REPUBLIC OF NAMIBIA

NATIONAL ASSEMBLY

NAMIBIA INVESTMENT PROMOTION AND FACILITATION BILL

(As passed by the National Assembly)

(Introduced by the Minister of International Relations and Trade)

[B. 5 - 2026]

BILL

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

(*Introduced by the Minister of International Relations and Trade)*

ARRANGEMENT OF SECTIONS

PART 1
INTRODUCTORY PROVISIONS

1. Definitions
2. Application of Act
3. Objects of the Act

PART 2
ADMINISTRATION OF ACT

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

PART 3
INVESTMENT PROMOTION AGENCY OF NAMIBIA

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

PART 4
ADMINISTRATION OF INVESTMENTS

29. Registration of investors and investments
30. Investment facilitation
31. Monitoring of investments

PART 5
DESIGNATION OF ECONOMIC SECTORS AND BUSINESS ACTIVITIES

32. Designation of economic sectors and business activities reserved for Namibians
33. Procedure before designation of economic sectors and business activities reserved for Namibians
34. Ownership and control of enterprises in reserved activities
35. Savings in respect of existing investments

PART 6
APPROVALS UNDER OTHER LAWS AND INVESTMENT ASSESSMENT

36. Approvals under other laws
37. Assessment of development contribution

PART 7
INVESTOR RIGHTS AND INCENTIVES

38. Treatment of foreign investors and their investments
39. Expropriation
40. Facilitation of visa and permits of investors, dependents and foreign personnel
41. Investment incentives

PART 8
INVESTOR OBLIGATIONS

42. Compliance with applicable laws and registration of foreign investors
43. Capacity development and transfer of skills

PART 9
DISPUTE SETTLEMENT

44. Dispute settlement
45. Grievances Resolution Committee
46. Resolution of disputes by Grievances Resolution Committee

PART 10
GENERAL PROVISIONS

47. National security
48. Contraventions and offences
49. Opportunity to comply with law
50. Action to be taken against investor or investment for contraventions
51. Appeal to High Court
52. Delegation of powers
53. Cooperation with other institutions or organisations
54. Preservation of secrecy

55. Limitation of liability
56. Regulations
57. Repeal of laws
58. Savings and transitional provisions
59. 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:

PART1
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 the Investment Promotion Agency of Namibia as established in terms of section 6;

"approval" means a licence, permit, authorisation, concession or other approval required for an investment under a law other than this Act;

"board" means the board of the Agency referred to in section 8;

"business activity" means an activity carried out to produce or provide a service for gain or reward in Namibia;

"certificate of registration" means a certificate issued under section 29(4)(a)(ii), including an incentive endorsement made under section 41(8);

"competent authority" means a person or body empowered by this Act or another applicable law to exercise the power or perform the function under this Act or the applicable law;

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

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

"effective Namibian control", in relation to an enterprise, means the ability of one or more Namibians, acting individually or jointly, directly or indirectly −

(a) to exercise or control the exercise of more than half of the voting rights in the enterprise;

(b) where the enterprise has a governing body, to appoint or remove a majority of the members of that body; or

(c) to determine the strategic operating decisions of the enterprise without being subject to the direction or consent of a person who is not a Namibian, other than consent confined to the protection of a minority interest as contemplated in section 34;

"enterprise" means any organised business undertaking, legally established in Namibia or any country other than Namibia, as the case requires;

"Executive Director" means the executive director of the Ministry;

"expansion of an existing investment," for the purposes of the definition of "investment" 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;

"fiscal incentive" means an incentive that reduces, exempts, defers, credits, refunds or otherwise provides preferential treatment of a tax, duty or other compulsory levy;

"foreign investor" means a person who is not a Namibian and who has made or seeks to make an investment in Namibia;

"Grievances Resolution Committee" means the Investment Grievances Resolution Committee established by section 45(1);

"High Court" means the High Court of Namibia as defined in section 1 of the High Court Act, 1990 (Act No. 16 of 1990);

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

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

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

"investment" means the establishment, acquisition or expansion of an enterprise carrying on a business activity in Namibia through the commitment of capital or other resources with the expectation of gain and the assumption of risk;

"majority Namibian-owned", in relation to an enterprise, means that Namibians collectively hold, directly or indirectly, beneficial ownership of more than 50 per cent of its ownership interests and beneficial entitlement to more than 50 per cent of its distributable profits and residual assets on dissolution;

"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" means the Minister responsible for investments;

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

"Namibian" means –

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

(b) an enterprise incorporated, registered or constituted under the laws of Namibia which satisfies the requirements of majority Namibian ownership and effective Namibian control, determined in accordance with the definitions of "majority Namibian-owned" and "effective Namibian control;

"Namibian investor" means a Namibian who has made or seeks to make an investment in Namibia;

"non-fiscal incentive" means an incentive other than a fiscal incentive, including technical assistance, training, supplier development, market-access support or a grant or cost-sharing contribution lawfully provided for investment development;

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

"one-stop-shop" means the physical centre or electronic portal established under section 30(1);

"ownership interest" means a share, a member's interest in a close corporation, a partnership interest or an equivalent proprietary interest in an enterprise;

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

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

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

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

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

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

"register" means the register referred to in section 29(14);

"regulation" means a regulation made under section 56;

"responsible investment" means a business activity that explicitly incorporates environmental, social, and governance factors, alongside traditional financial metrics into decision-making and ownership practices;

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

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

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

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

"this Act" includes regulations made under section 56; and

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

Application of Act

2. (1) This Act applies to foreign investors and their investments in Namibia, including investments existing at its commencement, subject to the savings and transitional provisions of this Act.

(2) This Act applies to registered Namibian investors who apply for or receive facilitation services or incentives under this Act, to the extent relevant to those services or incentives.

(3) Despite subsection (2), Part 5 and the provisions necessary for its enforcement apply to every person carrying on or proposing to carry on a designated activity, subject to section 35.

(4) Nothing in this Act exempts a person from compliance with another applicable law or confers an approval power vested in another authority.

Objects of Act

3. (1) The objects of this Act are to –

(a) establish the Investment Promotion Agency of Namibia responsible for investment promotion, facilitation and monitoring in Namibia;

(b) enhance the investment facilitation process, investment promotion, aftercare and monitoring;

(c) provide protection for investors and their investments;

(d) promote responsible investment that aims for sustainable development;

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

(f) allow for designation of certain sectors or business activities of the economy to be reserved for Namibians.

PART 2
ADMINISTRATION OF ACT

Administration and implementation of Act

4. (1) The Minister is responsible for the administration of this Act and may formulate policies and make regulations for its implementation.

(2) The Agency is responsible for implementing this Act within the powers conferred on it by this Act.

(3) The Minister may, after consultation with the Board, issue written directions of a general nature concerning the implementation of investment policy by the Agency.

