

**Law 38
of June 5, 2012
which creates Panama's Sovereign Wealth Fund and amends
Law 34 of June 5th, 2008,
on Social Fiscal Responsibility**

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**THE NATIONAL ASSEMBLY
DECREES:**

**Chapter I
General Provisions**

Article 1. Establishment and Objective

Panama's Sovereign Wealth Fund, hereinafter FAP, is created with the following objectives:

1. Establish a long-term savings mechanism for the Panamanian State.
2. Establish a stabilization mechanism for emergency situations and economic slowdowns.
3. Reduce the need for using debt instruments to deal with circumstances such as those described above.
4. Complement the previous objectives through a rule for deficit containment of the Non-Financial Public Sector through Law 34 of 2008 and its regulations.

Article 2. Glossary

For the purposes of this Law, the following terms shall be understood as follows:

1. *Asset or assets*. Set of goods, rights, financial instruments and other economic resources comprising FAP.
2. *Rating agencies*. Companies specializing in assessing institutions' credit risk and securities issued by these institutions. For purposes of FAP, the opinion of the following rating agencies will be taken into account: Fitch Ratings (Fitch), Moody's Investors Service (Moody's) and Standard & Poor's.
3. *Consolidated agencies*. Administrative bodies acting independently of the

Central Government in terms of their legal consolidation and responsibilities for carrying out their functions, designed to implement State policies aimed at achieving economic and social objectives with national outreach and whose prices, rates or operations are usually subsidized.

4. *Current savings*. The difference between current revenues and current expenditures.
5. *Adjusted current savings*. The current savings minus contributions to FAP resulting from applying the cumulation rule on the contribution of the Panama Canal Authority established by this Law.
6. *Fiscal balance of the Non-Financial Public Sector*. The result of the Deficit (-) /Surplus (+) of cashflow in the Non-Financial Public Sector, representing the balance obtained during a fiscal period of the income from current revenues (tax, non-tax and others, including contributions from the Panama Canal Authority), donations, capital income and the balance of net lending (loans minus recovery in entities that are not deposit-takers and that make loans for economic policy purposes), minus outflows in current expenditure and capital actually paid excluding amortization of loans. This balance must be equal to the result obtained when calculating the Non-Financial Public Sector's Fiscal Balance, with the opposite sign.
7. *Adjusted Fiscal Balance of the Non-Financial Public Sector*. The Fiscal Balance of the Non-Financial Public Sector minus contributions to Panama's Sovereign Wealth Fund (FAP) resulting from applying the cumulation rule on the contribution of the Panama Canal Authority established by this Law.
8. *Primary Balance of the Non-Financial Public Sector*. The Fiscal Balance of the Non-Financial Public Sector, excluding interest payments on public debt.
9. *Adjusted Primary Balance of the Non-Financial Public Sector*. Adjusted Fiscal Balance the Non-Financial Public Sector, excluding interest paid on public debt.
10. *Public debt*. It refers to the total public debt, defined as any financial or economic, internal or external obligation, acquired on behalf of public institutions, having complied with the laws and administrative provisions governing this matter;
11. *Public debt of the Non-Financial Public Sector*. The sum of the external debt and domestic debt of all Non-Financial Public Sector entities.
12. *Consolidated Public debt of the Non-Financial Public Sector*. The sum of the external debt and domestic debt of all the Non-Financial Public Sector entities offsetting debt operations between the Central Government and the rest of the Non-Financial Public Sector.
13. *Net public debt of the Non-Financial Public Sector*. The sum of the external debt and domestic debt, of all entities of the Non-Financial Public Sector minus FAP's equity.
14. *Consolidated net public debt of the Non-Financial Public Sector*. The sum of the external debt and domestic debt of all Non-Financial Public Sector entities, offsetting debt operations between the Central Government and the rest of the Non-Financial Public Sector, minus FAP's equity.
15. *Custody Guidelines*. Those that define procedures that custody entities must follow in relation to safekeeping the investments of FAP's assets as well as information that must be provided on these investments and the functions

pertaining to oversight and monitoring of compliance with the investment guidelines to be performed.

16. *Investment Guidelines*. Those defined by the Ministry of Economy and Finance, which serve as the framework within which the Board will establish the investment policy for FAP's assets. They outline the eligible assets and the strategic structure of the portfolio, define benchmarks to evaluate FAP's resources management performance and set investment limits and restrictions to control the risks to which FAP's resources are exposed.
17. *Tendering Guidelines*. Contractor selection procedures, in this case management, custody and external audit companies, established by the Board of Directors.
18. *Donations*. Transfers received or paid in cash that are not mandatory, unrequited and unrecoverable by the donor.
19. *Execution of the State's General Budget*. The set of decisions and operational, administrative and financial actions for implementing programs and projects set forth in the State's General Budget. The Income Budget's Execution is based on the concept of cash; raising physical financial resources that once available, allow for the execution of the Expenditure Budget. In order to evaluate the effectiveness of institutional budget management, information on the execution of the expenditure budget shall be drawn based on Commitments, Accrued Earnings and Payments made of all goods and services received by Public Sector institutions with the exception of the Panama Canal Authority.
20. *Management Companies*. Professional firms specializing in investment management.
21. *Custody Companies*. Banks or financial institutions responsible for safekeeping the investor's financial assets. They are also responsible for facilitating operations such as transfer of securities related to purchase or sale instructions deriving from the fund's administrator and for putting into effect all rights to ownership that these confer, such as collecting interest or dividend payments and represent investors in meetings with shareholders or bondholders.
22. *Non-Financial Public Enterprises*. Industrial or commercial entities owned by the government, which sell goods and services to the public at a large scale, and are incorporated in limited companies or other legal entities. For purposes of calculating current savings and adjusted current savings, Fiscal Balance and Adjusted Fiscal Balance and Primary Balance and Adjusted Primary Balance, the Tocumen International Airport, S.A., the *Empresa Nacional de Autopistas, S.A* (National Highway Company) and the *Empresa de Transmisión Eléctrica, S.A.*(Electrical Transmission Company) are excluded,
23. *State of emergency*. Any disturbance in the country's internal order, caused by natural disasters or serious circumstances that affect or disrupt the lives of citizens, declared by the Cabinet Council.
24. *FFD*. Development Trust Fund, created by Law 20 of 1995 and its amendments and regulations.
25. *FAP*. Panama's Sovereign Wealth Fund
26. *Trustor*. The Ministry of Economy and Finance, acting on behalf of the Republic of Panama.
27. *Trustee*. The National Bank of Panama, FAP's administrator.

