Ministry of International Relations and Trade

- PUBLIC NOTICE -

NATIONAL CONSULTATIONS ON THE NAMIBIA INVESTMENT PROMOTION BILL (NIPB) AND REGULATIONS

The Ministry of International Relations and Trade will be conducting nation-wide consultations on the Namibia Investment Promotion Bill (NIPB) and its Regulations across all regional capitals.

The consultations primarily target the private sector, but all interested stakeholders are welcome to attend. Those unable to join any of the sessions are encouraged to submit their inputs in writing on or before Friday, 12 December 2025 at 12h00.

Please note that no inputs will be accepted after this deadline.

The Ministry encourages the public, especially private sector representatives and other relevant stakeholders to review the draft NIPB and Regulations and provide comprehensive input for consideration.

Consultation Schedule - National Consultations on the Namibia Investment Promotion Bill and Regulations Schedule

28 Nov	Khomas	Windhoek
02 Dec	Omusati	Outapi
02 Dec	Kunene	Opuwo
02 Dec	Omaheke	Gobabis
02 Dec	Zambezi	Katima Mulilo
03 Dec	Oshana	Oshakati
03 Dec	Otjozondjupa	Otjiwarongo
04 Dec	Ohangwena	Eenhana
04 Dec	Oshikoto	Omuthiya
04 Dec	Kavango East	Nkurenkuru
05 Dec	Kavango West	Rundu
08 Dec	Hardap	Mariental
09 Dec	Kharas	Keetmanshoop
09 Dec	Erongo	Swakopmund

Kindly note: The schedule is subject to change.

For clarity or submissions, please contact:

andreas.andjene@mirt.gov.na | +264 81 129 4174
amalia.nangolo@mirt.gov.na

BILL

To provide for the administration of investments in Namibia; to establish the Namibia Investment Promotion Agency; to provide for the designation of economic sectors, business activities; to provide for the approval of investments and change of control of investments; to provide for investor rights, incentives and obligations; to provide for the resolution of investment disputes; to repeal the Foreign Investment Act, 1990 and the Namibia Investment Promotion Act, 2016 and to provide for incidental matters.

(Introduced by the Minister of International Relations and Trade)

ARRANGEMENT OF SECTIONS

PART 1
INTRODUCTORY PROVISIONS

1. Definitions
2. Meaning of "investment"
3. Application of Act
4. Objectives of Act

PART 2
ADMINISTRATION OF ACT

5. Administration and implementation of Act
6. Functions and powers of Minister
7. Performance agreements

PART 3
NAMIBIA INVESTMENT PROMOTION AGENCY

8. Establishment of Agency
9. Functions and powers of Agency
10. Board of Agency

11. Functions and powers of Board
12. Conduct of members of Board and disclosure of interest
13. Term of office of members of Board
14. Vacation of office by member of Board
15. Suspension of member of Board
16. Filling of vacancies of Board
17. Meetings and decisions of Board
18. Committees of Board
19. Disqualification for appointment as member of Board
20. Remuneration and expenses of members of Board
21. Chief executive officer
22. Functions of chief executive officer
23. Conditions of service of chief executive officer
24. Vacation of office by chief executive officer
25. Performance agreements of members of Board and chief executive officer
26. Funds of Agency
27. Accountability and administration of funds
28. Accounts, audit and annual reports
29. Winding-up of Agency

PART 4

DESIGNATION OF ECONOMIC SECTORS AND BUSINESS ACTIVITIES

30. Designation of economic sectors and business activities
31. Procedure before designation of economic sectors and business activities

32. Savings in respect of existing investments

PART 5

APPROVAL OF INVESTMENTS IN STRATEGIC ECONOMIC SECTORS, AND BUSINESS ACTIVITIES

33. Application for approval of investments and change of control

34. Consideration of application and grant of approval
35. Criteria for approval of investments
36. Effect of approval on other laws
37. Exception to requirements for approval for change of control

PART 6
ADMINISTRATION OF INVESTMENTS

38. Registration of investors and investments
39. Investment attraction, promotion and facilitation
40. Monitoring of investments

PART 7
INVESTOR RIGHTS AND INCENTIVES

41. Treatment of foreign investors and their investments
42. Expropriation
43. Payment of compensation
44. Review concerning expropriation and compensation
45. Facilitation of visa and permits of investors, dependants and foreign personnel
46. Foreign personnel
47. Transfer of funds
48. Investment incentives

PART 8
INVESTOR OBLIGATIONS

49. Compliance with applicable laws and registration of investors
50. Capacity development and transfer of skills

PART 9
DISPUTE SETTLEMENT

51. Grievances Resolution Committee

52. Resolution of disputes by Grievances Resolution Committee

PART 10
GENERAL PROVISIONS

53. National security
54. Contraventions and offences
55. Opportunity to comply with law
56. Action to be taken against investor or investment for contraventions
57. Appeal to High Court
58. Delegation of powers
59. Cooperation with other institutions or organisations
60. Exemptions
61. Preservation of secrecy
62. Limitation of liability
63. Regulations
64. Repeal of laws
65. Savings and transitional provisions
66. Short title and commencement

BE IT ENACTED as passed by the Parliament, and assented to by the President, of the Republic of Namibia as follows:

ARRANGEMENT OF SECTIONS
PART 1
INTRODUCTORY PROVISIONS

Definitions

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

"aftercare" means providing support to investors to facilitate their establishment phase as well as retaining existing ones and encouraging reinvestments by responding to their needs and challenges as contemplated in section 39(2);

"Agency" means Namibia Investment Promotion and Facilitation Agency as established in terms of section 8

"approval" means approval of an investment application granted in terms of section 33(2);

"business activity" means any activity conducted in Namibia that involves the commitment of capital, with the expectation of gain or profit and the assumption of risk, and a contribution to Namibia's sustainable development;

"certificate of approval" means a certificate of approval for an investment issued in terms of section 33(3);

"certificate of investment incentives" means a certificate of investment incentives issued in terms of section 48(4);

"change of control", in relation to an existing investment, means when one or more undertakings directly or indirectly acquire or establish direct or indirect control over the whole or part of the investment of another undertaking to the extent that it –

(a) beneficially owns more than one-half of the issued share capital of the undertaking;

(b) is entitled to a majority of the votes that may be cast at a general meeting of the undertaking, or has the ability to control the voting of a majority of those votes, either directly or through a controlled entity of that undertaking;

(c) is able to appoint, or to veto the appointment, of a majority of the directors of the undertaking;

(d) is a holding company, and the undertaking is a subsidiary of that company as contemplated in the Companies Act, 2004 (Act No. 28 of 2004);

(e) in the case of the undertaking being a trust, has the ability to control the majority of the votes of the trustees or to appoint the majority of the trustees or to appoint or change the majority of the beneficiaries of the trust;

(f) in the case of the undertaking being a close corporation, owns the majority of the members' interest or controls directly or has the right to control the majority of members' votes in the close corporation; or

(g) has the ability to materially influence the policy of the undertaking in a manner comparable to a person who, in ordinary commercial practice, can exercise an element of control referred to in paragraphs (a) to (f);

"chief executive officer" means the chief executive officer of the Agency appointed in terms of section 21;

"Competition Act" means the Competition Act, 2003 (Act No. 2 of 2003);

"day" means any day which is not a Saturday, Sunday or public holiday and must be computed to exclude the first day and include the last day unless the last day falls on a Saturday, Sunday or public holiday;

"enterprise" means any organised business undertaking, legally established in Namibia or any country other than Namibia, as the case requires;
"expansion of an existing investment," for the purposes of the definition of "investment" as described in section 2, includes –

(a) an expansion of facilities beyond the original investment plan or size of a pre-existing investment so as to require new approvals under any other applicable law;

(b) an expansion of an investment into new business sectors not included in the original proposal or the previous activities of an investment;

"expropriation" means the expropriation of property contemplated in Article 16(2) of the Namibian Constitution;

"fair market value" means the amount for which an asset would most probably be purchased by a willing and informed buyer from a non-related seller in good faith based on market value;

"foreign investor" means –

(a) a natural person, who is not a Namibian, who has made or is seeking to make an investment in Namibia; or

(b) an enterprise incorporated, registered or constituted in accordance with the laws of –

(i) Namibia; or

(ii) any country other than Namibia,

that is not directly or indirectly owned or controlled by a Namibian and that has made or is seeking to make an investment into Namibia in terms of this Act;

"freely convertible currency" means any currency that is widely traded in the international foreign exchange market;

"Grievances Resolution Committee" means the Investment Grievances Resolution Committee established in terms of section 51;

"Immigration Control Act" means the Immigration Control Act, 1993 (Act No. 7 of 1993);

"incentives" means either fiscal or non-fiscal measures or benefits afforded by the Namibian government to an investor in order to encourage investments in Namibia;

"investor", if used without a reference to foreign or Namibian, includes both foreign and Namibian investors;

"investment" means an investment as described in section 2;

"investment proposal" means an investment proposal that is required to be submitted to the Minister or to a sector minister for approval as contemplated in section 35(2)(d);

"measure" means any form of legally binding act of State directly affecting an investor or an investment, and includes any law, regulation, procedure, requirement, judicial decision or binding executive decision or agreement, unless otherwise excluded from the scope of this Act;

"member of the Board" includes a member of the Board referred to in section 10 and a member of a committee of the Board, where applicable;

"Minister" means the Minister responsible for investments;

"Ministry" means the Ministry responsible for the administration of investments;

"Namibian" means –

(a) a natural person who is a citizen of Namibia;

(b) a natural person who is a permanent resident of Namibia by virtue of holding a permanent residence permit issued to him or her in terms of the Immigration Control Act; or

(c) an enterprise incorporated, registered or constituted in accordance with the applicable laws of Namibia–

(i) which is directly or indirectly controlled by a person referred to in paragraph (a) or (b);

"Namibian investor" means a Namibian who is seeking to make an investment in Namibia subject to section 3 of this Act;

"office, ministry or agency" means any office, ministry or agency as defined in section 1 of the Public Service Act, 1993 (Act No. 13 of 1995);

"one-stop-shop" means the online portal or physical centre as contemplated in section 39(2)(c);

"performance agreement" means an agreement entered into by the Minister and an investor for an investment in a strategic economic sector or business activity as contemplated in section 7(1).

"prescribe" means prescribe by regulation made under this Act;

"public enterprise" means a public enterprise as defined in section 1 of the Public Enterprises Governance Act, 2019 (Act No. 1 of 2019);

"public entity" means any office, ministry or agency and includes –

(a) a local authority as defined in section 1 of the Local Authorities Act, 1992 (Act No. 23 of 1992);

(b) a regional council as defined in section 1 of the Regional Councils Act, 1992 (Act No. 22 of 1992);

(c) a public enterprise as referred to in section 2(1) of the Public Enterprises Governance Act, 2019 (Act No. 1 of 2019);

(d) a body or trust that is owned or controlled by the Government;

"rate" in relation to simple interest as contemplated in section 43(6) means the percentage rate to be paid by reference to the rate determined in accordance with applicable

international rates or as provided for in an agreement between the investor and the Minister;

“regulation” means a regulation made under section 63;

“sectoral minister” means the minister responsible for a particular economic sector in which a proposed investment is to be made;

“State” means the Republic of Namibia, whether acting in a commercial or sovereign capacity, and includes any public entity;

“State Finance Act” means the State Finance Act, 1991 (Act No. 31 of 1991);

“strategic economic sector or business activity” means an economic sector or business activity of national importance, which has significant impact on the development of the country, in line with national development plans and objectives, as per the criteria in section 35;

“sustainable development” means an organising principle that considers the three interdependent and mutually reinforcing pillars that are economic development, social development and environmental protection in accordance with the relevant United Nations documents and resolutions;

“this Act” includes regulations, directives and guidelines made or issued under this Act; and

“undertaking” means any business carried on for gain or reward by an individual, a body corporate, an unincorporated body of persons or a trust in the production, supply or distribution of goods or the provision of any service.

Meaning of "investment

2.

For the purpose of this Act, but subject to subsections (2) and (3), any enterprise -

(a) which is established, acquired or expanded by an investor in accordance with the laws of Namibia

(b) which carries out and maintains a business activity in accordance with the investment proposal and the nature of the business in Namibia.

(2) Any enterprise may possess assets, such as:

(a) shares, stocks, or any other form of participation of the enterprise or another enterprise;

(b) movable and immovable property including mortgages, liens, pledges, and any other similar rights as defined in conformity with the laws and regulations of Namibia;

(c) copyrights, know how, goodwill and industrial property rights such as patents, trademarks, industrial designs and trade names, to the extent that they are recognised under the law of Namibia;

(d) rights conferred by the law of Namibia or under contract, including licences to cultivate, extract or exploit natural resources; or

(e) rights under contracts including turnkey, construction, production, management, concession or other contract;

(3) Despite subsection (2), an investment does not include –

(a) debt securities issued by a government or loans to a government;

(b) portfolio investments, that is, investment that does not give the investor the possibility to exercise effective management or influence in the management of the enterprise;

(c) claims to money or commission that arise solely from commercial contracts for the sale of goods or provision of services by a natural person or an enterprise outside Namibia into the territory of Namibia, or the extension of credit in connection with a commercial transaction; or

(d) claims to money for the performance of services or provision of goods to any branch of government procured through tender, contract including public-private partnership agreements or any other means.

Application of Act

3. (1) This Act applies to all economic sectors and business activities within Namibia for –

(a) investors who want to access incentives, and use the facilitation services of the Agency;

(c) investors who have invested or want to invest in designated economic sectors, or business activities pursuant to section 30(2) (c) and (d).