(4) A direction under subsection (3) may not determine an individual application, override a duty imposed by law or interfere with the independent performance of a statutory function.

(5) The Minister or the Agency may publish guidelines explaining the administration of this Act, but a guideline is not binding on an investor and may not impose an obligation, fee, penalty or eligibility requirement not authorised by this Act or another law.

(6) Directions issued under subsection (3) and guidelines issued under subsection (5) must be made publicly available, subject to section 54.

Powers and functions of Minister

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

(a) set the policies for investment promotion and facilitation in Namibia;

(b) subject to section 41, prescribe categories of investors or investments eligible to apply for fiscal or non-fiscal incentives lawfully available under this Act or any other law;

(c) make recommendations, to the Minister responsible for finance, on the introduction, review, rationalisation or reform of fiscal incentives established under applicable revenue laws;

(d) recommend non-fiscal incentives in accordance with section 41;

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

(f) designate economic sectors or business activities as reserved for Namibian citizens and qualifying enterprises, or as open to investment subject to specified beneficial ownership and effective control requirements, in accordance with sections 32 and 33;

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

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

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

PART 3
INVESTMENT PROMOTION AGENCY OF NAMIBIA

Establishment of Agency

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

Functions and powers of Agency

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

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

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

(c) promote and facilitate investment by Namibian and foreign investors by -

(i) undertaking investment attraction and promotion activities;

(ii) identifying and promoting investment opportunities and incentives; and

(iii) facilitating the establishment, retention and expansion of investments;

(d) monitor compliance in accordance with section 31, provide investor aftercare services and facilitate the resolution of investment-related disputes, including through the Grievances Resolution Committee;

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

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

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

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

(i) coordinate investment promotion, facilitation and aftercare with relevant public entities and other stakeholders to address investment constraints and improve the business environment, while respecting their respective statutory mandates; and

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

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

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

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

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

(d) request assistance from a person or institution for the performance of its functions, subject to any applicable law;

(e) obtain information or documents in accordance with section 31 or another provision of this Act expressly authorising their collection; or

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

Board of Agency

8. (1) There is a board of the Agency which is accountable to the Minister and which is responsible for the governance, strategic direction of, and to have oversight over, the Agency.

(2) The board consists of not less than five and not more than seven members with proven knowledge and experience in the fields of investment, trade, economics, finance, law, business, commerce, innovation, public management, diplomacy, technology or any other disciplines relevant to the functions of the Agency who are appointed in terms of subsection (3).

(3) The Minister, must, subject to such terms and conditions as the Minister may determine, appoint persons who are suitably qualified as contemplated in subsection (2) as members of the board.

(4) For purposes of appointment of board members under subsection (3) the Minister must publish a notice in the *Gazette* and in at least two local newspapers widely circulating in Namibia requesting any interested persons or body to submit to the Minister, within 30 days from the date of publication of the notice, the names of suitably qualified persons to be appointed as members of the board.

(5) The Executive Director must for purposes of the recruitment of the board members, constitute a selection committee and designate staff members and other persons to serve on the selection committee.

(6) The selection committee referred to in subsection (5) must after the lapse of the 30 days period referred to in subsection (4) convene a meeting of the selection committee to be held on a date, time and venue as determined by the Executive Director to carry out the selection process in the prescribed manner.

(7) The selection committee must, within the prescribed period submit to the Minister a report containing the names of eight persons ranked according to priority, who are qualified to be members of the board and who are recommended as being most suited to serve on the board, together with reasons why they are recommended.

(8) The Minister must after considering the report prepared in terms of subsection (7), appoint members of the board and publish in the *Gazette* the names of the individuals appointed as members of the board and their dates of appointment.

(9) Despite subsection (8), a failure to publish the names of members of the board in terms of to that subsection does not invalidate any action or decision taken by the board if the members were properly appointed

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

Disqualification for appointment as member of board

9. A person is not eligible to be appointed to the board or continue to serve on the board, if that person –

(a) is not a Namibian citizen or a permanent resident in Namibia, and is not ordinarily resident in Namibia;

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

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

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

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

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

(g) is an unrehabilitated insolvent; or

(h) 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.

Functions and powers of board

10. (1) The board must exercise the powers and perform the functions conferred or imposed on it or the Agency by this Act, subject to the lawful policy directions of the Minister under section 4(3).

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

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

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

(c) review and approve the overall remuneration structure and other conditions of service of the other management staff and other staff members of the Agency, as proposed by the chief executive officer;

(d) on an annual basis, review and approve the business and financial plan of the Agency for the following year, prepared and submitted to the board by the chief executive officer as contemplated in section 20(1)(c);

(e) cause the annual financial statements of the Agency to be prepared in accordance with generally accepted accounting practice and approve those statements, and cause those annual financial statements to be audited in accordance with section 27, and submitted to the Minister in accordance with that section;

(f) prepare an annual report in accordance with section 27 which report must be submitted to the Minister in accordance with that section;

(g) review, and in writing approve, the code of conduct established in terms of section 20(2) at least once every two years and file a copy of that code of conduct with the Minister immediately after its approval.

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

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

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

Conduct of members of board and disclosure of interest

11. (1) A member of the board must –

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

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

(c) comply with any applicable code of conduct or conflict of interest guidelines referred to in section 20(2).

(2) A member of the board may not –

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

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

(3) A member who knowingly uses the position or confidential information acquired as a member to obtain an unlawful benefit for himself or herself or another person commits an offence and on conviction is liable to a fine not exceeding N$50 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

(4) A breach of a duty under this section or of an applicable code of conduct constitutes grounds for disciplinary action, including removal of the member from office in accordance with section 13.

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

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

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

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

(6) A disclosure made under subsection (5) must be recorded in the minutes of the meeting at which it is made.

(7) A member of the board who has disclosed an interest must withdraw while the remaining members consider the disclosure and a determination made by the remaining members must be recorded in the minutes.

(8) A member with an interest reasonably capable of impairing impartiality must not participate in the consideration, decision, administration or oversight of the matter and must not be counted towards its quorum.

Term of office of members of board

12. A member of the board holds office for a term of three years and may be eligible for re-appointment only once at the expiration of that term.

Vacation of office by member of board

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

(a) resigns by giving not less than 30 days' written notice to the Minister and the board;

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

(c) has become subject to any disqualification referred to in section 9; or

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

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

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

(b) has committed serious misconduct connected with the office of member;

(c) has persistently failed, without reasonable cause, to perform the duties of that office after written notice of the failure and a reasonable opportunity to remedy it; or

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

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

Suspension of member of board

14. (1) The Minister may suspend a member of the board where there are reasonable grounds to suspect serious misconduct and suspension is necessary to protect an investigation, the assets of the Agency or the integrity of the Agency.