28. *Central government*. Consists of the National Assembly, the Office of the Comptroller General of the Republic, the ministries, the Judiciary Branch, the Public Ministry and the Electoral Tribunal.
29. *General Government*. Consists of the Central Government, the Social Security Fund and consolidated agencies.
30. *Equity instruments*. Common and preferred shares and proportional ownership interest issued by legal entities.
31. *Credit instruments*. Credit securities, debenture bonds, negotiable commercial securities, bills, notes, bonds, promissory notes, demand and term deposits and other representative securities issued by governments, companies or financial institutions.
32. *Guaranteed instruments*. Securities that the guarantor must respond (at least indirectly) to a corresponding obligation to the same terms as the principal.
33. *Board*. Managing entity acting on behalf of the Ministry of Economy and Finance in investing FAP's resources, subject to specific instructions (investment guidelines) issued by the Ministry of Economy and Finance and the guidelines set forth in this Law. It defines custody and tendering guidelines to be followed by the National Bank of Panama in its capacity as FAP's trustee.
34. *Gross Domestic Product (GDP)*. The monetary value of final goods and services produced by the economy in a given period.
35. *GDP or Nominal GDP*. GDP measured at current prices.
36. *Real GDP*. GDP measured at constant prices.
37. *Investment policies*. Investment instructions of FAP's resources established by FAP's Board of Directors to be implemented by the National Bank of Panama and management companies.
38. *General Budget*. Estimated revenues and the maximum authorization of expenditures that the Central Government institutions, Decentralized Institutions, Public Companies and Financial Intermediaries could commit to for implementing their programs and projects and to achieve the objectives and institutional goals according to Government policies, in issues related to economic and social development.
39. *Yields*. Dividends, interests and capital gains generated by FAP's assets which will be transferred to the National Treasury for public investment.
40. *Non-Financial Public Sector*. That consisting of all entities of the General Government and Non-Financial Public Enterprises. It does not include deposit-taking public financial institutions, the Panama Canal Authority, the Tocumen International Airport, SA, *Empresa Nacional de Autopistas, SA* (National Highway Company) and the *Empresa de Transmisión Eléctrica, S.A.* (Electricity Transmission Company).
41. *Catastrophic insurance*. An insurance policy bought to cover material or consequential losses suffered by the insured or contracting entity, as a result of natural events such as earthquakes, tidal waves, tsunamis, hurricanes, floods, landslides, avalanches and the like.

Joint Ventures. Joint venture companies: AES Panama, SA, Bahia Las Minas Corp., Cable & Wireless Panama, SA, Elektra Noreste, SA, Empresa de Distribucion Eléctrica Chiriqui, SA, Empresa de Distribucion Eléctrica Metro-Oeste SA, Enel Fortuna, SA, Energy and

Services Panama, SA, Panama Ports Company and Petroterminal of Panama, SA
Paragraph 42 added by Act No. 48 of August 6, 2013, published in the Official Gazette of
Panama of August 6th, 2013.

Chapter II **FAP's Resources** **Articles 3 and 4**

Article 3. Cumulation Rule

FAP is constituted by all the assets of the FFD and assets will be accrued with the following contributions:

- Any contribution of the Panama Canal Authority to the National Treasury, higher than 3.5% of the nominal GDP of the current year, starting on fiscal year 2015.
- Funds from the sale of shares of joint ventures that are state property.
- Inheritances, bequests and donations
- Resources allocated by law to FAP.

Transitory paragraph. Until the Board of Directors and the Technical Secretariat of FAP is constituted, the liquidation of FFD's assets for transfer to FAP will be in charge of the Trustor and the Trustee.

Article amended by Law 48 of August 6, 2013, published in the Official Gazette of Panama of August 6th, 2013.

Article 4 Review of the Cumulation Rule

The Trustor will have the option to review the cumulation rule established in paragraph 1 of the preceding article. Such review may only occur after 2020 and the frequency shall be no less than five years between each revision. The Trustor shall submit the proposed revision for due approval from the Cabinet Council and the National Assembly, and it must be approved by absolute majority

Chapter III **Withdrawals from FAP**

Article 5. Withdrawal Rule. FAP resources may only be used for transfers to the National Treasury, under the conditions set out in Article 11 of Law 34 of 2008 and its regulations and in this article. Withdrawals may only be related to the following situations:

1. To cover costs related to a state of emergency declared by the Cabinet Council as long as it is equal or above 0.5% of GDP. This rule will come into effect as of the 2015 fiscal year.
2. Economic slowdown. This rule will come into effect as of fiscal year 2015.
3. Up to 0.5% of GDP may be withdrawn annually, with the sole purpose of prepaying and withdrawing sovereign debt issued by the State through the Central

Government, provided that FAP's assets are greater than 5% of nominal GDP of the previous year.

