



Ministry of Industrialisation & Trade

NIPFA UPDATE

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Windhoek Stakeholders' Briefing

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INTRODUCTION

- The principal purpose of this Act is to enable a conducive environment to attract, retain and facilitate both domestic and foreign sustainable investment in our country.
- The Act therefore also not only covers and define its objects, the Minister's powers, but also the duties and functions of key institutional poles within the NIPFA framework.

Perspectively driven from:

- Numerous studies and research such as The World Bank's Namibia Investor Roadmap of 2005 and the 2006, Foreign Investment Advisory Services in 2006 has continuously highlighted, since 1990, the need to shore up our Foreign Investment Act of 1990 as it was chiefly aimed at attracting foreign direct investment only and thereby wholly excluding domestic investment; and
- The need to embrace a modern and clear legal framework that accommodates newer economy dictates and developments to ensure that Namibia leverage on dimensions that emanates from the **4th Industrial Revolution; Economic Nationalism Agenda, the Digital Economy Imperatives, Smarter Approach towards Economic Incentives, Regional and Continental Free Trade Areas** as well as fostering **Regional and Bilateral Value Chains** through **New Generation Special Economic Zones**.



Revamping Needs

- The current version of NIPA evolved out of the 2016 Namibia Investment Promotion Act, which was assented to by His Excellency The President of Namibia, Dr. Hage. G. Geingob, but had to be withdrawn to ensure final consultative engagements.
- The Ministry of Industrialisation and Trade started working on revamping the investment legislation in the 2000s characterized by numerous consultations with various stakeholders. It is now more than seven years after the withdrawal of the 2016 Act and this severely affect the investment environment regime in Namibia.
- This has led to increasing **investor uncertainty**, a situation that Namibia can ill-afford any further. The investor uncertainty is felt in the very low investment the country secured over the last four years.
- **Unviable fallback position is the old FDI Act**
- The old legislation therefore will not support any viable initiatives that foster the adoption of 4th Industrial Revolution driven investments nor will it adequately enhance new policy developments around Special Economic Zones which aims to ensure that Namibia can attract investments for trading in through the African Continental Free Trade Area (ACFTA) and the rest of the world.



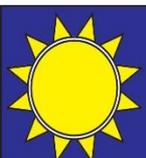
Global Developments in Investment Policy

- From 2011 onwards foreign investment screening has become the dominant issue in terms of investment law and policy.
- ‘Investment Screening’ refers to a procedure allowing the State to **assess, investigate, authorise, condition, prohibit or unwind foreign direct investments** based on a range of security and public order criteria.
- The major focus are on Sensitive and or Strategic Sectors and critical asset infrastructure as defined in the relevant law/policy.
- The rise of China (using SOE investments, Covid-19 pandemic which exposed weakness in supply chains and now the Russian Invasion of Ukraine which triggered unprecedented sanctions with impact on rules for inbound investment once again deepens investment screening.
- Consequently more than 60% of OECD member countries have adopted investment screening rules and up to 80 countries have in the past 5 years either introduced or amended their legislation, rules, regulations or policy in terms of updating the screening of investment and updating classification of sectors.



Framing NIFPA

- Defining a ***domestic and foreign investor***, as well as investment with an emphasis on sustainability of the said investment;
- ***Restriction of some economic sectors*** and or subsectors to foreign investors but buttressed by stringent research and criteria;
- Mainstreaming ***a national investment policy*** imperative within the investment law;
- Enabling a ***viable institutional framework*** to support the ambitions of the policy by addressing an institutional framework (Namibia Investment Promotion and Development Board) as well as requisite investor friendly infrastructure (the Integrated Client Service Facility or a One-Stop Shop);
- ***Investor performance requirements to ensure accountability***;
- Ensure an effective structure to support and guard our ***Economic Nationalism Agenda***, by introducing Business Inspectors/Compliance Inspectors;
- Ensuring that **admission procedures** for foreign investors are transparent;
- ***Making investor registration compulsory***, and hence introduce a crucial aspect of investor tracking and management;
- Clear ***guidelines for investor dispute procedures***.
- RATIONALE-ADEQUATE POLICY RESPONSE AND SUSTAINABLE INVESTMENTS



Key Sections-May Change

SECTIONS 1 and 2

- These sections provides for the definitions of the key words used in the Act for ease of reference and clarity and emphasis on the definition of **investment** to ensure clear clarification of concept and to ensure mainstreaming **sustainability**.