Objectives of Act

4. (1) The objectives of this Act are to –

(a) provide a clear and transparent framework for sustainable investment in Namibia;

(b) establish the Agency responsible for investment promotion and facilitation in Namibia;

(c) promote sustainable development and growth through the mobilisation and attraction of domestic and foreign investments that –

(i) enhance the economic development objectives of Namibia to build a prosperous, industrialised society with adequate direct investment to, among other things, encourage the creation of employment, wealth, technology transfer, capacity building, value addition to natural resources and foreign currency generation;

(ii) reduce unemployment, poverty and economic inequality in Namibia;

(iii) accelerate the growth and diversification of the Namibian economy;

(iv) facilitate sustainable investments, particularly in priority economic sectors;

(d) provide for any other matters on investment promotion, admission, treatment and management;

(e) enhance the investment facilitation process, aftercare and ensure a conducive and seamless business environment;

(f) promote Namibia as an attractive and efficient investment and business destination;

(g) provide strong institutional support for strategic economic planning and ensure greater coherence and effectiveness in economic policy formulation;

(h) create a coordinating mechanism to ensure that all offices, ministries and agencies having an impact on investment are aligned towards investment development in Namibia, and addressing constraints that hamper said development;

(i) provide for a mechanism for inter-ministerial coordination on regulatory provisions and incentives and support mechanisms for investments;

(j) provide for an efficient dispute resolution mechanism involving investors and investments;

(k) allow for designation of certain sectors of the economy to be reserved for certain investors and investments;

(l) support the development of local entrepreneurs and to assist local enterprises to expand and upgrade their operations; and

(m) promote the development of innovation and encourage businesses to upgrade their skills and technological levels through investment in technology, automation, training, research and product development activities.

(2) For the purpose of this section "sustainable investment" means an investment strategy that considers environmental, social and corporate governance factors.

PART 2
ADMINISTRATION OF ACT

Administration and implementation of Act

5. (1) The Minister is responsible for the administration of this Act and is empowered to formulate policies and to make or issue regulations and other related subordinate measures to give effect to this Act.

(2) The Agency is responsible for the implementation of the provisions of this Act and any regulations and related subordinate measures, as provided for in this Act.

Powers and functions of Minister

6. (1) Without derogating from the generality of section 5(1), the powers and functions of the Minister are to –

(a) set the policies for investment in Namibia;

(b) introduce incentives and other support mechanisms under this Act, and identify classes of investors or investments that are entitled to incentives provided for in any other applicable law –

(i) with the concurrence of the minister responsible for any specific economic sector;

(ii) with the concurrence of the minister responsible for finance, where State revenue is involved; and

(iii) after consultation with the Agency which must advise the Minister on the suitability of such incentives and mechanisms;

(c) prescribe the incentives referred to in paragraph (b) as provided for in section 48;

(d) enter into performance agreements of strategic investments referred to in section 7(1);

(e) undertake periodic reviews on investment policies and trends in Namibia and globally in achieving the overall objectives of this Act, including the review of levels of domestic and foreign investment in different sectors and the development benefits of these investments;

(f) identify and designate sectors that are reserved for certain categories of investors and investments following the procedure set out in section 30;

(g) periodically undertake a review of the operation and effectiveness of this Act through the prescribed consultative processes; and

(h) refer any matters related to investment policy for advice to the Agency.

(i) after the prescribed consultative process, propose policy reforms and measures, to the relevant offices, ministries and agencies, to support investment promotion, conducive labour market policies, and the improvement of Namibia's competitiveness and ease of doing business, as well as enhancing business development, and investment;

(j) ensure cross-Ministerial coordination mechanism(s) to effectively facilitate investments, and resolve policy and process constraints hindering investments.

(2) The Minister may, with the concurrence of the Minister responsible for finance, on a temporary basis, on such terms as may be agreed, engage the services of any person with special knowledge of any matter relating to the business activity or economic sector of an application, or to advise or assist the Minister in the exercise of his or her powers and the performance of his or her duties and functions under this Act.

(3) The Minister, after the prescribed consultative process, may issue general or specific directives and guidelines with respect to investment in Namibia in accordance with this Act.

Performance agreements

7. (1) The Minister may, on behalf of the State and after consultation with the Agency, enter into a performance agreement with any investor seeking approval, for an investment designated under section 30(2)(d) to agree on matters related to the contribution of the investment to the development objectives of Namibia.

(2) Where an investment into a strategic economic sector or business activity is covered by an investment framework, including rights and obligations for the investors, which has been established in another specific applicable law, the Minister and the sectoral minister must agree in writing that the investor's rights and obligations under the other applicable law cover substantially the same conditions and criteria set out in this Act, and therefore any approval, including any conditions thereto, or any agreement under the other applicable law, is deemed to be the approval or agreement under this Act.

(3) If an element of an agreement concerned relates to the application or implementation of another Act under the authority of another minister, the Minister or sectoral minister must consult with the other minister prior to the conclusion of the agreement.

(4) An agreement entered into in terms of subsections (1) and (2) must be in accordance with the applicable laws of Namibia.

(5) The performance agreements referred to in subsections (1) and (2) must include an agreed process for how the agreement will be executed.

(6) A performance agreement entered into under subsection (1) or (2) becomes binding on the parties when the investment is approved and the agreement is signed in accordance with this Act.

(7) The Minister must publish or cause to be published the agreement concerned on the website of the Ministry and Agency within 45 days of the agreement being entered into, provided that the Minister or the sectoral minister may redact and the Minister may not publish information which contains –

(a) trade secrets or confidential financial, commercial, scientific or technical information of an information holder or third party and the disclosure of which would likely cause harm to the commercial or financial interests of the information holder or third party;

(b) information of which the disclosure could reasonably be expected to prejudice the competitive position of an information holder or a third party or to interfere with contractual or other negotiations of the information holder or third party;

(c) scientific or technical information obtained through research by a staff member of a public or private entity, the disclosure of which could reasonably be expected to deprive the staff member of priority of publication;

(d) information of which the disclosure could reasonably be expected to be materially prejudicial to –

(i) the financial interests of a public or private entity; or

(ii) the ability of the government to manage the economy of Namibia; or

(e) information of which the disclosure could reasonably be expected to result in an undue economic benefit to any person.

PART 3
NAMIBIA INVESTMENT PROMOTION AGENCY

Establishment of Agency

8. (1) There is established a juristic person to be known as the Namibia Investment Promotion Agency whose main responsibility is investment promotion and facilitation for sustained economic growth and sustainable development in Namibia.

(2) The shortened form of the name of the Agency is "NIPA" which name may be used together with or independently of its name referred to in subsection (1).

(3) The Agency must act impartially and perform its functions under this Act or any other relevant law subject to the policy guidelines and directives made or issued by the Minister under this Act without fear, favour or prejudice.

Functions and powers of Agency

9. (1) The functions of the Agency are to –

(a) implement and coordinate the implementation of this Act;

(b) perform the functions imposed on the Agency by this Act, or delegated or assigned to the Agency by the Minister;

(c) promote, attract and facilitate investments by Namibian and foreign investors as well as new ventures that contribute to socioeconomic development and job creation as contemplated in section 35;

(d) ensure compliance with the terms and conditions of the investment and resolve any challenges the investor or investment may have, including facilitation through the Grievances Resolution Committee;

(e) implement the Namibia Investment Policy and associated strategy as delegated by the Minister;

(f) advise the Minister on a periodic basis on matters relating to investment policy and strategy for Namibia and legislative reform, including changes in both domestic and foreign investment levels;

(g) propose investor and investment incentives, formulate incentive implementation guidelines and advise the Minister accordingly;

(h) promote special economic arrangements, in terms of the applicable legislation;

(i) in collaboration with relevant stakeholders, facilitate collaborative roles between the Government and private sector to stimulate investments within and into the country, and improve Namibia's competitiveness and ease of doing business, as well as enhancing business development; and

(j) periodically evaluate the effectiveness of this Act in terms of attracting sufficient levels of Namibian and foreign investment and sustainable development benefits and provide advice on it to the Minister.

(2) To enable it to effectively perform its functions, attain the objectives and any other power conferred on it by this Act, the Agency may –

(a) hire, purchase or acquire such movable or immovable property as the Agency may consider necessary for the performance of its functions, and may let, sell or dispose of any property purchased or acquired in terms of this Act, subject to the State Finance Act;

(b) enter into any agreement or memorandum of understanding with a person or an institution for the performance of any specific act or function or the rendering of specific services in consultation with the Minister;

(c) subject to the State Finance Act, accept any money or goods donated or bequeathed to it for the benefit of the Agency;

(d) insure itself against any loss, damage, risk or liability which it may suffer or incur;

(e) request assistance from other institutions and other persons that are required to render such assistance to the Agency in accordance with the provisions of this Act;

(f) obtain any information or documents from other institutions, investors and other persons that are required to provide such information or documents to the Agency in accordance with the provisions of this Act;

(g) take any other action, in consultation with the Minister, that would be necessary for the effective functioning of the Agency.

Board of Agency

10. (1) There must be a Board of the Agency reporting to the minister, which, subject to this Act, is responsible for the implementation of the internal policy, management and control of the affairs of the Agency.

(2) The Board consists of not less than five and not more than seven members with proven knowledge and experience in the fields of investment, trade, economics,

finance, law, business, commerce, innovation, public management, diplomacy and technology and any other disciplines relevant to the functions of the Agency who are appointed in terms of subsection (3).

(3) The Minister, must, subject to such terms and conditions as the Minister may determine, appoint persons who are Namibian citizens as members of the Board.

(4) The Minister must, subject to such terms and conditions as the Minister may determine, from among the members of the Board appoint a chairperson of the Board.

Functions and powers of Board

11. (1) The Board is responsible for the oversight and it must on behalf of the Agency, subject to the overall policy guidelines and directives issued by the Minister under section 6, perform all the functions assigned to, and exercise all the powers conferred on, the Agency or the Board by this Act or any other applicable law.
(a) The board is responsible to govern, supervise and control the affairs of the agency;
(b) To exercise the powers conferred on the board by the Agency under this act or applicable legislation
(c) To perform each function imposed on the board under this act or applicable legislation.

(2) Without derogating from the generality of subsection (1), the Board must –

(a) comply with any request by the Minister for information relating to the performance of the Agency's functions;

(b) with the approval of the Minister periodically review and approve the overall remuneration structure and other conditions of service of the chief executive officer and senior management staff of the Agency;

(c) review and approve the overall remuneration structure and other conditions of service of the other management staff and other staff

members of the Agency, as proposed by the chief executive officer subject to PEGA;

(d) on an annual basis, review and approve the business and financial plan of the Agency for the following year, prepared and submitted to the Board by the chief executive officer as contemplated in section 22(1)(c);

(e) cause the annual financial statements of the Agency to be prepared in accordance with generally accepted accounting practice and approve those statements, and cause those annual financial statements to be audited in accordance with section 28, and submitted to the Minister in accordance with section 28;

(f) prepare an annual report in accordance with section 28 which report must be submitted to the Minister in accordance with section 28;

(g) review and in writing approve the code of conduct established in terms of section 22(2) at least once every two years and file a copy of that code of conduct with the Minister immediately after its approval; and

(4) The Board must, in addition to any functions specified in subsections (1) and (2), provide advice to the Minister on matters relating to the performance of the Agency, including but not limited to –

(a) measures that will foster investment and promote policies and plans, incentives and strategies to support enterprises in Namibia; and

(c) at the request of the Minister, on other matters as the Minister may determine from time to time.

Conduct of members of Board and disclosure of interest

12. (1) A member of the Board must –

(a) exercise the duty of utmost care to ensure reasonable protection of the assets and records of the Agency;

(b) act with fidelity, honesty, integrity and in the best interests of the Agency in managing its affairs; and

(c) comply with any applicable code of conduct or conflict of interest guidelines referred to in section 22(2).

(2) A member of the Board may not –

(a) act in a way that is inconsistent with the responsibilities of the Agency in terms of this Act; or

(b) use the position and privileges of, or confidential information obtained as a member of the Board, for personal gain or to improperly benefit another person.

(3) A person who contravenes or fails to comply with subsection (2) or a code of conduct referred to in section (1)(c) commits an offence and is liable on conviction to a fine not exceeding N$2 000 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

(4) A member of the Board who contravenes or fails to comply with subsection (1) or (2), in addition to the penalty provided for in subsection (3), commits an act of misconduct for which he or she is liable to disciplinary action being taken against him or her, including removal from office as contemplated in section 14(2).

(5) If a member of the Board has a direct or indirect financial or personal interest, that is likely to impair the member's objectivity in the exercise or performance of his or her powers or functions as a member –

(a) in a contract or proposed contract with the Agency; or

(b) in a matter being considered or proposed to be considered by the Board or a committee of the Board of which the person is a member of the Board,

that member must, as soon as is practicable after the relevant facts have come to his or her attention, disclose the nature of the interest at a meeting of the Board or of the committee.

(6) A disclosure made under subsection (1) must be recorded in the minutes of the meeting at which it is made.

(7) When a member of the Board has made a disclosure under subsection (1), the other members of the Board must –

(a) in the absence of that member of the Board, discuss the nature of the interest on which the member of the Board has made the disclosure; and

(b) determine whether the interest is likely to impair the member's objectivity in the exercise or performance of his or her powers or functions as a member of the Board;

(8) If the members of the Board determine that the interest of a member of the Board is likely to impair the member's objectivity in the exercise or performance of his or her powers or functions as a member of the Board, that member of the Board –

(a) may not take any further part in any consideration, discussion or decision relating to, or in connection with, the –

(i) contract, proposed contract or other matter; or

(ii) future administration or oversight over the administration of the contract or other matter;

(b) may not take part in any vote on the contract, proposed contract or other matter;

(c) may not be counted for the purposes of a quorum for discussing or deciding on the contract, proposed contract or other matter; and

(d) must absent himself or herself from the proceedings concerning the contract, proposed contract or other matter in which he or she has an interest.

(9) A member of the Board who makes a full and accurate disclosure under subsection (1) and who complies with subsection (4) is not in breach of any duty owed by that member to the Board or any committee of the Board by reason of the interest of the member in the contract, proposed contract or other matter about which the disclosure was made.

Term of office of members of Board

13. A member of the Board holds office for a term of five years and may be eligible for re-appointment only once at the expiration of that term.

Vacation of office by member of Board

14. (1) A member of the Board vacates his or her office if that member –

(a) resigns by giving not less than one month's written notice to the Minister and the Board;

(b) has without the leave of the Board, been absent from two consecutive meetings of the Board;

(c) has become subject to any disqualification referred to in section 21; or

(d) is removed from office under subsection (2).