(2) Before suspending a member, the Minister must give the member written notice of the grounds and a reasonable opportunity to make representations, unless delay would create a substantial and immediate risk to an interest referred to in subsection (1).

(3) Where prior notice is dispensed with, the Minister must give written reasons without delay and allow the member at least seven days to make representations, which the Minister must consider promptly.

(4) A suspension may not exceed 90 days unless the Minister, after considering the member's representations, gives written reasons for an extension not exceeding a further 90 days.

(5) The Minister must review the need for suspension at least every 30 days and revoke it when the grounds no longer exist.

Filling of vacancies of board

15. (1) If a member of the board dies or the office of a member of the board becomes vacant as a result of the happening of an event referred to in section 13(1) or for any other reason, the Minister must, within 90 days from the date of the office becoming vacant and with due regard to sections 8 and 9, appoint a person to fill the vacancy for the unexpired portion of the term of office of the member who has vacated his or her office.

(2) If at any time during the term of office of members of the board –

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

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

the Minister, subject to section 8, may appoint suitably qualified persons on a temporary basis to serve on the board until new members are appointed.

(3) The appointment of persons as members of the board in term of subsection (2) ceases to be of effect on the earlier of –

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

(b) the death, resignation or removal of the person temporarily appointed; or

(c) the appointment of new of members of the board.

Meetings and decisions of board

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

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

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

(a) the Minister; or

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

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

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

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

(6) A majority of the members appointed to the board constitutes a quorum, but a quorum may not consist of fewer than three members entitled to participate in the matter concerned.

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

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

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

(10) A written resolution signed by all members entitled to vote on the matter is valid as if adopted at a duly constituted meeting, provided that –

(a) the number entitled to vote is not less than the quorum required under subsection (6); and

(b) the resolution and every exclusion on account of an interest is recorded in the minutes of the next meeting.

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

(a) a vacancy on the board; or

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

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

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

(13) The chief executive officer may attend meetings of the board by invitation but is not a member, has no vote and must withdraw when the board considers the chief executive officer's appointment, remuneration, performance or conduct.

Committees of board

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

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

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

(2) A committee must consist of at least two members of the board and the chairperson of a committee must be a member of the board.

(3) Sections 9 and 11 apply, with the necessary changes, to a member of a committee.

(4) The board must specify in writing the membership, chairperson, functions, quorum, reporting duties and period of appointment of each committee.

(5) A committee must keep minutes and may exercise only a power expressly delegated to it under section 17(1)(b), but the board remains responsible for oversight of the delegated function.

(6) A member of a committee who is not a member of the board may be paid such remuneration or allowances as may be determined by the Minister with the concurrence of the Minister responsible for finance.

Remuneration and expenses of members of board

18. (1) A member of the board is entitled to be paid out of the funds of the Agency such remuneration or allowances in respect of his or her service as a member as may be determined by the Minister with the concurrence of the Minister responsible for finance.

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

Chief executive officer

19. (1) The board must, with the concurrence of the Minister and subject to such terms and conditions as the board may determine, appoint a suitably qualified person as the chief executive officer.

(2) A person is not eligible for appointment as the chief executive officer if he or she is subject to a disqualification referred to in section 9.

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

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

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

(b) may be performed by the chief executive officer in accordance with guidelines issued by the board.

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

(6) Where the office of chief executive officer is vacant or the chief executive officer is temporarily unable to perform the functions of office, the board must, with the concurrence of the Minister, appoint a suitably qualified person who meets the requirements of subsection (2) to act in that office for a period not exceeding six months, on good cause shown, the appointment may be extended once for a further period not exceeding six months.

(7) An acting chief executive officer may exercise the powers and perform the functions of that office, subject to any lawful limitations specified in the written appointment, and is subject to the duties, accountability and conflict-of-interest requirements applicable to the chief executive officer.

Functions and powers of chief executive officer

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

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

(b) subject to section 10(2)(b) and (c), ensuring compliance with the approved remuneration structure and other conditions of service of all staff of the Agency;

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

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

(e) administering, organising and controlling the staff members of the Agency in accordance with the approved human resource policy of the Agency and the code of conduct referred to in subsection (2); and

(f) at each quarterly meeting, updating the board on the current and emerging issues being considered by the Agency and receiving the Board's comments and suggestions on the issues.

(2) The chief executive officer must, within 90 days after appointment of the first board, prepare and submit to the board for approval a code of conduct for the members of the board, chief executive officer and staff.

Vacation of office by chief executive officer

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

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

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

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

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

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

(e) has become subject to a disqualification referred to in section 9.

Staff of Agency

22. (1) The chief executive officer, with the approval of the board, must employ suitably qualified persons to perform the powers and duties of the Agency efficiently and effectively in accordance with an employment policy approved by the Agency.

(2) The chief executive officer must ensure that all staff of the Agency are adequately qualified and trained for their respective positions.

(3) The board must with the approval of the Minister determine the conditions of service, remuneration and other benefits of the staff of the Agency.

(4) The board with the approval of the Minister, must on an annual basis, review and approve the overall remuneration structure and other conditions of service of the other management staff and other staff of the Agency, as proposed by the chief executive officer.

(5) Staff of the Agency are employed on such remuneration and conditions of service as determined by the board in terms of subsection (3).

Conduct of staff of Agency

23. (1) The chief executive officer or a staff member who has a direct or indirect interest reasonably capable of impairing impartiality in a matter must promptly disclose its nature and extent in writing, in the case of the chief executive officer to the chairperson, and in the case of a staff member to the chief executive officer.

(2) The person must not participate in the matter pending written arrangements made by the board or chief executive officer, as applicable, to manage the conflict.

(3) Failure to comply with subsection (1) or (2) constitutes a ground for disciplinary action in accordance with applicable employment law and conditions of service of the staff member.

(4) The Agency must maintain a register of disclosures and arrangements under this section.

Performance agreements of members of board and chief executive officer

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

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

Funds of Agency

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

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

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

(c) donations or bequests made to the Agency in terms of section 7(2)(c) with approval by the Minister and subject to the State Finance Act;

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

Accountability and administration of funds

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

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

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

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

(5) The Agency may not incur expenditure except –

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

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

Accounts, audit and annual reports

27. (1) The chief executive officer must keep proper accounts and records which accurately reflect the transactions, assets, liabilities and financial position of the Agency and must prepare annual financial statements in accordance with applicable accounting standards.

(2) The accounts, records and financial statements must be audited annually by the Auditor-General or by a person registered as an auditor under the Public Accountants' and Auditors' Act, 1951 (Act No. 51 of 1951), appointed by the board with the approval of the Auditor-General.

(3) The Agency must provide the auditor with access to its accounts, records and relevant explanations.