SECTIONS 3 AND 4

- These sections state the **objectives** to be achieved by the Act, which are, *inter alia*, aimed at providing a clear and transparent framework for sustainable investment in Namibia in order to ensure economic development.

SECTION 5

- This section bestows crucial **powers on the Minister** to ensure the attainment of the objects of the Act.



Key Sections

SECTIONS 6 TO 10

- These sections establish the **designated investment promotion agency** (Namibia Investment Promotion and Development Board), introduce **Business Inspectors/Compliance Officer**, and introduce the **framework for performance agreement with investors**, the dictates of investment promotion a facilitation as well as the requisite **infrastructure-the Integrated Client Service Facility/One Stop Shop**. The cries of our local businessmen and women against some unscrupulous foreign investors' business practices are to be formally accommodated through the appointment of Business Inspectors with full powers to investigate businesses in terms of compliance.



Key Sections

SECTION 11

- This section introduces a ***National Investment Policy*** imperative which will be crucial to ensure dynamisms and a sustained awakened approach towards Namibia' policy space in investments.

SECTIONS 12 TO 29

- These sections deal with frameworks around sector reservations, investment approvals-these will be further enhanced through Regulations. Further crucially these sections deal with not only the **Rights** but ***also very much importantly*** the **Obligations** of investors (a matter that has been often neglected in investment laws especially in Africa and the rest of the developing world). The final section here deals with aspects of the transfer of funds.

SECTION 30

- This section ensures ***that dispute resolution mechanisms***, access paths and frameworks are congruent to ensure a comfortable environment for both the country as well as the investor.



Key Sections

SECTIONS 31 TO 39

- These final sections deal with the further provisions applicable to the Act.
- These provisions include ***the policy space for the Minister to further prescribe and regulate investments to maintain national security and international peace.***
- The sections also deals with ***requisite offences and penalties*** where in the unfortunate event an investor may have committed an offence. The sections also provide the accommodative stance of a High Court appeal pathway for investors.
- These sections further deal with the provisions of ***Ministerial Regulations, Repealing of certain laws*** (Foreign Investment Act, 1990 (Act No 27 of 1990), the Foreign Investment Act, 1993 (Act No 24 of 1993) and the Namibia Investment Promotion Act, 2016 (Act No. 9 of 2016).
- Importantly the Section also provide for current holders of ***the investment certificates*** under the old law not to be prejudiced or negatively affected by this Act.



Deep Dive-Compliance Officers

- **General Market Inspection**-mainly involves inspection retail products for the process of labelling, packaging, unwholesome and dented cans, price-tagging etc.
- **Liquor Regulation**-Ensure prevention of sales of alcohol/liquor beverages to minors and licensed/unlicensed vendors
- **Investment Law Enforcement:** It's an exercise carried out by General Market Inspectors to ensure protection of sector-reservations and performance agreements requirements by the NIPA Act as well as other Namibian related regulations.
- **Business Registration Enforcement:** Means to ensure that businesses operating in Namibia are legally registered with valid BIPA Registration Certificates.
- **Price Tag Enforcement (PTE):** Means to ensure that all goods and services on the Namibian market for sale are price-tagged as a means of monitoring prices as well as promoting transparency.
- **Market Surveillance on Price (MSP):** Means to avoid price hiking, smuggling, hoarding, dumping of unsafe and substandard products and it is implemented through a monitoring process utilizing an approved price margin guidelines.



Update on Key Developments

- The MIT Minister submitted NIPA Bill in November 2021 to Parliament for review and eventual passing.
- The tabling of the Bill was met by a media campaign-very misinformed picture of the true intentions and ambitions of the Bill.

