

The Draft Namibia Investment Promotion Bill
Red Tape Rather Than Red Carpet

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The Government's draft Namibia Investment Promotion Bill is designed to allow greater government influence and control over investment in the economy by designating certain economic sectors and business activities as reserved for the State, reserved for Namibians, reserved for joint venture partnerships or designated strategic, in which case investors are likely to have to sign performance agreements with Government. The overall result is likely to be a huge new regulatory agency in the shape of the Namibia Investment Promotion Agency and significant amounts of red tape, discretion and uncertainty which will only discourage the private sector investment Namibia so badly needs.

On Sunday, 23 November, the Ministry of International Relations and Trade released the latest draft of its Namibia Investment Promotion Bill (NIP Bill) for consultation and invited responses from all interested parties, especially the private sector, to attend a series of public consultation meetings in each regional capital of the country which would take place between 28 November and 9 December. Those unable to attend these sessions were encouraged to submit their inputs in writing on or before Friday, 12 December 2025, at 12:00.

Background

It is worth noting important background information to the current exercise:

- Article 99 of Namibia's Constitution stipulates that Government should encourage foreign investment:

  Article 99 Foreign Investments

  Foreign investments shall be encouraged within Namibia subject to the provisions of an Investment Code to be adopted by Parliament.

- Since independence, the Foreign Investment Act (FIA) of 1990 (Act 27 of 1990) as amended in 1993 (Act 24 of 1993) has formed the cornerstone of Namibia's policy to encourage foreign investment.

- The Minister of Trade and Industry has invoked the power of Section 3 (4) of the Foreign Investment Act only once. In 2010, regulations were published in the Government Gazette prohibiting foreigners from becoming engaged in a range of small businesses including retail businesses, taxi and shuttle services, and hairdressing and beauty treatment (Notice 75). It is not known if this has ever been enforced or monitored.

- Parliament passed the Namibia Investment Promotion Act (NIPA) in 2016 (Act 9 of 2016) which was designed to replace the Foreign Investment Act of 1990. However, the new Act was never implemented.

- Government continued to issue Certificates of Status Investment (CSIs) to investors, which were legal instruments created by the FIA.

- Government has consulted on multiple drafts of a new Namibia Investment Promotion and Facilitation Act (NIPFA) since 2016.

- After the investment conference which took place on 31 July - 01 August 2019 under the theme "Economic Revival for Inclusive Growth: Strengthening the Namibian House", Government stated that it had finalised revisions to NIPA and that the Bill was to be tabled to the Cabinet Committee on Legislation and thereafter Cabinet before proceeding to Parliament. It stated that the Act could be operational "by the end of this financial year" (FY2019/20).

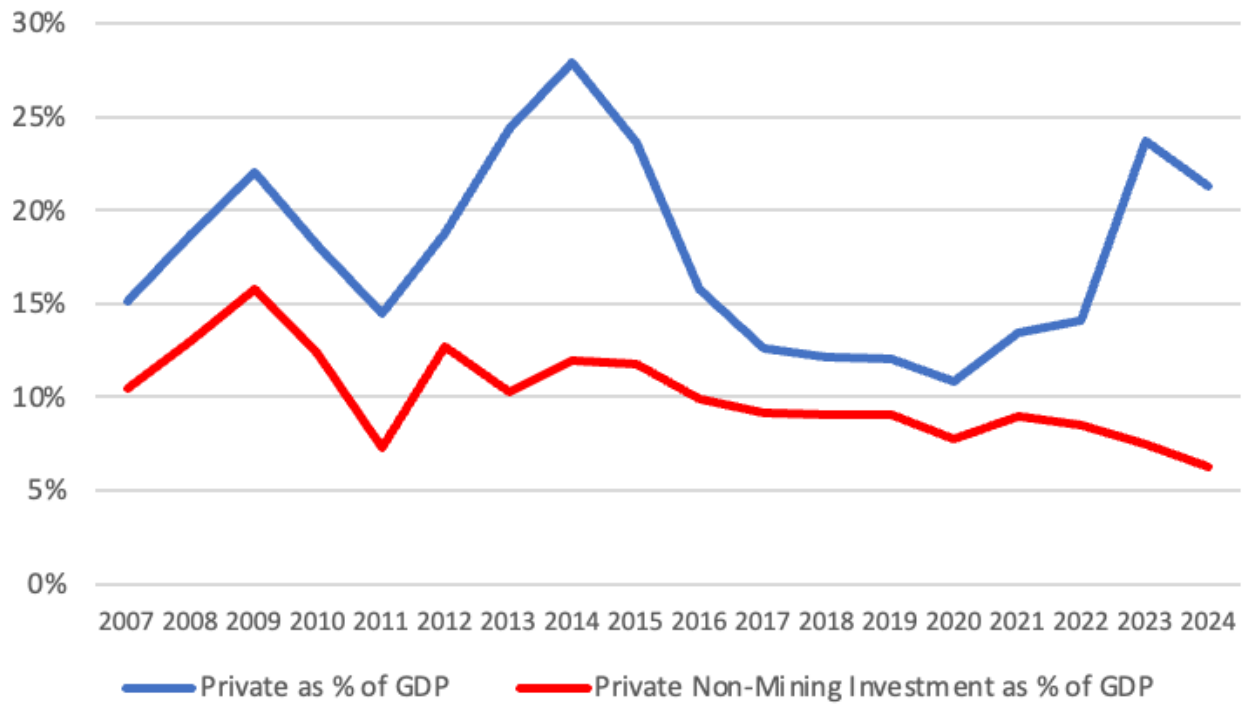
- The report of the High-Level Panel on the Namibian Economy (HLPNE) which was appointed in March 2019 and which reported in February 2020 made no mention of either the FIA of 1990 or the NIPA of 2016.