Paragraph. FAP withdrawals authorized in this article under paragraphs 1 and 2 shall be conditional upon FAP's assets not being less than 2.0% of the nominal GDP of the previous year.

Article amended by Law 87 of December 4th, 2012, published in the Official Gazette of Panama on December 5th, 2012.

Numeral 1 amended by Law 48 of August 6th, 2013, published in the Official Gazette of Panama on August 6th, 2013.

Article 6. Contracting a catastrophic insurance. The Trustor may contract a catastrophic insurance as a provision tool for possible natural disasters and keep it until FAP's assets do not exceed 5% of the previous year's GDP. The maximum cost and other conditions under which the insurance may be contracted shall be regulated.

Chapter IV **Investments and Restrictions to Investments**

Article 7. General Investment Guidelines. FAP's resources investment must conform to the following general guidelines:

- FAP may only invest in overseas issuers and instruments. As a sole exception, FAP may invest up to 10% of its assets in debt securities issued by the Republic of Panama, through international or domestic secondary capital markets, of which only 5% can be through the secondary domestic capital market (Treasury notes). This exception will come into effect starting 2015.
- The Ministry of Economy and Finance, as Trustor, by ministerial resolution, will define the investment guidelines under which the Board of Directors should establish the investment policy of FAP's assets, setting parameters for the investment that will determine the policy including benchmarks (performance benchmarks), risk rating and placement limits by asset class.

Article 8. Investment Restrictions. FAP's resources may not be used for the following purposes:

- Guarantee credit instruments of the Panamanian government.
- Buy credit instruments issued by third parties guaranteed by the Panamanian government.
- Buy credit instruments or equity instruments issued by national legal entities registered in the Republic of Panama or in any other international jurisdiction.
- Buy credit instruments or equity instruments issued by external legal entities, registered in the Republic of Panama or in any other international jurisdiction, whose economic activities in the Republic of Panama represent 5% or more of their total income.
- Constitute pledge or mortgage liens on FAP's assets.

- Invest in companies in which the members of FAP's Board of Directors, the Supervisory Commission, the Technical Secretariat's staff, the general manager and members of the Board of Directors the National Bank of Panama, the President and Vice-president of the Republic and the ministers, and their relatives within the fourth degree of kinship or second degree of affinity, maintain a direct or indirect shareholding, greater than or equal to 10% of the common outstanding shares.

Chapter V
Board of Directors and Supervisory Commission.
Articles 9-19

Article 9. Administrative Body. FAP will have a Board of Directors, which will be the management entity of its assets, whose objective will be to define FAP's investment policy.

Article 10 Functions

The Board shall have the following functions:

- Approve the Annual Investment Plan designed by the Technical Secretariat, which implements FAP's strategic placement of assets (asset strategic allocation) within the framework of the investment guidelines defined by the Trustor and in accordance with the provisions of Articles 7 and 8 of this Law and its regulations.
- Establish guidelines for custody and tenders.
- Propose amendments to the investment guidelines for approval by the Trustor.
- Ensure compliance with the Annual Investment Plan.
- Approve the selection of management and custody companies, as well as the external auditor proposed by the Technical Secretariat.
- Approve the assessment report prepared by the Technical Secretariat regarding the performance of management and custody companies, based on benchmarks and investment and custody guidelines.
- Prepare an annual activity report and submit it to the Trustor and the Supervisory Commission, and forward the report to the Economy and Finance Commission of the National Assembly.
- Appoint, remove and modify the number of staff members in the Technical Secretariat.
- Determine the Technical Secretariat's staff salaries.
- Evaluate and approve inheritances, bequests and donations to be made to FAP.
- Approve FAP's annual administrative budget prepared by the Technical Secretariat in the third quarterly meeting of the year preceding its term.
- Approve payment of accounts generated by the Trustee, management companies and custody companies.
- To be in charge of everything related to FAP's investment policy as well as the implementation of the guidelines: investment for FAP defined by the Trustor and established custody and tender guidelines.

The Board of Directors will base its decisions on the principles governing FAP's

investments contained in this Law and its regulations and the investment guidelines issued by the Trustor.

Article 11. Membership. The Board shall be comprised of seven directors, to be appointed by the Executive Branch.

The appointment of directors shall be subject to ratification by the National Assembly. The Assembly will have no more than thirty days to ratify these appointments after the Executive Branch submits them for their consideration. The directors shall hold office for a period of seven years, renewable for an additional period.

The seven-year term shall begin the day following the expiration of the period of the outgoing director. For cases of absolute vacancies, the incoming director shall hold office for the remaining period of the director who he has replaced.

The Board shall elect from its members a president, who shall act as its coordinator and a vice-president, who will serve as chairperson in case of absence or impediment of the former.

The president and vice-president will be elected for a two year period or for the period remaining as a board member, whichever is less.

Transitory paragraph. For the appointment of the first board members, the Executive Branch will make appointments in phases as follows: four for three years, two for five years and one for seven years. Upon expiration of the initial period, the appointment of board members shall be for a period of seven years.

