bankruptcy or insolvency.

(4) Where it appears to the President that there is cause to terminate the appointment of a member under subsection (3) -

- (a) the President shall notify, in writing, the relevant nominating organisation and the member of the cause and shall give the member an opportunity to submit an explanation or response, which shall be duly considered by the President before deciding whether to terminate the appointment of that member; and
- (b) the relevant nominating organisation shall nominate a replacement for the member whose appointment was terminated.

A.D. 2019]

TAX (AMENDMENT) ACT 2017

[No. 12

(5) A member of the Public Accountability and Oversight Committee may at any time by notice in writing to the President, resign from membership of the Public Accountability and Oversight Committee and the resulting vacancy shall be filled by another nominee of the relevant nominating authority under subsection (1).

(6) A member of the Public Accountability and Oversight Committee nominated by a Regional Democratic Council shall be appointed for a term of two years and may be reappointed for a further one term and in the case of a member nominated by any organisation other than a Regional Democratic Council, for a single term of three years.

(7) The Public Accountability and Oversight Committee shall elect a chairperson and a deputy chairperson from among its members at their first meeting.

(8) A decision of the Public Accountability and Oversight Committee shall only be binding if it is taken by a majority vote with a quorum consisting of at least thirteen members, with at least five members of the quorum being members who were nominated by Regional Democratic Councils.

(9) All other procedures of the Public Accountability and Oversight Committee shall be determined by its members.

(10) The names of the members of the Public Accountability and Oversight Committee as first constituted and every change in the membership, whether by death, termination, resignation or effluxion of time or for any other reason, shall be published in the *Gazette* and in two daily newspapers circulating in Guyana.

Remuneration of members of Public Accountability and Oversight Committee.

8. The members of the Public Accountability and Oversight Committee shall be paid remuneration approved under section 9.

Budget of Public Accountability and Oversight Committee.

9. (1) The Public Accountability and Oversight Committee shall prepare, in accordance with existing budget preparation guidelines, and submit to the Public Accounts Committee a budget for the Public Accountability and Oversight Committee, including remuneration, work plans and programmes, for the next ensuing fiscal year.

(2) The Public Accounts Committee shall review the budget submission made under subsection (1), approve the budget, either in full or in part, and publish the approved budget on the website of Parliament and elsewhere as the Public Accounts Committee considers necessary.

(3) The approved budget of the Public Accountability and Oversight Committee shall be financed by a direct charge on the Fund and shall be

paid into an account at the Bank held in the name of the Public Accountability and Oversight Committee.

Cap. 73:05 (4) All expenditures made by the Public Accountability and Oversight Committee shall be in keeping with the accounting and reporting procedures of Government and the Procurement Act.

Reporting of Public Accountability and Oversight Committee.

10. The Public Accountability and Oversight Committee shall -

- (a) publish bi-annual reports of its activities on its website or the website of Parliament;
- (b) organise annual public consultations to report on the discharge of its functions under this Act; and
- (c) submit copies of its bi-annual reports to the President and to the National Assembly within sixty days after the end of the first half of each fiscal year as well as within sixty days after the end of the second half of each fiscal year.

PART IV MANAGEMENT OF THE FUND

Minister responsible for overall management of Fund.

11. The Minister shall be responsible for the overall management of the Fund and shall –

- (a) be responsible for preparing the Investment Mandate and include the items specified in section 36;
- (b) when preparing or amending the Investment Mandate, seek the advice of the Investment Committee established under section 13;
- (c) be assisted by the Senior Investment Adviser and Analyst; and
- (d) enter into an operational agreement with the Bank for the operational management of the Fund.

Bank responsible for operational management of Fund.

12. (1) The Bank shall be responsible for the operational management of the Fund and shall manage the Fund in accordance with the Investment Mandate and the operational agreement.

(2) The operational agreement shall state –

- (a) the fee charged by the Bank for the operational management of the Fund;
- (b) the liability for paying damages to the Government for losses that occur due to negligence or intent on the part of the Bank or private managers in managing the Fund; and

A.D. 2019]

TAX (AMENDMENT) ACT 2017

[No. 12

(c) all other matters required for the effective operational management of the Fund.

(3) The Bank shall establish risk management arrangements and all necessary internal management systems for the operational management of the Fund.

Investment
Committee.

13. (1) There is established a committee to be known as the Investment Committee which shall consist of the following six members appointed by the Minister -

- (a) a nominee of the Minister who shall be the Chairperson of the Committee;
- (b) a nominee of the minister responsible for the administration of the petroleum sector;
- (c) a nominee of the Leader of the Opposition;
- (d) a nominee of the Guyana Association of Bankers; and
- (e) two *ex officio* non-voting members as follows -
 - (i) the Senior Investment Adviser and Analyst;
 - (ii) a nominee of the Governor of the Bank.

(2) The members of the Investment Committee shall be persons with –

- (a) at least ten years' experience and expertise in financial investments and financial portfolio management; and
- (b) a minimum of a master's degree from a reputable university in the discipline of finance or economics, or an equivalent professional qualification.

(3) The Minister shall be responsible for paying the remuneration of any member of the Investment Committee that, in the Minister's estimation, is entitled to remuneration.

(4) A person shall not be eligible for appointment as a member, or continue as a member, of the Investment Committee, where that person –

- (a) is a member of Parliament;
- (b) is a Minister;
- (c) is, or has been, declared bankrupt;
- (d) is medically unfit for office;

(e) has been convicted of any offence not minor in nature; or

(f) has due to personal or family interests and investments, a conflict of interest.

(5) The Minister may terminate the appointment of any member of the Investment Committee -

(a) who contravenes or fails to comply with the provisions of this Act;

(b) if information relating to the conduct of a member, which could have precluded that member's appointment if it had been made available to the Minister, is brought to the attention of the Minister;

(c) for incompetence;

(d) for misbehaviour or misconduct;

(e) for inability to perform the functions of that member's office arising from infirmity of body or mind; or

(f) for bankruptcy or insolvency.

