

BILL

To provide for the promotion and facilitation of foreign and Namibian investment to enhance sustainable economic development and reduce unemployment; to provide for the establishment of the Agency responsible for investment promotion and facilitation; to provide for the designation of certain economic sectors and business activities as reserved for certain categories of investors; to provide for approval of investments in designated economic sectors and business activities; to stipulate the rights and obligations of investors; to provide for dispute resolution mechanisms involving investments; and to provide for incidental matters.

(Introduced by the Minister of Industrialisation and Trade)

ARRANGEMENT OF SECTIONS

ARRANGEMENT OF SECTIONS

PART 1

INTRODUCTORY PROVISIONS

1. Definitions
2. Meaning of “investment”
3. Objectives of Act

PART 2

ADMINISTRATION OF ACT

4. Administration and implementation of Act
5. Powers and functions of Minister

6. Performance agreements for strategic investments
7. Compliance Officers

PART 3

NAMIBIA INVESTMENT PROMOTION AND DEVELOPMENT AGENCY

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

PART 4

MANAGEMENT AND ADMINISTRATION OF AGENCY

10. Establishment and constitution of Advisory Board
11. Functions and powers of Advisory Board
12. Term of office of members of the Advisory Board
13. Vacation of office by member of Advisory Board
14. Suspension of Advisory Board member
15. Filling of vacancies of Advisory Board
16. Committees of Advisory Board
17. Meetings and decisions of the Advisory Board
18. Disqualification for appointment as a non-executive member of the Advisory Board
19. Conduct of Advisory Board Members
20. Conflict of interest and disclosure of interest by members of the Advisory Board
21. Remuneration and expenses of members of the Advisory Board
22. Chief Executive Officer
23. Functions of the CEO
24. Conditions of service and remuneration of the CEO
25. Termination of appointment of the CEO
26. Appointment of staff members, agents and correspondents
27. Performance agreements of management and other employees of the Agency

28. Declaration of assets and interests by employees of the Agency

PART 5

FINANCIAL PROVISIONS

29. Source of Funds of the Agency
30. Utilisation of Funds
31. Accountability and administration of Funds
32. Estimates of expenditure
33. Investment of balances
34. Unexpended balances
35. Accounts and audit and annual report
36. Winding up of the Agency

PART 6

ADMINISTRATIVE MATTERS RELATING TO INVESTORS AND INVESTMENTS

37. Registration of investors and investments
38. Certificates for Investment Incentives
39. Investment attraction, promotion and facilitation
40. Monitoring of investments
41. Grievance resolution committee

PART 7

INVESTORS, ECONOMIC SECTORS AND BUSINESS ACTIVITIES

42. Designation of categories of economic sectors and business activities for certain categories of investors
43. Saving in respect of existing investments
44. Economic sectors and business activities not designated

PART 8

APPROVAL OF STRATEGIC INVESTMENTS

45. Application for approval of strategic investments and change of control
46. Consideration of application and grant of approval
47. Provisional approval of strategic investments
48. Criteria for approval of strategic investments
49. Approval of strategic investments
50. Exception to requirements for approval for change of control

PART 9

RIGHTS AND OBLIGATIONS OF INVESTORS

51. Compliance with applicable laws and registration of investors
52. Treatment of foreign investors and their investments
53. Expropriation
54. Payment of compensation
55. Review concerning expropriation and compensation
56. Foreign personnel
57. Facilitation of visa and permits of investors, dependants and foreign personnel
58. Capacity development and transfer of skills
59. Transfer of funds

PART 10

DISPUTE SETTLEMENT

60. Resolution of disputes

PART 11

GENERAL PROVISIONS

61. National security
62. Contraventions and offences
63. Opportunity to comply with law
64. Action to be taken against investor or investment for offences
65. Appeal to High Court
66. Regulations
67. Repeal of laws
68. Savings and transitional provisions
69. 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:

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.

“Agency” means Namibia Investment Promotion and Development agency/board as established in terms of section 6;

“approval” means approval investment in terms of Part 4 section 12

“approval certificate” means an approval certificate for an investment issued under section 16(2);

“arbitration agreement” means the specific provisions, and only such specific provisions, of a contract, law or other legal instrument that creates the agreement (“compromis”) between the parties to arbitrate a dispute.

business activity” means any activity conducted in Namibia -

- (a) that involves the commitment of capital, the expectation of gain or profit and the assumption of risk; and
- (b) that creates a contribution to the economic development of Namibia;

“change of control” in relation to an existing investment occurs 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;

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

“Compliance officer” means an individual responsible for ensuring compliance with the legal regulations and ethical standards of the country by monitoring all operational processes and procedures using a compliance management system

“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;
- (c) where a business injects capital in an entity or enterprise towards expansion in the same business;

“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.

“incentives” means either fiscal or non-fiscal measures and/or benefits afforded by the government to an investor in order to encourage investments in Namibia.

“One Stop Shop” means the online portal and/or physical centre as contemplated in section 10 for foreign and Namibian investors when establishing their business operations 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 strategic investment proposal that is required to be submitted to the Minister for approval as per section 12

“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;

“Minister” except where otherwise stated, is the Minister responsible for investments and/or Micro, Small and Medium Enterprises,

“Ministry” except where otherwise stated, is the Ministry responsible for investments and/or Micro, Small and Medium Enterprises.