(2) The Minister, may remove a member of the Board from office, if the Minister is satisfied that the member –

(a) is physically or mentally incapable of performing his or her functions efficiently, and a medical practitioner has issued a certificate to that effect;

(b) is guilty of misconduct of the objectives of the Board or the Agency;

(c) is not, for whatever reason, effectively and efficiently performing the functions of the Agency as a member of the Board; or

(d) has been found guilty of any offence involving dishonesty or has been found guilty of any other offence and sentenced to imprisonment without the option of a fine.

(4) The Minister may only so remove a member from office after giving notice to such member and after affording the member a reasonable opportunity to make representations.

Suspension of member of Board

15. The Minister may, subject to such conditions as the Minster may determine, suspend a member of the Board from office without giving a prior notice to that member if the Minister is satisfied that the member is guilty of dishonesty, gross misconduct or other unbecoming or inappropriate conduct such that it is necessary to act expeditiously in order to protect the integrity of the Agency, but the Minister must give notice to the member as soon as practicable after the suspension and consider any representations made by the member on the matter.

Filling of vacancies of Board

16. (1) If a member of the Board dies or the office of a member of the Board becomes vacant as a result of the happening of an event referred to in section 15 or for any other reason, the Minister may, within a period of 90 days from the date of the office becoming vacant and with due regard to sections 10 and 19, appoint a person to fill the vacancy for the unexpired portion of the term of office of the member who has vacated his or her office.

(2) If at any time during the term of office of a member of the Board –

(a) the offices of all the members become vacant; or

(b) the number of members is reduced to less than the number of members required for a quorum of the Board,

the Minister, subject to section 10, may appoint suitably qualified persons on a temporary basis to serve on the Board until new members are appointed.

(3) The appointment of a person as a member of the Board in term of subsection (2) ceases to be of effect on the earlier of –

(a) the expiry of a period of six months from the date of the appointment, but such period may be extended, once only, by the Minister for an additional period of not more than two months;

(b) the appointment of a person as a member in terms of subsection (1); or

(c) the death of a member of the Board.

Meetings and decisions of Board

17. (1) The members of the Board must, at the first meeting of the Board, elect from among their number a deputy chairperson of the Board.

(2) The Board must, at such date, time, and place as the Board may determine, hold one meeting every three months and may hold such other additional meetings as may be determined by the Board.

(3) Despite subsection (2), the chairperson must convene a special meeting of the Board within 14 days after the date of receipt of a written request by –

(a) the Minister; or

(b) the majority of the members of the Board,

which request must clearly state the purpose for which the special meeting is to be convened.

(4) The chairperson or in his or her absence, the deputy chairperson, must preside at a meeting of the Board.

(5) If both the chairperson and the deputy chairperson are for any reason unable to preside over a meeting of the Board, the members of the Board present must elect a member from among themselves to act as chairperson of the Board, for that meeting.

(6) A majority of all the members of the Board constitute a quorum at a meeting of the Board.

(7) The chairperson must cause reasonable written notice of every meeting of the Board to be given to its members.

(8) The Board must cause minutes to be kept of the proceedings at its meetings and the meetings of its committees.

(9) Despite subsection (8), a written resolution not passed at a meeting of the Board but signed by all the members of the Board is as valid and effectual as if it had been passed at a meeting of the Board duly convened and constituted, and such resolution must be recorded in the minutes of the next meeting of the Board.

(10) The decision of a majority of the members present and voting at a meeting of the Board constitutes a decision of the Board, and in the event of an equality of votes the person presiding at such meeting has a casting vote in addition to his or her deliberative vote.

(11) A decision of the Board or an act performed under the authority of the Board is not invalid only by reason of –

(a) a vacancy on the Board; or

(b) the fact that a person not entitled to sit as a member of the Board was in attendance when the decision was taken or act was authorised,

if the decision was taken or act was authorised by a majority of directors who were present and entitled to vote at such meeting, and who formed a quorum.

(12) The Board may make rules, not inconsistent with this Act, to regulate the procedures to be followed at its meetings and meetings of a committee of the Board.

Committees of Board

18. (1) The Board may, subject to such terms and conditions as it may determine necessary, establish one or more committees consisting of its members or any other persons to –

(a) assist and advise the Board in the exercise of its powers and performance of its functions or duties under this Act; and

(b) perform any function that the Board may in writing delegate to that committee.

(2) The provisions of subsections (5), (6), (7), (8), (10) and (11) of section 17, section 19 and section 20 apply to a committee of the Board subject to necessary changes as required by the context.

Disqualification for appointment as member of Board

19. A person is not eligible to be appointed to the Board or continue to serve on the Board, if that person –
Is not a Namibian citizen;
Is not a resident in Namibia

(a) is a member of Parliament or of a regional or local authority council, unless he or she ceases to be such a member before the date of the proposed appointment;

(b) is an office-bearer of any political party and is involved in the executive decision-making of that political party, unless he or she ceases to be such an office-bearer before the date of the proposed appointment;

(c) has during the preceding 10 years been found guilty of any offence involving dishonesty or has been found guilty of any other offence and sentenced to imprisonment without the option of a fine;

(d) has been or is removed from an office of trust on account of misconduct;

(e) has been declared mentally ill by a competent court;

(f) is an unrehabilitated insolvent; or

(g) has at any time by order of a competent authority, been suspended or disqualified from practising a profession on grounds of professional or personal misconduct.

Remuneration and expenses of members of Board

20. (1) A member of the Board, other than the chief executive officer, is entitled to be paid out of the funds of the Agency such remuneration or allowances in respect of his or her service as a member in line with PEGA.

(2) Allowances or other remuneration payable under subsection (1) may differ according to the different offices held or functions performed by members of the Board.

Chief executive officer

21. (1) The Board must, with the concurrence of the Minister and subject to such terms and conditions as the Board may determine, appoint a suitably qualified person who is a Namibian citizen as the chief executive officer.

(2) A person is not eligible for appointment as the chief executive officer if he or she is subject to a disqualification referred to in section 19.

(3) The chief executive officer is the administrative head of the Agency, and is, in accordance with the policies and directions of the Board, responsible for the control and administration of the business affairs and staff matters of the Agency.

(4) Policies and directions of the type referred to in subsection (3) may specify that a particular function or category of functions –

(a) may not be performed by the chief executive officer without the prior written approval of the Board;

(c) may be performed by the chief executive officer in accordance with guidelines issued by the Board;

(6) The chief executive officer is the accounting officer of the Agency.

(7) The chief executive officer is appointed for a term of five years and may be re-appointed for one more term after the expiry of his or her term of office.

Functions and powers of chief executive officer

22. (1) The chief executive officer is responsible for the day-to-day operations of the Agency and, without limiting the generality of the forgoing, is responsible for –

(a) employment of such qualified persons as are required to carry out the provisions of this Act and provides adequate training for such staff members in accordance with the approved employment structure;

(b) subject to section 11(2)(c) and (d), ensuring compliance with the approved remuneration structure and other conditions of service of all staff of the Agency;

(c) formulating and transmitting to the Board the strategic plan, internal policies, business plan, management systems, financial proposals and the financial statements for the previous fiscal year for guidance and approval;

(d) managing the funds, properties and business of the Agency;

(e) administering, organising and controlling the staff members of the Agency in accordance with the approved human resource policy of the Agency and the code of conduct referred to in subsection (2); and at each quarterly meeting, updating the Board on the current and emerging issues being considered by the Agency and receiving the Board's comments and suggestions on the issues.

(2) The chief executive officer must on the instruction of the Board –

(a) prepare a code of conduct containing acceptable ethical standards and conflict of interest guidelines applicable to the members of the Board, the chief executive officer and the staff members of the Agency,

(b) consult and get input from the Board on the above;

(c) submit the draft code to the Board for consideration and approval; and

(d) once every two years, submit a copy of the above code of conduct and any revisions to the code of conduct to the Board for the review and approval of the Board.

Conditions of service of chief executive officer

23. The terms and conditions of service of the chief executive officer are as determined in terms of section 21(1) and are paid from the funds of the Agency.

Vacation of office by chief executive officer

24. (1) The chief executive officer may at any time resign from office by submitting a written resignation to the Board and a copy to the Minister at least 90 days before the intended date of vacation of office unless the Board allows a shorter period.

(2) The Board, with the concurrence of the Minister and after having given the chief executive officer a reasonable opportunity to be heard, may by notice in writing remove the chief executive officer from office, if the Board is satisfied that the chief executive officer –

(a) is physically or mentally incapable of performing his or her functions efficiently, and a medical practitioner has issued a certificate to that effect;

(b) is guilty of misconduct of the objectives of the Board or the Agency;

(c) is not, for whatever reason, effectively and efficiently performing the functions of the Agency as the chief executive officer;

(d) has been found guilty of any offence involving dishonesty or has been found guilty of any other offence and sentenced to imprisonment without the option of a fine; or

(e) has become subject to a disqualification referred to in section 19.

Performance agreements of members of Board and chief executive officer

25. (1) Every member of the Board must enter into a performance agreement with the Minister.

(2) The chief executive officer must enter into a performance agreement with the Board.

Funds of Agency

26. (1) The funds of the Agency consist of –

(a) money appropriated by Parliament and made available to the Ministry for the purposes of attaining the objects of the Agency;

(b) money standing to the credit of the Agency having accrued to the Agency;

(c) donations or bequests made to the Agency in terms of section 9(2)(c) with approval by the Minister and subject to the State Fiance Act;

(2) The Agency must open bank accounts with a registered banking institution in Namibia, with the prior written approval of the Minister, as the Agency considers necessary, and into which all money received by the Agency must be deposited.

Accountability and administration of funds

27. (1) The chief executive officer is, for the purposes of the State Finance Act, the accounting officer of the Agency and any funds of the Agency.

(2) The financial year of the Agency ends on March 31 of each year.

(3) The accounting officer must within 90 days before the commencement of the financial year, prepare annual financial estimates of the expenditure of the Agency for that financial year and submit the estimates to the Board for approval.

(6) The Board must approve the annual financial estimates before the commencement of the financial year to which they relate and submit the annual financial estimates to the Minister for inclusion in the budget of the Ministry.

(7) The Agency may not incur expenditure except –

(a) in accordance with the annual financial estimates provided under subsection (3); or

(b) with the prior written approval of the Minister.

Accounts, audit and annual reports

28. (1) The Board must –

(a) furnish to the Minister quarterly or as required with the activities and financial statements of the Agency; and

(b) each year, within 180 days after the end of its financial year, submit to the Minister –

(i) copies of the Agency's audited financial statements and the auditor's report for that financial year; and

(ii) a report on the Agency's activities in respect of that financial year.

(2) The Minister must cause copies of the Agency's report and financial statements received in terms of subsection (3) to be laid before the National Assembly –

(a) if the National Assembly is in session, within 30 days of having received it from the Agency; or

(b) if the National Assembly is not in session, within 30 days after commencement of the National Assembly's next session.

Winding-up of Agency

29. The Agency may not be wound up except by or under the authority of, and in accordance with, an Act of Parliament.

PART 4
DESIGNATION OF ECONOMIC SECTORS AND BUSINESS ACTIVITIES

Designation of economic sectors and business activities

30. (1) The Minister, in recognition of –

(a) Namibia's national interests;

(b) the socioeconomic inclusion of all inhabitants of Namibia;

(c) the sustainable economic sectors, business activities and development objectives of Namibia;

(d) the ecological sustainability of the environment in Namibia;

(e) gender equality and youth empowerment;

(f) enhancement of innovation capability in Namibia; and

(g) the public interest,

must, after following the procedure set out in section 30, refer to Cabinet for input on the designation and classification of certain categories of –

(i) economic sectors; or

(ii) business activities;

as exclusive to certain categories of investors and investments as set out in subsection (2).

(2) The categories of designated economic sectors or business activities contemplated in subsection (1) are those –

(a) designated as reserved for the State;

(b) designated as reserved for Namibians;

(c) designated as requiring foreign investors to enter into joint venture partnerships with Namibian investors, of which the percentage is set out in the regulations; and

(d) designated as strategic economic sectors or, business activities, which require the approval of the Minister in terms of section 33(1)(a);

(3) Any person may propose, for consideration, to the Minister to designate an economic sector or business activities in terms of subsection (2).

(4) On receipt of the input contemplated in subsection (1) from Cabinet, the Minister may, after considering the input, by regulation, designate the categories of economic sectors and business activities for the different categories of investors and investments.

(5) Designations contemplated in subsection (1) may set out –

(a) the economic sectors or business activities to be designated for each category of designated sectors or business activity;

(b) if appropriate, specific thresholds or criteria relating to the economic sectors or business activities to be covered including, but not limited to –

(i) the value of the investment;

(ii) the number of jobs created;

(iii) the region as defined in section 1 of the Regional Councils Act, 1992 (Act No. 22 of 1992) or local authority area as defined in section 1 of the Local Authorities Act, 1992 (Act No. 23 of 1992), in which the investment is to be located; and

(iv) specific sub-activities of any business activity, if any.

(6) An investor must meet the applicable prescribed requirements for categories of investors in order to invest in the designated economic sectors or business activities.

(7) The expansion of an existing investment as defined in this Act is treated as an investment that is subject to this Part.

(8) In order to value the expansion of an existing investment for the purposes of determining the application of this Act, only the costs of the additional investment proposed will be considered on condition that the expansion proposed is not an attempt to circumvent subsection (9).

(9) If an investor –

(a) has made more than one investment; or

(b) proposes to make more than one investment,

that is below any threshold set by the Minister as contemplated in subsection (5)(b), but the total relevant quantities for such investments would be over the threshold, such investments must be treated in a cumulative fashion as a single investment for the purposes of this Act.

(10) An economic sector or business activity that has not been designated by regulation made under section 30(4) is open for investment and ownership participation by any investor in any legal form permitted by the applicable law.

Procedure before designation of economic sectors and business activities

31. (1) This provision sets out the consultative process that the Minister must undertake before the designation of certain economic sectors, and business activities, in accordance with the provisions of section 30.

(2) Before designating any economic sectors or, business activities the Minister must issue a notice in the *Gazette* and in any other prescribed manner, notifying the public of the intention to designate the economic sectors or business activities.

(3) The notice must be published at least 90 days before the proposed date of designation.

(4) The notice must include –

(a) a clear and concise description of the economic sector or business activity to be designated;
(b) the reasons for the proposed designation
(c) the proposed effective date of the designation
(d) contact information for submitting inputs and inquiries.