(6) Where it appears to the Minister that there is cause to terminate the appointment of a member under subsection (5) -

(a) the Minister shall notify, in writing, the relevant nominating organisation and the member of the cause and shall give the member an opportunity to submit an explanation or response, which shall be duly considered by the Minister before deciding whether to terminate the appointment of that member; and

(b) the nominating entity, where applicable, shall nominate a replacement for the member whose appointment was terminated.

(7) A member of the Investment Committee may at any time by notice in writing to the Minister, resign from membership of the Investment Committee and the resulting vacancy created by the resignation of a member shall be filled in accordance with subsection (1).

(8) Members shall be appointed for a term of four years and may be reappointed for one further term.

(9) The terms and conditions of appointment of the members of the Investment Committee shall be determined by the Minister.

A.D. 2019]

TAX (AMENDMENT) ACT 2017

[No. 12

(10) Until the Minister prescribes by order, the procedure of the Investment Committee, the Investment Committee shall determine its procedure.

(11) The names of the members of the Investment Committee as first constituted and every change in the membership, whether by death, termination, resignation or effluxion of time or for any other reason shall be published in the *Gazette*, on the website of the Ministry and in two daily newspapers circulating in Guyana.

Functions of
Investment
Committee.

14. (1) The Investment Committee established under section 13 shall be responsible for advising the Minister on the Investment Mandate referred to in section 11 and, in doing so, shall take account of -

- (a) the overall objectives of the Fund as outlined in this Act;
- (b) the current conditions, opportunities and constraints in relevant financial markets;
- (c) the need to ensure sufficient funds are available for withdrawals from the Fund;
- (d) international best practices in investment portfolio management;
- (e) the principle of financial diversification with the objective of maximising risk-adjusted financial returns and taking into account the capacity of the institutions involved in the management of the Fund and Guyana's ability to bear financial risk;
- (f) the need for the Fund, in the long term, to achieve on average over a number of years a real total return of at least three percent per annum, in United States Dollars, while minimising risk;
- (g) the need for the Fund to follow a strategic asset allocation strategy whereby over time as the balance of the Fund increases the percentage of the Fund invested in low risk eligible asset classes decreases and the percentage of the Fund invested in higher risk eligible asset classes increases;
- (h) the need for the Fund to avoid tactical asset allocation;
- (i) the financial modelling referred to in section 16(d);
- (j) the fees charged by the Bank as operational manager of the Fund;

(k) the fees charged by private managers; and

(l) any other relevant information.

(2) The advice of the Investment Committee shall be contained in written reports submitted to the Minister at least annually or within twenty working days of the Minister requesting such advice.

(3) The Investment Committee shall within thirty working days of the end of every fiscal year submit a report on its activities to the Minister.

Senior Investment Adviser and Analyst.

15. (1) The Minister shall appoint a Senior Investment Adviser and Analyst who shall be employed on terms and conditions, including the payment of pensions, gratuities or other like benefits, as determined by the Minister with the approval of Cabinet.

(2) The Senior Investment Adviser and Analyst shall possess a minimum of ten years of relevant professional experience and shall at the minimum be the holder of a master's degree in economics or finance, or an equivalent professional qualification, from a reputable institution.

(3) The Senior Investment Adviser and Analyst shall be recruited through an open and competitive recruitment process which shall be open to citizens of Guyana and non-citizens of Guyana.

Functions of Senior Investment Adviser and Analyst.

16. The Senior Investment Adviser and Analyst shall be responsible for –

- (a) assisting the Minister with the drafting of the Investment Mandate referred to in section 11;
- (b) assisting the Minister with reporting on and monitoring the financial performance of the Fund;
- (c) supporting the Investment Committee established under section 13 with the undertaking of its functions;
- (d) undertaking financial modelling showing the expected total return per annum and risk of different allocations of the Fund across different eligible asset classes and presenting this modelling to the Minister and Investment Committee; and
- (e) performing other tasks related to the management of the Fund as determined by the Minister.

Investment Advisory Services Company.

17. (1) The Minister may, through a competitive and open procurement process, procure the services of an investment advisory services company to provide advice on the Investment Mandate referred to in section 11.

A.D. 2019]

TAX (AMENDMENT) ACT 2017

[No. 12

(2) The investment advisory services company whose services are procured shall -

- (a) have a sound record of operational and financial performance spanning at least ten years;
- (b) have references and a reputation in the field of investment advisory services which is of the highest standard; and
- (c) have experience advising a sovereign wealth fund or other large institutional investor on strategic asset allocation.

(3) The Minister shall be responsible for paying the fees of the investment advisory services company.

(4) Any reports and written advice the Minister receives from the investment advisory services company shall be shared with the Investment Committee established under section 13.

(5) An organisation currently employed as a private manager shall not be procured as the investment advisory services company.

Private managers.

18. (1) The Governor of the Bank may procure the services of private managers to manage part of the balance of the Fund.

(2) The Bank, when procuring private managers, shall do so through a competitive and open procurement process that is in accordance with existing law or, in the case in which a private manager may be a supranational organisation to which Guyana is a member, shall do so through any procurement process in accordance with existing law.

(3) A private manager shall –

- (a) be a legal entity;
- (b) have sufficient capital and adequate insurance against operational risk;
- (c) have a sound record of operational and financial performance spanning at least ten years;
- (d) have references and a reputation in the field of fund management which is of the highest standard; and
- (e) have a long-term debt rating which is equal to, or the equivalent of, A(-) or above from at least two of the following three institutions –

- (i) Fitch;

(ii) Moody's;

(iii) Standard and Poor's.

