

IJG Economic Update

The Latest NIPF Bill: Less Damaging Than Previous Drafts

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Economist

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Summary

The draft Namibia Investment Promotion and Facilitation Bill laid before Parliament is a vast improvement on the Namibia Investment Promotion Act of 2016 and all subsequent drafts that have been consulted upon since.

It dispenses with much of the damaging discretionary political control, establishes an Investment Promotion Agency of Namibia (IPAN) on a sound institutional footing to replace the institutionally flawed Namibia Investment Promotion and Development Board (NIPDB), and sets out procedures which need to be followed before sectors can be reserved for Namibians.

However, while less damaging than all previous drafts, the new Bill still complicates an already complex, opaque and bureaucratic foreign investment environment and therefore hinders rather than encourage the foreign direct investment Namibia urgently requires.

Introduction

The latest draft of the Namibia Investment Promotion and Facilitation Bill reached the National Assembly in early November 2026, the latest stage in a process that has taken at least ten years as Government has striven to update legislation passed not long after Independence.

The Foreign Investment Act of 1990 (Act No. 27 of 1990) and the Foreign Investment Amendment Act of 1993 (Act No. 24 of 1993) were passed in the spirit of Article 99 of Namibia's Constitution which had only been adopted on 9 February 1990.

Article 99: Foreign Investments

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

It has been almost a year since IJG commented on the last publicly available draft legislation (see IJG, "The Draft Namibia Investment Promotion Bill: More Red Tape Than Red Carpet", December 2025). This short report updates that note. It gives a brief history of the consultation process that led to the recent tabling and compares the latest draft Bill ("B5") with the flawed legislation that Parliament passed in 2016 (Namibia Investment Promotion Act 2016, Act No. 9 of 2016) but which was never brought into force. B5 has been laid before Parliament but has not yet gone through the full parliamentary process which involves the National Assembly, the National Council and the signing by the President and publication in the Government Gazette.

The 2016 Act was signed by the President on 12 August 2016 and gazetted on 31 August 2016, but it was withdrawn for further consultation and, as far as can be established, never put into effect. Its regime was therefore never tested in practice. Remarkably for a country that relies so heavily on foreign direct investment, Namibia's foreign investment policy framework has been missing in action for the last ten years.

Foreign investment has kept arriving without it, but it has been concentrated: net foreign direct investment inflows of more than N$114.9 billion since 2021 went mostly into oil and gas exploration (Bank of Namibia, as reported by Bowmans Namibia in The Brief, 24 September 2025).

Consultation history

At least five distinct rounds of consultation on the Bill have taken place since the 2016 Act was withdrawn, plus a separate round on draft regulations and numerous earlier consultations from 2010. Table 1 below captures the main stages of the process.

The process since 2016 has been a long and arduous one as government essentially attempted to impose restrictions and regulate foreign investment in a way that would have been immensely damaging as IJG has repeatedly made clear. During that time Presidents, Ministers and Executive Directors have changed and ministries have been restructured. The 2016 Act was passed under Immanuel Ngatjizeko who was replaced by Tjekero Tweya in February 2018 before Lucia Iipumbu was appointed for the whole of President Geingob's second term from March 2020 after which the Ministry was split by incoming President Nandi-Ndaitwah in March 2025 with the investment function going to the Ministry of International Relations and Trade under Selma Ashipala-Musavyi.