(4) The board must –

(a) submit to the Minister, within 30 days after the end of each quarter, a report on the activities and financial position of the Agency, and provide any further report lawfully required by the Minister; and

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

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

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

(5) The Minister must cause copies of the Agency's report and financial statements received in terms of subsection (1) to be laid before the National Assembly –

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

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

Winding-up of Agency

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

PART 4
ADMINISTRATION OF INVESTMENTS

Registration of investors and investments

29. (1) A foreign investor may not invest or continue to invest in Namibia unless that investor is registered with the Agency in accordance with this Act.

(2) A foreign investor who wishes to be registered under subsection (1) must, subject to section 42(3), apply to the Agency for registration of the investor and investment in the prescribed manner and within the prescribed period.

(3) A Namibian investor who wishes to access facilitation services or incentives that are available under this Act or an applicable law must apply for registration of the investor and investment in the prescribed manner and within the prescribed period.

(4) On receipt of an application made under subsection (2) or (3) the Agency after considering the application −

(a) must –

(i) register the investor and investment where the prescribed registration requirements have been met; and

(ii) issue a certificate of registration; or

(b) must refuse to register the investor and investment and give the applicant reasons for the refusal, if the applicant does not meet the prescribed registration requirements.

(5) Registration under this section –

(a) does not constitute an investment approval or establish compliance with another law;

(b) does not confer entitlement to an incentive; and

(c) may not be conditional on an assessment of development contribution under section 37.

(6) A registered investor must notify the Agency of any material change in registered particulars or cessation of the investment, in the prescribed manner and within the prescribed period.

(7) Before changing a register entry adversely affecting an investor under subsection (6), the Agency must –

(a) afford the investor a reasonable opportunity to make representations;

(b) consider any representations received; and

(c) give written reasons for its decision.

(8) Application requirements, determination periods, certificates and procedures for maintaining and correcting the register must be as prescribed.

(9) The Agency must, in the prescribed manner, verify and record an investor's classification for purposes of—

(a) determining compliance with the participation requirements applicable to a designated activity under sections 32 and 34; or

(b) verifying eligibility for an incentive under section 41.

(10) Before making or changing a classification adversely affecting an investor, the Agency must afford the investor a reasonable opportunity to make representations and give written reasons for its decision.

(11) An investor may apply for registration and verification of eligibility for an incentive under section 41 in a single application, or apply for an incentive endorsement after registration.

(12) The Agency must determine registration separately from incentive verification and may not delay registration solely because verification is incomplete.

(13) The Agency must issue a certificate of registration for the investor and investment, recording any incentive endorsement under section 41 on that certificate in the prescribed manner.

(14) The Agency must in the prescribed form and manner open and maintain a register into which all matters that are required to be recorded in terms of this Act or that may be prescribed are recorded and kept.

Investment facilitation

30. (1) The Agency must in the prescribed manner establish and administer a one-stop-shop to –

(a) provide investment information; and

(b) receive, transmit and track applications for licences, permits and other authorisations.

(2) If the Agency receives an application for a licence, permit or for any other authorisation the Agency must be refer the application to the competent authority for determination under the applicable law.

(3) Receipt of an application by the Agency constitutes lodgement with the competent authority only where the applicable law or an arrangement lawfully made under that law so provides.

(4) An investor may apply directly to the competent authority or seek assistance through the one-stop-shop, whether or not the investor is registered under section 29.

Monitoring of investments

31. (1) The Agency –

(a) must monitor compliance with obligations imposed by this Act; and

(b) may monitor commitments under section 41(12) to the extent authorised by the applicable law or agreement.

(2) For purposes of subsection (1) –

(a) the Agency may, by written notice, require an investor to provide information or documents reasonably necessary for monitoring;

(b) an investor must comply with a lawful request under paragraph (a) and submit compliance reports at the intervals and in the manner prescribed; and

(c) the Agency must ensure that information and reporting requirements are proportionate to the obligation monitored and that unnecessary duplication is avoided.

(3) A staff member of the Agency authorised in writing by the chief executive officer may enter business premises and inspect or copy relevant records only –

(a) with the informed consent of the owner or occupier of the premises; or

(b) under a warrant issued by a judge or magistrate under subsection (4).

(4) A judge of the High Court or magistrate in chambers may, on information on oath or affirmation establishing reasonable grounds to believe that evidence of a contravention of this Act is on the premises and that entry is necessary for its investigation, issue a warrant specifying -

(a) the premises;

(b) the purpose of entry;

(c) the acts authorised; and

(d) the period of validity.

(5) This section does not authorise –

(a) the seizure of property;

(b) personal searches; or

(c) access to legally privileged material.

(6) Where the Agency identifies suspected non-compliance with this Act, it may –

(a) issue a written warning;

(b) request correction of information; or

(c) refer the matter to the Minister for action under section 49 or 50.

(7) Before recording an adverse finding, the Agency must –

(a) notify the investor of the proposed finding and its grounds; and

(b) afford the investor a reasonable opportunity to respond and consider that response.

(8) A suspected contravention of another applicable law must be referred to the competent authority responsible for administering or enforcing that law.

(9) A public entity or competent authority must provide information reasonably required by the Agency for monitoring under this section, only to the extent permitted by the applicable law and subject to section 54.

(10) Monitoring must be conducted in the prescribed manner, subject to this section and section 54.

PART 5
DESIGNATION OF ECONOMIC SECTORS AND BUSINESS ACTIVITIES

Designation of economic sectors and business activities reserved for Namibians

32. (1) Subject to this Part, the Minister may, after consultation with the Agency and the relevant sectoral minister, in compliance with section 33 and with the approval of Cabinet, by notice in the *Gazette* designate a specified economic sector or business activity as –

(a) reserved exclusively for Namibians and enterprises wholly beneficially owned by Namibians and subject to effective Namibian control; or

(b) open to investment subject to a specified minimum level of beneficial ownership by Namibians and effective Namibian control.

(2) A designation may distinguish between objectively defined activities or scales of operation within a sector, but may not extend to an activity merely because that activity falls within the same broad sector as a designated activity.

(3) An economic sector or business activity which is not designated under subsection (1) is open to investment by any investor, subject to other applicable laws.

(4) The Minister may make a designation under subsection (1) only if satisfied on the basis of the contemplated assessment in terms of section 33, that the prescribed requirements or criteria for designation have been met.

(5) A designation under subsection (1) must contain such information relating to the designation as may be prescribed.

(6) The Minister may, in respect of a designation made under subsection (1), pursuant to section 56, make such regulations as may be necessary to ensure the effectiveness of –

(a) the designation under that subsection; and

(b) the ownership and effective control in reserved activities of section 34.

Procedure before designation of economic sectors and business activities reserved for Namibians

33. (1) Any person may in the prescribed manner submit a reasoned proposal for a designation to the Minister.