(4) Private managers shall manage funds in accordance with a management agreement entered into with the Bank and an Investment Instruction including the matters specified in subsection (6), which shall be included as an attachment to the management agreement.

(5) The management agreement referred to in subsection (4) shall –

- (a) state the fees to be paid to the private manager;
- (b) provide for the liability of the private manager for losses that occur due to negligence or intent on the part of the private manager;
- (c) include a code of conduct for the private manager; and
- (d) include any other information that the Bank considers necessary or as may be required by law.

(6) The Investment Instruction referred to in subsection (4) shall include –

- (a) instructions on the investments that the private manager can make;
- (b) a relevant index for these investments;
- (c) the maximum acceptable tracking error between the index and investments;
- (d) details of, and deadlines for, any reports the Bank requires from the private manager; and
- (e) such other directions as the Bank deems fit.

(7) Any company currently engaged as the investment advisory services company shall not be procured as a private manager.

Custodians.

19. (1) The Governor of the Bank may, through a competitive and open procurement process, procure the services of a custodian for the safekeeping of all or some of the investments of the Fund.

(2) A custodian appointed shall –

- (a) be a legal entity;
- (b) have sufficient capital and adequate insurance against

A.D. 2019]

TAX (AMENDMENT) ACT 2017

[No. 12

operational risk;

- (c) have a sound record of operational and financial performance spanning at least ten years;
- (d) have references and a reputation in the field of custodianship which is of the highest standard; and
- (e) have a long-term debt rating which is equal to, or the equivalent of, A(-) or above from at least two of the following three institutions –
 - (i) Fitch;
 - (ii) Moody's;
 - (iii) Standard and Poor's.

(3) A custodian shall hold funds in accordance with the custodian agreement with the Bank.

(4) The custodian agreement shall –

- (a) state the fees to be paid to the custodian;
- (b) provide for the liability of the custodian for losses that occur due to negligence or intent on the part of custodian; and
- (c) include any other such information that the Bank considers necessary or as may be required by law.

Macroeconomic
Committee.

20. (1) There is established a committee to be known as the Macroeconomic Committee which shall be responsible for advising the Minister on the Economically Sustainable Amount.

(2) The Macroeconomic Committee shall consist of the following five members appointed by the Minister –

- (a) a representative of the Ministry who shall be the Chairperson of the Macroeconomic Committee;
- (b) a nominee of the Leader of the Opposition;
- (c) a representative of the Bank nominated by the Governor of the Bank;
- (d) a nominee of the Private Sector Commission; and
- (e) a leading international expert in macroeconomics identified and approved by Cabinet.

(3) All members of the Macroeconomic Committee shall be persons with at least ten years of experience of applied macroeconomics and shall hold a minimum of a master's degree in economics or a related field from a reputable university.

(4) In addition to the requirements in subsection (3), the expert referred to in subsection (2)(e) shall have at least ten years of professional experience in applied macroeconomics and hold a doctorate degree in macroeconomics from a reputable university.

(5) A person shall not be eligible for appointment as a member, or continue as a member, of the Macroeconomic Committee, where that person –

- (a) is a member of Parliament;
- (b) is a Minister;
- (c) is, or has been, declared bankrupt;
- (d) is medically unfit for office;
- (e) has been convicted of any offence not minor in nature; or
- (f) has due to personal or family interest and investments, a conflict of interest.

(6) A member of the Macroeconomic Committee shall be appointed for a term of four years and may only be reappointed for one further term.

(7) Until the Minister prescribes by order, the procedure of the Macroeconomic Committee, the Macroeconomic Committee shall determine its procedure.

(8) The terms of appointment of the members of the Macroeconomic Committee, including remuneration if any, shall be determined by the Minister who shall be responsible for paying the remuneration of any member of the Macroeconomic Committee that is entitled to remuneration.

(9) The Macroeconomic Committee shall within thirty working days of the end of every fiscal year submit a report on its activities to the Minister.

(10) The Minister may terminate the appointment of any member of the Macroeconomic Committee -

- (a) who contravenes the provisions of this Act;

A.D. 2019]

TAX (AMENDMENT) ACT 2017

[No. 12

- (b) if information relating to the conduct of a member, which could have precluded that member's appointment if it had been made available to the Minister, is brought to the attention of the Minister;
- (c) for incompetence;
- (d) for misbehaviour or misconduct;
- (e) for inability to perform the functions of that member's office arising from infirmity of body or mind; or
- (f) for bankruptcy or insolvency.

(11) Where it appears to the Minister that there is cause to terminate the appointment of a member under subsection (10) –

(a) the Minister shall notify the relevant nominating organisation and the member in writing and shall give the member an opportunity to submit an explanation or response, which shall be duly considered by the Minister before deciding whether to terminate the appointment of that member; and

(b) the nominating entity, where applicable, shall nominate a replacement for the member whose appointment was terminated.

(12) A member of the Macroeconomic Committee may at any time by notice in writing to the Minister, resign from membership of the Macroeconomic Committee.

(13) Where a vacancy is created by the resignation of a member the vacancy created shall be filled in accordance with subsection (2).

(14) The names of the members of the Macroeconomic Committee as first constituted and every change in the membership, whether by death, termination, resignation or effluxion of time or for any other reason shall be published in the *Gazette*, in two daily newspapers circulating in Guyana and on the website of the Ministry.

PART V DEPOSITS AND WITHDRAWALS

Deposits into Fund.

21. (1) Petroleum revenues shall be directly paid into a bank account denominated in United States of America Dollars and held by the Bank as part of the Fund.