Table 1: Key Stages in the NIPF Bill Consultation History

Period	Stage	What happened	Source
2010–2016	Pre-2016	The Ministry began revamping investment legislation in 2010, with numerous stakeholder consultations. The resulting Namibia Investment Promotion Act, 2016 was approved by Parliament and signed by the President but then withdrawn to allow further consultations.	Minister of Industrialisation and Trade, motivation statement, 17 November 2021
November 2021	Tabling	Bill tabled in the National Assembly as B.12-2021 (first reading 25 November 2021). It stalled at the second reading stage.	Parliament of Namibia bill register
Sept–Oct 2022	Round 1	Regional stakeholder engagements, starting in Khomas in September 2022 and rolled out to other regions. A technical committee of senior officials was set up to consider concerns and recommend amendments to Cabinet.	Minister of Industrialisation and Trade, Erongo stakeholder engagement statement, Oct 2022
Dec 2022–early 2023	Round 2	Technical committee's revised draft (dated 12 December 2022) to be workshopped with stakeholders over the following two months; workshopping still under way in early 2023.	IPPR Quarterly Economic Reviews, Q4 2022 and Q1 2023
Mid-2023	Round 3	Further engagement with business bodies; the Economic Association of Namibia submitted calls for changes in August 2023.	NAMPA, August 2023
December 2023	Regulations	Regional consultations on the draft implementing regulations, following on from the 2022 consultations on the Bill.	Ministry of Industrialisation and Trade, via allAfrica, Dec 2023
November 2025	Round 4	New draft released for public consultation; national consultation sessions held by the Ministry of International Relations and Trade, with comments to be incorporated before the Cabinet Committee on Legislation.	The Brief, 28 Nov 2025; Market Watch, 27 Nov 2025
Early 2026	Round 5 (written submissions)	Written submissions continued, including the Heathcote legal opinion commissioned by NIEP and the EAN's comments; Heathcote criticised the process as "draft first, consult later".	Namibian Sun, 2 Feb 2026; Republikein, Apr 2026
Nov 2026	Parliament	Bill tabled in the National Assembly as B. 5 – 2026. It still has to pass the National Assembly and the National Council, which gives a further opportunity for input.	B. 5 – 2026; The Villager, 8 Nov 2026

Source: As listed in table; IJG Securities

Comparison of B5 with the Namibia Investment Promotion Act, 2016

We have compared B5 with NIPA 2016 provision by provision. B5 is radically different from NIPA 2016. The 2016 Act screened every foreign investment before it could go ahead. Foreign investors needed ministerial approval, judged against a net-benefit test, and could face criminal penalties and the cancellation of their licences. In return, the Act gave them strong, treaty-style protections. B5 drops the screening and most of the criminal penalties, but it also drops most of those protections. An investor under B5 finds it much easier to get in, but is less protected once in.

Table 2: Headline Comparisons of B5 and NIPA 2016

Issue	2016 Act	B5-2026
Size and structure	36 sections, 7 Parts	59 sections, 10 Parts
Implementing body	Namibia Investment Centre, a department of the Ministry; the Minister decides almost everything	A separate statutory Agency with a fiduciary board and its own CEO
Entry of foreign investment	Every foreign investment needs prior ministerial approval (s12(1)), subject to a net-benefit test (s14) and development criteria (s4(2))	No approval at all (s36(4)); compulsory registration only (s29(1))
Change of ownership or control	Transfers to foreigners above a threshold or in natural resources need approval, applied for at least 60 days ahead (s11)	No approval; only competition law, licence terms and any reservation rules apply (s36(3))
Registration	Only above monetary thresholds set by the Minister, which can differ for Namibians and foreigners (s4(3)(c), s19)	All foreign investors, with no threshold; voluntary for Namibians
"Investment"	Detailed definition; holdings must exceed 10% with management influence; excludes portfolio holdings, government debt, trade credit and procurement claims	Short enterprise-based definition, with no threshold or exclusions
"Namibian"	Citizens, permanent residents, and companies (incorporated anywhere) that Namibians majority-own or control	Citizens only, and Namibian-incorporated firms that Namibians both majority-own and effectively control
Reserved sectors	Four categories (State, Namibians, joint ventures, investors meeting s4), set by regulation with no required consultation; anti-splitting rule (s8(6))	Two categories; assessment, 60-day public comment, Cabinet approval and tabling in the National Assembly; anti-fronting rules
National treatment	No less favourable treatment than Namibians in like circumstances, with listed factors (s19(5)–(6))	Duty only to avoid "unjustified discrimination", with a broad carve-out (s38)
Expropriation	Public interest, due process, just compensation normally based on fair market value, prompt payment in convertible currency, interest, judicial review (ss21–23)	One sentence referring to Article 16 of the Constitution (s39)
Transfer of funds	Guaranteed for a listed set of payments, subject to exchange control and defined exceptions (s27)	No provision
Treaty carve-out	Treaty-based advantages excluded from the Act's obligations (s20)	No provision
Investor entry rights	Approved investors, shareholders, spouses and children deemed entitled to enter and work, subject to immigration control (s24(4))	Agency to "engage" the Immigration Selection Board (s40)
Disputes	Optional ministerial mediation; Namibian courts have exclusive jurisdiction; arbitration only by agreement, under the Arbitration Act in Namibia (s28)	Amicable settlement first; Grievances Resolution Committee; courts; then international arbitration by prior agreement (ss44–46)
Sanctions	Criminal offences for investing without approval, breaching reservations or conditions; false information up to N$2 million or 10 years; Minister can cancel licences issued under any law and close operations (ss31–33)	Mostly administrative contraventions; false information up to N$50 000 or 5 years; compliance orders; High Court fines capped at proven benefit (ss48–50)
Existing Foreign Investment Act certificates	Continue but can be reviewed and "aligned" by the State, and lapse on expiry unless renewed on the new Act's terms (s35)	Continue on their own terms, with relevant Foreign Investment Act sections kept alive (s58)

