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LEGAL SUPPLEMENT — C

BILL No. 20 of 2021 *Wednesday 15th December, 2021*

PARLIAMENT OFFICE
Public Buildings,
Georgetown,
Guyana.

15th December, 2021.

The following Bill which will be introduced in the National Assembly is published for general information.

S.E. Isaacs,
Clerk of the National Assembly.

GUYANA

BILL No. 20 of 2021

NATURAL RESOURCE FUND BILL 2021

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A BILL

Intituled

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. 2021 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 2021 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;

"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 18;

"custodian agreement" means the custodian agreement provided for under section 14(3);

"eligible asset class" means an –

(a) eligible bank deposit;

(b) eligible commodity;

(c) eligible corporate bond;

(d) eligible equity;

(e) eligible derivative;

(f) eligible treasury bill; and

(g) eligible sovereign bond;

"emergency financing" means the amount needed for ameliorating major natural disasters as specified in section 18;

"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 31;

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

Cap. 73:02

"Fitch" refers to Fitch Rating Inc, a credit rating agency;

"Fund" means the Natural Resource Fund established under section 3;

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

"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 ceiling calculated in accordance with section 17 and the First Schedule

First Schedule

and non-petroleum revenues is required to ameliorate the impact on the population and the environment;

"Minister" means the Minister responsible for finance;

"Ministry" means the Ministry 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;

Cap. 65:04

"petroleum revenues" means all Government revenues specified in section 15;

"private manager" means an asset management company or other financial institution, that manages assets on behalf of investors appointed under section 13;

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

"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 -

(a) ensuring that volatility in natural resource revenues does 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
GOVERNANCE AND MANAGEMENT OF THE FUND

Board of Directors.

5. (1) There shall be a Board of Directors of the Fund which shall comprise of not less than three and not more than five members who shall be appointed by the President, one of whom shall be appointed Chairperson by the President.

(2) The Directors shall be selected from among persons who have wide experience and ability in legal, financial, business, or administrative matters, one of whom shall be nominated by the National Assembly and one of whom shall be a representative of the private sector.

(3) The Directors shall be appointed for a period not exceeding two years and shall be eligible for reappointment.

(4) The appointment of the Directors and every change in the appointment shall be published in the *Gazette,* on the website of the Ministry and in two daily newspapers circulating in Guyana.

(5) Subject to subsection (8) and other relevant provisions of this Act, the Board of Directors shall be responsible for-

(a) the overall management of the Fund;

(b) reviewing and approving the policies of the Fund;

(c) monitoring the performance of the Fund;

(d) ensuring compliance with the approved policies of the Fund;

(e) exercising general oversight of all aspects of the operations of the Fund; and

(f) ensuring that the Fund is managed in compliance with this Act and all other applicable laws.

(6) In accordance with subsection (5), the Board of Directors shall –

(a) be responsible for preparing the Investment Mandate and include the items specified in section 27;

(b) when preparing or amending the Investment Mandate, seek the advice of the Investment Committee established under section 8;

(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:

Provided that the Investment Mandate and the operational agreement and any changes thereto shall be subject to the prior approval of the Minister.

(7) The Board of Directors shall, in the discharge of their functions, report to the Minister and shall provide such information and reports as the Minister may require.

(8) The Minister may give to the Board of Directors such general policy directives in accordance with this Act with respect to their functions as the Minister considers necessary and the Board of Directors shall give effect to such directives.

(9) The Directors shall be paid such remuneration in respect of their office as the Minister may determine from time to time.

(10) A person shall not be eligible for appointment as a Director, or continue as a Director, if that person-

(a) is a member of the Parliament;
(b) is a member of the Public Accountability and Oversight Committee established under section 6;
(c) is a member of the Investment Committee established under section 8;
(d) is, or has been, declared bankrupt;
(e) is medically unfit for office;
(f) has been convicted of any offence not minor in nature; or
(g) has, due to personal or family interests and investments, a conflict of interest.

Public Accountability and Oversight Committee.

6. (1) There shall be a Committee to be known as the Public Accountability and Oversight Committee which shall comprise the following members appointed by the President and one of whom shall be appointed Chairperson by the President-

(a) a nominee of the National Assembly;

(b) three representatives of the religious community;
(c) two representatives of the private sector;
(d) two representatives of organised labour; and
(e) one representative of the professions.

(2) The members shall be appointed for a period not exceeding two years and shall be eligible for reappointment.