(2) Petroleum revenues shall include all revenue from -

- (a) royalties, whether paid in cash or in kind, due and payable by the holder of a petroleum licence;
- (b) the Government's share of profit oil received under the terms of a production sharing agreement or other agreement;
- (c) the Government's share of profit gas received under the terms of a production sharing agreement or other agreement;
- (d) any income tax or corporate income tax levied on the profits of companies or individuals undertaking production operations;
- (e) any capital gains tax levied on the capital gains of companies or individuals undertaking production operations;
- (f) any property tax levied on the net property of companies or individuals undertaking production operations;
- (g) any petroleum income tax, additional profits tax or any other future tax levied on the profits of companies or individuals undertaking production operations;
- (h) any signature bonus, discovery bonus, production bonus or other bonus related to production operations or the award of a petroleum licence; and
- (i) any other current or future fiscal instrument levied solely or mainly on companies or individuals involved in production operations.

(3) In the event that the Government elects to participate in production operations through a national oil company, petroleum revenues shall also include any amount -

- (a) payable by the national oil company as royalty or tax due in accordance with applicable law;
- (b) distributed by the national oil company as a dividend to the Government; and
- (c) realised from the sale of Government shares or equity in the national oil company.

(4) Petroleum revenues shall not include revenue from -

- (a) value added tax collected on inputs or outputs from

A.D. 2019]

TAX (AMENDMENT) ACT 2017

[No. 12

production operations;

- (b) customs duties collected on inputs into production operations;
- (c) applicable statutory fees collected by regulatory agencies; and
- (d) withholding tax on payments made to contractors by companies or individuals undertaking production operations.

(5) The Minister may deposit excess mining and forestry revenues into the Fund.

(6) The total return from the investments of the Fund shall be retained by the Fund.

(7) In this section “excess mining and forestry revenues” means revenues from mining or forestry as the case may be that accrue due to the price of the relevant commodity being above its long-term average price or production of the relevant commodity being above its long-term average level of production or both.

Withdrawals from Fund.

22. (1) The maximum amount that may be withdrawn from the Fund in a fiscal year shall be a portion of the Fund and shall not exceed the total withdrawal from the Fund approved by the National Assembly for that fiscal year in accordance with section 28.

(2) All withdrawals from the Fund shall be deposited into the Consolidated Fund and shall be used only to finance -

- (a) national development priorities including any initiative aimed at realising an inclusive green economy; and
- (b) essential projects that are directly related to ameliorating the effect of a major natural disaster.

Direct charges on Fund.

23. (1) The fees to be paid to the Bank under the operational agreement referred to in section 11, the fees approved by the board of the Bank for any custodian, private managers and other third parties arising from the management of the Fund and the fees related to the audit of the Fund by the Auditor General or an external auditor acting on behalf of the Auditor General, shall be paid directly from the Fund.

(2) The approved budget of the Public Accountability and Oversight Committee shall be a direct charge on the Fund.

PART VI DETERMINATION OF WITHDRAWAL AMOUNTS

No. 12]

LAWS OF GUYANA

[A.D. 2019

Economically and
Fiscally
Sustainable
Amount.

24. The Economically and Fiscally Sustainable Amount for a fiscal year shall be the lesser of the following amounts –

- (a) the Economically Sustainable Amount for that fiscal year; and
- (b) the Fiscally Sustainable Amount for that fiscal year.

Economically
Sustainable
Amount.

25. (1) The Economically Sustainable Amount is the maximum amount that can, in the opinion of the Minister after taking into account the recommendations of the Macroeconomic Committee established under section 20, be withdrawn from the Fund for the next ensuing fiscal year without diminishing the competitiveness of Guyana's economy.

(2) The Macroeconomic Committee shall submit to the Minister, at least annually and by deadlines determined by the Minister, a report on the Economically Sustainable Amount which shall -

- (a) analyse the impact on Guyana's economic competitiveness of past public spending financed by past withdrawals from the Fund;
- (b) analyse the potential impact of future public spending financed by possible future withdrawals from the Fund on Guyana's economic competitiveness taking into account the following variables –
 - (i)inflation;
 - (ii)the exchange rate;
 - (iii)the real effective exchange rate;
 - (iv)the balance of payments;
 - (v)economic growth, particularly in the agriculture and manufacturing sectors;
 - (vi)the composition of public spending;
 - (vii)the need to maintain stability in public spending;
 - (viii)public debt; and
 - (ix)other relevant economic indicators;
- (c) recommend the Economically Sustainable Amount for the next ensuing fiscal year, and each of the next following three fiscal years; and

A.D. 2019]

TAX (AMENDMENT) ACT 2017

[No. 12

(d) explain the economic logic underpinning the calculation of the Economically Sustainable Amount.

Fiscally Sustainable Amount.

26. (1) The Fiscally Sustainable Amount is the maximum amount that can be withdrawn from the Fund in a fiscal year while ensuring the long-term financial sustainability of the Fund, a fair inter-generational distribution of natural resource wealth and maintaining stability in the annual withdrawals from the Fund.

(2) The Minister is responsible for calculating the Fiscally Sustainable Amount.

(3) The Fiscally Sustainable Amount shall be calculated by the 1st of June of each year prior to the next ensuing fiscal year for which the Fiscally Sustainable Amount is being determined.

First Schedule. (4) The Fiscally Sustainable Amount shall be calculated at least annually using the method as specified in the First Schedule.

Emergency financing.

27. (1) In the event of the occurrence of a major natural disaster, the Minister may request a withdrawal from the Fund for emergency financing.

(2) A request pursuant to subsection (1) shall only be made by the Minister when there has been a major natural disaster in the current or two preceding fiscal years.

(3) The total amount requested for emergency financing for a fiscal year shall not exceed the Economically and Fiscally Sustainable Amount for that fiscal year.

PART VII PARLIAMENTARY APPROVAL FOR WITHDRAWALS

Approval of withdrawals from Fund.