“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, 1993 (Act No. 7 of 1993); or
- (c) an enterprise incorporated, registered or constituted in accordance with the applicable laws of Namibia or any country other than Namibia -
 - (i) of which the majority of the issued share capital is directly or indirectly owned by a Namibian who benefits in the form of income or addition to capital or otherwise;
 - or

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

“Namibian investor” means a Namibian who has made or is seeking to make an investment in Namibia;

“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);

“performance agreement” means an agreement contemplated in section 6(1) for strategic investments;

“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 *of the Government, 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 24(5) 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 37;

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

“strategic investments” means an investment of national importance, which has significant impact on the development of the country, **as per section 42(2)(e)**

“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. (1) For the purposes of this Act, but subject to subsections (2) and (3), an investment includes –

(a) any enterprise -

(i) lawfully established, acquired or expanded by an investor in accordance with the applicable laws of Namibia; and

(ii) that carries out a business activity through a substantial operation in accordance with the investment proposal and the nature of the business in Namibia; or

(b) any enterprise in Namibia that an investor has or is seeking to -

(i) establish, acquire, merge with or expand, whether through the constitution, maintenance, merger with or acquisition of, a juristic person inside Namibia or outside Namibia having an effect in Namibia; or

(ii) acquire shares, debentures or other ownership instruments directly or indirectly;

- (c) the acquisition by any means of any license, permit or concession issued by the State directly related to the operation of an investment in Namibia, including such instruments relating to the exploration or exploitation of natural resources;
- (d) the acquisition by any means of a minority ownership interest or joint venture interest in accordance with this Act, in relation to any of the enterprises or licence, permit or concession referred to in paragraphs (a) to (c), but such interest must constitute more than 10% of the shares of the enterprise or business venture and the investor must exercise effective management, or influence on the management, of the investment.

(2) For purposes of subsection (1), a foreign enterprise is not constituted in Namibia by the mere holding of ownership of the following assets in Namibia, even though they may be considered as assets for an enterprise incorporated in Namibia:

- (a) shares, stocks, debentures and other equity instruments of the enterprise or another enterprise;
- (b) a debt security of another enterprise;
- (c) loans to an enterprise;
- (d) movable or immovable property and other property rights such as mortgages, liens or pledges;
- (e) claims to money or to any performance under a contract having a financial value;
- (f) 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;
- (g) returns such as profits, dividends, royalties and income yielded by an investment;
and

- (h) long term leases over land or other property.
- (3) Despite subsection (1), an investment does not include -
 - (a) assets that are of a personal nature, unrelated to any business activity;
 - (b) debt securities issued by a government or loans advanced to a government;
 - (c) portfolio investment, which is investment that constitutes less than 10% of the shares of the company or otherwise does not give the investor the possibility to exercise an effective management or influence on the management of the investment;
 - (d) 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
 - (e) 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.

Objectives of Act

- 3. The objectives of this Act are to –
 - (a) provide a clear and transparent framework for sustainable investment and micro, small and medium enterprises (MSMEs) in Namibia;
 - (b) establish the Agency responsible for investment promotion and facilitation and for MSME development in Namibia;

- (c) promote sustainable economic development and growth through the mobilization 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 Namibian 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 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 micro, small and medium enterprises 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.

PART 2 ADMINISTRATION OF ACT

Administration and implementation of Act

4. (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.
- (3) The Minister may in writing delegate any power which is vested with the Minister as set out in subsection (1) , except the power to make regulations or a power which relates to policy formulation, or assign any function -
- (a) to the Agency, or
 - (b) to a body designated by the Minister for that purpose by notice in the *Gazette*;
- (4) The Minister
- (a) is not divested of a power delegated or a function assigned under subsection (3);
 - (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.

Powers and functions of Minister

5. Without derogating from the generality of section 4(1), the functions of the Minister are to –

- (a) set the policies for investment and micro, small and medium enterprises (MSMEs) in Namibia;
- (b) introduce incentives and other support mechanisms consistent with any applicable law as may be required for investments-
 - (i) in consultation with the minister responsible for any specific economic sector; and
 - (ii) in consultation with the minister responsible for finance, where revenue is involved.
- (c) prescribe the incentives referred to in paragraph (b) , on recommendation of the Agency;
- (d) approve economic sectors for investment potential, opportunities and social economic impact, following the prescribed consultative processes;
- (e) enter into performance agreements of strategic investments referred to in **section 42(2)(e)**;
- (f) 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;
- (g) appoint compliance officers to ensure compliance with the provisions of this Act or of any investment approval;
- (h) identify and designate sectors that are reserved for certain categories of investors and investments following the prescribed consultative processes; and
- (i) periodically undertake a multi-stakeholder review of the operation and effectiveness of this Act;

- (j) refer any matters related to investment and MSME policy for advice to the Agency.

Performance agreements for strategic investments

6. (1) The Minister may, on behalf of the State and on the recommendations of the Agency, enter into a performance agreement with any investor seeking approval, for an investment designated under **section 42(2)(e)** of this Act to agree on matters related to the contribution of the investment to the development objectives of Namibia.

(2) A performance agreement entered into under subsection (1) becomes binding on the parties at the time the investment is approved in accordance with this Act;

(3) The Minister must publish or cause to be published the agreement concerned by notice in the *Gazette* and also on the website of the Agency within 30 business days of the agreement being entered into, but if the parties to a performance agreement agree that it contains confidential business information, they may agree to redact this specific information from the publication.

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

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

(6) Where a strategic investment 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 minister responsible for that economic sector 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, including, but not limited to any approval **under Part 8 and the agreement under section 6** of this Act;

(7) The agreement of the Ministers relating to strategic investments in subsection (1) must include an agreed process for participation of one or more designated representatives of the Minister in the process for making the relevant approval or agreement, including any conditions thereto, under the other applicable law.

(8) The agreement of the Ministers relating to Strategic Investment under this section must be applicable in relation to any subsequent approval, including any conditions thereto, and/or any agreement under the other applicable law, as long as said agreement in writing between the Ministers remains in force.