(2) Before making a designation, the Minister, after consultation with the Agency, the relevant sectoral minister, the relevant competent authority, the authority responsible for competition and other public bodies whose functions are materially affected, must in the prescribed manner cause an assessment to be prepared.

(3) The assessment must identify and specify such matters relating to the proposed designation as may be prescribed.

(4) The Minister must publish a draft designation and a non-confidential version of the assessment in the *Gazette* and on other prescribed media platforms and invite written representations for a period of not less than 60 days after publication in the *Gazette* and other media platforms.

(5) The notice must specify the procedure to be followed when making representations and the affected persons who or groups of persons that are expected to make the representations as well as the timelines that must be observed as prescribed.

(6) The Minister must consider the representations made, if any, within the prescribed period after the closing date which period may be extended as prescribed.

(7) The Minister must submit the proposed final designation, the assessment and a summary of representations and responses to Cabinet for approval.

(8) Following Cabinet approval, the Minister must publish the final designation in the *Gazette* and in other prescribed media platforms, and that designation must contain such information as may be prescribed.

(9) The Minister must lay the final designation and the non-confidential assessment before the National Assembly within 30 days after publication, if the National Assembly is in session, or if it is not in session, within 30 days after the commencement of its next session.

Ownership and control of enterprises in reserved activities

34. (1) Subject to section 35, an enterprise carrying on an economic activity designated under section 32 must −

(a) for an activity reserved under section 32(1)(a), satisfy the following requirements:

(i) Namibians must hold, directly or indirectly, all ownership interests and all beneficial entitlement to distributable profits and residual assets on dissolution; and

(ii) the enterprise must be subject to effective Namibian control; or

(b) for an activity designated under section 32(1)(b), satisfy the minimum citizen or residency beneficial ownership and effective control requirements specified in the designation.

(2) Compliance with subsection (1) must be maintained for as long as the enterprise undertakes the reserved activity, subject to the transitional provisions of this Act.

(3) In determining compliance with subsection (1), regard must be had to the substance and combined effect of all relevant ownership, voting, governance, financing, management and other arrangements, including arrangements involving persons acting jointly or in concert.

(4) A right held by a minority investor solely to protect that investor against the variation of rights attached to its ownership interest, dilution of that interest, winding-up of the enterprise or disposal of substantially all its assets does not, by itself, prevent effective Namibian control, provided that the right does not confer the ability to determine or routinely prevent the implementation of the enterprise's strategic operating decisions.

(5) An ownership interest held by a Namibian as nominee or otherwise for the benefit of a person who is not a Namibian must not be counted as Namibian beneficial ownership.

(6) A person may not enter into or give effect to an arrangement that represents an enterprise as satisfying subsection (1) where the beneficial ownership or effective control required by that subsection is retained by another person.

(7) An enterprise to which this section applies must –

(a) maintain records sufficient to establish its beneficial ownership and effective control;

(b) submit the prescribed information and supporting documents to the Agency; and

(c) notify the Minister, through the Agency, in the prescribed manner and within the prescribed period, of any proposed or actual change that may affect compliance with this section.

(8) This section does not extend a reservation to an existing investment or activity protected by the transitional provisions of this Act.

(9) Incorporation, registration or tax residence in Namibia does not, of itself, establish eligibility for a reservation or preference under this Act.

Savings in respect of existing investments

35. (1) An investor who lawfully carried on an investment before a designation under section 32 took effect may continue the pre-existing activity without being required solely by that designation to alter its ownership or control.

(2) Where an existing investment is expanded after a designation takes effect, the designation applies only to the additional activity constituting the expansion and does not, by reason only of that expansion, apply to the protected pre-existing activity.

(3) A change of control of a protected existing investment is subject to a participation or notification requirement under the designation only to the extent expressly specified in that designation.

(4) This section does not exempt an investment from a requirement under another applicable law.

PART 6
APPROVALS UNDER OTHER LAWS AND INVESTMENT ASSESSMENT

Approvals under other laws

36. (1) An investor must obtain every approval required under an applicable law before undertaking the activity for which that approval is required.

(2) An application for an approval under any applicable law may be made through the one-stop-shop of the Agency or directly to the competent authority of the applicable law and must be determined by the authority empowered under that law.

(3) A proposed change in control of an investment must comply with any applicable approval, notification or other requirement under –

(a) the Competition Act;

(b) any other law governing the investment;

(c) the terms of a licence, permit, authorisation or concession held in respect of the investment; or

(d) a designation made under section 32.

(4) This Act does not establish a separate approval of an investment or a change of control and registration, facilitation or assessment by the Agency does not replace an approval required under another law.

(5) Registration under section 29 is not a prerequisite for applying for or obtaining an approval under another law and registration and an application for that approval may proceed concurrently, and the duty to register within the prescribed period remains applicable.

(6) Where approval for an investment is not required under another applicable law, an investor is not required to obtain an approval under this Act before commencing the investment but the investor may, if the investor so wishes, apply for

registration under section 29 in order to access facilitation services and incentives available under this Act or any applicable law.

Assessment of development contribution

37. (1) The Agency may assess the economic, social and environmental contribution of a proposed investment, in accordance with prescribed criteria, for purposes of –

(a) making a recommendation under section 41; or

(b) providing advice requested by a competent authority.

(2) An assessment under this section is advisory and does not –

(a) constitute an approval or refusal of an investment; or

(b) replace a determination of eligibility under section 41 or the law governing an incentive.

(3) The prescribed criteria must be relevant to the purpose of the assessment, objectively ascertainable and published in the *Gazette* and in other prescribed media platform before their application.

(4) A change to the prescribed criteria may not apply retrospectively to a complete application unless expressly required by the applicable law.

PART 7
INVESTOR RIGHTS AND INCENTIVES

Treatment of foreign investors and their investments

38. (1) The Namibian legal and regulatory framework applicable to investments must not create unjustified discrimination between foreign and domestic investors.

(2) Subsection (1) does not prevent the State from adopting or maintaining measures in pursuit of legitimate public policy and national development objectives, in accordance with the Constitution and applicable laws.

Expropriation

39. 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.

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

40. The Agency must engage the Immigration Selection Board to facilitate the issuing of visas and residence permits to investors, their spouses and dependents, of the investors and the engagement of foreign personnel as provided for in the Immigration Control Act.

Investment incentives

41. (1) The Minister may on the recommendation of the Agency and with the concurrence of the Minister responsible for the relevant sector, recommend the provision of a non-fiscal incentive after consultation with the authority empowered by law to provide it.

(2) The Minister may make regulations under section 56 prescribing −

(a) categories, eligibility criteria, conditions and duration of non-fiscal incentives, subject to subsection (1) and the law governing the incentive, but subject to subsections (3) and (4);

(b) administrative requirements for verifying eligibility for fiscal incentives, in each case consistent with the law governing the incentive, but subject to subsection (5); and

(c) procedures for combined applications, verification of eligibility, incentive endorsements on certificates of registration and monitoring under this section.