28. (1) The amount that the Minister shall request the National Assembly to approve as the withdrawal from the Fund for the next ensuing fiscal year shall be included in the annual budget proposal and shall not exceed, for that year, the Economically and Fiscally Sustainable Amount plus any amount required for emergency financing.

(2) The amount that the National Assembly shall approve as the withdrawal from the Fund for the next ensuing Fiscal Year shall be included in the annual budget and shall not exceed, for that year, the Economically and Fiscally Sustainable Amount plus any amount required for emergency financing.

(3) In the event that the annual budget proposal approved by the National Assembly for a fiscal year does not include a withdrawal for emergency financing and a major natural disaster occurs during that fiscal

year, the Minister may request that the National Assembly approve a withdrawal for emergency financing for that fiscal year, which shall be included in a supplementary appropriation Bill.

Contents of annual
budget proposal.

29. (1) The annual budget proposal shall include –

- (a) an estimate of the withdrawal from the Fund for the next ensuing fiscal year and each of the next following three fiscal years;
- (b) an estimate of the deposits into the Fund for the next ensuing fiscal year and each of the next following three fiscal years;
- (c) a detailed estimate of petroleum revenues for the next ensuing fiscal year and each of the next following three fiscal years;
- (d) an estimate of the expected nominal total return per annum of the Fund for the next ensuing fiscal year and each of the next following three fiscal years;
- (e) a statement of the Economically and Fiscally Sustainable Amount for the next ensuing fiscal year, and each of the next following three fiscal years;
- (f) a statement of the Economically Sustainable Amount for the next ensuing fiscal year, and each of the next following three fiscal years;
- (g) the report on the Economically Sustainable Amount prepared by the Macroeconomic Committee established under section 20;
- (h) a statement of the Fiscally Sustainable Amount for the next ensuing fiscal year, and each of the next following three fiscal years;
- (i) a report explaining how the Fiscally Sustainable Amount was calculated for the next ensuing fiscal year, and each of the next following three fiscal years;
- (j) a statement explaining how the withdrawal from the Fund for the next ensuing fiscal year and each of the next following three fiscal years, shall be used to finance national development priorities including any initiative aimed at realising an inclusive green economy;
- (k) a comparison of actual withdrawals from the Fund with the amount approved by the National Assembly for withdrawal from the Fund and the Economically and Fiscally

A.D. 2019]

TAX (AMENDMENT) ACT 2017

[No. 12

Sustainable Amount for the past three fiscal years; and

(1) an explanation of how the Fund works and a summary of its investments and financial performance.

(2) In the event that the annual budget proposal includes a request for a withdrawal for emergency financing then in addition to the information outlined in subsection (1), the annual budget proposal shall include -

- (a) a detailed report describing the major natural disaster and its impact on the environment and population of Guyana;
- (b) a detailed report explaining why a withdrawal for emergency financing is required, the projects it will be used to finance and how those projects ameliorate the effect of the major natural disaster;
- (c) a table showing for the next ensuing fiscal year the total withdrawal being requested from the Fund, the withdrawal being requested for emergency financing for that fiscal year and the Economically and Fiscally Sustainable Amount for that fiscal year; and
- (d) a table showing any reduction in the Fiscally Sustainable Amount for the subsequent ensuing fiscal year and each of the succeeding three fiscal years due to the request for a withdrawal for emergency financing.

Contents of
supplementary
Appropriation Bill
for emergency
financing.

30. A supplementary Appropriation Bill presented to the National Assembly pursuant to section 28(2) shall include –

- (a) a report describing the major natural disaster and its impact on the environment and population of Guyana;
- (b) a detailed report explaining why the withdrawal for emergency financing is required, the projects it will be used to finance and how those projects ameliorate the effect of the major natural disaster;
- (c) a table showing for the current fiscal year the withdrawal requested for emergency financing, the withdrawal from the Fund approved in the annual budget and the Economically and Fiscally Sustainable Amount; and
- (d) a table showing any reduction in the Fiscally Sustainable Amount for the next ensuing fiscal year and each of the next following three fiscal years due to the requested withdrawal for emergency financing.

**PART VIII
ELIGIBLE INVESTMENTS**

Eligible asset classes.

31. (1) The Fund shall only be invested in eligible asset classes which shall be limited to –

(a) eligible bank deposits which are bank deposits held in United States Dollars with foreign financial institutions that have a long-term bank deposit rating in a category which is equal to, or the equivalent of, A(-) or above from at least two of the following three institutions –

(i) Fitch;

(ii) Moody's; and

(iii) Standard and Poor's,

or an account held at the Bank in Guyana Dollars or United States Dollars;

(b) eligible treasury bills which are treasury bills issued by a sovereign in their domestic currency where the domestic currency of the sovereign is a basket currency of the Special Drawing Rights and the sovereign has a long-term credit rating for their domestic currency which is equal to, or the equivalent of, A(-) or above from at least one of the following three institutions –

(i) Fitch;

(ii) Moody's; and

(iii) Standard and Poor's;

(c) eligible sovereign bonds which are any sovereign bonds included in the Barclays Global Treasury Index;

(d) eligible corporate bonds which are any corporate bonds included in the Barclays Global Aggregate Corporate Index;

(e) eligible equities which are any equities included in the MSCI World Index;

(f) eligible derivatives which are derivatives that are solely based on assets held by the Fund and where the purchase of the derivative reduces the risk of losses associated with the

A.D. 2019]

TAX (AMENDMENT) ACT 2017

[No. 12

underlying asset; and

(g) eligible commodities which are limited to gold.

(2) All investments in eligible treasury bills, eligible sovereign bonds, eligible corporate bonds, eligible equities, eligible derivatives and eligible commodities shall be in foreign assets.

Minimum investment in very safe investments.

32. (1) Where the balance of the Fund is less than five hundred million United States Dollars then all of the Fund shall be invested in very safe investments.