- In March 2020, President Geingob announced the creation of a Namibia Investment Promotion and Development Board (NIPDB) within the Presidency to take the place of the Namibia Investment Centre (NIC). A CEO for the NIPDB was appointed from January 2021 and resources were allocated to the new agency in the national budget of FY2021/22.

- Another draft Namibia Investment Promotion and Facilitation Bill (NIPF Bill) was released dated 12 December 2022 and formed the basis for consultations in 2023.

- During the entire period in which uncertainty prevailed over Namibia's legal framework for investment and FDI, private sector investment outside of the mining and oil and gas sectors experienced a steady decline as a percentage of GDP as shown in Chart 1.

Chart 1: Private and Private Non-Mining and Oil and Gas Investment as % of GDP



Source: National Accounts, BoN & IJG Securities

- The SWAPO Manifesto Implementation Plan (SMIP) promised to "expedite the revision and enactment" of the Investment Promotion and Facilitation Bill 2021 "in a manner that will promote investment, enhance sustainable economic development and reduce unemployment" (page 48).

- As the year 2025 ends and 2026 begins, Namibia is approaching the tenth anniversary of a period of uncertainty surrounding THE key piece of legislation affecting investment and FDI.

The New Namibia Investment Promotion Bill

The preamble to the new draft Bill states its aim is 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."*

As will become clear below, the Bill is much more about administration and regulation than simply promotion.

The Bill is divided into ten Parts:

1. Introductory Provisions
2. Administration of Act
3. Namibia Investment Promotion Agency
4. Designation of Economic Sectors and Business Activities
5. Approval of Investments in Strategic Economic Sectors and Business Activities
6. Administration of Investments
7. Investor Rights and Incentives
8. Investor Obligations
9. Dispute Settlement
10. General Provisions

This report will focus on the main issues of concern for investors rather than go through the draft Bill section by section.

Part 1: Introductory Provisions

Throughout the draft, the term "Minister" is used to refer to the Minister responsible for investments. As things currently stand, this is the Minister of International Relations and Trade.

Noteworthy is that the list of definitions in Part 1 does not include the term "Previously Disadvantaged Namibian (PDN)" while the term "Namibian" includes "a natural person who is a citizen of Namibia" and also "a natural person who is a permanent resident of Namibia".

Part 2: Administration of Act

The draft Bill provides for performance agreements for strategic investments to be signed between the Minister and investors. Part 2 Section 7 states "*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) [a strategic sector] to agree on matters related to the contribution of the investment to the development objectives of Namibia*." It is not clear how rigid these performance agreements will be and what happens when circumstances change. What penalties will be levied if performance agreements are not adhered to?

Part 3: Namibia Investment Promotion Agency (NIPA)

The draft Bill envisages the creation of a new Namibia Investment Promotion Agency (NIPA) whose main function is to "*implement and coordinate the implementation of this Act*". The NIPA will ensure compliance with the Act and also play an advisory role "*on matters relating to investment policy and strategy for Namibia and legislative reform*" as well as "propose investor and investment incentives", "*promote special economic arrangements*", and "*facilitate collaborative roles between the Government and private sector*" Section 9 (1).