(3) The appointment of the members and every change in the appointment of the Committee shall be published in the *Gazette*, on the website of the Ministry and in two daily newspapers circulating in Guyana.

(4) The Committee shall provide non-governmental oversight of the Fund.

(5) Pursuant to the discharge of its functions in subsection (4), the Committee shall-

(a) receive quarterly reports from the Board of Directors on the operations of the Fund; and
(b) meet no less than quarterly with the Board of Directors of the Fund to be briefed on the operations of the Fund.

(6) The Committee shall prepare and submit to the Speaker an annual report on the discharge of its functions no later than the 30th of April of the fiscal year following the fiscal year to which the report relates, and the Speaker shall cause the report to be laid before the National Assembly as soon as practicable but not later than thirty days after receiving the report.

(7) A person shall not be eligible for appointment as a member, or continue as a member, if that person-

(a) is a member of the Parliament;
(b) is an employee of the Ministry responsible for finance;
(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; or
(d) is a member of the Investment Committee established under section 8;
(e) is, or has been, declared bankrupt;
(f) is medically unfit for office;
(g) has been convicted of any offence not minor in nature; or
(h) has due to personal or family interests and investments, a conflict of interest.

(8) The members shall be paid such remuneration in respect of their office as the Minister may determine from time to time.

Bank responsible for operational management of Fund.

7. (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

(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.

8. (1) There is established a committee to be known as the Investment Committee which shall consist of the following seven 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 Attorney General;

(d) a nominee of the Leader of the Opposition;

(e) a nominee of the private sector; and

(f) 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 members shall be paid such remuneration in respect of their office as the Minister may determine from time to time.

(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, or has been, declared bankrupt;

(c) is medically unfit for office;

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

(e) 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.

(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.

9. (1) The Investment Committee established under section 8 shall be responsible for advising the Board of Directors on the Investment Mandate referred to in section 5 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 11 (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 Board of Directors at least annually or within twenty working days of the Board of Directors 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 Board of Directors.

Senior Investment Adviser and Analyst.

10. (1) The Board of Directors shall, subject to the approval of the Minister, 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.

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

(a) assisting the Board of Directors with the drafting of the Investment Mandate referred to in section 5;

(b) assisting the Board of Directors with reporting on and monitoring the financial performance of the Fund;

(c) supporting the Investment Committee established under section 8 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 Board of Directors and Investment Committee; and

(e) performing other tasks related to the management of the Fund as determined by the Board of Directors.

Investment Advisory Services Company.

12. (1) The Board of Directors may, subject to the approval of the Minister, 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 5.

(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 Board of Directors shall be responsible for paying the fees of the investment advisory services company.

(4) Any reports and written advice the Board of Directors receives from the investment advisory services company shall be shared with the Investment Committee established under section 8.

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

Private managers.

13. (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.

14. (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 –

(d) be a legal entity;

(e) have sufficient capital and adequate insurance against operational risk;

(f) have a sound record of operational and financial performance spanning at least ten years;

(g) have references and a reputation in the field of custodianship which is of the highest standard; and

(h) 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.

PART IV
DEPOSITS AND WITHDRAWALS

Deposits into Fund.

15. (1) Petroleum revenues shall be directly paid into a bank account denominated in United States 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 petroleum income tax, additional profits tax or any other future tax levied on the profits of companies or individuals undertaking production operations;

(e) any signature bonus, discovery bonus, production bonus or other bonus related to production operations or the award of a petroleum licence; and

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

Withdrawals from Fund.

16. (1) The maximum amount that may be withdrawn from the Fund in a fiscal year shall not exceed the total withdrawal from the Fund approved by the National Assembly for that fiscal year in accordance with section 19.

(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.

Amount that may be withdrawn.

17. (1) Subject to subsection (2), the amount that may be withdrawn from the Fund pursuant to section 19 in any fiscal year shall be subject to a ceiling calculated in accordance with the First Schedule.

First Schedule.

(2) In the fiscal year that this Act comes into operation, notwithstanding the provisions of subsection (1) and of the First Schedule, the ceiling on the amount that may be withdrawn shall be the total balance accumulated in the account described as "the Natural Resource Fund" as at the date that the Act comes into operation.

(3) The Minister shall cause to be conducted, periodically and not less than once every five years, a review of the implementation of the First Schedule and shall submit a report on the results of that review to the National Assembly.

Emergency financing.

18. (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.

First Schedule.

(3) The total amount requested for emergency financing for a fiscal year shall not be subject to the ceiling calculated in accordance with section 17 and the First Schedule.