3 key issues identified:

- *perceived Superpowers of the Minister under which all and sundry investment decision to be made in this country must be reviewed and approved by him/her;*
 - *Minister limiting and even trampling on the Independence of the Namibia Investment and Promotion Development Board (NIPDB) and*
 - *an Act that has no or little bearing on an accommodative stance for expropriation and investor transgressions review*
-
- MIT identified 3 main Namibian dailies-*The Namibian, The Sun and Die Republikein.*
 - No Right of Reply ever accorded to MIT.
 - The Media mainly drove the Ministerial Superpowers and the stance on expropriation.
 - The NIDPB mainly drove the limits on the powers of NIPDB as quoted in the Newspapers.



Review of Key Matters Raised

On Ministerial Superpowers over ALL Investments

- This is false as the Minister only has a determination over those sectors that are designated as such by Regulation.
- Section 14 in NIPA is very clear *'An economic sector or business activity that has not been designated by regulation made pursuant to Section 12 is open for investment or ownership participation by any investor in any legal form permitted by the applicable law'*.
- Section 12 treats economic sectors that may be designated for the State, Namibians, Joint Ventures, Strategic Investments and Innovation.
- This is normal across the world as economic designation is done for various reasons such as fostering entrepreneurship, mineral beneficiation or for national security reasons.
- Minister must actually ensure proper research, table it to Cabinet and can only do such under a given criteria-value of investment, region etc).
- These criteria actually avert a blanket provision of economic nationalism.



Review of Key Matters Raised

On MIT encroachment of the NIPDB Independence.

- The Bill ensures clear separation of both the Minister and NIPDB.
- The Minister is accorded powers over policy and strategic matters (policy, incentives, sector designations, business inspectors etc).
- The NIPDB is designated as the Namibian Investment Promotion Agency. (implementation, advisor to Minister, Performance Agreements, market intelligence).
- Section (9) further provides for Agency to ensure investment promotion and facilitation.
- There is no provision in the Act where Minister is mentioned appointing the Board Chairperson, Board, and Chief Executive Officer.
- The Act also provides enough flexibility and policy space (Section 4) to ensure readiness of the system should there be any changes to the NIPDB ability to carry out her functions so designated.
- The Act makes mention of no reporting lines to Minister, it dutifully reference that NIPDB is established under a different set up.



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Review of Key Matters Raised

On Accusations of a Draconian Act: Expropriation and Dispute Resolutions.

- The Bill deals with these matters effectively in Sections 23-25.
- The Bill provides that should there be any expropriation event/s, such must confirm with Article 16 of the Constitution and any compensation should be under market value guidelines.
- Section 24 also accord a Namibian High Court review should a investor be unsatisfied with the compensation so derived.
- In terms of transgressions, whereby a Ministerial fine was imposed, there is a large latitude to actually evade or sanitise the matter-from request to conform to new agreement of behaviour to even appeal the matter at the High Court.
- International fora is also brought in with regards to arbitration matters should the Minister, in a matter of a Performance Agreement and the investor agrees to it.



Latest Updates

- Through the R.T. Hon Prime Minister the MIT Minister has set up a Technical Committee.
- The TC has worked since March 2022 on revamping the Act.
- The TC has also resolved key issues on the Bill and has reported more than once to the Cabinet subcommittee on progress and has received substantial guidance.
- Final touches are being made on the Bill, especially immersing the institutional agency-NIPDB.
- The TC is finalizing its work, whilst Hon Minister has started the consultative process to ensure timely completion of this Bill.



Regulations

- Draft Regulations are developed
- Draft Regulations will be released for public consultations.
- They identify key sectors to be reserved for the state and local Namibians.
- For the State and example is the Central Bank.
- For local Namibians, some sectors are identified such as retail, construction, subsectors in tourism, transport etc.
- Regulations will look at have sectoral thresholds which the public consultations shall make input thereto.