Article 12. Requirements. Board members are required:

- To be of Panamanian nationality
- To have reached thirty-five years of age.
To have an academic degree equal or higher to a Bachelor's Degree.
- To have held a management position or an executive responsibility in companies of proven track record, public entities or international organizations, for a minimum of five years.
- To not have been convicted by a competent authority of the Republic of Panama or another country for committing intentional crimes of any kind and not have been convicted for committing economic felonies, crimes against the economic order, the Public Administration, public faith or collective security.
- To not have been sanctioned for a serious or very serious offense by a supervisory entity of the financial sector in Panama or in an external jurisdiction.
- Not hold public office with authority and jurisdiction at the time of appointment.
- To have proven competence, ethics and professional conduct.
- To not have kinship with the president and vice president of the Republic and/or ministers of state, within the fourth degree of kinship or second of affinity.

The Ministry of Economy and Finance, as Trustor shall inform, by publishing on the

Ministry's website, the name, educational background, profession and employment of the members of the Board.

Article 13 Obligations of directors. The members of the Board of Directors shall be obliged to keep strict confidentiality and not use for their own benefit or that of another person, the information to which they have access because of their participation in the Board of Directors, and to maintain confidentiality regarding the negotiations, operations, acts or contracts signed.

Article 14. Grounds for removal or suspension. The members of the Board of Directors shall be suspended or removed for the following reasons:

1. Lack of integrity in the performance of their duties.
2. Non-attendance to Board meetings in a repeated and unjustified manner.
3. Failure to comply with the requirements established for their selection.
4. Conviction by a competent authority of the Republic of Panama or another country for committing intentional crimes of any type and conviction for committing an economic negligent offense, public order, public administration, public faith or against collective security.
5. Sanctioning for serious or very serious offense by a supervisory body of the financial sector in Panama or in a external jurisdiction.
6. Inability to perform duties due to proven mental or physical disability.
7. Involvement in an administrative offense, in accordance with the internal regulations of the Board of Directors.

The director who commits any of the grounds set out in this article may resign, but will remain in office until the Executive Branch admits the case and appoints a replacement.

The suspension or removal of directors shall be applied notwithstanding any appropriate administrative, criminal or police sanction, by disposition of the Executive Branch.

Article 15. Operation. The Board of Directors shall hold ordinary meetings at least once a quarter and extraordinary meetings whenever convened by the President or when requested by the majority of its members.

The Board of Directors shall meet with the attendance of at least four of its members. The resolutions of the Board shall be adopted by an absolute majority of its members. In case the majority of votes is not reached at a meeting, the issue shall be taken up at the next meeting attended by all board members.

The general manager of the National Bank of Panama, in his capacity as Trustee, and the staff of the Technical Secretariat may attend meetings of the Board, only with the right to speak.

The Board shall adopt an internal regulation, which determines how to summon, voting procedures, the adoption of agreements, minutes and other considerations needed for its operation. Such rules shall be adopted one month after the Board has been formally

constituted.

The directors are entitled to receive an allowance for attending each ordinary meeting of the Board. The amount of the allowance will be established by the Trustor by ministerial decision, in accordance with best market practices.

Article 16 Annual Report. The Board shall prepare an annual report on its work and activities conducted during the previous year to be submitted to the Ministry of Economy and Finance and the Supervisory Commission no later than March 31st of each year. A copy of such report shall be sent to the Commission of Economy and Finance of the National Assembly.

Article 17. Supervisory Commission. A representative body of civil society, called FAP Supervisory Commission, hereinafter the Supervisory Commission is established. This Committee shall meet once a year, no later than April 30th of each year to assess the Board's annual report.

Article 18. Sessions. The Supervisory Commission will meet with the attendance of all its members and issue a report of opinion regarding the administration of FAP, no later than June 30th of each year.

The members of the Supervisory Commission shall be entitled to compensation for their assessment of the annual report of the Board, which shall be established by the Trustor by ministerial decision, in accordance with the best market practices.

Article 19. Membership of the Supervisory Commission.

The Supervisory Commission shall be composed of:

1. The President of the National Council of Organized Workers or his designee.
2. The President of the National Council of the Private Enterprise or his designee.
3. The President of the Institute of Licensed Public Accountants of Panama or his designee.
4. The President of the Association of Economists of Panama or his designee.
5. A representative of the Ecumenical Council of Panama.

Chapter VI Administration of FAP

Articles 20 to 23

Article 20. Trust. FAP's administration will be in charge of the National Bank of Panama as Trustee, with an irrevocable Trust, hereinafter the Trust, to be administered with independence of the activities of the National Bank of Panama. The terms of the Trust must comply with the investment, custody and tendering guidelines of FAP, as well as with the provisions of this Law and its regulations. The Trust may be amended only by mutual agreement between the Trustor and the Trustee. In addition, the Board may suggest any changes it deems necessary for optimal management of FAP. Any modification must comply with the investment, security, performance, liquidity, risk diversification and

limitations conditions contained in the investment guidelines and in this Law and its regulations.

The decisions made by mutual agreement between the Trustor and the Trustee shall be recorded in writing in the minutes. In case of changes in the trust agreement, these may not contravene FAP's investment, custody and tender guidelines, and the provisions of this Law and its regulations.

Article 21. Trustor. The Ministry of Economy and Finance, acting in its capacity as Trustor and as a representative of the Republic of Panama, owner of FAP's assets, issues investment guidelines within which the Board of Directors will establish the investment policy and will ensure that the Board is governed by FAP's investment parameters. It must also ensure transparency in the disclosure of FAP's operations. These operations include investment decisions, financial statements, accruals and withdrawal flows, minutes of the Board and the Supervisory Commission meetings, hiring management and custody companies, as well as external auditors.

Article 22. Report on Operations. The Ministry of Economy and Finance shall submit a detailed report on the operations of FAP annually, before the plenary session of the National Assembly, through its Minister and the President of the Board of Directors, which shall include the financial statements prepared by the external auditor and his opinion, no later than June 30th.