Compliance officers

7. (1) The Minister may –
- (a) subject to the Public Service Act, 1995 (Act No. of 1995), designate a staff member of the Ministry/Agency; or
 - (b) subject to such conditions as may be agreed between the Minister/Agency and the person appointed, appoint any other person,

as a compliance officer, responsible for ensuring compliance of an investor or investment with the provisions of this Act.

PART 3

NAMIBIA INVESTMENT PROMOTION AND DEVELOPMENT AGENCY

Establishment of Agency

8. (1) There is established a juristic body in the Office of the President to be known as the Namibia Investment Promotion and Development Agency whose main responsibility is investment promotion and facilitation for economic development.

(2) In performing its functions under this Act or any other relevant law, the Agency must, subject to the investment policy guidelines and directives made or issued by the Minister under this Act, act independently and impartially and must perform its functions without fear, favour or prejudice and without improper or undue interference from any person or authority.

Functions and powers of Agency

9. (1) The Agency must perform the following functions: or 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 President or Minister;
- (c) promote and facilitate investment by Namibian and Foreign investors as well as new ventures that contributes to economic development and job creation, including providing investor retention and aftercare services to encourage reinvestment, ensure compliance, and resolve any challenges the investor or investment may have;
- (d) implement the Namibia Investment Policy and attendant Strategy;
- (e) review and propose policy reforms and measures 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, investment and MSME development;
- (f) advise the Minister, or any other relevant minister on a periodic basis, on matters relating to the national micro, small and medium enterprises (MSMEs) and investment policy and strategy for Namibia, including increases in both domestic and foreign investment levels;

- (g) develop and recommend criteria for the approval of investors and investments, except for strategic investments that require the approval of the Minister under section 49;
 - (h) in consultation with the Minister, formulate incentive implementation guidelines, and recommend to the Minister incentives that should be made available to investors and investments;
 - (i) develop and implement branding interventions that promote Namibia as an attractive investment destination;
 - (j) implement the National MSME Policy and other policies related to MSME development, and develop institutional mechanisms and assume the lead coordinating role across all levers for SME development nationally;
 - (k) promote Special Economic Zones that leverage geographic comparative advantages of each region;
 - (l) in collaboration with relevant stakeholders, facilitate collaborative roles between Government and private sector to stimulate investments in and into the country; and
 - (m) 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 thereon.
- (2) To enable it to effectively perform its functions under this Act and to attain the objectives of this Act , and in addition to 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;
 - (b) enter into any agreement or memorandum of understanding with any person or an institution for the performance of any specific act or function or the rendering of specific services;
 - (c) 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) with the approval of the Minister responsible for finance, borrow money for the benefit of the Agency,;

- (f) appoint employees and receive seconded personnel to posts on its staff establishment as contemplated in **section 26**;
- (g) issue a code of conduct on acceptable ethical standards or conflict of interest guidelines applicable to the Board, individual directors, the CEO, and employees of the Agency;
- (h) call for and obtain 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;
- (i) issue general or specific directives and guidelines with respect to investment in Namibia in accordance with section xx;
- (j) request for and 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; and
- (k) Any other action that would be necessary for the functioning of the Agency.

PART 4

MANAGEMENT AND ADMINISTRATION OF AGENCY

Establishment and constitution of Advisory Board

10. (1) There is established an Advisory Board of the Agency.

(2) The Advisory Board consists of -

- (a) the CEO of the Agency who is the chairperson of the Board and
- (b) not less than six and not more than eight members with proven knowledge and experience in the following fields of investment, economics, finance, law, business/commerce, innovation and technology and any other disciplines relevant to the functions of the Agency.

(3) The members of the Advisory Board who must be Namibian citizens or holders of permanent residence permits are appointed by the President pursuant to Article 32(i)(hh) of the Namibian Constitution.

(4) The Advisory Board may co-opt persons who are not Namibian citizens or holders of permanent residence permits but have extensive relevant experience to the Advisory Board, as considered necessary.

Functions and powers of the Advisory Board

11. (1) The Advisory Board must determine the overall strategic direction of the Agency in line with the national investment policy, and as may be assigned to or conferred on the Agency by this Act or any other law, the President, or the Minister.

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

- (a) approves the budget of the Agency;
- (b) approves the annual report of the Agency;
- (c) determines the strategic direction of the Board and its ultimate performance;
- (d) determines and ensures that an effective risk management structure is established within the Agency; and
- (e) makes rules for the good governance of the Agency and the conduct of its business in line with the best practices.

(3) The Advisory Board must, in addition to any functions specified in subsections (1) and (2), provide advice to the President and 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;
- (b) any other matters aimed at promoting the achievement of the objectives of the Agency; and
- (c) other related matters as the President or Minister may determine from time to time.

Term of office of members of the Advisory Board

12. An Advisory Board member holds office for a term of three years and is eligible for re-appointment only once at the expiration of that term, except for the Chief Executive Officer who is an *ex officio* member.

Vacation of office by member of Advisory Board

13. (1) An Advisory Board member vacates office, if that member –

- (a) resigns by giving not less than one month's written notice to the President and the Advisory Board;
- (b) has without the leave of the Advisory Board, been absent from three consecutive meetings of the Advisory Board;
- (c) has become subject to any disqualification referred to in **section 18; or**
- (d) is removed from office under subsection **(2)**.

(2) The President may remove an Advisory Board Member from office, if the –

(a) President is satisfied that the member is by reason of his or her physical or mental condition or for any other reason incapable of acting as a member;

(b) member is found guilty of conduct which renders him or her unable or unfit to efficiently discharge the functions of the office as a member or has taken part in the discussion of, or has voted in connection with, any matter in which he or she has an interest; or

(c) member is guilty of conduct prejudicial to the objectives of the Agency.