(3) The Minister may, on the recommendation of the Agency, with the concurrence of the Minister responsible for finance and, where applicable, the relevant sectoral minister, establish by regulation a non-fiscal incentive scheme for technical assistance, skills development, supplier development, innovation or market-access support, including grants or cost-sharing contributions for those purposes.

(4) Regulations under subsection (3) must specify the purpose and beneficiaries of the scheme, the nature and maximum extent of assistance, objective eligibility criteria, duration, conditions, monitoring and reporting requirements, grounds and procedures for suspension, termination and recovery of assistance, and the public entity responsible for administering it.

(5) Regulations concerning fiscal incentives must be made with the concurrence of the Minister responsible for finance and after consultation with the Namibia Revenue Agency.

(6) An incentive may be granted only by the competent authority under the law governing that incentive and if an application to access an incentive is refused, the competent authority must give reasons for the refusal.

(7) An investor registered or applying for registration under section 29 may apply to the Agency for verification of eligibility for an incentive relating to the production of goods or the provision of services.

(8) Where the applicable eligibility requirements falling within its mandate have been met, the Agency must record an incentive endorsement on the certificate of registration, identifying the matters verified and the competent authority responsible for the incentive.

(9) The Agency may amend, suspend or revoke an incentive endorsement only where –

(a) it contains a material error;

(b) it was obtained through material misrepresentation; or

(c) an applicable eligibility requirement is no longer met.

(10) Before taking action under subsection (9), the Agency must −

(a) notify the affected person of the proposed decision and its grounds;

(b) afford that person a reasonable opportunity to make representations and consider any representations received; and

(c) give written reasons for its decision and notice of the right of appeal under section 51.

(11) An incentive endorsement –

(a) constitutes evidence only of the matters lawfully verified by the Agency;

(b) does not grant an incentive or bind another authority, except to the extent provided by the law governing the incentive; and

(c) does not, by its amendment, suspension or revocation, of itself –

(i) affect registration;

(ii) withdraw an incentive; or

(iii) create a tax liability or repayment obligation.

(12) The Agency may coordinate the conclusion of an investment performance agreement between an investor and a competent authority or public entity responsible for an incentive, in the prescribed manner.

(13) The Agency must, within 14 days after amending, suspending or revoking an incentive endorsement, notify –

(a) the authority responsible for providing the affected incentive; and

(b) where the affected incentive is fiscal, the Namibia Revenue Agency,

of the decision, its effective date and the reasons for it, in the prescribed manner.

(14) The Agency must maintain and make publicly accessible, in the prescribed manner, a register of incentive endorsements and investment performance agreements under this section, identifying –

(a) the investor and investment concerned;

(b) the incentive, its legal basis and the authority responsible for providing it;

(c) the status of the endorsement and any applicable period of validity; and

(d) the material obligations under any investment performance agreement.

(15) Despite section 54, the particulars required under subsection (14) must be made public, except to the extent that disclosure is prohibited by another law and commercially sensitive information and personal information not necessary for the purposes of that subsection must be protected in the prescribed manner.

PART 8
INVESTOR OBLIGATIONS

Compliance with applicable laws and registration of foreign investors

42. (1) An investor must, in carrying on an investment, comply with –

(a) this Act and all other applicable laws of Namibia, including the Competition Act; and

(b) any lawful condition attached to a licence, permit, authorisation or incentive relating to the investment.

(2) An investor must endeavour to observe relevant international standards on responsible business conduct, including human rights, labour, anti-corruption and environmental protection, consistent with applicable Namibian law.

(3) A foreign investor whose investment exists when section 29 commences must apply for registration of the investor and the investment –

(a) within 12 months after that commencement; or

(b) within an extended period allowed by the Agency on reasonable grounds, not exceeding 18 months after that commencement.

(4) Failure to register constitutes non-compliance with this Act but does not, of itself, invalidate a licence, permit or authorisation issued under another law.

Capacity development and transfer of skills

43. (1) An investor must support the sustainable development of human capital in Namibia by facilitating the transfer of knowledge, technology, and advanced technical and managerial capabilities to Namibians.

(2) An investor who intends to employ foreign personnel in specialized, technical, or managerial positions must, in the prescribed form and manner, submit a human capital development plan to the agency for registration.

(3) A human capital development plan submitted under subsection (2) must specify verifiable metrics, timelines, and budgets, and may fulfil capacity development obligations through one or a combination of the following recognized pathways −

(a) structured on-the-job training, mentorship, or succession arrangements pairing Namibian personnel with foreign professionals;

(b) structured internship, apprenticeship, or graduate trainee programs conducted in collaboration with accredited Namibian vocational training institutions, higher education institutions, or national internship programs;

(c) capital, technical, or curricular support toward the establishment or upgrading of recognised training institutions, specialised laboratories, or innovation centres in Namibia; or

(d) technical capacity building, technology transfer, or capability incubation provided to domestic micro, small, and medium-sized suppliers.

(4) The Agency, after consultation with the authorities responsible for immigration, vocational training, and higher education, must formulate guidelines prescribing the standards, evaluation criteria, and reporting cycles for human capital development plans across designated priority investment sectors.

(5) An investor holding a registered human capital development plan –

(a) must submit annual implementation progress reports to the Agency; and

(b) is eligible for expedited administrative facilitation by the Agency in respect of entry and work authorisations for essential expatriate personnel, subject to compliance with the Immigration Control Act.

(6) An investor who demonstrates exceptional contribution to national skills development system, technology transfer, or industrial research and development, may be recommended to access incentives applicable under the applicable investment incentive governing law.

(7) Where an investor fails to submit, implement, or report on an approved human capital development plan without reasonable cause -

(a) the Agency must issue a notice of non-compliance specifying the corrective measures required within 30 days; and

(b) the Agency may withdraw facilitation services or revoke incentives granted pursuant to this Act, without prejudice to proceedings under other laws, if there is persistent non-compliance by the investor.

PART 9
DISPUTE SETTLEMENT

Dispute settlement

44. (1) An investor or public entity must initially seek to resolve the dispute amicably through consultations, negotiations, conciliation, mediation or other amicable dispute resolution mechanisms available in Namibia before approaching a competent local court.

(2) The Grievances Resolutions Committee must seek to resolve amicably the dispute through consultations, negotiations, conciliation, mediation or other amicable dispute resolution mechanisms

(3) In the event that an investor or public entity are unable to amicably resolve the dispute in accordance with this Part, they may seek to resolve such dispute in competent local courts or tribunals, and if the dispute is not resolved, the disputing party may by prior agreement approach international arbitration courts or tribunals.

Grievances Resolution Committee

45. (1) There is established a Grievances Resolution Committee to facilitate the voluntary resolution of investment-related grievances between investors and public entities.