Source: Namibia Investment Promotion Act, 2016 (Act No. 9 of 2016); B. 5 – 2026; IJG Securities

Where B5 improves on NIPA 2016

It ends blanket screening of foreign investment. Under s12(1) of the 2016 Act no foreign investor could invest without the Minister's approval, and under s14 the Minister had to weigh nine net-benefit factors, including redress, regional development and SME procurement. That is one of the most restrictive entry regimes a country can adopt. B5 removes it entirely (s36(4)). This is the single biggest change, and probably the main reason B5 has progressed further than the 2016 Act did.

It removes power over licences issued under other laws. The 2016 Act let the Minister suspend, withdraw or cancel licences, permits and concessions "issued under any law", "despite any other law to the contrary", and stop operations (ss11(4), 33(1)). In effect the investment minister could override mining, fisheries or petroleum regulators. B5 instead requires suspected breaches of other laws to be referred to the responsible authority (ss31(8), 48(2), 50(1)(b)).

It stops treating investment as a crime. Investing without approval, materially changing an approved investment, failing to combine linked investments and breaching agreed conditions were all criminal offences in 2016, and false information carried up to N$2 million or 10 years (s33(6)). B5 turns most of these into administrative contraventions. Both laws cap fines at the economic benefit, but B5 defines that benefit and requires the High Court to weigh proportionality factors.

It gives investors due process. Appeals under the 2016 Act were limited to three grounds (s33(2)) and ministerial decisions were largely discretionary. B5 adds notice, an opportunity to make representations and written reasons at every adverse step, and a general right of appeal to the High Court (s51).

Existing investors keep their rights. The 2016 Act let the State review existing Foreign Investment Act certificates and "align" them to the new law, and they ended on expiry (s35(2)). B5 leaves them intact on their own terms (s58(1)–(2)).

It has real governance. Implementation in 2016 sat with a department of the Ministry, with no governance provisions. B5 creates a statutory body with a board, conflict-of-interest rules, audit and reporting obligations.

Reservations follow a proper process. The 2016 Minister could reserve sectors simply by making regulations, with no consultation. B5 requires an assessment, public comment, Cabinet approval and tabling in Parliament (s33).

Incentives are disciplined and transparent. Both laws keep the Minister of Finance in charge where tax revenue is involved. B5 adds a public register of incentive endorsements and performance agreements (s41(14)–(15)), which the 2016 Act lacked.