(3) The President 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 Advisory Board member

14. The President may, suspend an Advisory Board member from office without complying with section 13(3), if the President 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 President must give notice to the member as soon as practicable thereafter and consider any representations made by the member on the matter.

Filling of vacancies of Advisory Board

15. (1) If the office of an Advisory Board member becomes vacant as a result of the happening of an event referred to in section 13(1), or for any other reason, the President may, within a period of 90 days from the date of the office becoming vacant and with due regard to sections 6 and 8, appoint a person to fill the vacancy.

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

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

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

the President may appoint suitably qualified persons on a temporary basis to serve on the Advisory Board until new members are appointed.

(3) The appointment of a person as Advisory Board Member pursuant to subsection (2) ceases to be of effect upon 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 President for an additional period of not more than two months;

- (b) the appointment of a person as a member pursuant to subsection (1); or
- (c) upon death of the Advisory Board Member.

Committees of Advisory Board

16. The Advisory Board may, subject to such terms and conditions as and when it may determine necessary, from time to time establish one or more committees consisting of its members to –

- (a) assist and advise the Advisory Board in the exercise of its powers and performance of its functions or duties under this Act; and
- (b) perform any function that the Advisory Board may delegate to that committee.

Meetings and decisions of the Advisory Board

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

(2) The chairperson –

(a) may at any time on his or her own initiative; or

(b) must at the written request of the President or at the written request of a two of the Advisory Board Members, convene an extraordinary meeting of the Board.

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

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

(5) A quorum will be the lesser of four (4) Advisory Board members or one half of the Advisory Board members.

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

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

(8) Despite subsection (7), a written resolution not passed at a meeting of the Advisory Board but signed by all the Advisory Board members of the Advisory Board is as valid and effectual as if it had been passed at a meeting of the Advisory Board duly convened and constituted, and such resolution must be recorded in the minutes of the next meeting of the Advisory Board.

(9) The advisory board shall operate by majority decision, with the Chairperson having a casting vote.

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

(a) a vacancy on the Advisory Board; or

(b) the fact that a person not entitled to sit as an Advisory Board member 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.

(11) The Advisory Board may make rules, not inconsistent with this Act, to regulate the procedures to be followed at its meetings.

Disqualification for appointment as a non-executive member of the Advisory Board

18. A person is not eligible to be appointed to the Advisory Board or continue to serve on the Advisory Board, if that person –

- (a) is a member of Parliament or of a regional or local authority council;
- (b) is an office-bearer of any political party;
- (c) has been convicted of an offence, whether in Namibia or elsewhere, for which he or she was sentenced to imprisonment without the option of a fine;
- (d) has committed any breach of trust or is guilty of serious misconduct in the discharge of his or her duties under this Act, which renders him or her unfit to be appointed or to continue in office;
- (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.

Conduct of Advisory Board Members

19. (1) An Advisory Board Member 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 20.**

(2) An Advisory Board Member 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 an Advisory Board Member, for personal gain or to improperly benefit another person.

Conflict of interest and disclosure of interest by members of the Board

20. (1) Where an Advisory Board member or a member of a committee of the Advisory Board has a direct or indirect financial or personal interest, that is likely to impair the member's or member of the committee's objectivity in the exercise or performance of his or her powers or functions as a member or member of a committee

–

- (a) in a contract or proposed contract with the Agency; or
- (b) in a matter being considered or proposed to be considered by the Advisory Board or a committee of the Advisory Board of which the person is an Advisory Board member, or member of a committee 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 Advisory Board or of the committee of the Advisory Board, as the case may be.

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

(3) When an Advisory Board member or member of the committee has made a disclosure under subsection (1), the other Advisory board members or members of a committee of the Advisory Board must –

- (a) in the absence of that Advisory Board Member or member of the committee, discuss the nature of the interest on which the Advisory Board member or member of the committee 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 an Advisory board member or a member of a committee of the Board.

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

- (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; and

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

(5) A person 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 person to the Advisory Board or any committee of the Advisory Board by reason of the interest of the person in the contract, proposed contract or other matter about which the disclosure was made.

Remuneration and expenses of members of the Advisory Board

21. The Advisory Board members, excluding the CEO are entitled to be remunerated for services rendered in accordance with section 18 of PEGA.

Chief Executive Officer

22. (1) The Chief Executive Officer who is also the chairperson of the Advisory Board is appointed by the President and is the administrative head of the Agency responsible for the control and administration of the business affairs and staff matters of the Agency.

(2) The CEO is appointed for a term of five years and may be re-appointed after the expiry of his or her term of office.

(3) The CEO of the Agency must be –

- (a) a fit and proper person; and
- (b) of recognised professional standing and experience in the field of investment promotion, economics, finance, marketing, or other fields relevant to investment promotion.

Functions of the CEO

23. (1) The functions of the CEO of the Agency are -

- (a) to administer and manage the activities of the Agency subject to the advice and general direction of the Advisory Board;
- (b) to formulate and transmit to the Board the strategic plan, internal policies, business plan, management systems, budget proposals and the budget execution report for the previous fiscal year for guidance and approval;
- (c) to manage the funds, properties and business of the Agency;
- (d) to administer, organise and control the staff members of the Agency in accordance with the approved Agency Human Resource Policy;
- (e) to properly, efficiently and effectively perform the functions and execute the mandate of the Agency; and
- (f) to report to the President and to submit to the President, on a quarterly basis (and/or when deemed necessary), a performance report.