(2) The Grievances Resolution Committee consists of not more than three members appointed by the Minister, including a chairperson with knowledge and experience in investment law and mediation.

(3) The Minister must appoint persons who collectively have experience in investment, public administration, law and dispute resolution and a member holds office for three years and may be reappointed only once.

(4) A member vacates office upon death, resignation by 30 days' written notice to the Minister, expiry of the term of office or removal under subsection (5).

(5) The Minister may remove a member for incapacity, serious misconduct or persistent failure to perform the functions of office, after giving written notice of the grounds and a reasonable opportunity to make representations and if there is a vacancy the Minister must fill that vacancy by appointing a member for the unexpired portion of the term.

(6) A majority of the appointed members constitutes a quorum and decisions are taken by a majority of members present and entitled to vote, but if there is an equality of votes, the person chairing at the proceedings has a casting vote in addition to his or her ordinary vote.

(7) If a member has a direct or an indirect personal or financial interest in aa matter that is before the Grievances Resolution Committee for determination, the member must disclose that interest and withdraw from its consideration and determination and the disclosure and withdrawal must be recorded, and the member may not count towards the quorum for that matter.

(8) The Grievances Resolution Committee must act impartially and a person may not improperly influence its consideration of a grievance.

(9) A member who participated in the decision giving rise to a grievance may not participate in its consideration.

(10) The Ministry must provide secretariat services, keep records of proceedings and facilitate the submission of grievances.

(11) A member of the Grievances Resolution Committee may be paid allowances determined by the Minister with the concurrence of the Minister responsible for finance, from money appropriated by Parliament for that purpose.

(12) The Grievances Resolution Committee –

(a) may make procedural rules consistent with this Act and must publish the rules in the *Gazette* and on the website portal of the Agency; and

(b) prepare an annual report, excluding protected information, on grievances and recommendations for administrative or regulatory improvement and within 60 days after the end of each calendar year submit the report to the Minister.

(13) The Grievances Resolution Committee may facilitate settlement and make recommendations, but may not set aside an administrative decision, determine a tax liability or exercise the powers of a court or another statutory authority.

Resolution of disputes by Grievances Resolution Committee

46. (1) An investor or public entity may submit an investment-related grievance to the Grievances Resolution Committee in writing and request assistance to resolve it.

(2) With the written consent of the parties, the Grievances Resolution Committee may appoint an independent mediator or mediation panel on terms agreed by the parties, including the allocation of any costs.

(3) The Grievances Resolution Committee must endeavour to conclude its consideration within 90 days after receipt of the grievance, or within a longer period agreed in writing by the parties, but a party may before conclusion of the proceedings withdraw from mediation by written notice.

(4) A settlement must be recorded in writing and signed by each party or a person lawfully authorised to bind that party.

(5) Submission of a grievance or participation in mediation does not prevent a person from approaching a competent court, lodging a statutory objection or appeal, or seeking urgent relief, and does not suspend a statutory time limit unless the applicable law provides otherwise.

PART 10
GENERAL PROVISIONS

National security

47. The Minister, with the concurrence of the Minister responsible for national security, may further prescribe and regulate investments in a manner necessary to maintain –

(a) national security; and

(b) any obligations arising from the obligations of Namibia as a member of regional, continental and international Organisations concerning international peace and security.

Contraventions and offences

48. (1) An investor commits an administrative contravention if the investor –

(a) fails to register or notify a material change as required by section 29;

(b) fails to comply with a participation or notification requirement under section 32 or 34, subject to section 35;

(c) fails to comply with a lawful information or reporting requirement under section 31 or 43; or

(d) fails to comply with a training obligation under subsection (2) of section 43 or an alternative arrangement approved under subsection (5) of that section.

(2) A suspected contravention of another law must be referred to the competent authority empowered to enforce that law.

(3) A person commits an offence, if that 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, and on conviction that person is liable to a fine not exceeding N$50 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

Opportunity to comply with law

49. (1) If the Minister has reason to believe that an investor has committed a contravention as contemplated in section 48(1) the Minister may, where appropriate –

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

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

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

(3) If the Minister is of the opinion that an effort has been made in good faith to ensure compliance within the period referred to in subsection (2) the Minister may delay any further enforcement of any action contemplated in section 50.

(4) If the Minister is of the opinion that an investor has failed in bad faith to implement or comply with the corrective measures, the Minister may take the enforcement actions set out in section 50 against the investor.

Action to be taken against investor or investment for contraventions

50. (1) Where, after following section 49, the Minister finds that an investor has committed a contravention under section 48(1), the Minister may –

(a) issue a written compliance order specifying the contravention, the steps reasonably necessary to remedy it and a reasonable period for compliance;

(b) refer a matter falling under another law to the competent authority;

(c) direct the Agency to correct a registration entry or record the cessation of an investment, without treating deregistration as a penalty for failure to comply; or

(d) apply to the High Court for an order restraining a contravention of a participation requirement under section 32, limited to the activity concerned and subject to section 35.

(2) Before taking action under subsection (1)(a) or (c), the Minister must give affected persons written notice of the proposed action and grounds and at least 30 days to make representations, consider those representations and give written reasons, the effective date and notice of the right of appeal under section 51.

(3) The Minister may apply to the High Court, on notice to the investor, for an administrative fine in respect of a contravention under section 48(1) and must prove the contravention on a balance of probabilities and place before the Court the evidence relied on to quantify any economic benefit attributable to it.

(4) The Court may impose a proportionate administrative fine not exceeding the economic benefit proved under subsection (3).

(5) For purposes of subsection (4), "economic benefit" means a monetary gain obtained or expenditure unlawfully avoided by reason of the contravention during the period in which it occurred, less expenditure directly incurred in obtaining that gain and any amount already repaid or recovered in respect of the same benefit.

(6) In determining the fine, the Court must consider the seriousness and duration of the contravention, the investor's degree of fault, actual harm, steps taken to remedy it, ability to pay, and any penalty, repayment or recovery already imposed for the same conduct.

(7) An administrative fine is a debt due to the State and must be paid into the State Revenue Fund.

(8) A person may not recover the same economic benefit twice under this section and another law.

(9) A compliance order under subsection (1)(a) may be enforced by application to the High Court.

Appeal to High Court

51. (1) A person aggrieved by a final decision of the Minister or Agency under section 29, 41, 43(5), (6) or (7) or 50(1)(a) or (c), may appeal to the High Court within 30 days after receiving written notice of the decision and its reasons.

(2) The High Court may, on good cause shown, extend the period for lodging an appeal.

(3) An appeal must be lodged and served in accordance with the rules of the High Court.

(4) The Court may confirm, vary or set aside the decision, substitute a decision or remit the matter for reconsideration, and may make an appropriate order as to costs.