Article 23. Trustee. The National Bank of Panama, in its capacity as Trustee shall have the following functions:

1. Manage FAP's assets within the framework set out in the Annual Investment Plan approved by the Board of Directors and the custody and tendering guidelines established by the Board.
2. Conduct the supervision, monitoring and performance evaluation of the management companies and the services of the custodians.
3. Establish and, where appropriate, clarify the differences that may arise between the records of the National Bank of Panama, the external managers and custodians, as well as other discrepancies pertaining to contracted services.
4. Report to the Board for the purpose of reporting any need for presenting legal or administrative actions required for defending or safeguarding FAP's assets, designed to enforce the civil, criminal and administrative responsibilities that apply due to damages, crimes or offenses committed by management or custody companies.
5. Inform the Technical Secretariat of the daily position of the investments made with FAP's assets.
6. Keep FAP accounts independent and separate from their own accounts and the government's accounts, in separate accounting records.
7. Prepare monthly financial reports.
8. Publish annual consolidated financial statements prepared and audited by FAP's external auditors.
9. Publish quarterly financial statements for FAP on its operations, and provide access to such information to those interested in learning about its functioning.

10. Pay for expenses generated by the Trustee, management companies, custody companies and the external auditor with FAP funds
11. Pay the salaries of the Technical Secretariat with FAP funds.
12. Exercise the functions deriving from its role contained in the Trust Indenture, in the tendering and custody guidelines and the provisions of this Law and its regulations, as well as any other function assigned or instructed by the Trustor.

Chapter VII FAP Technical Secretariat

Articles 24-32

Article 24 Technical Secretariat

FAP will have a Technical Secretariat, aimed at providing technical support to the Board.

The Technical Secretariat shall have the following functions:

1. Prepare FAP's Annual Investment Plan to submit it for the approval of the Board of Directors, and propose modifications to it during the year.
2. Support the Board of Directors in analyzing investment guidelines defined by the Trustor, as well as any modifications.
3. Study changes to the investment guidelines presented by the Board, and propose amendments to the Board for submission for approval by the Trustor.
4. Analyze and evaluate FAP's portfolios in investment, risk, performance and management metrics.
5. Monitor compliance with the Annual Investment Plan.
6. Prepare tendering and custody guidelines for the approval of the Board.
7. Inform the Trustee, management and custody companies on investments, payments, withdrawals, portfolio liquidations, and any other issues related to asset movements of FAP in line with the investment policy and custody guidelines established by the Board.
8. Oversee the liquidation of the FFD's assets.
9. Prepare presentations, reports and analysis on any aspect related to FAP at the request of the Board.
10. Administer and manage the competitive process for selecting management, custody and external audit companies in line with the tendering guidelines for the approval of the Board.
11. Record in the minutes all decisions and actions undertaken by the Board and prepare them for the members' signatures who will receive copies.
12. Prepare FAP's annual operating budget for the approval of the Board.
13. Publish on FAP's website the performance of its portfolios, the annual operating budget and the decisions taken by the Board on management and investment policies.
14. Exercise the functions required for providing technical support to the Board and the

National Bank of Panama contained in the provisions of this Law and its regulations, as well as any other function assigned or instructed by the Board.

Article 25. Membership of the Technical Secretariat. The Technical Secretariat shall consist of a secretary, two financial analysts and an administrative assistant, who shall be appointed by the Board of Directors.

The Board must approve any additional personnel to the Technical Secretariat.

The Technical Secretary shall meet the following requirements:

1. To be of Panamanian nationality
2. To have an academic degree equal or higher to a Bachelor's of Arts.
3. To have held a management position or an executive responsibility in the area of investment policy design in companies of the financial sector during a minimum of five years.
4. To not have been convicted by a competent authority of the Republic of Panama or another country for committing intentional crimes of any kind and not have been convicted for committing economic felonies, crimes against the economic order, the Public Administration, public faith or collective security.
5. To not have been sanctioned for a serious or very serious offense by a supervisory entity of the financial sector in Panama or in a foreign jurisdiction.
6. To have proven competency, ethics and professional conduct.
7. To not have kinship with the president and vice president of the Republic and/or ministers of state, members of the Board and /or the General Manager of the National Bank of Panama and members of the Board of the National Bank of Panama, within the fourth degree of kinship or second of affinity.

Article 26. Management Companies

The Technical Secretariat, on instructions from the Board of Directors may task the Trustee with hiring one or more management companies to invest part of FAP's assets.

Article 27. Requirements of management companies

Financial institutions whose long-term debt has maintained an international risk credit rating equivalent to AA- or higher, during the last twelve months, issued by at least two international rating agencies (Fitch, Moody's and Standard & Poor's) are eligible.

Article 28. Custody Companies

The Technical Secretariat, upon instructions received from the Board of Directors, may task the Trustee with hiring one or more custody companies to maintain under custody and supervision the record and custody of FAP's assets and values.

Article 29. Requirements of custody companies

Financial institutions whose long-term debt has maintained an international risk credit rating equivalent to AA- or higher, during the last twelve months, issued by at least two international rating agencies (Fitch, Moody's and Standard & Poor's) are eligible.

Article 30. External Auditor

The Technical Secretariat, on instructions of the Board of Directors shall task the Trustee with hiring an external audit firm selected by the Board of Directors to evaluate FAP's assets quarterly, annually and whenever requested by the Board of Directors.

Article 31. Internal Auditor

The Comptroller General of the Republic will act as internal auditor of FAP, as provided for in Article 280 of the Constitution.