Conditions of Service and Remuneration of the CEO

24. (1) The remuneration, allowances and terms and condition of service of the CEO are paid from the funds of the Agency and are determined as follows-

(a) on appointment, the initial terms and conditions of services and the starting remuneration and allowances of the CEO are determined by the President on the recommendation of the Minister responsible for public enterprises

(b) any subsequent changes and adjustments in the terms and conditions of service and the remuneration and allowances of the CEO, after the determination contemplated in paragraph (a)

Termination of appointment of the CEO

25. (1) The President may, subject to the rules of natural justice, terminate the appointment of the CEO, if the CEO –

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

(b) is found guilty of misconduct to the detriment 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 CEO; or

(d) is found guilty of any offence involving dishonesty or other serious offence.

(2) The CEO may resign from office by giving at least **three** months written notice of his or her resignation to the President.

Appointment of staff members, agents and correspondents

26. (1) The members of the Senior Executive Team shall be appointed by the CEO, with the concurrence of the Advisory Board.

(2) The CEO may -

(a) in accordance with the organisational structure of the Agency, as approved by the Advisory Board, appoint persons as staff members to assist the Agency in the performance or exercise of its powers and functions;

(b) appoint agents and correspondents of the Agency, within Namibia or outside Namibia, as the CEO may consider necessary for the efficient functioning of the Agency and in line with rules for the good governance of the Agency and the conduct of its business.

(3) The Board, on the recommendation of the CEO, must determine the terms and conditions of employment, including conditions relating to remuneration and service benefits of staff members.

Performance agreements of management and other employees of the Agency.

27. (1) The CEO must enter into a performance agreement with the President, as the appointing authority.

(2) The Executive management team of the Agency must enter into performance agreements with the CEO.

(3) Other employees of the Agency must enter into a performance agreement with the Agency.

(4) The performance agreements under subsections (2) and (3) include human resources policy matters.

Declaration of assets and interests by employees of the Agency

28. (1) Employees must declare their conflict of interest in line with the Conflict of Interest Policy of the Agency.

PART 5

FINANCIAL PROVISIONS

29. (1) The funds of the Agency consist of -

- (a) money appropriated by Parliament and made available to the Office of the President for the purposes of attaining the objects of the Agency;
- (b) revenue activities;
- (c) donations made to the Agency;
- (d) interest derived from an investment made under **section 33**; and
- (e) any unexpended money from the previous financial year carried over to the next financial year pursuant to **section 34**.

Utilisation of funds

30. (1) Money allocated to or standing to the credit of the Agency must be utilised for -

- (a) funding the administrative and operational needs of the Agency ;
- (c) defraying any expenses incurred by members of the Advisory Board and its committees;
- (e) payment for such other expenses or matters that the Agency, with the approval of the Minister responsible for finance may in writing determine.

Accountability and administration of funds

31. (1) The person designated as CEO by the President is, for the purposes of the State Finance Act, 1991 (Act No. 31 of 1991), the accounting officer of the Agency and any funds of the Agency.

Estimates of expenditure

32. (1) The financial year of the Agency is the same as that of the Government.

(2) The accounting officer must within three months before the commencement of the financial year, prepare annual estimates of the expenditure of the Agency for that financial year.

(3) The annual estimates of expenditure referred to in subsection (2) must separately specify the amounts required for -

- (a) the activities of the Agency;
- (b) the administrative and operational needs of the Agency;
- (c) the expenses of the Advisory Board.

(4) The annual estimate must make provision for all estimated expenditure of the Agency for the financial year to which they relate, including a reserve fund to provide for contingency in the event of an unforeseen increase in expenditure and other emergencies not contemplated at the time of making the estimates.

(5) The Advisory Board must make recommendations on the annual estimates before the commencement of the financial year to which they relate and, once the recommendations are made, the amount of money provided in the estimates must be submitted to the accounting officer for approval.

(6) The Agency may not incur expenditure except in accordance with the annual estimates provided under subsection (2), or with prior written approval of the accounting officer.

Investment of balances

33. (1) The accounting officer may, with the prior written approval of the Minister and the Minister responsible for finance, despite the provisions of section 20, invest money referred to in section 29 which is not required for immediate use or as a reasonable working balance.

Unexpended balances

34. (1) Despite anything to the contrary contained in any law, any unexpended balance of money referred to in section 29 at the close of any financial year, including accrued interest on investment balances and other receipts, must be carried forward as a credit in the funds of the Agency to the next succeeding financial year.

Accounts and audit and annual reports

35. (1) The accounting officer must keep books, and other records of accounts of the expenditure of monies allocated to the Agency and the assets and liabilities of the Agency.

(2) The accounting officer must prepare the annual accounts of the funds of the Agency and the Auditor-General must audit and report on those annual accounts in accordance with the provisions of the said State Finance Act.

(3) The accounting officer must submit the financial records and statements of the Agency within ninety (90) days of the end of the financial year to its auditors for auditing purposes

(4) The accounting officer must within four months after the end of each financial year, submit to the President and the Minister -

- (a) a report generally on the operations and functioning of the Agency during that financial year;
- (b) audited financial statements of the Agency,

which annual financial statements and annual report must be in compliance with PEGA;

(5) The President shall cause the annual report and statement to be tabled in Parliament.

Winding up of the Agency

36. (1) The Agency may not be wound up except by or under authority of an act of Parliament.

PART 6

ADMINISTRATIVE MATTERS RELATING TO INVESTORS AND INVESTMENTS

Registration of investors and investments

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

(2) On receipt of an application made under subsection (1) the Agency must consider the application and if it is satisfied that the investment meets the prescribed criteria, the Agency must grant the application.