(2) Where the balance of the Fund is more than five hundred million United States Dollars and less than three times the amount approved by the National Assembly for the withdrawal from the Fund for the next ensuing fiscal year then all of the Fund shall be invested in very safe investments.

(3) Where the balance of the Fund is more than five hundred million United States Dollars and more than three times the amount approved by the National Assembly for the withdrawal from the Fund for the next ensuing fiscal year then the amount invested in very safe investments shall be equal to the larger of –

(a) five hundred million United States Dollars; and

(b) three times the amount approved by the National Assembly for the withdrawal from the Fund for the next ensuing fiscal year.

(4) For the purposes of this section, the term “very safe investments” means eligible bank deposits and eligible treasury bills only.

Investment for long-term savings.

33. (1) The Fund shall, with the exception of the amount invested under section 32, be invested for the purpose of long-term savings in eligible bank deposits, eligible treasury bills, eligible sovereign bonds, eligible corporate bonds, eligible equities, eligible derivatives and eligible commodities.

Second Schedule

(2) The amount of the Fund invested for the purpose of long-term savings in an eligible asset class shall not be more than its ceiling as specified in the Second Schedule.

(3) The amount of the Fund invested for the purpose of long-term savings in an eligible asset class shall not be less than its floor as specified in the Second Schedule.

Fund to remain unencumbered.

34. (1) The financial assets of the Fund shall not be encumbered by any person or entity.

No. 12]

LAWS OF GUYANA

[A.D. 2019

(2) The future petroleum revenues shall not be encumbered by any person or entity.

(3) The Government shall not –

(i) borrow or lend money from the Fund; or

(ii) hold a financial instrument that places or may place a liability or contingent liability on the Fund:

Provided that, for the avoidance of doubt, this shall not exclude the Fund from investing in eligible derivatives.

(4) Any contract, agreement or arrangement that encumbers any financial asset of the Fund, or future petroleum revenues, shall to the extent of such encumbrance, be null and void:

Provided that this subsection shall not apply to contracts, agreements or arrangements in respect of eligible derivatives.

(5) In this section “encumbered” means –

(a) used to provide credit to Government, or any other person or entity;

(b) used as collateral for debts, guarantees, commitments or other liabilities of any person or entity;

(c) borrowed from; and

(d) used for borrowing against any of the assets of the Fund.

Passive investment management.

35. The Fund shall be invested according to the principle of passive investment management which shall mean that –

(a) investments in eligible treasury bills and eligible commodities shall be made to track indices included in the Investment Mandate under section 36;

(b) investments in eligible sovereign bonds shall be made to track the Barclays Global Treasury Index;

(c) investments in eligible corporate bonds shall be made to track the Barclays Global Aggregate Corporate Index; and

(d) investments in eligible equities shall be made to track the MSCI World Index, MSCI World ESG Leaders Index or the MSCI World Ex Fossil Fuels Index.

Investment Mandate.

36. The Investment Mandate shall be prepared in accordance with this

Act and shall include -

- (a) directions relating to the management of credit, liquidity, operational, currency, market and other financial risks;
- (b) directions regarding ethical investments, including policies, standards and procedures for avoiding prejudice to Guyana's reputation as a responsible member of the world community;
- (c) the percentage of the Fund that shall be invested in each eligible asset class;
- (d) relevant indices for investments in eligible treasury bills and eligible commodities;
- (e) the relevant index or indices for investments in eligible equities from those indices listed in section 35;
- (f) the maximum acceptable tracking error between the relevant index and the relevant eligible asset class;
- (g) directions relating to how frequently the Fund shall be rebalanced; and
- (h) such other directions, not inconsistent with this Act, as the Minister deems fit.

PART IX ACCOUNTING, REPORTING AND AUDITING

Accounting.

37. The Bank shall maintain proper books of accounts and records for the Fund which accounts and reports shall conform to International Financial Reporting Standards.

Reports and
Financial
Statements.

38. (1) The Bank shall, not later than twelve working days after the end of each month, submit to the Minister monthly reports on the Fund which shall include a summary of the financial position of the Fund for the preceding month.

(2) The Bank shall, not later than thirty working days after the end of each quarter of the fiscal year, submit to the Minister quarterly reports on the Fund for the preceding quarter which shall include –

- (a) information on the performance and activities of the Fund;
- (b) a description of the financial performance of the Fund;
- (c) financial statements of the Fund; and
- (d) a comparison of the financial performance of the Fund to the relevant index for each eligible asset class.

No. 12]

LAWS OF GUYANA

[A.D. 2019

(3) The financial statements mentioned above shall be prepared in accordance with International Financial Reporting Standards.

Internal audit.

39. The internal audit department of the Bank shall undertake an internal audit of the accounts, records and other documents relating to the Fund at least annually.

External audit.

40. (1) An external audit of the accounts, records and other documents relating to the Fund shall be undertaken annually by the Auditor General who may engage an internationally recognised auditing firm to assist in the discharge of this external audit function.

(2) The Bank shall submit the audited financial statements of the Fund and the external auditor's report to the Minister no later than the 30th of April of the fiscal year following the fiscal year that is being audited.

(3) The Auditor General may charge a cost recovery fee for the external audit which shall be paid by the Fund.

Annual report.

41. (1) The Minister shall prepare and cause to be laid before the National Assembly, as soon as practicable but not later than thirty days after the receipt of the audited financial statements of the Fund and the external auditor's report from the Bank, the annual report of the Fund.

(2) The Bank shall, when requested by the Minister, provide the Minister with any information required to prepare the annual report.