Approval of withdrawals from Fund.

19. (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 ceiling calculated in accordance with section 17 and the First Schedule plus any amount required for emergency financing.

(2) The amount that 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

First Schedule

ceiling calculated in accordance with section 17 and the First Schedule 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.

20. (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 comparison of actual withdrawals from the Fund with the amount approved by the National

Assembly for withdrawal from the Fund for the past three fiscal years.

(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 and the withdrawal being requested for emergency financing for that fiscal year.

Contents of Supplementary Appropriation Bill for emergency financing.

21. A supplementary appropriation Bill presented to the National Assembly pursuant to section 19 (3) shall be accompanied by –

(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 how those projects ameliorate the effect of the major natural disaster; and

(c) a table showing for the current fiscal year the withdrawal requested for emergency financing and the withdrawal from the Fund approved in the annual budget.

PART V
ELIGIBLE INVESTMENTS

Eligible asset classes.

22. (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 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.

23. (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.

24. (1) The Fund shall, with the exception of the amount invested under section 23, 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.

(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.

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.

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

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

(3) The Government shall not –

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

(b) 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.

26. 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 27;

(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.

27. 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 26;

(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 VI
ACCOUNTING, REPORTING AND AUDITING

Accounting.

28. 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.

29. (1) The Bank shall, not later than twelve working days after the end of each month, submit to the Minister and the Board of Directors 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 and the Board of Directors 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.

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

Internal audit.

30. 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.

31. (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 internationality 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 and the Board of Directors 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.

Annual report.

32. (1) The Board of Directors shall prepare and submit to the Minister, 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 Board of Directors, provide the Board of Directors with any information required to prepare the annual report.

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

(a) the audited financial statements of the Fund and external auditor's report on the Fund;

(b) details of all deposits to, and withdrawals from, the Fund;

(c) the nominal total return per annum from the Fund from its inception to date;

(d) the annual total balance of the Fund from its inception to date;

(e) a table showing the market value for each eligible asset class that comprises the Fund;

(f) a table showing the amount invested under section 23 and the amount invested under section 24;

(g) 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;

(h) a table showing the market value of investments per country;

(i) 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;

(j) 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; and

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

(4) The Minister shall cause to be laid before the National Assembly, as soon as practicable but not later than thirty days after receipt from the Board of Directors, the annual report of the Fund.

Publication of reports.

33. (1) The Minister or any person directed by 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 5 within seven working days after it has been sent to the Bank; and

(f) the Investment Instruction referred to in section 13(4) within thirty working days after they have been submitted to the Minister by the Bank.

(2) The Minister or any person directed by the Minister shall cause to be published in the *Gazette* notification of the receipts of all petroleum revenues that are paid into the Fund within three months of such receipts, and the Minister shall cause such notification to be tabled in the National Assembly as soon as practicable thereafter.

PART VII
CONFIDENTIALITY

Confidentiality.

34. 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 VIII
PENALTIES AND OFFENCES

Misleading information.

35. 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.

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

Hindering exercise of powers of external auditor.

37. 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.

38. 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.

39. (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.

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

PART IX
MISCELLANEOUS

Codes of conduct.

41. The Minister shall determine a code of conduct to govern the members of the Board of Directors, Public Accountability and Oversight Committee and Investment Committee established under the Act and publish the code on the website of the Ministry.

Secretariat and costs.

42. (1) The Board of Directors, the Public Accountability and Oversight Committee and the Investment Committee shall have analytical, executive, administrative and secretarial support provided by a Secretariat which shall be provided by the Minister and which shall undertake such other functions as may be determined by the Minister.

(2) The following expenditure shall be financed by the sums appropriated by the National Assembly therefor-

(a) the remuneration of the Board of Directors, the Public Accountability and Oversight Committee and the Investment Committee;
(b) the costs of the operations of the Secretariat;
(c) the fees to be paid to the Bank under the operational agreement referred to in section 5, 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; and
(d) all other costs incurred in connection with administering this Act.

Delegation of functions.

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

Regulations.

44. 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.

Act prevails where inconsistencies with it exist.

45. 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

46. 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 Board of Directors established under section 5 of the Natural Resource Fund Act";

(b) "Members of the Public Accountability and Oversight Committee established under section 6 of the Natural Resource Fund Act";

(c) "Members of the Investment Committee established under section 8 of the Natural Resource Fund Act".