Article 32. FAP's Annual Budget

The Board shall adopt an annual budget, prepared by the Technical Secretariat, to pay the Technical Secretariat's payroll, the directors' allowances and expenses, as well as expenses incurred upon by the trustee, management and custody companies, and the external auditor. For this purpose, the Trustee will open an operational account; which will draw on FAP's current funds.

The budget must conform to international best practices and its funds must come from FAP's yields after being ratified by the Trustor. The budget should be published annually on FAP's website.

**Chapter VIII
Additional Provisions.**

Articles 7 to 37

Article 33. Article 7 of Law 34 of 2008 reads as follows:

Article 7. Definitions

For the purposes of this Law, the following terms shall be understood as follows:

1. *National Coalition Agreements*: agreements reached in the National Dialogue for the Coalition for Development which were signed by the participants and published in the document "National Coalition Agreements for Development" on October 29, 2007.
2. *Consolidated agencies*. administrative bodies acting independently of the central government in terms of their legal consolidation and responsibilities for performing their functions and are designed to implement government policies, aimed at achieving economic and social objectives of national scope and whose prices, tariffs or operations are usually subsidized. These agencies are part of the General Government and differ from Public Enterprises, which perform functions of an

industrial or commercial nature and are comprised by corporations that sell goods and services to the public on a large scale at market prices.

3. *Current savings*. The difference between current income and current expenditure.
4. *Adjusted current savings*. Current savings minus contributions to the Sovereign Wealth Fund resulting from applying the cumulation rule on the contribution of the Panama Canal Authority established by this Law.
5. *Fiscal balance of the Non-Financial Public Sector*. The result of the Deficit (-) /Surplus (+) of cash flow in the Non-Financial Public Sector, representing the balance obtained during a fiscal period of the income from current revenues (tax, non-tax and others, including contributions from the Panama Canal Authority), donations, capital income and the balance of net lending (loans minus recovery in entities that are not deposit-takers and that make loans for economic policy purposes), minus outflows in current expenditure and capital actually paid excluding amortization of loans. This balance must be equal to the result obtained when calculating the Non-Financial Public Sector's Fiscal Balance, with the opposite sign.
6. *Adjusted Fiscal Balance of the NFPS*. The Fiscal Balance Non-Financial Public Sector minus contributions to Panama's Sovereign Wealth Fund resulting from applying the cumulation rule on the contribution of the Panama Canal Authority established by this Law.
7. *Primary balance of the Non-Financial Public Sector*. The Fiscal Balance of the Non-Financial Public Sector, excluding interest paid on public debt.
8. *Adjusted Primary Balance of the Non-Financial Public Sector*. Adjusted Fiscal Balance of the Non-Financial Public Sector, excluding interest paid on public debt.
9. *Floating debt*. The accrual of accounts payable in relation to goods and services received, excluding structured contractual obligations to be paid in terms greater than one year.
10. *External public debt*. Debentures acquired by specific agreements whose repayment and service are met through payments to creditors outside of Panama and are subject in principle to the laws of one or more external countries and to the jurisdiction of external courts.
11. *Internal public debt*: domestic debentures that are met in Panama, whose principal amortization or balances and interest service, fees and charges are subject exclusively to Panamanian laws and are under the jurisdiction of its courts.
12. *Total public debt*. Any financial or economic, internal or external obligation, acquired on behalf of public institutions, which has complied with the laws and administrative provisions governing this matter.
13. *Public debt of the Non-Financial Public Sector*: The sum of the external debt and domestic debt of all Non-Financial Public Sector entities.
14. *Net public debt of the Non-Financial Public Sector*: The sum of the external debt and domestic debt of all Non-Financial Public Sector entities minus the assets of Panama's Sovereign Wealth Fund.
15. *Consolidated Public Debt of the Non-Financial Public Sector*. The sum of the external debt and domestic debt of all Non-Financial Public Sector entities, offsetting debt operations between the Central Government and the rest of the Non-Financial Public Sector.
16. *Consolidated net public debt of the Non-Financial Public Sector*. The sum of the

external debt and domestic debt of all Non-Financial Public Sector entities, offsetting debt operations between the Central Government and the rest of Non-Financial Public Sector, minus the equity of Panama's Sovereign Wealth Fund.

17. *Donations*. Transfers received or paid in cash, not compulsory, unrequited and unrecoverable by the donor.
18. *Execution of the Government's General Budget*. The set of decisions and operational, administrative and financial actions for implementing programs and projects listed in the Government's General Budget. The execution of the Income Budget is based on the concept of cash, which is the physical collection of financial resources, whose availability allows for the execution of the expenditure budget. In order to evaluate how efficiently the institutional budget is executed, information on implementation of expenditures as per the budget shall be devised on the basis of commitments, accruals and payments made for all goods and services received by institutions in the Public Sector excluding the Panama Canal Authority.
19. *Non-Financial public enterprises*. Industrial or commercial units owned by the Government, which sell goods and services to the public at a large scale, and which are incorporated in capital companies or under other legal status. They operate outside the General Government and are part of the Non-Financial Sector Companies.
20. *Non-Financial Public Sector Special Funds (trusts or others)*. Those created for specific purposes whose resources are part of government accounts and therefore are consolidated in the fiscal accounts. For transparency purposes, the financial information of these funds will be detailed in the Non-Financial Public Sector Fiscal Balance report.
21. *Implementation phases of the Expenditure Budget*. The implementation of the expenditure budget will be recorded in a timely and comprehensive manner in three sequential phases:
 - a. *Commitment*: recording of the debenture acquired by a public institution in accordance with the procedures and established standards, which entails an outlay in favor of third parties to be debited from funds available in the respective budget allocation of the current fiscal year, for the purchase of goods or services regardless of their delivery, payment or consumption.
 - b. *Accruals*: recording of the obligation to pay for goods or services received, delivered by the supplier, regardless of the time they are used. They will be recorded through reports of reception at the store or of upon delivery of the service.
 - c. *Payment*: recording of the issuance and delivery of cash from petty cash, check or electronic funds transferred for suppliers for goods and services received.
22. *Financing of the Fiscal Balance of the Non-Financial Public Sector*. Funding of the Fiscal Balance of the Non-Financial Public Sector is obtained by the net issuance of credit obligations to be amortized in the future by net changes in the balances in liquid assets; therefore, total financing is equal to the Fiscal Balance, but with the opposite sign.