(5) An appeal does not automatically suspend the decision, but the Court may, on application and on appropriate conditions, suspend its operation pending determination of the appeal.

Delegation of powers

52. (1) The Minister may in writing delegate a power or assign a function under this Act to the Executive Director, the board or the chief executive officer, except a power to make regulations, issue a notice in the *Gazette,* formulate policy, appoint or remove a member of the board or the Grievances Resolution Committee, or give a concurrence or approval expressly required from the Minister.

(2) A delegation or assignment must specify its extent, conditions and duration, and may not authorise subdelegation.

(3) The Minister is not divested of a delegated power or assigned function and may amend or withdraw the delegation or assignment in writing.

(4) The Minister may vary or set aside the decision only in accordance with applicable law and after affording affected persons procedural fairness, without retrospectively prejudicing an accrued right.

(5) Withdrawal of a delegation does not invalidate a lawful act previously performed under it.

Cooperation with other institutions or organisations

53. (1) The Agency may with the prior written approval of the Minister –

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

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

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

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

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

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

(3) An arrangement under this section may coordinate services, referrals, shared facilities or lawful information exchange, but may not transfer a statutory power, alter a statutory time limit, authorise expenditure without lawful authority or permit disclosure contrary to section 54 or another law.

(4) The Agency must keep a register of arrangements made under this section, identifying the parties, purpose, duration, financial commitments and responsible officials, and must review their operation periodically.

Preservation of secrecy

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

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

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

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

(a) a member of the board;

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

(c) a member of the Grievances Resolution Committee or a person appointed to resolve a dispute by that committee under Part 9;

(d) a former member, chief executive officer or staff member or other person referred to in paragraphs (a) to (c) who no longer performs functions for or on behalf of the Agency or Ministry; and

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

(3) The Agency may disclose information to the Minister or another public entity only to the extent necessary for a specified lawful function under this Act or another law.

(4) Disclosure to an institution outside Namibia may occur only under a written arrangement approved under section 53 which must specify the circumstances under which such disclosure may be made.

(5) A person who knowingly discloses protected information contrary to this section commits an offence and is liable on conviction to a fine not exceeding

N$50 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

(6) The Agency must keep a record of disclosures under this section, provide only the information necessary for the stated purpose and, where sufficient, provide anonymised or aggregated information.

Limitation of liability

55. The Minister or any person referred to in section 54(2) is not personally liable in respect of anything done or omitted to be done in good faith and without gross negligence in the exercise of any power or the performance of any duty under this Act.

Regulations

56. (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) administrative procedures for the exercise of powers and performance of functions expressly conferred or imposed by this Act;

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

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

(e) the identification and measurement of participation requirements for designated activities, and notification of changes in ownership or control, subject to sections 32 to 35;

(f) the information, documents and administrative procedures for registration, correction of records and recording cessation of investments under section 29;

(g) the provision of support mechanisms, in line with section 5(1)(b), read with section 41, to investors and the criteria to qualify for such incentives;

(h) the criteria and procedures for assessing the economic, social, and environmental development contribution of investments under section 37;

(i) the procedures and standards for monitoring investments, submitting compliance reports, and conducting inspections under section 31;

(j) the method of calculating direct and indirect beneficial ownership for the purposes of section 34;

(k) the information, declarations and supporting documents required to establish compliance with section 34;

(l) the procedures for verifying beneficial ownership and effective Namibian control;

(m) the manner and periods for reporting changes in ownership, voting rights, governance or other arrangements affecting compliance with section 34;

(n) measures necessary to maintain national security and implement international obligations concerning international peace and security under section 47;

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

(p) any incidental administrative matter necessary to give effect to this Act and consistent with its provisions.

(2) Regulations made under section may –

(a) be made in respect of a specified category or categories of persons, entities or investors and different regulations may be made for different categories of persons, entities o investors;

(b) prescribe penalties for a contravention of or failure to comply with any regulation not exceeding a fine of N$50 000 or imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

Repeal of laws

57. 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 subject to section 58 repealed.

Savings and transitional provisions

58. (1) Despite section 57, a Certificate of Status Investment lawfully issued under the Foreign Investments Act, 1990 (Act No. 27 of 1990) and in force immediately before the commencement of this section continues in force in accordance with its terms.

(2) Despite section 57, sections 8 to 15 and 18 of the Foreign Investments Act, 1990, and other provisions of that Act necessary to give them effect, continue to apply in relation to a certificate preserved by subsection (1), solely for administering and enforcing the rights and obligations preserved in respect of that certificate, including its amendment, transfer or cancellation and the settlement of related disputes.

(3) The holder must in the prescribed manner submit the certificate to the Agency within six months after commencement of this section for recording, but failure to submit the certificate does not of itself terminate the certificate but is considered to be a contravention of section 48.

(4) The Minister may, on application and after considering the Agency's recommendation, agree with the holder to replace the certificate with an instrument lawfully available under this Act or another law, but may not thereby create or extend a fiscal benefit without authority under the law governing that benefit.

(5) The Minister must, by notice in the *Gazette*, determine a transfer date on which the assets, liabilities, rights, obligations and records of the Namibia Investment Promotion and Development Board, registration number 21/2020/0929, vest in the Agency.

(6) On the transfer date –

(a) the Agency succeeds to those assets, liabilities, rights and obligations;

(b) every contract or pending legal proceeding continues with the Agency substituted for the Namibia Investment Promotion and Development Board, without affecting an accrued right, defence or obligation; and

(c) every employee of the Namibia Investment Promotion and Development Board becomes an employee of the Agency without interruption of service and on terms and conditions not less favourable, taken as a whole, than those applicable immediately before that date, with accrued leave and other employment benefits preserved.

(7) A transfer under subsection (6)(c) is not, of itself, a termination of employment and is deemed not to be a change of employer for purposes of the Income Tax Act, 1981 (Act No. 24 of 1981).

(8) The Minister must, after consultation with the board and the Namibia Investment Promotion and Development Board, approve a transfer plan identifying the property, liabilities, contracts, staff and records transferred, the responsible officers and arrangements for continuity of services.

(9) The Minister must ensure that before the transfer date the board contemplated in section 8 has been appointed in terms of this Act and that the chief executive officer of the Agency has likewise been appointed in terms of this Act.

(10) A certificate issued by the Minister and published in the *Gazette,* identifying property vested under subsection (6) is sufficient evidence of the vesting for registration purposes and on production of the certificate, the relevant registrar or officer charged with the responsibility for registration of the property concerned must make the necessary entries in the relevant register without payment of a registration fee.

(11) After the transfer date, the Minister must cause the steps required under the Companies Act, 2004 for dissolution of the Namibia Investment Promotion and Development Board to be taken.

Short title and commencement

59. (1) This Act is called the Namibia Investment Promotion and Facilitation Act, 2026 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.