Repeal. No. 12 of 2019

47. The Natural Resource Fund Act 2019 is repealed.

FIRST SCHEDULE S. 17

CALCULATING THE CEILING ON ANNUAL WITHDRAWALS

For any fiscal year (except the first fiscal year in which the Fund is brought into operation, as indicated in section 17(2)), the ceiling on annual withdrawals from the Fund, not including withdrawals for emergency financing, shall be calculated as follows-

1. 100 percent of the first five hundred million United States Dollars of deposits paid into the Fund in the immediately preceding fiscal year;
2. 75 percent of the second five hundred million United States Dollars of deposits paid into the Fund in the immediately preceding fiscal year;
3. 50 percent of the third five hundred million United States Dollars of deposits paid into the Fund in the immediately preceding fiscal year;
4. 25 percent of the fourth five hundred million United States Dollars of deposits paid into the Fund in the immediately preceding fiscal year;
5. 5 percent of the fifth five hundred million United States Dollars of deposits paid into the Fund in the immediately preceding fiscal year; and
6. 3 percent of any amounts in excess of the first two thousand five hundred million United States Dollars of deposits paid into the Fund in the immediately preceding fiscal year:

Provided that, if at the time of submission of the annual budget proposal to the National Assembly for a fiscal year, the actual amount of deposits paid into the Fund in the immediately preceding fiscal year is not yet available, the best estimate of that amount shall be substituted.

SECOND SCHEDULE S. 24

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 24)	Ceiling as a percentage of the balance of the Fund (excluding the amount invested under section 24)
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%

EXPLANATORY MEMORANDUM

This Bill seeks to establish the Natural Resource Fund to manage natural resource wealth. It seeks to mandate the parties involved with managing the Fund to ensure that resource wealth benefits both current and future generations of the people.

PART I of the Bill sets out the short title and the definition of key words and terms found in the Bill.

PART II of the Bill establishes the Natural Resource Fund. The fund is established to manage the natural resource wealth of Guyana for the present and future benefit of the people of Guyana in an effective and efficient manner. 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 of the Bill seeks to provide for the establishment of a Board of Directors. The Board will be responsible for reviewing and approving the policies of the Fund and monitoring the performance of the Fund. This Part also establishes a Public Accountability and Oversight Committee with the responsibility of providing non-governmental oversight of the operations of the Fund. Additionally, this Part deals with the management of the Fund. The Board of Directors is entrusted with the responsibility of managing the Fund. Additionally, the Bank of Guyana has the responsibility for the operational management of the Fund. This Part also establishes the Investment Committee which shall advise the Board of Directors on the Investment Mandate.

Part IV of the Bill seeks to set out what revenues shall be deposited into the Fund and the conditions for withdrawals from the Fund. Also, this Part seeks to set out the relevant calculations needed for ensuring that the Fund achieves its purposes and seeks to provide for emergency financing in times of major natural disasters. Further, this Part aims to require Government to seek Parliamentary approval for withdrawals from the Fund and aims to provide for additional documentation in the annual budget proposal to facilitate proper management of the Fund. It also seeks to provide for the contents of supplementary appropriation Bills seeking financing from the Fund in times of major natural disasters.

PART V seeks to specify how and in what ways the Fund can be properly invested and seeks to require that the Fund remains unencumbered.

PART VI seeks to provide for proper accounting and reporting regarding the Fund. It seeks to mandate the Bank of Guyana with responsibility to prepare accounts and reports and to audit the accounts and records pertaining to the Fund. The Auditor General is also required to perform an external audit, the report of which shall be submitted to the Minister along with the report of the internal audit. This Part also provides for the publication of reports.

PART VII of the Bill seeks to provide for confidentiality from all persons involved in the oversight and management of the Fund.

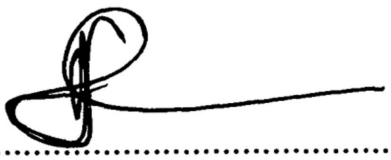
PART VIII of the Bill seeks to provide for offences and penalties for contravention of the provisions of the proposed Act.

PART IX seeks to provide for, inter alia, codes of conduct for persons involved in the management of the Fund, Secretariat for the Board of Directors and other bodies established

by this Act, and consequential amendments. This Part also provides for the repeal of the Natural Resource Fund Act 2019.

The First Schedule contains a simplified and transparent methodology in which the ceiling on annual withdrawals is calculated.

The Second Schedule contains the ceilings and floors for the investment of the Natural Resource Fund for the purpose of long-term savings.



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Dr. the Hon Ashni K. Singh, MP
Senior Minister in the Office of the President
with responsibility for Finance