(5) On the publication of the notice, the Minister must call on interested persons, stakeholders, and the public to provide their inputs, comments, and suggestions regarding the proposed designation.

(6) Interested persons and stakeholders may submit their inputs in writing or through any other means specified in the notice.

(7) The Minister must, together with relevant sector Ministers, consider all inputs received from the public, interested persons, and stakeholders within 30 days of the closing date for submissions as specified in the notice.

(8) In the event of extraordinary circumstances that require additional time for consideration, the Minister may extend the period for consideration for up to 60 days in which case the Minister must communicate the reasons for such extension in the *Gazette* and in any other prescribed manner.

(9) After considering the inputs received, and before making a decision, the Minister must seek input from Cabinet regarding the designation of the economic sector, or business activity.

(10) After receiving the input from Cabinet the Minister must decide whether to designate the economic sectors or business activities or not and afterwards he or she must publish the decision in the *Gazette* and in any other prescribed manner, along with the reasons for the decision.

(11) If the Minister decides not to proceed with the designation reasons for this decision must also be provided in the publication.

Savings in respect of existing investments

32. (1) Subject to section 65(5), an investor who has lawfully invested in an economic sector or business activity before the sector or activity has been designated under section 30 is entitled to maintain his or her investment after the effective date of the designation of the sector or activity despite such designation.

(2) Any change in control of the maintained investments contemplated in subsection (1) is subject to the applicable requirements of Part 5 for investments under 30 (2) (d) or as per the designation requirements set out in the regulations.

PART 5

APPROVAL OF INVESTMENTS IN STRATEGIC ECONOMIC SECTORS AND BUSINESS ACTIVITIES

Application for approval of investments and change of control

33. (1) An investor wishing to invest in a category of economic sectors or business activities for which the investment is designated as being subject to the approval of the Minister in accordance with section 30 (2)(d) must be required to obtain the approval of the Minister or sectoral minister.

(2) An investor who intends to make an investment in Namibia as contemplated in subsection (1) must make an application for approval of the investment to the Minister or to the sectoral minister, through the Agency in the prescribed manner.

(3) Any proposed change in control of an investment in Namibia in a sector designated in accordance with section 31(10), including any licence, permit, authorisation or concession in Namibia, through –

(a) the constitution, maintenance, merger with or acquisition of an enterprise inside or outside Namibia which has an effect in Namibia; or

(b) the acquisition, directly or indirectly, of any license, permit, authorisation or concession inside Namibia, whether acquired through a transaction inside or outside Namibia,

requires the written approval of the Minister or the sectoral minister prior to any such change taking place.

(4) An investor who intends to change control of an existing investment in Namibia as contemplated in subsection (3) must make an application for approval of the change to the Minister or the sectoral minister, through the Agency, in the prescribed manner.

(5) In addition to any applicable requirements of the Competition Act or any other applicable law, an investor contemplated in subsection (3) must make the application contemplated in subsection (4) at least 60 days before the date of the intended change, or any earlier date as the Minister on application may permit in particular circumstances.

Consideration of application and grant of approval

34. (1) On receipt of an application made under section 33(2) or (4) the Agency–

(a) must consider the application together with any additional information supplied according to the time periods set out in the regulations;

(b) in the case of an application under section 33(4), must seek advice from the Namibian Competition Commission as contemplated in section 16(1)(d) of the Competition Act; and

(c) must, subject to section 36, and based on the criteria set out in section 35, submit to the Minister or sectoral minister a non-binding recommendation to approve or disapprove the application for approval or change of control of an investment.

(2) On receipt of an application and non-binding recommendation referred to in subsection (1)(c), the Minister or sectoral minister must, with or without conditions, –

(a) in writing, through the Agency, provide the applicant concerned with his or her decision approving or disapproving the application; or

(b) in the case of a disapproval of the application, in writing, through the Agency, provide the applicant with the reasons for the disapproval.

(3) When –

(a) the requirements of any other law have been complied with; and

(b) an approval of an investment under subsection (1)(c) has been received by the investor;

the Minister must issue a certificate of approval of investment that allows the investor to register with the Agency and commence with the investment.

(4) If the Minister or sectoral minister has approved a change of control the approval will only take effect when –

(a) the investor has –

(i) accepted in writing the approval of such change of control, including any conditions set out by the Minister or sectoral minister;

(ii) accepted in writing all the obligations, conditions and responsibilities of the prior investor; and

(iii) complied with all other applicable laws; and

(b) the relevant certificate of approval has been amended to reflect the change, if necessary, and the Agency has made the necessary changes in the register referred to in section 38.

(5) If an applicant, before approval is obtained, intends to make changes to a proposed investment or a proposed change of control that alter the nature, size, location or scale of a proposed investment or a proposed change of control, the investor must in the prescribed manner and within the prescribed period notify the Minister or sectoral minister, through the Agency, of all the proposed changes.

Criteria for approval of investments in strategic economic sectors or business activities

35. (1) In considering an application for approval of a proposed investment or change of control and in addition to any other provision of this Act, the Agency, Minister and sectoral minister, must consider the overall net benefit to Namibia, taking into account, as may be relevant to a specific investment proposal –

(a) the contribution of the investment to the national development, economic growth, public policy and national objectives of Namibia;

(b) the contribution of the investment to the advancement of persons who have been socially, economically or educationally disadvantaged by past discriminatory laws and practices;

(c) the contribution of the investment to the implementation of programmes and policies aimed at redressing social and economic imbalances in Namibia, including gender-based imbalances;

(d) the contribution of the investment towards increasing employment creation, particular youth employment, in Namibia;

(e) the contribution of the investment to the advancement of small and medium enterprises, particular youth-led enterprises, in Namibia;

(f) the contribution of the investment to the advancement of the development of a geographical area of low social and economic development;

(g) the contribution of the investment to the transfer of technological and managerial skills, knowledge and innovation;

(h) the contribution of the investment to value addition to the natural resources and manufacturing sector of Namibia;

(i) the extent to which the investment will procure goods and services from the small and medium enterprises sector and Namibian suppliers in general;

(j) the impact on the environment and contribution to environmental benefits;

(k) the record of the proposed investor in terms of compliance with applicable laws and relationships with communities in other states, if the investor has made investments in other states;

(l) if the investor is an enterprise of another state which is similar to a public entity, the –

(i) degree of independence of the investor from the government, and whether the enterprise operates on a transparent commercial basis;

(ii) degree to which it operates in a free market context; and

(iii) risks to national security of the proposed investment; and

(m) any other factor which the Minister may prescribe and based on both qualitative and quantitative evaluation criteria encompassing aspects pertaining to structural development, innovation and research and development as well as sustainable development.

Effect of approval on other laws

36. (1) An approval of an investment application or a change of control by the Minister or sectoral minister under this Act only constitutes an approval to proceed with an investment or change of control if all other approvals, permits or authorisations of any type under any other applicable law have been lawfully granted to the investor.

(2) An investor may not commence with the establishment or operation of an investment or change of control until all the approvals, permits or authorisations of any type referred to in subsection (1) are granted.

Exception to requirements for approval for change of control

37. (1) If a finance contract, mortgage or similar instrument permits the provider of finance to take possession of the financed investment –

(a) in the event of a default by the debtor; or

(b) in the event of the bankruptcy or insolvency of the investment in accordance with the Insolvency Act, 1936 (Act No. 24 of 1936),

the transfer of ownership for this purpose is not subject to approval under this Act.

(2) Despite subsection (1) the transfer of ownership to any third party by a provider of finance concerned is subject to this Act.

(3) Despite subsection (1), if the provider of finance seeks to operate the investment, other than for essential maintenance and temporary operation, until a buyer

is determined or the investment is dissolved in an orderly manner, the provisions relating to the transfer of ownership apply with the necessary changes.

PART 6
ADMINISTRATION OF INVESTMENTS

Registration of investors and investments

38. (1) On receipt of a certificate of approval in terms of section 34(3) the Agency must register the prescribed particulars of the investor and investment in the register referred to in subsection (4) and the investor and investment are considered to have met the requirements of subsection (2).

(2) An investor who wishes to access investment incentives introduced under this Act and whose investment meets the prescribed criteria for registration may in the prescribed manner apply for registration of the investment to the Agency.

(3) On receipt of an application made under subsection (2) the Agency must consider the application and if it is satisfied that the investment meets the prescribed criteria, the Agency must grant the application.

(4) The Agency must, in the prescribed manner –

(a) keep and maintain a register of current and potential foreign investors and investments;

(b) keep a register of current and potential Namibian investors considering pairing with foreign investors;

(c) register and maintain a register of prescribed accredited micro small and medium enterprises that might benefit from investments;

(d) register an investor upon an application received from an investor whose application has been granted issue a confirmation of registration.

(5) The registration contemplated in this section must not be perceived as an approval of an investment application contemplated in Part 5 and does not in and of itself entitle an investor to any incentives offered to investors in terms of this Act.

(6) An investor or investment may not be considered for incentives or benefits including public-private partnerships, joint ventures, business relationships with the State, procurement of a designated amount or designated licences or permits with access to natural resources, as determined by the Minister by notice in the *Gazette*, granted by any public entity unless the investor or investment is duly registered in terms of this section.

Investment attraction, promotion and facilitation

39. (1) For purposes of promoting investments as contemplated in section 9(1)(c), and subject to any investment promotion or facilitation efforts or activities initiated by any public entity, person or institution, the Agency is responsible for –

(a) identifying specific projects and inviting interested investors for participation in those projects;

(b) initiating, either in or outside Namibia, promotional activities to attract foreign investments that are beneficial to the economy and development objectives of Namibia, including the branding of Namibia or specific sectors and the management of the brand image of Namibia, and assessing periodically the competitive position of Namibia as an investment destination;

(c) promoting investment incentives to investors and potential investors;

(d) collaborating with other public entities in the promotion of investment into specific sectors in Namibia, including in relation to the activities referred in paragraphs (a) to (d);

(e) periodically hosting an inter-ministerial forum as well as forums with other stakeholders including private sector representatives on investment promotion activities and opportunities;

(f) collecting, collating, analysing and disseminating information about investment opportunities and sources of investment capital, incentives available to investors, the investment climate and advising upon request on the availability, choice or suitability of partners in joint venture projects;

(g) assessing investment proposals and projects for investment potential, opportunities and economic impact; and

(h) joining and participating in strategic regional and global cooperation opportunities, including with other investment promotion agencies, regional and continental bodies, global investment promotion platforms, to boost investment in Namibia and in the region.

(2) For the purpose of facilitating and retaining investment, the Agency may

–

(a) subject to applicable laws of Namibia facilitate investments that contribute to sustainable development;

(b) subject to section 45, facilitate the granting of visas and permits to foreign employees and consultants as designated by the investor;

(c) streamline investment administration procedures and requirements and establish mechanisms for business entry facilitation including setting up a one-stop-shop for foreign and Namibian investors when establishing their business operations in Namibia, aftercare services and digitalisation of business facilitation procedures;

(d) establish a framework for cooperation and coordination between relevant and competent national regulatory authorities with a view to facilitating investment flows and ensuring seamless business facilitation for investors;

(e) cooperate on policies and other related issues that encourage and facilitate the use of special purpose vehicles to increase the participation of the private sector in development initiatives of the Namibian government;

(f) facilitate the sharing of information between the State, investors and the public in relation to establishing an investment;

(g) provide support services to investors and investments before and after establishment in order to assist them in their on-going relations with the State;

(h) provide investor retention and aftercare services to encourage reinvestment, ensure compliance, and resolve any challenges the investor or investment may have;

(i) recommend investments and investors that the Minister may enter into performance agreements under section 7(1) or as agreed with the sectoral minister as per section (7)(2) and (7)(3));

(3) In order to enhance the overall investment facilitation process the Agency must seek the cooperation of other relevant public entities to ensure inclusive physical and online representation of investment related activities and requirements in the operation of the one-stop shop.

(4) An investor may apply online or in person for a license, permit or approval of investment that is available through the one-stop shop and any other services that may be provided for business development in Namibia under a one-stop shop.

Monitoring of investments

40. (1) The Agency must monitor investors and investments to which this Act applies, and all operational processes and procedures using a compliance management system, to ensure compliance with this Act.

(2) The Agency in the performance of its monitoring functions may request relevant information from an investor or investment and the investor or investment must comply with the request within 30 days.

(3) An investor or investment must permit an officer of the Agency, who provides proof of identity, to enter its premises at a reasonable time in exercising the monitoring and compliance function of the Agency.

(4) If during the course of monitoring an investor or investment, the Agency finds that the investor is contravening the provisions of this Act or of his, her or its investment, the Agency must, in writing, notify the office, ministry or agency to take action .

PART 7

INVESTOR RIGHTS AND INCENTIVES

Treatment of foreign investors and their investments

41. (1) With respect to the establishment, management, operation and disposition of investments within Namibia, the State must, subject to this Act, accord to foreign investors and their investments treatment that is not less favourable than the treatment it accords in like circumstances to Namibian investors and their investments.

(2) In the assessment of the "like circumstances" contemplated in subsection (1) the State must consider –

(a) the effects on third parties and the community in proximity to the investment location;

(b) the effects on the environment, including the cumulative effects of all investments on the environment;

(c) the sector of investment;

(d) the linkages to other sectors;

(e) the aim of the measure concerned; and

(f) the regulatory process generally applied in relation to the measure concerned.

(3) The treatment of foreign investors and their investments contemplated in subsection (1) does not apply in relation to any concessions, advantages, exemptions or other measures in favour of any investor or any investment in Namibia that may result from the existence or implementation of –

(a) any bilateral treaty relating to investment or free trade between Namibia and another state;

(b) any multilateral or regional agreement relating to investment, free trade or economic integration to which Namibia is a party; or

(c) State procurement tied to development assistance funds or loans.

(4) Nothing in this Part may be construed to prevent Namibia from adopting or maintaining a measure that prescribes special formalities in connection with the investments of foreign investors, which is:

(a) designed and applied to protect or enhance legitimate public policy objectives such as, but not limited to, public morals, public health, prevention of diseases and pests in animals or plants, climate action, essential security interests, safety and the protection of environment; or

(b) implemented in order to achieve national development objectives or address the internal needs of designated disadvantaged persons, groups, or regions.

but the measures described in (a) and (b) above may not materially impair the rights granted by other provisions of this Act.

