



Namibia Investment Promotion Act

ACF Presentation

Robert Grant

13 October 2016



Purpose and objects of the Act

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To provide for the promotion of sustainable economic development and growth through the mobilisation and attraction of foreign and domestic investment to enhance economic development, reduce unemployment, accelerate growth and diversify the economy;

To provide for reservation of certain economic sectors and business activities to certain categories of investors;

To provide for dispute resolution mechanisms involving investment; and

To provide for incidental matters.

Objects of the Act

To provide a clear and transparent framework for investment in Namibia.

To provide for an efficient dispute resolution mechanism involving investment.

To provide for a mechanism for inter-ministerial coordination on regulatory provisions and incentives and support mechanisms for investments.

To promote sustainable economic development and growth through the mobilisation and attraction of domestic and foreign investments that

- **Enhance the economic development objectives of Namibia**
- **Reduce unemployment, poverty and economic inequality**
- **Accelerate growth and diversification of the Namibian economy**
- **Facilitate domestic investments, particularly in priority economic sectors**
- **Provide for other matters on investment promotion, admission, treatment and management**



Important definitions

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‘business activity’ – any activity carried out in Namibia that involves the commitment of capital, the expectation of gain or profit and the assumption of risk and that creates a contribution to the economic development of Namibia

‘foreign investor’ – a natural person who is not a Namibian that has made or is seeking to make an investment into Namibia, or a company incorporated, registered or constituted in accordance with the laws of Namibia or any other country other than Namibia that is not directly or indirectly owned or controlled by a Namibian

‘investor’ – when used without a reference to foreign or Namibian, includes both foreign and Namibian investors

‘investment’

- (a) Any enterprise lawfully established, acquired or expanded by an investor in accordance with the laws of Namibia that carries out a business activity through substantial operation in accordance with the investment proposal and the nature of the business in Namibia**
- (b) Any enterprise in Namibia that an investor is seeking to establish, acquire, merge with or expand, whether through the constitution, maintenance or acquisition of a juridical person inside Namibia or outside; merge with another enterprise inside Namibia or outside Namibia; or acquire shares, debentures or other ownership instruments of directly or indirectly**

Important definitions (cont)

'investment' (cont)

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

For the purposes of this definition, a foreign investor may not regard specific assets for the purposes of the definition

'Namibian' – a natural person who is a citizen of Namibia, a permanent resident of Namibia who is in possession of a permanent residence permit, or a company incorporated, registered or constituted in accordance with the laws of Namibia or any other state other than Namibia of which the majority of the issued share capital is directly or indirectly owned by a Namibian who proportionately benefits from the dividends or otherwise, or which is directly or indirectly controlled by a natural person or permanent resident of Namibia

'Namibian investor' – a Namibian investor investing in Namibia and registered in terms of section 19



Powers and functions of the Minister

Powers and functions of the Minister

The Minister must receive and consider the investment proposal together with the recommendation of the Namibia Investment Centre and may approve or disapprove the investment proposal and must in writing give reasons for his or her decision

Minister may approve the investment proposal after having considered and satisfied himself or herself that:

(a) The investment has a net benefit for Namibia, taking into account the contribution to

- ❖ The national development, economic growth, public policy and national security objectives of Namibia
- ❖ The advancement of persons who have been socially, economically or educationally disadvantaged by past discriminatory laws and practices
- ❖ The implementation of programmes and policies aimed at redressing social and economic imbalances in Namibia, including gender-based imbalances
- ❖ Increasing employment creation in Namibia
- ❖ The advancement of the development of a geographical area of a low social and economic development
- ❖ The transfer of technological and managerial skills, knowledge and innovation
- ❖ The value addition to the natural resources and manufacturing sector of Namibia
- ❖ The extent that the investment will procure goods and services from the SME sector and Namibian suppliers in general
- ❖ The impact on the environment and contribution to environmental benefits

Powers and functions of the Minister (cont)