NIPA is to be overseen by a board of five to seven board members who are Namibian citizens and resident in Namibia "*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*" appointed by the Minister for terms of five years (renewable once) and meeting once a quarter. Salary structures of staff members are to be in accordance with PEGA. A majority of this Part - Section 9 (1) to Section 29 - is devoted to the corporate governance of NIPA. This can be viewed as an implicit criticism of the NIPDB where corporate governance was weak. Board members have to enter into performance agreements with the Minister and the CEO must enter into a performance agreement with the Board. The CEO serves for a term of five years and may be reappointed for one more term. These sections are relatively uncontroversial, but the impression is given that NIPA will be a large organisation given its various functions, although no mention is made of possible staff numbers or potential budget.

Part 4: Designation of Economic Sectors and Business Activities

The Minister must designate economic sectors and business activities as exclusive to certain categories of investors, namely:

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);

Furthermore, any person may propose, for consideration, to the Minister to designate an economic sector or business activities in terms of the above categories.

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

The expansion of an existing investment as defined in this Act is treated as an investment that is subject to this Part and investors will be prohibited from circumventing these requirements by breaking their investments up into smaller investments to come in under the threshold. An economic sector or business activity that has not been designated by regulation is open for investment and ownership participation by any investor in any legal form permitted by the applicable law.

The Act stipulates the consultative process the Minister must follow in order to designate economic sectors or business activities (Section 31).

An investor who has lawfully invested in an economic sector or business activity before the sector or activity has been designated is entitled to maintain his or her investment after the effective date of the designation of the sector or activity despite such designation but any change in control of the maintained investments is subject to the applicable requirements of Part 5 (Section 32).

Part 5: Approval of Investments in Strategic Economic Sectors and Business Activities

Investors wishing to invest in a sector or activity deemed strategic by the Minister "*must be required to obtain the approval of the Minister or sectoral minister*" and must make an application for approval through NIPA and any change of control must also be approved through NIPA. This is in addition to any requirements under the Competition Act [of 2003]. The Minister has to either approve or disapprove the application and can attach conditions to any approval. If approval is obtained, the investor receives a Certificate of Approval from NIPA that allows it to register with NIPA and commence the investment. Investors must notify NIPA of any changes to their investments before approval is obtained.

For an investment to be considered strategic, NIPA, the Minister and the sectoral Minister have to assess its likely economic and developmental impact. Special considerations apply to investors which are enterprises controlled by another State.

There are some limited exceptions on the issue of change of control, for example in the case of a default or bankruptcy where a provider of finance temporarily takes over the investment until a new buyer is found.

Part 6: Administration of Investments

Investors who wish to benefit from investment incentives must register with NIPA. NIPA has to maintain registers of current and potential foreign investors and investments, current and potential Namibian investors considering pairing with foreign investors, and accredited micro small and medium enterprises that might benefit from investments.

Section 39 lays out NIPAs investment attraction, promotion and facilitation responsibilities and this includes proactively generating interest in specific projects. NIPA can also "*facilitate the granting of visas and permits to foreign employees and consultants as designated by the investor*" as well as "*streamline investment administration procedures*" and even create a "*one-stop shop*".

Section 40 stipulates that NIPA has to monitor the investments to which the Act applies and gives it powers to enforce compliance. Other than notify the office, ministry or agency to take action, it is not clear what non-compliance results in.

Part 7: Investor Rights

Section 41 gives foreign investors equal treatment to Namibian investors but in "like circumstances" which is subject to a number of considerations.

Sections 42, 43 and 44 cover expropriation by the State which must be carried out according to Article 16 of the Constitution with market-related compensation being paid.

Section 46 states that the long-term and temporary employment of foreign nationals needs approval from the Minister and must be part of the performance agreement between the investor and the State.

Section 47 covers the transfer of funds including the repatriation of dividends, profits and royalties as well as just compensation but it gives the State the right to delay payments under certain circumstances including "exceptional balance of payments or external financial difficulties" and "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."

Section 48 deals with investment incentives and the conditions under which they may be granted. Investors will have to apply for certificates of investment incentives.

Section 50 imposes obligations on investors to train Namibians and replace foreign nationals permitted under Section 46 within an agreed timeframe.