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

- (ii) keep and maintain a register of current and potential foreign investors and investments;
- (iii) keep a register of Namibian investors considering pairing with foreign investors;

- (iv) register and maintain a register of prescribed accredited micro small and medium enterprises that might benefit from investments;
- (v) register an investor upon an application received from an investor whose application has been granted issue a confirmation of registration
- (vi) ;

(4) The registration contemplated in this section must not be perceived as an approval of an investment proposal contemplated **in part 8 of this Act** and does not in and of itself entitle an investor to any incentives and/or any benefits/services offered by the country to investors.

(5) No investor or investment may be considered for incentives and/or benefits including public private partnerships , joint ventures, business relationships with the State, procurement of a designated amount or designated licenses/permit with access to natural resources, as gazetted from time to time by the Minister, granted by any public entity unless such investor or investment is duly registered with the agency.

(6) For ease of doing business, new qualifying investors registering with BIPA should automatically be registered with the Agency, provided they meet the prescribed criteria.

Certificates for Investment Incentives

38. (1) A registered investor who wishes to access incentives made available to investment under this Act must apply for such incentives to the Agency in the prescribed form and manner.(2) The Agency must recommend for the approval of the Minister, registered investors and investments who should access available investment incentives ;

(3) The Agency must, in the prescribed manner, issue a Certificate for Investment Incentives to -

- (a) Investors registered under section 37 (1) and who meet the prescribed criteria to qualify for incentives;
- (b) registered entities (general investments) with which the Agency has agreed on certain qualifying and complying conditions, subject to this Act,

related but not limited to the contribution of the investment to the development objectives of Namibia, schedule of investment, capacity building to be done, environmental considerations, governance undertaking, gender and social equity, amongst others.

Investment attraction, promotion and facilitation

39. (1) For purposes of promoting investments as contemplated in **section 9(1)(c), the** Agency is responsible for -

- (a) identifying specific projects and inviting interested investors for participation in those projects;
- (b) undertaking, 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) coordinating the investment related functions of commercial or trade representatives of Namibia stationed abroad;
- (d) promoting investment incentives to investors and potential investors;
- (e) collaborating with other public entities in the promotion of investment into specific sectors in Namibia, including in relation to the above activities related to specific sectors; and
- (f) periodically hosting an inter-ministerial forum as well as forums with other stakeholders including private sector representatives on investment promotion activities and opportunities;
- (g) 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;
- (h) assessing investment proposals and projects for investment potential, opportunities and economic impact;

- (i) joining and participating in strategic regional and global cooperation opportunities, including with other Investment Promotion Agencies, regional and continental bodies, global investment promotion platforms, etc, to boost investment in Namibia and in the region.
- (2) For the purpose of facilitating and retaining investment, the Agency shall
- (a) subject to Namibia's respective laws and regulations, facilitate investments that contribute to sustainable development;
 - (b) subject to **section 57**, facilitate the granting of visas and permits to foreign workers, 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 One Stop Shops, aftercare services and digitalization 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 with under **section 6(1)**;
 - (j) on behalf of the State, conclude performance agreements with investors for any applicable investments not designated as strategic investments.

(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 shall monitor investors and investments to which this Act applies to ensure compliance with this Act and Regulations made under this Act.

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

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

Grievance resolution committee

41. (1) As part of its investor aftercare function, the Agency shall set up an Investment Grievances Resolution Committee which shall provide post-investment and grievance-settlement services for investors and enterprises doing business in Namibia.

(2) The Investment Grievances resolution committee shall use the insights from these grievances amongst investors to provide input to policy makers to make regulatory adjustments and reforms to make Namibia a more attractive environment for investment.

(3) The Investment Grievances resolution committee under its auspices shall focus on complaints and grievances by investors and try to seek resolution of complaints, grievances and disputes by amicable means.

(4) An investor shall notify the Investment Grievances resolution committee of any grievance arising between the investor or the investment and the State after admission or after establishment of the investment.

(5) The Investment Grievance Resolution Committee shall be chaired by an appointed Senior Official of the Agency who is specifically designated to carry out this role on a full or part time basis, with expertise in corporate and investment law and mediation.

(6) Other members of the Committee may include experienced mediators and arbitrators, and persons who have knowledge and experience in foreign investment matters.

PART 7

INVESTORS, ECONOMIC SECTORS AND BUSINESS ACTIVITIES

Designation of categories of economic sectors and business activities for certain categories of investors

- 42.** (1) The Minister, in recognition of -
- (a) the sustainable economic sectors, business activities and development objectives of Namibia;
 - (b) the ecological sustainability of the environment in Namibia;
 - (c) Namibia's national security interests; and
 - (d) the social inclusion of all inhabitants of Namibia;

- (e) gender equality;
- (f) enhancement of innovation capability in Namibia; or
- (g) the public interest,

must recommend, after following the prescribed consultative process, to Cabinet the designation 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 designated as -

- (a) reserved for the State;
- (b) reserved for Namibians ;
- (c) requiring foreign investors to enter into joint venture partnership, of which the percentage is set out in the regulations, between Namibian investors and foreign investors; and
- (d) reserved for public private partnership projects as contemplated in the Public Private Partnership Act, 2017(Act No. 4 of 2017);
- (e) strategic investments, which are subject to an approval process and the criteria set out in section 49.

(3) On approval of the recommendation contemplated in subsection (1) by Cabinet, the Minister must, by regulation, designate the approved categories of economic sectors and business activities for the different categories of investors and investments.

- (4) Regulations 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 employees;
 - (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.
- (5) An investor must meet the applicable requirements for categories of investors in order to invest in the designated economic sectors or business activities.
- (6) The expansion of an existing investment as defined in this Act is treated as an investment that is subject to this Part.
- (7) 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: provided that the expansion proposed is not an attempt to circumvent subsection (8).
- (8) If an investor or investment -
- (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 (4)(b), but the total relevant quantities for such investments would be over the threshold, such investments must be treated in a cumulated fashion as a single investment for the purposes of this Act.