(b) A substantial number of the following requirements are fulfilled or likely to be fulfilled in a specified period

- ❖ Joint venture with Namibians
- ❖ Employment creation for Namibians
- ❖ The advancement of persons who have been socially, economically or educationally disadvantaged by past discriminatory laws and practices
- ❖ The implementation of programmes and policies aimed at redressing social and economic imbalances in Namibia, including gender-based imbalances
- ❖ Transfer of technology and technological skills
- ❖ Development of managerial skills
- ❖ Promotion of research, development and innovation
- ❖ Value addition to the natural resources and manufacturing sector and procurement of goods and services
- ❖ Environmental impact and contribution to environmental benefits
- ❖ Other matters relating to the improvement of the economy and development benefits in the public interest as the Minister may prescribe

Powers and functions of the Minister (cont)

Minister may determine monetary thresholds for different economic sectors above which Namibian and foreign investors are required to register with the Namibia Investment Centre, and the Minister may determine different thresholds for Namibian and foreign investors

Minister must issue a certificate of approval of investment that allows the foreign investor to register with the Namibia Investment Centre and commence with the investment

Minister may enter in performance agreements with any foreign investor



Reserved
economic sectors
or business
activities

Reserved economic sectors or business activities

The Minister may, by regulations, reserve certain categories of economic sectors or business activities as exclusive to certain categories of investors

Categories (economic sectors or business activities) are those:

- **Reserved for the State**
- **Reserved for Namibians and entities whose majority shareholdings are owned by Namibians**
- **Reserved for joint venture partnership between Namibian investors and foreign investors**
- **Reserved for investors that meet the requirements of section 4 and the prescribed specific conditions**

Reservation of an economic sector is effective from the prescribed date. An investor who lawfully invested before this date is entitled to maintain his or her investment. Any change in ownership or control of these investments is subject to the requirements of Part 4.



Change in ownership and control

Change in ownership and control of investments

Investor or investment in the natural resource sector or in any other sector which is above the threshold may not change ownership or control of the investment, or transfer any license, permit, authorisation or concession owned by the investor or investment to a foreign investor through any form or merger, acquisition, direct sale or transfer without the approval of the Minister

Any such changes must be applied for to the Minister, subject to the requirements of the Competition Act, in the prescribed form, 60 days before the date of the intended change



Rights and obligations of investors

Rights and obligations of investors

New investor in any investment above the threshold must register

Obligation to register also applies to existing investors and investments – registration within 12 months from commencement of the Act

Investment that is below the threshold but which grows to exceed the threshold must also register within 12 months of exceeding the threshold

Foreign personnel – Minister for immigration may authorise the investor to employ natural persons who are not Namibians to perform scarce key professions and managerial functions or specialised services, scarce skills or specialities required for the investment. This excludes the investor and shareholder, his or her spouse and dependent children, who, if not Namibian, are deemed to have been granted the right to enter and work in Namibia once final approval of the investment has been granted



Penalties for offences and commencement of the Act

Penalties for offences and commencement of the Act

Person convicted of an offence is liable to a fine not exceeding N\$2 000 000 or to imprisonment for a term not exceeding 10 years, or both

Act commences on a date to be determined by the Minister by notice in the Government Gazette



Practicalities of implementation and discussion points

Practicalities of implementation and discussion points

- **Definition of Namibian does not include a person with domicile**
- **Namibian company requires a “person” to hold the shares and does not seem to take into account more than one Namibian person holding such interest**
- **Length of time and costs that a foreign investor needs to incur for approval of investment may dissuade foreign investors**
- **Setting of thresholds**
- **Definition of “natural resources” not included in the Act**
- **Expansion of existing businesses invested into by foreigners, subject to the Act – implications for growth**
- **Powers of Minister**
 - Authority to cancel a foreigners ability to conduct business in Namibia (s33)
 - Approval of Minister required in the event that assets are required to be attached to settle debts of the foreigner – implications for court orders obtained against the foreign investor



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