Part 10: General Provisions

Part 10 includes provisions on national security, consequences of contraventions of the Act by investors and appeals processes, and the preservation of secrecy (Section 61).

Section 65 lays down that Certificates of Status Investment issued under the FIA of 1990 remain valid but must be converted into Certificates of Approval within six months.

The NIPDB is dissolved and all assets and liabilities transferred to NIPA. NIPDB staff will be transferred to NIPA on the same terms and conditions.

Designation of Economic Sectors and Business Activities

The draft Government Notice attached to the draft Bill lists all the economic sector and business activity designations.

State

The following economic sector and business activity is designated as reserved for the State -

a) central banking.

Namibians

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

Joint Venture Partnerships

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

Strategic

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 [NB not energy, green hydrogen or nuclear energy]

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.

Conclusions

The draft Bill appears to have several major aims.

One main aim appears to be to create yet another large and powerful regulator with a myriad of powers and responsibilities. The Namibia Investment Promotion Bill is rather a misnomer since NIPA will in effect do far more than promote investment. It will regulate investment and ensure compliance and advise government on investment policies. To do all this it will need to employ a significant number of people and require a significant budget.

Another major aim appears to be to reserve certain economic sectors or business activities for Namibians. This was already permitted under the FIA but, as mentioned above, this was only acted upon once in 2010 and, to the best of anyone's knowledge, has not been monitored or enforced. It is not clear if anyone has any idea how many businesses exist which fall within the thresholds set out in the draft Bill. Is the intention to ultimately force foreign nationals who own businesses in these sectors to force them to sell to Namibians despite Section 32? Realistically, what prices are they likely to obtain given they are being forced to sell. What if they cannot find buyers? To come to a concrete example, will the Chinese owners of the many existing small Chinese retail outlets around the country with turnovers less than N$7.5 million be forced to sell their shops to Namibians? Is their presence currently a problem? How were these thresholds arrived at? Will they change over time with inflation? N$200 million is a relatively high threshold for the construction and tourism sectors. The Bill allows anyone to suggest to the Minister that a sector or activity be reserved for Namibians. Which foreign investors will invest knowing that their business might sooner or later find itself reserved for Namibians? The Bill obliges NIPA to maintain lists of potential investors. Is the intention to nudge investors into "shot gun" weddings with other investors they have no interest in becoming business partners with?

A further major aim appears to be that government should be able to hold investors in strategic sectors to account by signing performance agreements with them. Thus, a mining company will sign a performance agreement with the Minister likely to include stipulations about how much it will invest, how many Namibians it will employ, how much training it will undertake, among potentially many key performance indicators. Yet mining is an inherently uncertain activity. What happens if the mineral price plunges and the company needs to take difficult decisions such as laying off employees to survive? Will it then have to negotiate this with the Minister before being able to take action? This is likely to take some time unless the intention is to prevent businesses from taking such action in the first place. It is hard to believe that investors in large-scale retail, mining, oil and gas, crop production, construction and tourism would be willing to sign such agreements. The key characteristic of any business is that it is able to respond quickly to market circumstances.

A final major aim appears to be to give Government control over changes in ownership since these will have to be approved not only by the Namibia Competition Commission but also by NIPA. Again, this will have huge implications for new investments since investors will know they will no longer be free to sell out of their investments if an attractive offer is made. Any sale of change of ownership is likely to get bogged down in negotiations with NIPA. Namibia's oil and gas sector is one where changes in ownership of investments takes place relatively frequently. Will changes in PEL require permission from NIPA?

All in all, the main aim of the Bill appears to be to give Government far more influence and control over the economy. It gives the Minister in charge of investment immense discretionary powers over key decisions. Given these considerations, it is hard to see how this Bill will promote investment. Rather it is likely to tie up investment in lots of



new red tape and scare off investors. This Bill is therefore likely be highly controversial with investors if not with Parliament (which uncontroversially passed the deeply flawed NIPA in 2016). There is always the danger that it will take time to pass and to implement. It may be tested in the courts for its constitutionality and whether it is compliant with World Trade Organisation (WTO) rules. During this initial period (which could last years) the investment climate will be shrouded in uncertainty at precisely the time when private investment is most needed. Ten years of "consultation" do not appear to have changed many of the essential flaws of the NIPA of 2016. In reality, Namibia has wasted ten years going round in circles. At a time when Namibia needs to encourage private investment and FDI, passing this Bill runs the risk of achieving the exact opposite.

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