Saving in respect of existing investments

43. (1) An investor who has lawfully invested in an economic sector or business activity before the sector or activity has been designated under section 12 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 ownership or control of the maintained investments contemplated in subsection (1) is subject to the applicable requirements of Part 5.

Economic sectors and business activities not designated

44. An economic sector or business activity that has not been designated by regulation made pursuant to section 42 is open for investment and ownership participation by any investor in any legal form permitted by the applicable law. The process relative to approval of investments and time periods relating to approval where applicable, must be determined by way of regulations.

PART 8

APPROVAL OF STRATEGIC INVESTMENTS

Application for approval of strategic investments and change of control

45 (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 42(2)(e)** shall be required to obtain the approval of the 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 agency in the prescribed form and manner.

(3) Any proposed change in control of an existing strategic investment in Namibia in a sector prescribed by regulation pursuant to **section 42(2)(e)**, 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,

must require the approval of the 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 in the prescribed manner.

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

Consideration of application and grant or approval

- 46.** (1) On receipt of an application made under section 45 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 45(4), must seek advice from the Namibian Competition Commission as contemplated in section 16(1)(d) of the Competition Act.
 - (c) may, subject to section 18, submit to the Minister recommendations to approve or disapprove the application for approval or change of control of an investment.
- (2) In the case of an approval, with or without conditions, the Minister must –
- (i) in writing provide the applicant concerned with the Minister decision approving or disapproving of the proposal; or
 - (ii) in the case of a disapproval of the application, in writing 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 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 ;
 - (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 investment has been amended to reflect the change, if necessary, and the Agency has made the necessary changes in the register referred to in section 37.
- (5) If an applicant intends to make changes to a proposed investment or a proposed change of control that -
- (a) do not materially alter the nature, size, location or scale of the proposed investment or proposed change of control; or
 - (b) do materially alter the nature, size, location or scale of a proposed investment or a proposed change of control,

the investor must in writing notify the Minister through the Agency of all the proposed changes.

Provisional approval of investments

47. (1) On recommendation of the Agency, the Minister may grant a provisional approval for a specified period of time in relation to a proposed investment for which an approval under this Act is required if -

- (a) the investor has requested a provisional approval in writing;
- (b) the Agency has had an opportunity to fully consider the circumstances; and
- (c) it will facilitate the ability of an investor to obtain other approvals, permits, licenses, authorisations or concessions under other legislation, which are necessary for the final approval of the proposed investment.

Criteria for approval of strategic investments

48. (1) In considering an application for approval of a proposed investment and in addition to any other provision of this Act, the 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 security 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 in Namibia;
- (e) the contribution of the investment to the advancement of small and medium enterprises in Namibia;

- (f) the contribution of the investment to the advancement of the development of a geographical area of a 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.

Approval of strategic investments

49. (1) an 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

(2) an 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 (1) are granted.

Exception to requirements for approval for change of control

50. (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 9
RIGHTS AND OBLIGATIONS OF INVESTORS

Compliance with applicable laws and registration of investors

51. (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.

(2) An investor whose investment has been approved under section 49, as well as any other qualifying/required investor **under part 6** must register itself and the investment 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 be registered under subsection (1) 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.

Treatment of foreign investors and their investments

52. (1) With respect to the 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;
- (a) 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, but the measures may not materially impair the rights granted by other provisions of this Act.

Expropriation

53. (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

54. (1) The just compensation contemplated in section 53(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;
- (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 acquisition of the property;
 - (f) purpose of the expropriation; and
 - (g) duration of the investment.
- (3) The amount of compensation -
- (a) 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;
 - (b) determined by the Minister must be approved by the Cabinet.
- (4) The assessment of fair market value may not reflect any change in value occurring because the intended expropriation had become known earlier.
- (5) 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

55. 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 54**.

Foreign personnel

56. (1) The Minister will engage the Minister responsible for immigration to facilitate the issuing of visas and residence permits to investors, their spouses and dependent children and parents of the investors and the engagement of foreign personnel.

Despite subsection (3) the Minister responsible for immigration, on the recommendation of the Minister and after consultation with any relevant Minister as the circumstances require, may in writing authorise an investor to employ natural persons who are not Namibians to perform in Namibia -

- (a) scarce key professional and managerial functions; or
- (b) specialised services, scarce skills or specialities,

required for the operation of the investment.

(2) The authorisation granted under subsection (1) is subject to this Act, to other laws relating to labour and immigration control and to any applicable agreement entered into with the Minister.

- (3) An investor must -
 - (a) employ and make use of available skills in the Namibian labour market;
 - (b) invest in human capacity development in the Namibian labour market; and
 - (c) ensure the transfer of skills to Namibians,

so as to enhance the sustainability of the investment and its linkages within the Namibian economy and achieve the developmental objectives of Namibia.

(4) The foreign personnel referred to in subsection (1) excludes the investor and shareholder, his or her spouse and dependent children and parents of the investor, who, if non-Namibian, are deemed to have been granted, subject to **section 57 and** to other immigration control requirements, the right to enter and work in Namibia at the point of admission once final approval of the investment has been granted.

Facilitation of visas and permits of investors, dependents and foreign personnel

57. (1) The Agency will engage the Minister responsible for immigration to facilitate the issuing of visas and residence permits to investors, their spouses and dependent children and parents of the investors and foreign personnel.

(2) Agency, after consultation with the Minister responsible for immigration, the Minister responsible for labour and the Minister responsible for tertiary education, may give approval to 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.