Expropriation

42. (1) In case of an expropriation of land or property affecting any investment such expropriation must be done in conformity with Article 16 of the Namibian Constitution, this Act and any applicable law.

(2) The State may take a measure of expropriation affecting land, property, a property right or any other right of an investor if the measure –

(a) is taken in the public interest;

(b) is taken in accordance with applicable legal requirements and procedures; and

(c) is accompanied by the payment of just compensation.

Payment of compensation

43. (1) The just compensation contemplated in section 42(2)(c) must be paid, once it is assessed in accordance with subsection (2), promptly in a freely convertible currency.

(2) Subject to any other law to the contrary, the just compensation referred to in subsection (1) must be assessed in relation to the fair market value of the expropriated investment immediately before the expropriation took place, but in appropriate circumstances, the just compensation may be based on an equitable balance between the public interest and the interest of those affected having regard to all relevant circumstances, including the –

(a) fair market value of the investment;

(b) profit of the investment up to date of the expropriation;

(c) capital costs of the investment;

(d) current and past use of the property;

(e) the history of the acquisition of the property;

(f) purpose of the expropriation; and

(g) duration of the investment.

(3) The amount of compensation must be assessed after consultation with any other relevant Minister responsible for the sector of the enterprise or property in question and following a just compensation evaluation by an independent expert or a panel of experts.

(4) The amount of compensation determined by the Minister must be approved by the Cabinet.

(5) The assessment of fair market value may not reflect any change in value occurring because the intended expropriation had become known earlier.

(6) Compensation must include simple interest at the rate as defined in section 1 and commences on the date the act of expropriation occurs and ends on the date the whole compensation amount is paid.

Review concerning expropriation and compensation

44. If an investor or investment affected by an expropriation takes the expropriation and the amount of the just compensation in respect of the expropriated investment on review to the High Court, that court must have regard to the principles set out in section 42.

Facilitation of visa and permits of investors, dependants and foreign personnel

45. The Minister must engage the minister responsible for immigration to facilitate the issuing of visas and residence permits to investors, their spouses and dependants, of the investors and the engagement of foreign personnel as provided for in the Immigration Control Act.

Foreign personnel

46. The Minister, after consultation with the Minister responsible for immigration, the Minister responsible for labour and the Minister responsible for higher education, may recommend the engagement of foreign personnel in a written agreement with the investor, to be included in the performance agreement of the investment if appropriate, in respect of the positions available for –

(a) a long-term engagement of foreign personnel; or

(b) a temporary engagement of foreign personnel for a prescribed period.

Transfer of funds

47. (1) Subject to subsection (4) and the applicable laws of Namibia an investor may transfer funds relating to his, her or its investment into and out of Namibia.

(2) The funds referred to in subsection (1) include –

(a) the initial capital and additional amounts to maintain or increase the investment including, among other things, funds relating to equipment, stocks, supplies and other necessary operational elements;

(b) the profits, dividends, royalties and income yielded by an investment;

(c) the funds in repayment of loans and interests of loans related to an investment;

(d) just compensation paid under this Act;

(e) proceeds from the total or partial sale or liquidation of an investment;

(f) earnings and other remuneration of personnel engaged from abroad in connection with an investment; and

(g) payments arising out of the settlement of a dispute between the investor and another party in Namibia.

(3) The transfer of funds under this Act must be made without undue delay in a freely convertible currency at the market value of exchange applicable on the date of transfer, subject to the exchange control regulations made under the Currency and Exchanges Act, 1933 (Act No. 9 of 1933).

(4) Despite subsection (1), the State may delay or prevent a transfer of funds or other assets through a fair, non-discriminatory and good faith application of measures –

(a) to protect the rights of the creditors in the event of actual or anticipated bankruptcy;

(b) to ensure the compliance with judgments concerning offences;

(c) to ensure the compliance with tax obligations;

(d) to comply with lawful administrative decisions and facilitate the execution of judgments;

(e) in response to serious or exceptional balance of payments or external financial difficulties, or the anticipated financial risk experienced in Namibia; or

(f) in exceptional circumstances, to prevent movements of capital that cause or threaten to cause serious difficulties for macro-economic management, including monetary or exchange rate policies in Namibia.

Investment incentives

48. (1) Despite anything to the contrary in any law, the Minister, on the recommendation of the Agency, may prescribe that incentives made available to investors in accordance with section 6(1)(b) and (c).

(2) Regulations made under subsection (1) may –

(a) require the Minister either acting alone or together with another minister or functionary responsible for the administration of any relevant law to afford different types of incentives to investors;

(b) set the criteria for entitlement to the incentives and the basis on which such criteria is determined;

(c) where reasonably justified, differentiate between the investors or categories of investors;

(d) specify the conditions subject to which and period for which the incentives are available; and

(e) stipulate the form and manner in which the incentives conferred under this Act or under any other law may be accessed by the investors.

(3) A registered investor who wishes to access incentives made available to investors or investments under this Act must apply for a certificate of investment incentives to the Agency in the prescribed manner.

(4) The Agency must, in the prescribed manner, issue a certificate of investment incentives which indicates the type of incentives to which the investor or investment is entitled under this Act or any other applicable law, to an investor or investment registered under section 42(1) or (2).

PART 8
INVESTOR OBLIGATIONS

Compliance with applicable laws and registration of investors

49. (1) Investors and their investment must in the carrying out of their activities at all times comply with this Act and all other applicable laws of Namibia, including but not limited to licences, permits, incentive requirements and conditions for investments. Investor and their investments also need to ensure compliance with high standards of responsible business conduct, investment-related human rights, labour standards, anti-corruption and environmental protection.

(2) An investor must register himself, herself or itself in terms of section 38 (1) with the Agency in the prescribed manner.

(3) Despite anything to the contrary in this Act, the obligation to register in terms of subsection (2) applies to existing investors and investments, subject to subsection (4).

(4) Every investor and every investment existing at the commencement of this Act which is required to register under this Act must register itself and the investment as contemplated in subsection (2), within 12 months from the date of commencement of this Act or such longer period of time that the Agency may allow, but which period may not in total exceed 18 months.

Capacity development and transfer of skills

50. (1) If the Agency and investor have, in terms of section 46, agreed on positions that may be filled on a temporary basis by foreign personnel by reason of lack of appropriate skills in the Namibian market, an investor must ensure that Namibians are trained to acquire relevant skills to assume those positions within the designated period or a period agreed on in the performance agreement.

(2) An investor must train Namibians to fill the positions occupied by foreign personnel on the basis of work integrated learning, such as one apprenticeship for each position held by a foreign person, unless otherwise agreed and specified in the performance agreement.

PART 9

DISPUTE SETTLEMENT

Grievances Resolution Committee

51. (1) As part of its investor aftercare function as contemplated in section 39(2), the Minister must establish the Grievances Resolution Committee which provides post-investment, grievances and dispute-settlement services for the State and investors in Namibia in terms of section 52.

(2) The Grievances Resolution Committee must use the insights from the services referred to in subsection (1) to provide input to the Minister, sectoral minister, Agency or any other policy maker to make regulatory adjustments and reforms to make Namibia a more attractive environment for investment.

(3) The Grievances Resolution Committee must –

(a) hear and resolve complaints or grievances by investors or the State in the prescribed manner;

(b) facilitate the resolution of disputes between investors and the State in terms of section 52.

(4) The Grievances Resolution Committee consists of not less than five and not more than nine members.

(5) The Grievances Resolution Committee is chaired by a senior official of the Agency who is designated by the Minister to carry out this role on a full or part-time basis, with expertise in investment law and mediation.

(6) The Minister must appoint other members of the Grievances Resolution Committee who may be staff members of the Agency or any other persons who may include experienced mediators and arbitrators, and persons who have knowledge and experience in investment matters.

(7) The Grievances Resolution Committee must act impartially and no person or official may influence or interfere with the performance of the functions of the Grievances Resolution Committee.

(8) A member of the Grievances Resolution Committee is entitled to be paid out of the funds of the Agency, such remuneration and allowances for specific services rendered to the Grievances Resolution Committee in that capacity, as the Minister may determine in respect of the chairperson and other members.

(9) The remuneration and allowances referred to in subsection (8) are payable on the basis of the actual work done and time spent on a particular matter brought before the Grievances Resolution Committee, and not on the basis of a fixed fee paid on a regular basis.

Resolution of disputes by Grievances Resolution Committee

52. (1) In the event of a dispute arising between the State and an investor, the investor must, as a matter of first recourse, notify the Grievances Resolution Committee in writing, seeking its assistance for the resolution of the dispute.

(2) The Grievances Resolution Committee on request of the investor or the State and if appropriate, may –

(a) where the parties agree, appoint a mediator or mediation panel to mediate any dispute contemplated in subsection (1); or

(b) where there is no agreement between the parties, as contemplated in paragraph (a), request the Judge President of the High Court or a judge of that court designated by the Judge President, to appoint a mediator or mediation panel to mediate any dispute contemplated in subsection (1).

(3) Either of the parties to a dispute contemplated in subsection (1) may choose to approach a competent court in Namibia directly without exhausting the avenue provided for in subsection (2) under the following circumstances:

(b) as an interim or provisional measure if the delay in resolving the dispute through the Grievances Resolution Committee would cause or is likely to cause prejudice to either party's interests; or

(c) if the dispute remains unresolved 90 days after the date of notification to the Grievances Resolution Committee.

(4) If the mediation process contemplated in subsection (2) is not successful, either party to the dispute may refer the dispute to any competent court in Namibia.

(5) Nothing in this Act impedes the courts from seeking to pursue alternative forms of dispute settlement employed by the courts to encourage the resolution of disputes.

(6) Nothing contained in this Act prevents the parties to a dispute from referring the dispute to arbitration as provided for in a performance agreement or according to an arbitration agreement between the State and an investor that has been agreed to or may be agreed to pursuant to other legislation permitting such arbitration.

(7) For the purposes of subsection (6) "arbitration agreement" means a written agreement providing for the reference to arbitration of any existing dispute or any future dispute relating to a matter specified in the agreement subject to any applicable law.

PART 10
GENERAL PROVISIONS

National security

53. (1) Despite any other provision of this Act to the contrary and subject to consultation with the Head of the Namibian Central Intelligence Service referred to in Article 120A of the Namibian Constitution, the Minister may further prescribe and regulate investments in a manner necessary to maintain –

(a) national security and international peace; and

(b) any obligations arising from the obligations of Namibia as a member of the United Nations Organisation concerning international peace and security.

Contraventions and offences

54. (1) An investor commits a contravention, if the investor –

(a) undertakes, establishes or operates an investment in a manner contrary to sections 33(1) and (3);

(b) invests in a sector in which such investment is not permitted according to the reservations made in terms of section 30;

(c) without the approval of the Minister or sectoral minister, changes the nature of the investment in a manner that makes it different from the approved investment;

(d) fails to comply with the requirement to cumulate investments into a singular investment for the purposes of this Act when so required; or

(e) is, despite any other law to the contrary, in material breach of any conditions agreed with the Minister in relation to the establishment or operation of investment.

(2) An investor commits a contravention, if the investor transfers any investment, licence, permit, authorisation or concession owned by the investor to another investor or person in contravention of section 33(3).

(3) A investor commits an offence, if the person submits information which he or she –

(a) knows to be false, misleading or fraudulent; or

(b) does not believe to be true,

in relation to any matter required by or under this Act.

(4) A investor convicted of an offence under subsection (3) on conviction is liable to a fine not exceeding N$50 000 or to imprisonment for a period not exceeding five years or to both such fine and imprisonment.

Opportunity to comply with law

55. (1) If the Minister has reason to believe that an investor has committed a contravention as contemplated in section 54(1) or (2) the Minister may, where appropriate –

(a) notify the investor of the reasons for such belief that a contravention has been committed; and

(b) provide the investor an opportunity to implement corrective measures to ensure compliance.

(2) If an investor has agreed to implement corrective measures as contemplated in subsection (1) the investor must implement the corrective measures concerned within a period agreed on with the Minister .

(3) If the Minister is of the opinion that an effort has been made in good faith to ensure compliance within the period referred to in subsection (2) the Minister may delay any further enforcement of any action contemplated in section 56.

(4) If the Minister is of the opinion that an investor has failed in bad faith to implement or comply with the corrective measures, the Minister may take the enforcement actions set out in section 56 against the investor.

Action to be taken against investor or investment for contraventions

56. (1) If the Minister is of the opinion that an investor has committed a contravention as contemplated in section 54(1) or (2) or has refused or failed to take corrective measures under section 55, the Minister may, subject to subsection (2) –

(a) in writing order the suspension, withdrawal or cancellation of the approval of the investment issued under this Act;

(b) where appropriate, notify the sectoral minister, of the contravention;

(c) direct the Agency to deregister the investor or investment; or

(d) direct the investor or investment to cease operations until the suspension, withdrawal or cancellation is lifted or until the contravention is remedied.

(2) If the Minister intends to make an order under subsection (1) the Minister must –

(a) give notice in writing of the intended action to the investor or investment concerned and to any other person who in the opinion of the Minister is likely to have an interest in the matter; and

(b) call on the investor, investment or person concerned to submit to the Minister, within 30 business days after receipt of the notice, in writing any representation which they may wish to make regarding the intended action.

(3) Apart from any suspension, withdrawal or cancellation of approval under this section the Minister may apply to the High Court by way of a notice of motion for an order that the investor pay an administrative fine as a result of the commission of the offence.

(4) The Minister must in his or her application contemplated in subsection (3) submit all evidence to the High Court which supports the order contemplated in that subsection.

(5) If the High Court is of the opinion that an investor has committed a contravention contemplated in section 54, the court may impose an administrative fine that does not exceed the full value of the economic benefits that have accrued to the investor as a result of the commission of the contravention.

(6) When imposing an administrative fine as contemplated in subsection (5) the rules of the High Court apply and the court may issue any further directive in respect

of the application and the administrative fine so imposed with reference to the objectives of this Act.

(7) If the High Court imposes an administrative fine under subsection (3) the fine is –

(a) payable to the Ministry for the benefit of the State Revenue Fund;

(b) regarded as a debt due to the State; and

(c) recoverable in a court of law in the case of non-payment.