Where B5 is weaker than NIPA 2016

Investor protections

This is the clearest step backwards. The 2016 Act had protections close to those in a standard investment treaty:

- **National treatment:** a full standard, with listed "like circumstances" factors modelled on modern treaty practice (s19(5)–(6)).
- **Expropriation:** a detailed compensation framework (ss21–23), starting from fair market value, requiring prompt payment in convertible currency with interest, disregarding any fall in value caused by the expropriation being announced, and giving a right of judicial review.
- **Transfer of funds:** a guarantee covering capital, profits, loan repayments, compensation, sale proceeds, salaries and settlements, with defined emergency exceptions (s27).

B5 replaces all three with a weak non-discrimination duty and a reference to the Constitution. Part of the 2016 framework is dated, since its interest rate was defined by reference to LIBOR, which no longer exists. But the better response would have been to update these provisions, not delete them.

No registration threshold

Under the 2016 Act only investments above monetary thresholds set by the Minister had to register. B5 requires every foreign investor to register, however small. For the very large number of small foreign-owned businesses, B5 is in this respect more burdensome than the 2016 Act.

Who counts as Namibian

The 2016 Act treated permanent residents as Namibian, and counted companies that Namibians either majority-owned *or* controlled. B5 narrows this to citizens and requires both majority ownership *and* control. Businesses owned by permanent residents, which counted as Namibian under the 2016 Act, become foreign investors under B5.

The definition of investment

The 2016 definition was clumsy in places, with an odd list of assets a foreign enterprise "may not regard" as investments. But it did exclude portfolio holdings below 10% and holdings without management influence. B5 drops that exclusion.

Treaty carve-out and investor entry rights

Section 20 of the 2016 Act stopped its obligations from applying to advantages Namibia grants under trade and investment treaties; B5 has no equivalent. Under s24(4) of the 2016 Act, an approved investor, shareholders, spouse and dependent children were deemed to have the right to enter and work once the investment was approved, subject to immigration control. B5's s40 only obliges the Agency to "engage" the Immigration Selection Board.

What carries over from NIPA 2016

The national-security power. B5's s47 is almost word for word the 2016 Act's s29. It still allows investments to be regulated for national-security reasons with no procedure, criteria or review; the only change is the added concurrence of the security minister. This weakness has survived ten years of redrafting.

Disputes. The 2016 Act gave Namibian courts exclusive jurisdiction and allowed arbitration only inside Namibia under the Arbitration Act 1965. B5 is more open to international arbitration in principle, but its wording seems to place arbitration after the courts. Neither law addresses consent to arbitration that Namibia has already given in its investment treaties.

Skills transfer. The 2016 Act required a Namibian apprentice for each position held by foreign staff (s26(2)). B5 replaces this with a menu of options in a human capital development plan (s43). That is more flexible, but it is still a separate reporting duty alongside immigration and employment-equity rules.

Drafting quality. Both texts contain errors. The 2016 Act has two paragraphs numbered (a) in s36(1), cross-refers to the wrong sections in s6(1) and s32(3), and places its national-treatment rule inside the registration section. B5's slips are of a similar kind.

Overall assessment

The two laws reflect very different models. The 2016 Act combined tight control of who gets in with strong protection once an investor is established. B5 combines an open door with light registration and a narrower, better-run reservation power, but offers little statutory protection after entry.

For most investors, B5 is the better deal on entry, compliance burden and due process. The exceptions are small foreign investors, who now have to register, and permanent residents, who lose their Namibian status. The 2016 Act's protection chapter is the strongest part of either text, and much of it could be carried into B5 with updating, such as replacing the LIBOR reference. That would answer the main weakness in B5. How much of a real disadvantage that is may be debatable given Namibia's track record with foreign investors. The greatest danger is probably that B5 adds bureaucracy and creates a "one more stop shop" instead of the envisaged "one stop shop", which could deter rather than encourage investment. The Bill is a test case for Parliament: will it see meaningful debate and changes of substance, or pass on the nod?

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