The following are complementary aspects of the Fiscal Balance of the Non-Financial Public Sector:

- a. In the Social Security Fund, investment and net lending shall be recorded as part of the financing.
 - b. The disposal or concession of land and improvements will be recorded as capital income and should be part of the cash flow of capital projects financing.
23. *Capital expense of the Non-Financial Public Sector.* Expenses paid directly and indirectly for gross capital formation (studies, projects, construction and capital transfers) and the purchase of land, intangible assets and other non-financial assets to be used for more than one year in the production process as well as for capital donations.
24. *Non-Financial Public Sector Current Expenditure.* Expenses paid for ordinary consumption and operations of public administration. It includes salaries, purchase of goods and services, commissions, current transfers, interests and others.
25. *Total expenses for the Non-Financial Public Sector.* The sum of all expenses, both current and capital, actually paid by the Non-Financial Public Sector.
26. *Tax expenditures.* Concessions or exemptions (subsidies or others) applied to the tax structure that reduces government revenue collection.
27. *Central Government.* It is comprised of the National Assembly, the Office of the Comptroller General of the Republic, the ministries, the Judicial Branch, the Public Ministry and the Electoral Tribunal.
28. *General Government.* It is comprised (better use is 'of' than 'by') by the Central Government, the Social Security Fund and consolidated agencies.
29. *Performance indicators.* Those that measure the degree of compliance with the goals and predetermined targets, in quantitative terms, representing the achievement of the objective. Actions have been efficient if a target is fully reached.
30. *Efficiency indicators:* Those that measure the degree in which human, material, financial and technological resources have been used and their relation to the goods, services and other results obtained, defining an activity as efficient when using a minimum of resources to achieve a particular result or output.
31. *Public Financial Institutions.* Those covering public entities incurring on liabilities and acquiring financial assets in the market, accepting deposits and performing financial intermediation functions. These public entities are not part of the Non-Financial Public Sector.
32. *Current Income.* Cash resources generated by public entities, whether from taxes (taxes, levies, fees and other), sale of goods, services, property income, self-income (including fines and penalties), collecting insurance, non-refundable transfers from other governments (grants), national or external legal entities or natural persons.
33. *Capital Income.* The financial resources that are obtained occasionally and that immediately alter the government's financial position. These include the sale of capital assets, transfer of capital and the balance of net lending (loans minus recovery in entities that are not deposit-takers and are engaged in making loans for public policy purposes).
34. *Non-Financial Public Sector's Total revenues:* Comprised of current and capital income and donations.
35. *Contingent Liability.* Obligations that arise from specific and independent events that may or may not occur in the future.
36. *General Budget of the State.* An estimate of revenue and the maximum expenditures

authorized that the central government's institutions, decentralized institutions, public companies and financial intermediaries can commit to implement their programs and projects and to achieve the objectives and institutional goals according to government policies, in matters pertaining to economic and social development.

37. *Turnkey projects*. Investment projects where all payments to the contractor are done at the time the work is delivered.
38. *Deferred Payment Projects*. Investment projects where part of the payments to the contractor are done during the execution of the work and part after the delivery of the work.
39. *Non-Financial Public Sector*. That consisting of all entities of the General Government and Non-Financial Public Enterprises. It does not include deposit-taking public financial institutions, the Panama Canal Authority, the International Tocumen Airport, SA, *Empresa Nacional de Autopistas, SA* (National Highway Company) and the *Empresa de Transmisión Eléctrica, S.A.* (Electricity Transmission Company).
40. *Fiscal transparency*. The dissemination and promotion by the authorities of access to all information regarding the objectives, goals and expected results of fiscal policy, the budget cycle, public accounts and reports on accounts payable in a timely manner, with their corresponding movements and age, to the Central Government, as well as the assumptions on projections made for purposes related to the multiannual macroeconomic framework and annual budgets.

Article 34

Article 10 of Law 34 of 2008 reads as follows:

Article 10 Adjusted Fiscal Balance of the Non-Financial Public Sector

The annual laws of the Government's Budget and the budget's execution shall be subject to the guidelines of this Law, providing for a judicious fiscal policy and a sustainable public debt. The absolute amount of the adjusted deficit of the Non-Financial Public Sector relative to the estimated nominal GDP for the year shall be calculated on cash basis and may not exceed 0.5% per year. The reference Gross Domestic Product will be calculated by the National Institute of Statistics and Census the Office of the Comptroller General of the Republic.

The maximum deficit cap to the Adjusted Fiscal Balance of the Non-Financial Public Sector referred to in this article will be 2.9% for the 2012 fiscal year; 2.8% for fiscal year 2013; 2.7% for fiscal year 2014; 2% for fiscal year 2015; 1.5% for fiscal 2016 and 1% for fiscal 2017.