(3) The annual report referred to in subsection (1) shall include –

- (a) a description of the legal framework governing the Fund;
- (b) a summary of the main objectives of the Fund;
- (c) an explanation of the relationship between risk and total return and an explanation of the expected nominal total return per annum and expected volatility of the investments of the Fund;
- (d) the audited financial statements of the Fund and external auditor's report on the Fund;
- (e) details of all deposits to, and withdrawals from, the Fund;
- (f) the nominal total return per annum from the Fund from its inception to date;
- (g) the annual total balance of the Fund from its inception to date;
- (h) a summary of the withdrawals to finance the budget of the Public Accountability and Oversight Committee;

A.D. 2019]

TAX (AMENDMENT) ACT 2017

[No. 12

- (i) a summary of the fees paid to the Bank, custodians, private managers, the Auditor General and any other third parties;
- (j) a table showing the market value for each eligible asset class that comprises the Fund;
- (k) a table showing the amount invested under section 32 and the amount invested under section 33;
- (l) a table showing the market value for each individual eligible bank deposit, eligible treasury bill, eligible sovereign bond, eligible corporate bond, eligible equity, eligible commodity and eligible derivative held by the Fund;
- (m) a table showing the market value of investments per country;
- (n) a comparison of the investment performance of each eligible asset class in the Fund per annum compared to its relevant index since the inception of the Fund;
- (o) a comparison of the amount approved by the National Assembly for withdrawal from the Fund with the amount actually withdrawn from the Fund for each fiscal year from the inception of the Fund;
- (p) a comparison of the amount actually withdrawn from the Fund and the nominal total return per annum for each fiscal year from the inception of the Fund;
- (q) the Investment Mandate referred to in section 11;
- (r) the Investment Instruction referred to in section 18(4) for each private manager;
- (s) the operational agreement referred to in section 11;
- (t) the management agreements referred to in section 18(4);
- (u) advisory reports from the Investment Committee established under section 13;
- (v) the reports from the Macroeconomic Committee, established under section 20, on the Economically Sustainable Amount;
- (w) a list of all persons sitting on the Investment Committee and Macroeconomic Committee;
- (x) a detailed report explaining how the projects funded by any emergency financing for that fiscal year served to ameliorate

No. 12]

LAWS OF GUYANA

[A.D. 2019

the effects of the relevant major natural disaster; and

- (y) all other relevant information that the Minister considers Parliament requires to fully understand the performance of the Fund.

Publication of reports.

42. The Minister shall publish on the website of the Ministry and generally make available to the public –

- (a) the annual report, audited financial statements and external auditor's report on the Fund within three working days after they are laid before the National Assembly;
- (b) the quarterly reports and financial statements of the Fund within thirty working days after they have been submitted to the Minister by the Bank;
- (c) the monthly reports within seven working days after they have been submitted to the Minister by the Bank;
- (d) the operational agreement within seven working days after it has been executed;
- (e) the Investment Mandate referred to in section 11 within seven working days after it has been sent to the Bank; and
- (f) the Investment Instructions referred to in section 18(4) within thirty working days after they have been submitted to the Minister by the Bank.

PART X CONFIDENTIALITY

Confidentiality.

43. Except as permitted under this Act or where required by any applicable law, a person who is employed, or ceases to be employed, in the oversight and management of the Fund shall not disclose to any other person any official information which the person may have obtained in the course of the person's employment.

PART XI PENALTIES AND OFFENCES

Misleading information.

44. A person who gives information that is materially false or misleading, or knowingly includes or permits to be included, in any report or document, information that is materially false or misleading, commits an offence and is liable on conviction on indictment to a fine of ten million dollars and to imprisonment for five years.

Failure to publish information.

45. A person who fails to comply with any obligation to publish information, provided for in this Act, or leads someone else to fail to

A.D. 2019]

TAX (AMENDMENT) ACT 2017

[No. 12

comply with, or hinders or leads someone else to hinder the compliance with, the obligation commits an offence and is liable on conviction on indictment to a fine of five million dollars and to imprisonment for three years.

Hindering exercise of powers of external auditor.

46. A person who, directly or indirectly, hinders or leads someone else to hinder the exercise of powers by an external auditor under this Act commits an indictable offence and is liable on conviction to a fine of five million dollars and to imprisonment for three years.

Disclosing confidential information.

47. A person who discloses official information in contravention of the provisions of this Act commits an offence and is liable on summary conviction to a fine of five million dollars and to imprisonment for three years.

Liability of legal entities.

48. (1) Legal persons, corporations or any other legal entities are liable for contraventions provided for in this Part when committed by its organs or representatives in its name and in the collective interest.

(2) The liability is excluded where the agent has acted against express orders or instructions properly issued.

(3) The liability of the entities mentioned in subsection (2) does not exclude the individual liability of their respective agents.

(4) The entities mentioned in the subsection (1) are jointly and severally liable for the payment of any fine or compensation, or for the fulfilment of any obligations, derived from the facts or with incidence on matters covered by the scope of this Act.

Scope of this Part.

49. The provisions included in this Part are without prejudice to criminal and civil liability under applicable law.

PART XII MISCELLANEOUS

Codes of conduct.

50. (1) The Public Accounts Committee shall determine a code of conduct to govern the members of the Public Accountability and Oversight Committee and shall publish the code on the website of the Parliament.

(2) The Minister shall determine a code of conduct to govern the members of the Investment Committee established under section 13 and the Macroeconomic Committee established under section 20 and publish the code on the website of the Ministry.

Secretariats to Committees.

51. (1) The Public Accountability and Oversight Committee shall have analytical, executive, administrative and secretarial support provided by a Secretariat which shall be financed by the approved budget of the Committee and shall undertake such other functions as are determined by

the Committee.

(2) The Investment Committee and the Macroeconomic Committee shall have analytical, executive, administrative and secretarial support provided by a Secretariat which shall be provided by the Minister and shall undertake such other functions as are determined by the Investment Committee and the Macroeconomic Committee, respectively.

Delegation of functions.