(3) The Agency, after consultation with the Minister responsible for immigration, the Minister responsible for labour and the Minister responsible for tertiary education, may prescribe positions, even in the absence of the performance agreement contemplated in subsection (2), as temporary in respect of foreign personnel in respect of various investments to which section 56 **applies**.

Capacity development and transfer of skills

- 58.** (1) If -
- (a) the Agency and investor have 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; or
 - (b) the Agency has designated positions as temporary in respect of foreign personnel under section 56,

an investor must ensure that Namibians are trained to acquire relevant skills to assume those positions within the designated period or a period agreed upon between the Agency and the investor.

(2) An investor must train Namibians to fill the positions occupied by foreign personnel on the basis of work integrated learning (one apprenticeship for each position held by a foreign person,) unless otherwise agreed and specified in the performance agreement contemplated in section 57(2). (ref to Affirmative Action Act)

Transfer of funds

- 59.** (1) Subject to subsection (4) and the applicable laws of Namibia an investor may transfer funds relating to his or 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.

PART 10 DISPUTE SETTLEMENT

Resolution of disputes

- 60.** (1) An investor may notify the Investment Grievance Resolution Committee, of a dispute relating to this Act arising between the investor or the investment and the State after admission or after establishment of the investment.
- (2) The Investment Grievance Resolution Committee, on request of the investor or investment and if appropriate, may assist in consultation with the Minister in the resolution of the dispute, including by designating a mediator or mediation panel to mediate any dispute contemplated in subsection (1). (if both/either one, minister and/or Agency are involved, in consultation with a party that is not involved i.e. from the judiciary/Chief Justice, can appoint the mediator) or by agreement by both parties, can appoint the mediator
- (3) An investor or investment may choose to directly approach the courts of Namibia for remedy instead of using the mediation procedures referred to in subsection (2).
- (4) 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.
- (5) Nothing contained in this Act has any impact on an arbitration agreement between a public entity and an investor or investment that has been agreed or may be agreed pursuant to other legislation permitting such arbitration.

PART 11 GENERAL PROVISIONS

National security

61. (1) Despite any other provision of this Act to the contrary and subject to consultation with the Head of the Namibian 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

62. (1) An investor or investment commits a contravention, if the investor or investment -

- (a) undertakes, establishes or operates an investment in a manner contrary to sections 11 or 45(1);
- (b) invests in a sector in which such investment is not permitted pursuant to the reservations made in terms of section 42;
- (c) changes the nature of the investment in a manner that makes it materially 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 or investment commits a contravention, if the investor or investment -

- (b) transfers any licence, permit, authorisation or concession owned by the investor or investment,

to a foreign investor in contravention of section 11(1).

(3) A person 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 person convicted of an offence under subsection (3) is liable to a fine not exceeding N\$10 000 or to imprisonment for a term not exceeding two years, or to both such fine and such imprisonment.

Opportunity to comply with law

63. (1) If the Minister or a compliance officer has reason to believe that an investor or investment has committed a contravention as contemplated in section 60 the Minister or compliance officer may, where appropriate -

(a) notify the investor or investment of the reasons for such belief that an offence has been committed; and

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

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

(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 62.

Action to be taken against investor or investment for offences

64. (1) If the Minister is of the opinion that an investor or investment has committed a contravention contemplated in section 62, the Minister may, subject to subsection (2) and with due regard of any penalty that may be imposed under that section -

- (a) in writing order the suspension, withdrawal or cancellation of the approval of the investment issued under this Act;
 - (a) where appropriate, notify to the relevant Minister, of the contravention;
 - (c) direct the Agency to deregister the investor or investment;
 - (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 upon 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 or investment 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 or investment has committed a contravention contemplated in section 62, the court may impose an administrative fine that does not exceed the full value of the economic benefits that have accrued to the investor or investment 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.

Appeal to High Court

65. (1) An investor or investment may appeal to the High Court against any suspension, withdrawal or cancellation contemplated in section 64 on the grounds that

-

- (a) no contravention has been committed;
- (b) the contraventions so committed has 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 be conducted in accordance with 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 consider appropriate.

Regulations

- 66.** (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) the organisation and operations and proceedings of a body that may be established under this Act to perform any functions in terms of this Act or as may be delegated to it;
 - (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 sectors pursuant to sections 48 and 49;
 - (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 subsection 5(b), to investors and the criteria to qualify for such incentives ;
 - (g) the qualifications and functions of compliance officers;

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

67. 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

68. (1) Despite the repeal of the Foreign Investment Act, 1990, any certificate of investment status, investment contract or permit executed thereunder and in force at the date of commencement of this Act continues to be in force as if it has been made under a corresponding provision of this Act and may not be prejudiced or limited or otherwise negatively affected by this Act.

(2) A Status of Investment Certificate, an investment contract or permit contemplated in subsection (1) ceases to be of effect at the earlier of its expiry or one year after the effective date of this Act as pronounced by the Minister, unless the Minister, on recommendation of the Agency, and the investor agree to its renewal on terms consistent with this Act.

(3) Owner(s) of a Status of Investment Certificate, an investment contract or permit approved/issued before the commencement of this Act should apply for the

renewal/recognitions/replacement of such investment status, contract or permit with the Agency, within a period of one year after the effect of this Act;

- (4) Anything done under a provision of the repealed Foreign Investment Act, 1990, that could have been done under this Act is deemed to have been done under the corresponding provision of this Act.
- (5) Nothing in this Act applies to annual or other designated short-term periodic renewal processes for any investment permit, license, concession or other instrument that is embodied within an instrument that has a longer term of duration.

Short title and commencement

69. (1) This Act is called the Investment Promotion and Facilitation Act, 2021; 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.