Paragraph. Adjustments to the Fiscal Balance of the NFPS to calculate the Adjusted Fiscal Balance to which the limit established in this article is applied, corresponds to the contribution made to the Sovereign Wealth Fund in accordance with the provisions of Paragraph 1 of Article 3 of Panama's Sovereign Wealth Fund Law. In the event that the contribution of the Panama Canal Authority was less than the percentage set out in Paragraph 1 of Article 3 cited above, the adjustment is calculated as the difference between

the actual contribution of the Panama Canal Authority and the percentage established in Paragraph 1 of Article 3 of Panama’s Sovereign Wealth Fund Law.

Article 35. Article 11 of Law 34 of 2008 reads as follows:

Article 11. Temporary suspension of financial limits

The application of the maximum limit of adjusted deficit of the Non-Financial Public Sector, the nominal domestic product, measured at the end of the fiscal year, as well as other financial limits and prohibitions referred to in this Chapter, may be suspended temporarily by a waiver approved by the National Assembly in the event of any of the following situations:

1. *State of emergency.* For cases of state of emergency declared by the Cabinet Council. The maximum waiver may not exceed 1.5% of the Gross Domestic Product or the cost associated with the state of emergency, whichever is the lesser amount.
2. *Economic slowdown.* When the Panamanian economy experiences a real Gross Domestic Product growth rate of 2.0% or less, during two consecutive quarters, based on figures published by the National Institute of Statistics and Census of the Office of the Comptroller General of the Republic. Waivers must meet the following limits:

Real Gross Domestic Product Growth rate	Waiver limit
1.1% -2.0%	-1.0% of nominal Gross Domestic Product
0.0% -1.0%	-1.5% of nominal Gross Domestic Product
negative growth	-2.0% of the nominal Gross Domestic Product

The limits of the waiver are maximum limits and the waiver application must justify the limit of the waiver requested. The waiver may remain in force for a maximum period of three consecutive years, while there is conclusive evidence that the real rate in GDP growth remains below 2% which led to the waiver.

Withdrawals from Panama’s Sovereign Wealth Fund used to finance these waivers must meet the limit set in the corresponding Paragraph of Article 5 of Panama’s Sovereign Wealth Fund Law.

The Ministry of Economy and Finance will request the waiver from the Cabinet Council based on this article, through a substantiated report approved by the Comptroller General of the Republic. Once the waiver is approved by the Cabinet Council, it will be presented to the National Assembly for approval by an absolute majority through a resolution proposed by the Economy and Finance Committee.

Within the following three calendar months after changes are made to the limits in the Adjusted Fiscal Balance of the NFPS, the Executive Branch will submit a revised financial programming to the National Assembly, to which the substantiation of the adjustment in the timeline is reflected, so that it may allow returning to the financial limit consistent with the

Adjusted Fiscal Balance target established in this Law, in the time scheduled in said timeline.

In addition, a timeline will be presented to meet the target of reducing net debt with respect to the nominal Gross Domestic Product, "when the provisions of the Law cannot be achieved, in which case the deadline to comply may be extended for the same period of the adjustment program's duration or as required by the adjustment program, whichever is has the shorter term.

When waivers are granted for applying the maximum to the Adjusted Fiscal Balance based on the situations referred to in Paragraph 2, the return to the financial limit shall be conducted in accordance with the following minimum annual adjustment timeline:

Year of the Timeline	First year	Second year	Third year (return to target in the Adjusted Fiscal Balance)
Ratio of the difference between the waiver and the Adjusted Fiscal Balance target	1/3	1/3	1/3

Article 36. Article 13 of Law 34 of 2008 reads as follows:

Article 13. Adjusted Primary Balance of the Non-Financial Public Sector

The NFPS will maintain annually adjusted primary surpluses consistent with the annual level of net debt /Gross Domestic Product and interest / current revenues of the NFPS and consistent with the public debt limit established in the previous article. The result of the Adjusted Primary Fiscal Balance during the exercise of each administration must be positive.

Article 37. Article 14 of Law 34 of 2008 reads as follows:

Article 14. Adjusted Current Savings of the Non-Financial Public Sector

The Non-Financial Public Sector aims at generating positive adjusted current savings to facilitate financing of public investment needs, reducing emphasis on debt growth as a source of financing.

**Chapter IX
Final Provisions**

Articles 38 to 41

Article 38. Legal Substitution

From the entry into force of this Law, the FFD will be substituted for all legal purposes by

FAP. Consequently, any legal standard, document or ongoing process, in which FFD is a party, will be considered as referring to FAP.

Article 39. Regulations

This Law shall be regulated by the Executive Branch in a period of three months from the date of its enactment.

Article 40. Indicative

This Law repeals Law 20 of May 15, 1995 and amends Articles 7, 10, 11, 13 and 14 of Law 34 of June 5, 2008.

Article 41. Validity

This Law shall take effect on the day following its enactment.

TO BE PUBLISHED AND ENFORCED.

Draft Bill 483 of 2012 approved on third debate in the Justo Arosemena Palace, Panama City, to the thirty-first day of May of the year two thousand and twelve.

(signed) The President, Hector E. Aparicio Díaz

(signed) The General Secretary, Wigberto E. Quintero

NATIONAL EXECUTIVE BRANCH. PRESIDENCY OF THE REPUBLIC.

PANAMA, REPUBLIC OF PANAMA OF JUNE 5th, 2012.

RICARDO MARTINELLI BERROCAL

President of the Republic

FRANK DE LIMA

Minister of Economy and Finance