52. The Minister may, in writing, delegate to an official of the Ministry any of the Minister's functions under this Act.

Regulations.

53. The Minister may make regulations generally for the better carrying out of the purposes of this Act taking into account the generally accepted principles and practices on sovereign wealth funds as contained in the Santiago Principles, including regulations prescribing the calculation of excess mining and forestry revenues and the deposit of excess mining and forestry revenues into the Fund pursuant to section 21.

Act prevails where inconsistencies with it exist.

54. In the event of any inconsistency between the provisions of this Act and the provisions of any other law on fiscal matters and financial management, or between the provisions of this Act and the terms of a petroleum licence, the provisions of this Act shall prevail.

Consequential Amendment.
Cap. 26:01

55. The Integrity Commission Act is amended in Schedule I, by the insertion, immediately after the entry "Regional Executive Officer and Heads of Departments of Regional Democratic Councils", of the following

-
- (a) "Members of the Public Accountability and Oversight Committee established under section 5 of the Natural Resource Fund Act";
 - (b) "Members of the Investment Committee established under section 13 of the Natural Resource Fund Act";
 - (c) "Members of the Macroeconomic Committee established under section 20 of the Natural Resource Fund Act"

A.D. 2019]

TAX (AMENDMENT) ACT 2017

[No. 12

FIRST SCHEDULE

ss. 4, 26

CALCULATING THE FISCALLY SUSTAINABLE AMOUNT

The Minister when determining the Fiscally Sustainable Amount shall calculate Benchmark Petroleum Revenues, Production Constrained Benchmark Petroleum Revenues, and the Fiscally Sustainable Amount Ceiling, as well as whether Production Constrained Benchmark Petroleum Revenues have ever exceeded three percent of the Balance of the Fund.

Benchmark Petroleum Revenues

1. Benchmark Petroleum Revenues is an estimate of petroleum revenues for a fiscal year using a Benchmark Price for Crude Oil and an estimate of petroleum production for that fiscal year.
2. The estimate of petroleum production shall be a conservative estimate of petroleum production based on data from persons undertaking production operations and shall only include production from petroleum fields with signed field development plans.
3. The Benchmark Price for Crude Oil shall be the seven-year average of crude oil prices from the most relevant benchmark for the preceding three fiscal years, the current fiscal year that Benchmark Petroleum Revenues is being forecasted in, and the succeeding three fiscal years.
4. The crude oil price for the current fiscal year that Benchmark Petroleum Revenues is being forecasted shall be based on the average of the actual realised prices for the months of the fiscal year available at the time of the calculation, and the forecasted prices for the remaining months of the fiscal year for the reference case from the most recently available Energy Information Administration International Energy Outlook.
5. The crude oil price for the succeeding three fiscal years referred to in paragraph 3 shall be forecasted based on the average of the low and reference case from the most recently available Energy Information Administration International Energy Outlook.

Production Constrained Benchmark Petroleum Revenues

6. Production Constrained Benchmark Petroleum Revenues vary with production and are equal to:
 - (a) sixty-seven percent of Benchmark Petroleum Revenues when estimated petroleum production for the fiscal year that the Fiscally Sustainable Amount is being calculated for is less than two hundred thousand barrels of oil per day;
 - (b) fifty percent of Benchmark Petroleum Revenues when estimated petroleum production for the fiscal year that the Fiscally Sustainable Amount is being calculated for is equal to or greater than two hundred thousand barrels of oil per day and less than four hundred thousand barrels of oil per day; and
 - (c) thirty-three percent of Benchmark Petroleum Revenues when estimated petroleum production for the fiscal year the Fiscally Sustainable Amount is being calculated for is equal to or greater than four hundred thousand barrels of oil per day.

Fiscally Sustainable Amount Ceiling

7. The Fiscally Sustainable Amount Ceiling for a fiscal year shall be equal to the greater of:
 - (a) twenty-five percent of the five-year average of non-petroleum revenues for the preceding two fiscal years, current fiscal year, and the succeeding two fiscal years; and
 - (b) three percent of the projected balance of the Natural Resource Fund for that fiscal year.

Determination of the Fiscally Sustainable Amount

8. If three percent of the Balance of the Natural Resource Fund has never for any past fiscal year exceeded Production Constrained Benchmark Petroleum Revenues then the Fiscally Sustainable Amount is equal to the lesser of:
 - (a) Production Constrained Benchmark Petroleum Revenues for the fiscal year the Fiscally Sustainable Amount is being calculated for; and
 - (b) the Fiscally Sustainable Amount Ceiling for the fiscal year the Fiscally Sustainable Amount is being calculated for.
9. If in a past fiscal year three percent of the balance of the Natural Resource Fund for that past fiscal year exceeded Production Constrained Benchmark Petroleum Revenues for that past fiscal year then for all future fiscal years the Fiscally Sustainable Amount shall not exceed three percent of the projected balance of the Fund for that fiscal year.

A.D. 2019]

TAX (AMENDMENT) ACT 2017

[No. 12

SECOND SCHEDULE**s. 33****CEILINGS AND FLOORS FOR THE INVESTMENT OF THE NATURAL RESOURCE FUND FOR THE PURPOSE OF LONG-TERM SAVINGS**

Eligible asset class or classes	Floor as a percentage of the balance of the Fund (excluding the amount invested under section 32)	Ceiling as a percentage of the balance of the Fund (excluding the amount invested under section 32)
Eligible treasury bills and eligible bank deposits combined	0%	45%
Eligible sovereign bonds	30%	60%
Eligible corporate bonds	0%	20%
Eligible equities	0%	40%
Eligible derivatives	0%	10%
Eligible commodities	0%	10%

Passed by the National Assembly on the 3rd January, 2019.



S.E. Isaacs,

Clerk of the National Assembly.

(BILL No. 14/2018)