(8) If the contravention concerned is also an offence under any other law, the fine imposed under subsection (5) is in addition to such other applicable penalties in such other law.

(9) An investor who fails to comply with a directive issued under section 56(1)(d) commits an offence and on conviction is liable to a fine not exceeding N$50 000 or imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

Appeal to High Court

57. (1) An investor may, subject to section 55, appeal to the High Court against any suspension, withdrawal or cancellation contemplated in section 56 on the grounds that –

(a) no contravention has been committed;

(b) the contraventions so committed have no material impact on the issuance of the approval of the investment contemplated in this Act; and

(c) the intended suspension, withdrawal or cancellation is manifestly excessive given the nature of the contravention.

(2) A notice of appeal relating to an appeal in terms of subsection (1) must be lodged, in the prescribed manner, with the registrar of the High Court within a period of 30 days after the date upon which the suspension, withdrawal or cancellation appealed against was ordered.

(3) The High Court may allow, on good cause shown, an appeal to be lodged after the expiry of the period of 30 days specified in subsection (2).

(4) An appeal under this section must, subject to necessary changes that may be required by the context, be conducted in accordance with the rules of the High Court regulating civil proceedings in an appeal from a decision of a magistrates' court to that court.

(5) The High Court may –

(a) request the Minister in writing to furnish it with such documents or particulars as it may require;

(b) refer the matter to the Minister for further consideration;

(c) allow or dismiss an appeal lodged in terms of this section;

(d) make an order reversing or amending the suspension, withdrawal or cancellation appealed against, if it is of the opinion that the Minister has not acted in accordance with this Act;

(e) make an order relating to the payment of costs; or

(f) make such other order as it may be considered appropriate.

Delegation of powers

58. (1) The Minister may in writing assign any function or delegate any power which is vested with the Minister, except the power to make regulations, the power to issue notices in the *Gazette,* a power which relates to policy formulation or the power to grant an application for an exemption –

(a) to the Executive Director of the Ministry; or

(b) to the Agency.

(2) (2) Anything done or omitted to be done by the Executive Director of the Ministry or the Agency in the exercise of any power delegated or the performance of any function or duty assigned under subsection (1) must be considered to have been done or omitted to have been done by the Minister, as applicable.

(3) The Minister, –

(a) is not divested of a power delegated or a function assigned under subsection (1);

(b) may, without prejudice of a right, vary or set aside a decision made under the power so delegated, or perform a function so assigned; and

(c) may at any time and in writing, withdraw the delegation of a power or the assignment of a function.

Cooperation with other institutions or organisations

59. (1) The Agency may –

(a) enter into an arrangement or memorandum of understanding with any other institution or organisation within Namibia; or

(b) with the prior written approval of the Minister, enter into an arrangement or agreement with any other institution or organisation outside Namibia, that performs functions that are similar to those of the Agency, that has objects that are similar to those of the Agency, that performs functions related to investment promotion and facilitation, or that advance the achievement of the objectives of this Act.

(2) An arrangement or agreement referred to in subsection (1) may provide for –

(a) the sharing of information between the Agency and the institution or organisation relating to persons that fall under their respective jurisdictions or on any matter that falls within the ambit of the functions or powers of the respective parties;

(b) the confidentiality relating to information referred to in paragraphs (a); and

(c) any other matter which the parties may consider of importance relating to investment promotion and facilitation.

Exemptions

60. (1) The Minister, after consultation with Cabinet, may prescribe the manner in which an investor or investment may be exempted from any provision of this Act.

(2) An investor or investment who wishes to be exempted from any provision of this Act may in the prescribed form and manner apply for exemption to the Minister who must consider and decide on the application, taking into account whether –

(a) the granting of the exemption is likely to impact negatively on the interests of the general public;

(b) the granting of the exemption is likely to impact negatively or positively on investors or investments;

(c) the granting of the exemption is likely to benefit one section of investors or investments to the detriment of another; and

(d) the exemption would not defeat the objects of this Act.

(3) The Minister may, after consultation with the Agency, within a prescribed period –

(a) grant the exemption on such conditions and for such period specified by the Minister;

(b) refuse the application and give written reasons for the refusal; or

(c) refer the application back to the applicant for further clarification.

(4) If the Minister grants the exemption, the Agency must publish the decision in the prescribed manner.

(5) Any person may at any time in writing request the Minister to review any exemption granted in terms of this section.

(6) The Minister must instruct the person requesting the review to notify the Agency as well as any other person specified by the Minister, for the account of the person requesting that review, and to submit any comments received to the Minister.

(7) The Minister, after taking into the comments of the Agency and the person requesting the review, may re-consider his or her decision to grant the application for exemption.

(8) The Minister may on reasonable grounds amend, suspend or withdraw an exemption granted in terms of this section.

Preservation of secrecy

61. (1) An investor or investment referred to in subsection (2) may not disclose to any person information relating to the affairs of the Agency or of any other person, acquired in the performance of duties or the exercise of powers under this Act, except –

(a) for the purpose of the exercise of powers or the performance of duties under this Act; or

(b) when required to disclose that information before a court or under any law.

(2) The persons to whom subsection (1) apply are –

(a) a member of the Board;

(b) the chief executive officer or any other staff member of the Agency;

(c) a former member of the Board, a former chief executive officer or staff member of the Agency; and

any other person performing a function or exercising a power that he or she is lawfully required or requested to perform or exercise in terms of this Act.

(3) Despite subsection (1), the Agency may share information concerning any matter dealt with under this Act with the Minister and with all other entities, whether inside Namibia or elsewhere, responsible for the promotion and facilitation of investment.

(4) Any person who contravenes or fails to comply with subsection (1) commits an offence and is liable on conviction to a fine of N$50 000 or to imprisonment for a period not exceeding five years or to both such fine and imprisonment.

Limitation of liability

62. (1) The Minister or any person referred to in subsection (2) is not personally liable in respect of anything done or omitted to be done in good faith and without gross negligence in the exercise of any power or the performance of any duty under this Act.

(2) The persons to whom subsection (1) applies are –

(a) a member of the Board;

(b) the chief executive officer or any other staff member of the Agency; and

any other person performing a function or exercising a power that he or she is lawfully required or requested to perform or exercise in terms of this Act.

Regulations

63. (1) The Minister may make regulations relating to –

(a) the form of any application, notice and other document required for the purposes of this Act and the manner for making such application;

(b) any matter relating to the functions and powers of the Agency under this Act;

(c) any fees to be paid for services provided under this Act;

(d) the facilitation of Namibian investment in priority economic sectors;

(e) the requirements that must be met by Namibian and foreign investors, which may differ, that seek approval of investment in designated

economic sectors, or business activities or classified investments pursuant to sections 30;

(d) the criteria for registration of investors and investments and other matters pertaining to such registration;

(f) the provision of incentives and support mechanisms, in line with section 6(1)(c), to investors and the criteria to qualify for such incentives;

(g) any matter which in terms of this Act is required or permitted to be prescribed; and

(h) generally any matter in respect of which the Minister considers it necessary or expedient to prescribe in order to achieve the objectives of this Act, but not inconsistent with this Act.

Repeal of laws

64. The Foreign Investment Act, 1990 (Act No. 27 of 1990), the Foreign Investment Amendment Act, 1993 (Act No. 24 of 1993) and the Namibia Investment Promotion Act, 2016 (Act No. 9 of 2016) are repealed.

Savings and transitional provisions

65. (1) Despite the repeal of the Foreign Investment Act, 1990 (Act No. 27 of 1990), any Certificate of Status Investment issued under that Act and in force at the date of commencement of this Act continues to be in force as if it has been issued under this Act and may not be prejudiced or limited or otherwise negatively affected by this Act.

(2) A Certificate of Status Investment contemplated in subsection (1) ceases to be of effect at the earlier of its expiry or six months after the commencement of this Act, unless the Minister, on the recommendation of the Agency, and the investor agree to its renewal on terms consistent with this Act.

(3) A holder of a Certificate of Status Investment, issued before the commencement of this Act who wishes to continue with the investment must apply for a certificate of approval of such investment in terms of this Act within a period of 36 months after the commencement of this Act.

(4) An investor who, as contemplated in section 32, lawfully invested in an economic sector or business activity before the sector or activity has been designated under section 30 must apply for a certificate of approval of such investment in terms of this Act within a period of 36 months after the commencement of this Act.

(5) Anything done, including any subordinate legislation or other measures, under a provision of the repealed Foreign Investment Act, 1990 (Act No. 27 of 1990), that could have been done under this Act is deemed where applicable to have been done under the corresponding provision of this Act.

(6) The juristic person known as the Namibia Investment Promotion and Development Board (Registration Number: 21/2020/0929), registered as an organisation not for gain, under section 21 of the Companies Act, 2004 (Act No. 28 of 2004), must, on a date determined by the Minister after the date of commencement of this Act be dissolved in terms of the Companies Act.

(7) On the dissolution referred to in subsection (6) –

(a) all assets, liabilities, rights and obligations of the Namibia Investment Promotion and Development Board are deemed to have been transferred to or vested in the Agency;

(b) any person employed by the Namibia Investment Promotion and Development Board, including the chief executive officer is deemed to be employed by the Agency on same terms and conditions of service applicable to such person at the Namibia Investment Promotion and Development Board at the date of transfer of service; and

(c) an employee referred to in paragraph (b) is deemed, for the purposes of the Income Tax Act, 1981 (Act 24 of 1981), not to have changed employers.

(8) For the purposes of subsection (7)(a) a certificate issued by the Minister in which the assets, liabilities, rights and obligations of the Namibia Investment Promotion and Development Board are listed is on presentation to a registrar of deeds or other officer charged with the registration of assets, liabilities, rights and obligations sufficient proof that those assets, liabilities, rights and obligations have been transferred to or vested in the Agency and the registrar or other officer must make the necessary entries or endorsements in the records of his or her office free of charge.

(9) On issuing the certificate referred to in subsection (8) the Minister must publish such certificate in the *Gazette* and in such other manner as the Minister considers appropriate.

Short title and commencement

66. (1) This Act is called the Investment Promotion Act, 2025 and commences on a date determined by the Minister by notice in the *Gazette*.

(2) The Minister may determine different dates under subsection (1) in respect of different sections of this Act.

GOVERNMENT NOTICE

MINISTRY OF INTERNATIONAL RELATIONS AND TRADE

No. 2026

REGULATIONS IN TERMS OF THE INVESTMENT PROMOTION ACT, 2026

The Minister responsible for investment and trade has under section (63) of the Investment Promotion Act, 2026 (Act No. ……. of 2026), and after consultation where necessary, made the regulations set out in the Schedule below.

Selma Ashipala-Musavyi, Minister of International Relations and Trade
Windhoek, 2026

SCHEDULE

ARRANGEMENT OF REGULATIONS

PART 1
INTRODUCTORY

1. Definitions

PART 2
DESIGNATION OF CATEGORIES OF ECONOMIC SECTORS OR BUSINESS ACTIVITIES

2. Designation of economic sector or business activity as reserved for the State
3. Designation of economic sectors or business activities as reserved for Namibians
4. Designation of economic sectors or business activities as reserved for joint venture partnership of at least 33,3 % or as per existing sector regulation requirement between Namibian investors and foreign investors

5. Designation of strategic economic sectors or business activities

PART 3

APPLICATION FOR APPROVAL OF INVESTMENT AND FOR CHANGE OF CONTROL OF INVESTMENT

7. Application by foreign investor for approval of investments in strategic economic sectors and business activities

8. Application by foreign investor and/or foreign owned investment for approval of change of control of investments in strategic economic sectors and business activities

9. Time period for approval or change of control of investments in strategic economic sectors and business activities

PART 4

APPEALS

10. Notice of appeal to High Court

11. Lodging of appeal

12. Referral of notice of appeal to judge

13. Date of hearing of appeal

14. Request for further particulars

15. Submission of main points of argument

16. Conducting of appeal by judge

17. Calling of witnesses and submission of documents, books or records

18. Decision by judge to conduct appeal on written submissions only

19. Findings of judge

20. Granting of extension and condonation of failure

21. Giving of notice and submission of particulars

PART 5

CRITERIA FOR INCENTIVISED INVESTMENTS

22. Investment incentives

23. Application for investment incentives

24. Consideration of application and issue of investment incentives certificate

25. Validity of investment incentives certificates

26. Renewal of investment incentives certificates

27. Register of investment incentives certificates

28. Notification of non-implementation of investment

29. Transfer of investment incentives certificate

30. Suspension and cancellation of investment incentives certificate

31. Performance agreements and incentives

SCHEDULE

PART 1

INTRODUCTORY

Definitions

1. In these regulations a word or expression defined in the Act bears that meaning and unless the context otherwise indicates -

"judge" means a judge of the High Court;

"registrar" means the registrar of the High Court;

"strategic economic sector or business activity" means an economic sector or business activity of national importance, which has significant impact on the development of

the country, in line with national development plans and objectives, as per the criteria in section 15; and

"the Act" means the Investment Promotion Act, 2026 (Act No. …… of 2026).

PART 2
DESIGNATION OF CATEGORIES OF ECONOMIC SECTORS OR BUSINESS ACTIVITIES

Designation of economic sector or business activity as reserved for the State

2. In recognition of 30 (1), economic sectors and business activities are designated as contemplated in subsection (2) and in accordance with the procedures set out in article 31 of the Act.

3. As contemplated in section 30(2)(a) of the Act the following economic sector and business activity is designated as reserved for the State -

(a) central banking.

Designation of economic sectors or business activities as reserved for Namibians

4. As contemplated in section 30(2)(b) of the Act the following economic sectors and business activities are designated for Namibians and entities owned by Namibians -

(a) retail sectors under the threshold of N$7,500,000.00:

(b) agriculture under the threshold of N$7,500,000,00, but excluding -

(i) crops grown in an enclosed or substantially enclosed facility;

(ii) those crops grown by hotel and restaurants for their own use, both of which remain unrestricted to investment; and

(iii) crop growing that are land-based and over the threshold of N$7,500,000.00:

(c) construction activities with capitalisation under the threshold of N$200 million:

(d) fisheries:
(i) fresh water fishing.