Regulations-Not Exhaustive

STIVE

Sectors	Draft Threshold	Notification Threshold
Retail	N\$7.5 million	N\$300 million
Agriculture	N\$7.5 million	N\$7.5 million
Joint Ventures	33% Namibian ownership	N\$300 million
Construction	N\$200 million	N\$300 million
Small scale Mining	Reserved wholesale	
Transport (taxis, airport shuttles, petroleum distribution, storage)	Reserved wholesale	
Child Care (Creches e.g.)	Reserved wholesale	
Hairsalons & Beauty treatment	Reserved wholesale	
Camping, Entertainment Park	Reserved wholesale	
Other sectors, Cruise ship services, Mining, Lodges etc	Variations	Variations



Update on Process & Regions

- Since October 2021 the MIT has extensively embarked upon a regional consultation process.
- The process of regional consultations is driven by the Hon Minister.
- In addition the MIT has also initiated work with the SADC secretariat to partake in the 'Support for Improving the Investment and Business Environment in the Southern African Development Community Region (SIBE).
- The SADC process is a process that aims to introduce a National Action Programme on investment (NAPI) to domesticate the SADC Investment Policy Framework (IPF)
- The SADC process has completed the draft NAPI which will also feed into the work of the Investment Bill.
- The SADC process has now embarked upon the second stage of developing a national investment policy to complete the requirement as per the Investment Act.



Update on Process & Regions

Five Action Areas for Investment Reforms

Area	Action	Stakeholders Views	Bill Alignment
Area 1	Promoting a Coherent and Transparent Investment Environment	<ul style="list-style-type: none"> • Ensure predictability and availability of investor information. • Ensure a transparent investment screening processes • Institutionalise open stakeholder consultations • Imbue Cost-benefit analyses 	
Area 2	Ensuring Market Access and Competition	<ul style="list-style-type: none"> • Need to protect MSMEs against undue competition from FDI. • Mixed views especially on quotas on local labour. • Cost benefit analysis of targeted tax incentives. • Policies on land rights should be designed to support investment 	
Area 3	Providing Security and Protection of Investors' Rights	<ul style="list-style-type: none"> • Measures for fair compensation in cases of expropriation already exists. • GRN must put in place and enforce measures to minimise corruption risks in investment. • Protection of IPR 	



Update on Process & Regions

Area 4	Ensuring Responsible and Inclusive Investment for Development	<ul style="list-style-type: none">• Protect environment, labour and ensure public health.• Align NIP with international and development objectives.• FDI must support local entrepreneurship and NIP must ensure it.	
Area 5	Promoting Regional and International Cooperation.	<ul style="list-style-type: none">• Namibia must deepen its regional, continental and international integration through various policies.• Namibia must be active and support immediate ratification of regional cooperation agreements.	



Update on Process & Regions

REGIONAL CONSULTATIONS ON KEY ISSUES OF BILL: OUTCOMES

Key Issue	Alignment with Bill
Overall Bill Support is positive	
Investment screening is supported with emphasis on sustainable investments	
Business Inspectors/Compliance Officers are supported and needed	
Sector reservations supported but majority view early assessments are that thresholds are low, regional variations also evident.	



Conclusions

- The MIT also re-engaged the NCCI in terms of latest developments but some of their matters were accommodated already as they had a private lawyer who reviewed the bill before Parliamentary tabling.
- The MIT is also aware of the new fragmentation in the business association sector of Namibia, but do take note of recent pronouncements by some of these groupings in calling for the immediate passing of both NIPA and NEEF.
- Regional consultations in support of the Bill.
- MIT has received comments from NALOPA and NISO-Supportive of the Bill.
- Fall back position of Old FDI Act unviable as the world has progressed beyond mere FDI concentration.
- The work of the Act along with policy and regulations are also to supplement and enhance other key pieces of legislation such as the Competition Act which also looks at mergers and acquisitions, network/critical infrastructure regulations as well as Special Economic Zones.
- MIT remains Open-Minded to the key issues raised.



Thank you



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