(e) mining:
(i) small-scale prospecting operations and small-scale mining operations as determined by the Minister of Industries, Mines and Energy.

(f) tourism:
(i) guesthouses and bed and breakfast (below the threshold of N$5,000,000.00)
(ii) camping grounds, recreational vehicle parks and trailer parks (all amounts).

(g) child day care service activities conducted on a profitable basis.

(h) transportation and storage:
(i) passenger land transport such as taxi operations and airport shuttles,
(ii) freight transport by road relating to the distribution of petroleum products,
(iii) warehousing and storage of petroleum products.

(i) hairdressing and other beauty treatment,

(j) renting and leasing of other machinery, equipment and tangible goods:
provided that if it is not available for use in the construction industry, it may only be imported for the duration of a project it is required for.

(k) customs clearance

Designation of economic sectors or business activities for joint venture partnership of at least 33,3 % or as per existing sector regulation requirement between Namibian investors and foreign investors

5. As contemplated in section 30(2)(c) of the Act the following economic sectors and business activities are reserved for joint venture partnership of at least 33,3% or as per existing sector regulation requirement between Namibian investors and foreign investors -

(a) marine fishing, subject to the granting of rights to harvest marine resources and the allocation of fishing quotas as per the Marine Resources Act (Act No. 27 of 2000), and its regulations and policy guidelines

(b) architectural and engineering activities and related technical consultancy

(c) activities of quantity surveyors

(d) forestry:
(i) silviculture and other forestry activities
(ii) logging

(e) tourism:
(i) lodges and hotels up to the threshold of N$200,000,000.00

Designation of strategic economic sectors or business activities

6. As contemplated in section 30 (2)(d) of the Act the following economic sectors and business activities are classified as strategic, which require the approval of the Minister in terms of section 33 -

(a) retail sectors that are above the threshold of N$ 300,000,000.00:

(b) mining, oil and gas

(c) crop growing over the threshold of N$7,500,000.00, but excluding

(i) crops grown in an enclosed or substantially enclosed facility; and

(ii) crops grown by hotel and restaurants for their own use, both of which remain unrestricted to investment.

(d) construction activities with capitalisation above the threshold of N$200,000,000.00

(e) tourism:

(i) lodges and hotels over the threshold of N$200,000,000.00

(f) marine and freshwater aquaculture

(g) education:

(i) pre-primary, primary education and general secondary education,

(ii) research, tertiary and vocational education.

PART 3
APPLICATION FOR APPROVAL OF INVESTMENT AND FOR CHANGE OF CONTROL OF INVESTMENT

Application by foreign investor for approval of investment

7. An application by a foreign investor for approval of an investment as contemplated in section 33 (1) of the Act must -

(a) be substantially in the form of Form 1 of Annexure 1;

(b) contain the particulars or information required therein; and

(c) be accompanied by -

(i) Identification document

(ii) project proposal

(iii) proof of funds

Application by foreign investor and/or foreign owned investment for approval of change of control of investment

8. An application by a foreign investor for approval of change of control of an investment as contemplated in section 33(3) of the Act must -

(a) be substantially in the form of Form 2 of Annexure 1;

(b) contain the particulars or information required therein; and

(c) be accompanied by -

(i) Identification document

(ii) valid permit, licenses, authorization or concessions of company to be acquired

(iii) proof of funds

(iv) proposed acquisition agreement

Time period for approval of investments in strategic economic sectors or business activities or change of control

9. (1) The Minister must, subject to subsections (2) to (6), make any decision contemplated in this Act within 90 business days after receipt of the application for approval or change of control of an investment.

(2) If after receipt of an application under this Act the Minister requires additional information in order to consider the application, the Minister may, within 60 business days after the date of receipt of the application, in writing request for such information from the applicant, in which case the time for making the decision as contemplated in subsection (1) runs from the date of receipt of the additional information.

(3) Subject to subsection (4), if the Minister is of the opinion that the period referred to in subsection (1) or (2) ought to be extended –

(a) to ensure a fully informed decision; or

(b) due to the complexity of the issues involved,

the Minister may extend by notice in writing to the applicant, before expiry of that period, the period concerned by a further period, not exceeding 90 business days, specified in the notice.

(4) Despite subsection (3), if the Minister is of the opinion, based on extraordinary circumstances, that a decision cannot be reached within the extended period contemplated in that subsection, the Minister may extend by notice in writing to the applicant, before expiry of that period, as an exceptional measure the period concerned by a maximum of 30 business days, but no further extensions are permitted.

(5) If, at the end of a decision-making period contemplated in -

(a) subsection (1), (2) or (3) the Minister has not yet made decided and the period concerned has not been extended; or

(b) subsection (4) the Minister has not yet made a decided,

it is deemed that the Minister has given approval in respect of the application concerned.

(6) Despite subsection (5), if a performance agreement is requested as contemplated in section (7), the Minister and the investor must make best efforts to enter into such an agreement in the timeframes set out subsections (1) to (4), and subsection (5) does not apply in these circumstances.

(7) An -

(a) approval of an investment proposal by the Minister under this Act only constitutes an approval to proceed with an investment if all other approvals,

permits or authorisations of any type under any other applicable law have been lawfully granted to the investor; and

(b) investor or investment may not commence with the establishment or operation of an investment until all the approvals, permits or authorisations of any type referred to in paragraph (a) are granted.

(8) The Minister may, after the applicant has been afforded the opportunity to be heard, suspend any decision-making period if there are changes to the investment proposal that do not materially alter the nature, size, location or scale of the proposal, and if the decision-making period is so suspended, it will continue to run on the date that all information pertaining to the changes is received by the Minister.

(9) The Minister may, after the applicant has been afforded the opportunity to be heard, suspend or annul a decision-making period if there are changes to a proposal which materially alter the nature, size, location or scale of the proposal.

(10) If the decision-making period under subsection (9) –

(a) is suspended, it will continue to run on the date that all information pertaining to the changes is received by the Minister;

(b) is annulled, the applicant may resubmit the application as a new proposal.

(11) If a document submitted in respect of an investment contains false or misleading information the Minister may, after the applicant has been afforded an opportunity to be heard, suspend or annul the decision-making process, and -

(a) if suspended, the decision-making period recommences when the corrected information is received;

(b) if annulled, the applicant may resubmit the application as a new proposal.

(12) If a new proposal is submitted under subregulation (10)(b) or (11)(b), the time period for a decision recommences on the date of submission of the new proposal.

PART 4

APPEALS

Notice of appeal to High Court

10. A notice of appeal contemplated in section 57(2) of the Act must be substantially in the form of Form 3 of Annexure 1.

Lodging of appeal

11. (1) A notice of appeal must be lodged with the registrar of the High Court concerned at his or her offices during normal office hours.

(2) The registrar or a member of the staff of the registrar must acknowledge receipt of the notice of appeal by signing and dating a copy of the notice, which copy must be handed to the person lodging the notice of appeal with the registrar.

Referral of notice of appeal to judge

12. The registrar must refer the notice of appeal to a judge by delivering to the judge –

(a) the notice of appeal lodged with the registrar as contemplated in regulation 11(1); and

(b) particulars relating to the suspension, withdrawal or cancellation appealed against, together with a copy of every document, book, record or thing submitted to the Minister relating to that suspension, withdrawal or cancellation.

Date of hearing of appeal

13. (1) The judge must determine a date and time on and at which the hearing of the appeal is to start and must accordingly notify the registrar in writing not less than 40 days before the date of the hearing so determined.

(2) The registrar must notify the appellant of the date and time of the hearing of the appeal determined under subregulation (1), not less than 30 days before the date so determined.

Request for further particulars

14. (1) The judge may request in writing, at any time after the receipt of the copies of the documents, books, records and things referred to in regulation 12 -

(a) the appellant to furnish the judge with further particulars relating to -

(i) any particulars submitted with or statement made in his or her notice of appeal lodged with the registrar;

(ii) his or her grounds for appeal;

(b) the respondent to furnish the judge with further particulars relating to the suspension, withdrawal or cancellation concerned.

(2) The appellant or the respondent must furnish the further particulars requested under subregulation (1) to the judge within a period of ten days after receipt of the request.

(3) The further particulars furnished as contemplated in subregulation (2) form part of the record of the appeal conducted by the judge.

Submission of main points of argument

15. (1) Not less than -

(a) 21 days before the date of the hearing of the appeal determined under regulation 13(1), the appellant must submit to the registrar and to the respondent one copy of a concise statement of the main points, without elaboration, which he or she intends to argue on appeal, including a list of the authorities to be presented in support of each of those arguments; and

(b) 15 days before the date determined for the hearing of the appeal referred to in paragraph (a), the respondent must submit to the registrar and to the appellant one copy of a concise statement of the reply of the respondent, without elaboration, to the main points of argument of the appellant contemplated in paragraph (a), and the main points, without elaboration, which he or she intends to argue on appeal, including a list of the authorities to be presented in support of each of those arguments.

(2) The registrar must deliver, not less than 12 days before the date determined under regulation 13(1) for the hearing of the appeal, a copy of each of the statements submitted to him or her in terms of subregulation (1) to the judge.

Conducting of appeal by judge

16. (1) In this regulation, and in regulations (17), (18) and (19) the -

(a) "appellant" includes a legal practitioner representing the appellant;

(b) "representative of the respondent" means a person appointed by the respondent for the purpose of representing the respondent at the hearing of the appeal, and includes a legal practitioner representing the respondent.

(2) The judge must preside at the hearing of an appeal as contemplated in section 33 of the Act and these regulations.

(3) The appellant may address the judge on the main points of argument submitted to the registrar in terms of regulation 15(1)(a).

(4) The representative of the respondent may address the judge on the respondent's reply and main points of argument submitted to the registrar and the appellant in terms of regulation 15(1)(b).

(5) Notwithstanding subregulations (3) and (4) the appellant or the representative of the respondent may address the judge with his or her consent on any matter relevant to the appeal, but not specified in the statements contemplated in regulation 15(1)(a) or (b).

(6) The representative of the respondent or the appellant may reply to the address of the appellant or the representative of the respondent made in terms of subregulation (5).

Calling of witnesses and submission of documents, books or records

17. (1) The judge may at any time during the hearing of the appeal -

(a) instruct the appellant or the respondent to call witnesses to give evidence before the judge on any issue relevant to the appeal concerned;

(b) allow, on the application by any party to the appeal, that party to call a witness or submit to the judge a copy of any document, book, record or thing not submitted to the Minister, if the judge is satisfied that -

(i) the party making the application was not aware, and could not reasonably have been aware, of the existence of that witness, document, book, record or thing at the time when the Minister ordered, the suspension, withdrawal or cancellation concerned; and

(ii) it would not be reasonable under the circumstances relating to the appeal to deny that party the opportunity to call that witness or submit that document, book, record or thing to the judge for consideration.

(2) If a party calls a witness to testify as contemplated in subregulation (1) -

(a) the other party and the judge may cross-examine that witness; and

(b) that witness is entitled to all the privileges that a witness giving evidence in the High Court of Namibia is entitled to.

Decision by judge to conduct appeal on written submissions only

18. (1) For the purposes of this regulation "written submission" means a written submission by a party as contemplated in subregulation (4).

(2) At any time after the receipt by the judge of the notice of appeal referred to him or her by the registrar under regulation 12, the judge may decide, notwithstanding regulations 15, 16 and 17, but subject to this regulation, to conduct the appeal on written submissions by the parties only, if the judge is satisfied that it is appropriate and fair to both parties in the circumstances of the case to so conduct the appeal.

(3) If the judge decides under subregulation (2) to conduct the appeal on written submissions by the parties only -

(a) he or she must determine a reasonable period of time within which the parties must lodge their written submissions with the him or her; and

(b) the registrar must inform the parties in writing -

(i) of the decision of the judge to conduct the appeal on written submissions only; and

(ii) the period of time determined under paragraph (a) within which the parties must lodge their written submissions.

(4) A written submission by a party to the judge contemplated in this regulation must -

(a) set out the arguments of that party relating to the appeal, with an elaboration on each one of those arguments, including a list of the authorities in support of the arguments;

(b) be lodged with the registrar within the period of time determined under subregulation (3)(a) for the lodging of the submissions.

(5) The registrar must deliver a copy of a written submission lodged with him or her by a party as contemplated in subregulation (4)(b) to the other party within a period of seven days after the receipt of the written submission.

(6) A party may lodge with the registrar a written reply to the written submission within a period of 14 days after receipt of the copy of the written submission delivered to him or her by the registrar as contemplated in subregulation (5).

(7) Within a period of three days after the expiry of the period of 14 days contemplated in subregulation (6) the registrar must deliver to the judge a copy of every written submission and of every reply to a written submission lodged with the registrar as contemplated in this regulation.

(8) The judge may conduct and take a decision on the appeal on the contents of the notice of appeal, minutes, documents, books, records and things delivered to him or her as contemplated in regulation 12, and the arguments raised in the submissions delivered as contemplated in subregulation (7), without requiring the parties to submit to him or her their main points of argument as contemplated in regulation 15 or to address the judge as contemplated in regulation 16.

Findings of judge

19. (1) After having conducted the appeal as contemplated in section 57 of the Act and these regulations the judge may make known his or her findings relating to the appeal or may postpone the announcement of those findings until a date and time determined by him or her.

(2) The judge must make known in writing -

(a) the findings of; and

(b) any orders made by,

him or her under section 57 of the Act and must submit a copy of the findings and orders to the registrar.

(3) The registrar must deliver a copy of the findings and orders contemplated in subregulation (2) to the appellant.

(4) When making an order as to the payment of costs under section 57(5)(e) of the Act the judge may award costs as contemplated in the fees that may be charged by legal practitioners as prescribed by the Rules of the High Court.

(5) The registrar judge must tax a bill of costs as contemplated in the Rules of the High Court with the necessary changes.

Granting of extension and condonation of failure

20. (1) Notwithstanding any provision of these regulations the judge may grant, on good cause shown and subject to such conditions as he or she may determine, to any of the parties to the appeal an extension of time for the lodging of any document in terms of, or condone any failure by a party to comply with, any of these regulations.

(2) The conditions determined by the judge as contemplated in subregulation (1) may include an order as to the payment of costs by the party who is granted an extension of time or whose failure is condoned.

Giving of notice and submission of particulars

21. Any notice or particulars that must be given or submitted as contemplated in these regulations -

(a) by or to the appellant, must be given or submitted by or to the appellant, or if he or she has appointed a legal practitioner to represent him or her, by or to that legal practitioner;

(b) by or to the respondent, must be given or submitted by or to the registrar, or if the respondent has appointed a legal practitioner to represent him or her, by or to that legal practitioner;

(c) to the judge, must be given or submitted to the registrar.

PART 5
CRITERIA FOR INCENTIVISED INVESTMENTS

22. Investment incentives

(1) The investment incentives scheme offers investment incentives for projects in qualifying sectors to be determined by the Minister in consultation with the relevant sectoral Minister or relevant office or agency.

(2) The Agency must assess and evaluate all applications for incentives for projects that fall within the investment incentives scheme and is empowered to issue certificates of investment incentives to successful applicants.

Application for investment incentives

23. (1) An investor who wishes to access incentives under the investment incentives scheme must apply for such incentives on a form supplied by the Agency and submit the application to the Agency.

(2) An application referred to in subregulation (1) must be accompanied by -

(a) a copy of business registration documents of the investor;

(b) an investor income statement;

(c) a tax clearance certificate;

(d) a list of employees registered with Social Security Commission and a good standing certificate;

(e) an investor registration certificate or letter from Agency;

(f) evidence of funds and proof that the investor has sufficient funds to make the investment;

(g) financial statements or any other documentation necessary to prove the credibility and capability of the investor and financial standing; and

(h) any other relevant document specific to the type of investment and sector in question.

(3) The Agency may refer an application referred to in subregulation (1) to the relevant public entity that has jurisdiction over the sector in which incentives are sought and the public entity may request for confirmation or additional reasonable information from the applicant in order to determine whether the applicant indeed qualifies for the respective incentives.

Consideration of application and issue of investment incentives certificate

24. (1) If after considering a complete application together with any input from the public entity the Agency is satisfied that the applicant meets the investment criteria the Agency must approve the application and issue a certificate of investment incentives in the form determined by the Centre to the successful applicant.

(2) The investment criteria referred to in subregulation (1) is constituted by the sector definition, and the minimum threshold required to benefit from the investment incentives scheme.

(3) The investment incentives certificate referred to in (1) above must be accompanied by a compliance certificate issued by the Agency.

Validity of investment incentives certificates

25. An investment incentives certificate is valid for a period five years from the date of issue.

Renewal of investment incentives certificates

26. (1) The holder of an investment incentives certificate may apply for renewal of the certificate before its expiry, and an application for renewal must be made on the form provided by the Agency.

(2) An application for renewal of an investment incentives certificate must be accompanied by an audit report that is in a form determined by the Agency which demonstrates that the investor has satisfied conditions set out in the compliance certificate.

Register of investment incentives certificates

27. (1) The Agency must in such form and manner that it considers appropriate maintain or cause to be maintained a register of -

(a) investment incentives certificates, including any conditions subject to which each investment incentives certificate is issued; and

(b) any amendments, suspensions or cancellations of investment incentives certificates.

(2) The register kept in terms of subsection (1) must be open for inspection by members of the public at all reasonable times at the offices of the Agency.

(3) The Agency must create and maintain an up-to-date website which, among other things, will enable members of the public to have access to the register kept in terms of subsection (1).

Notification of non-implementation of investment

28. (1) Where for any reason, an investor is unable to implement the investment described in his or her investment incentives certificate, he or she must notify the Agency of his or her inability to implement such investment, stating the reasons for the inability, within 30 working days of his or her becoming aware of the non-implementation of the investment.

(2) An investor must without delay inform the Agency of any material alteration in the information or particulars furnished by him or her when he or she applied for the investment incentives certificate to determine whether or not is necessary to re-evaluate the application.

Transfer of investment incentives certificate

29. (1) A holder of an investment incentives certificate may not, except with the prior approval of the Agency, assign, cede or otherwise transfer his or her investment incentives certificate to any other person.

(2) In the event that a holder of an investment incentives certificate wishes to assign, cede, or otherwise transfer the said certificate to another party, the recipient must submit an application with detailed motivation for such request.

Suspension and cancellation of investment incentives certificate

30. (1) The Minister or the Agency, depending on who approved the respective investment incentives certificate, may suspend or cancel any investment incentives certificate where the investor -

(a) obtained the certificate on the basis of fraud or a misrepresentation of a material nature or any false or misleading statement;

(b) assigns, cedes or otherwise transfers the certificate to another person without the prior approval of the Agency as applicable; or

(c) fails to comply with any provision of the Act or these regulations.

(2) The Minister or the Agency, as applicable, must, before taking any action in terms of subsection (1), notify the investor of its or his or her intention to suspend or cancel the investment incentives certificate concerned and the reasons for the proposed suspension or cancellation, and call upon the investor to show cause, within such reasonable period as may be specified in the notice, why his or her investment incentives certificate should not be suspended or cancelled.

(3) If, at the expiration of the period specified in the notice given in terms of subsection (2), and after considering any representations made by the investor, the Minister or the Agency, as applicable, is satisfied for any reason specified in subsection (1) that the investment incentives certificate concerned should be suspended or cancelled, the Minister or Agency may, by notice in writing to the applicant -

(a) suspend or cancel the certificate; or

(b) take such other action as it considers appropriate, including suspending or cancelling any incentives to which the investor may be entitled in terms of this Act.

(4) The provisions of sub regulations (2) and (3) apply to a certificate suspended, amended or cancelled.

Performance agreements and incentives

31. (1) A performance agreement, will be signed between the Minister or sectoral Minister and the investor, according to section (7) of the Act.

(2) There is established a committee whose main role is to advise on matters related to the planning, design, implementation and monitoring and evaluation of performance agreements.

(3) A performance agreement must contain key performance indicators to be measured.

(4) Incentives under the performance agreement are offered for a period of five years from the date of award, and are renewable in multiples of five years upon successful consideration of the Agency in line with the key performance indicators.

(5) Investments benefiting from incentives under performance agreements are subject to an annual performance audit to ensure compliance.

(6) Monitoring and evaluation of the investments under a performance agreement will be periodically undertaken to ensure that performance in relation to undertakings made by the investor and those by the Government are fulfilled.

(7) The performance agreement must contain clawback and exit clause provisions in the event where the investor persistently under-performs or fails to meet the requirements in the performance agreement.

ANNEXURE 1: FORMS

FORM 1

REPUBLIC OF NAMIBIA
MINISTRY OF INTERNATIONAL RELATIONS AND TRADE
APPLICATION BY FOREIGN INVESTOR FOR APPROVAL OF INVESTMENT
INVESTMENT PROMOTION ACT, 2026
(Section 33)

Personal

1. Name of investor (if more than one, please itemize)
2. Nationality and identity or passport number
3. Name of legal entity
4. Work address

5. Residential address

6. Telephone

7. Mobile/cell number

8. Internet address (URL — if available)

9. If acting on behalf of investor, state personal **Name** and **address**
(if more than one, please itemize)

Company or business applied for

10. Name of legal entity

11. Type of legal entity
(please specify private limited liability, public limited liability, close corporation etc)

12. Brief description of the investment or business activities of (e.g. manufacturing, retail, mining, tourism etc.)
13. Proposed location
14. Number of people to be employed (please specify number of locals and foreigners)

Investment value

15. a) Give the total value of the proposed investment:
    N$

    AND

    b) Indicate the sources of funds for the proposed investment (please specify local equity, foreign equity etc)
    N$

    Declaration
    I / We hereby confirm that the answers given on this Form are true and correct to the best of my / our knowledge.
    I / We would be pleased to provide you with any further information you may require.

    Date

    Signature of Investor

    Name and Title

Please send this form to:
The Deputy Executive Director
Namibia Investment Promotion Agency
Private Bag 13347
Windhoek
Namibia

ANNEXURE 1: FORMS



FORM 2

REPUBLIC OF NAMIBIA
MINISTRY OF INTERNATIONAL RELATIONS AND TRADE

APPLICATION BY FOREIGN INVESTOR FOR APPROVAL OF CHANGE OF CONTROL OF INVESTMENT
INVESTMENT PROMOTION ACT, 2025
(Section 33)

Personal

1. Name of investor (if more than one, please itemize)
2. Nationality and identity or passport number
3. Name of legal entity
4. Work address

5. Residential address



6. Telephone



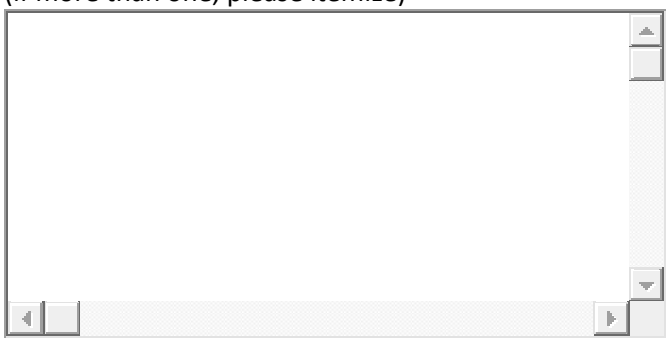
7. Mobile/cell number



8. Internet address (URL — if available)



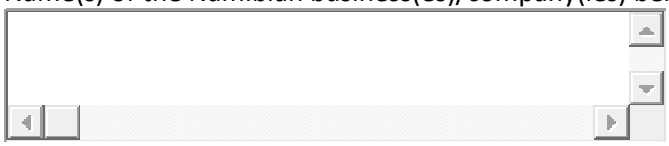
9. If acting on behalf of investor or legal entity above, state personal **Name** and **address** (if more than one, please itemize)



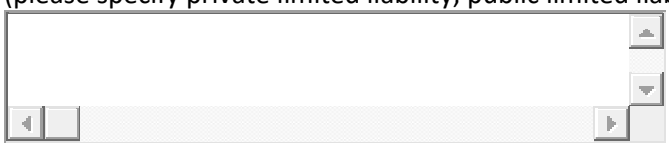
Namibian company or business to be acquired

Note: provide the information for each entity acquired.

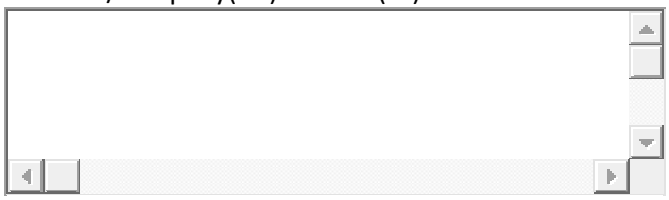
10. Name(s) of the Namibian business(es)/company(ies) being acquired



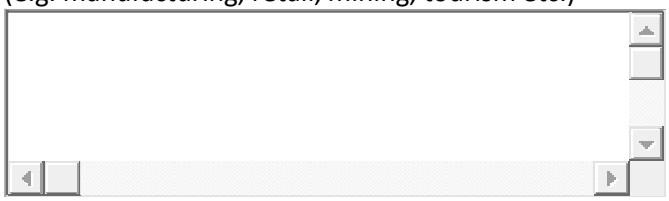
11. Type of legal entity acquired
(please specify private limited liability, public limited liability, close corporation etc)



12. Business/company(ies) address(es) of the Namibian business(es)/company(ies)



13. Brief description of the business activities of the Namibian business(es)/company(ies)
(e.g. manufacturing, retail, mining, tourism etc.)



14. Number of people employed by Namibian business(es)/company(ies)

Investment value

15. a) Give the value of all assets of the entity carrying on the Namibian business/company and of all other entities in Namibian control of which is being acquired in this transaction, or if purchasing assets, give the total value of all assets of the Namibian business/company being acquired:

N$

AND

b) If the acquisition of the Namibian business is the result of the change of control of a corporation incorporated outside Namibia, give the total value of the assets of all entities both in Namibia and outside Namibia, the control of which is being acquired in this transaction

N$

The value of assets is the value shown in the applicable financial statements, expressed in Namibian dollars

Declaration

I / We hereby confirm that the answers given on this Form are true and correct to the best of my / our knowledge.
I / We would be pleased to provide you with any further information you may require.

Date

Signature of Investor

Name and Title



Please send this form to:
The Deputy Executive Director
Namibia Investment Promotion Agency
Private Bag 13347
Windhoek
Namibia

Form 3

NOTICE OF APPEAL TO THE HIGH COURT
(Section 57, Regulation 10)

In the appeal between ……..
(Appellant)

and

The Minister Responsible for Investment
Respondent

TO:

The Registrar
High Court of Namibia
WINDHOEK/OSHAKATI

As contemplated in section 33(1) of the Investment Promotion Act, 2025, the Appellant appeals to the -

HIGH COURT OF NAMIBIA

against the suspension, cancellation or withdrawal by the Minister contemplated in section 31(1) of the Investment Promotion Act, 2025, of which particulars appear on the second page of this Form. #

Dated at …… this …….. day of …….. 20 …… .

_____
Signature of Appellant
or of the person appointed to represent him or her.
Physical address of Appellant or of person appointed to represent him or her for service of notices and documents: ……...
.....
.....
.....
(This address for service must be located within a distance of ten kilometres from the office of the Registrar)

Full names and surname, identity number and profession of the Appellant:
.....
.....
.....

Received this Notice of Appeal:

_____Signature of Registrar
For and on behalf of the High Court.
Date: _____ Time: _____

PARTICULARS OF SUSPENSION, CANCELLATION OR WITHDRAWAL BY THE MINISTER CONTEMPLATED IN SECTION 31 APPEALED AGAINST: #

#(a) Date of suspension, cancellation or withdrawal concerned, if applicable:

1. .....
2 .....
3 .....

#(b) Particulars of suspension, cancellation or withdrawal concerned:

1. .....
.....
.....

2. .....
.....
.....

3. .....
.....
.....

(If this space is insufficient, add a schedule setting out particulars.)

GROUNDS THAT APPEAL IS BASED ON:

Set out in full the grounds that the appeal is based on:
.....
.....
.....
.....
.....
.....
.....
.....
.....
.....
.....
.....
.....
.....
.....
.....
.....
.....
.....

(If this space is insufficient, add a schedule setting out the particulars.)