



The Namibia Investor Roadmap

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Executive Summary

I. Overarching Issues

Comparative international indices as reflected in World Bank, United Nations, and various private data sources do not portray Namibia in a particularly favorable light for potential foreign investors. Furthermore, foreign direct investment (FDI) in Namibia has been declining in absolute and relative terms, and its value for the country is debated in some quarters of Namibian society. For example, the World Economic Forum's latest *Africa Competitiveness Report* highlights that of the "most problematic factors for doing business" based on survey results, an inadequately trained workforce was ranked first and inefficient government bureaucracy was ranked fifth of 14 indicators.¹ Concerned with such trends, the Ministry of Trade and Industry, through the Namibia Investment Centre (NIC), requested the assistance of the U.S. Agency for International Development (USAID)-funded Southern Africa Trade Hub to conduct an Investor Roadmap study for Namibia. A three-person consulting team completed the in-country data collection during an intensive two-week period in June and July of 2005.

Because an Investor Roadmap focuses on administrative, regulatory, and procedural issues that may impede or slow the investment process, some factors that may have significant impact on FDI are outside its scope of coverage. Four that deserve mention, nonetheless, are the questionable value of the various incentive packages and the appropriateness of the institutional arrangements for investment and export promotion; questions related to the application of competition law; the status and mandate of the NIC in relation to other promotional agencies; and the antagonism between labor and industry in Namibia.

At the level of regulation and procedure, Namibia performs well in many areas. In others there is need for substantial reform, and the reform efforts advocated herein are entirely consistent with the country's Vision 2030, which includes the goal of creating "a prosperous and industrialized Namibia."² Its foreign investment legislation, for example, is in serious need of modernization, and some laws have been excessively amended rather than wholly revised, such as those governing close corporations. The entire system of incentives cries out for scrutiny and revision. Yet except in the matters of work permits, permanent residence, and termination of employees, company registration, and certain types of land access investors do not generally consider administrative barriers in Namibia to deter or significantly impede investment.

That being said, there is a general consensus in the private sector that Namibian civil servants can at times be unresponsive. This is seen in government officials' perceived tendency to miss or be late for scheduled meetings, to avoid committing to meetings within a timely fashion, and to not return phone calls in a reasonable timeframe. The private sector also suggests that in general reform and changes in direction come slowly to the government. Finally, in certain technical areas several investors have suggested that regulators may not always have the skills and experience required to adequately fulfill their mandate.

¹ Hernandez-Cata, Ernesto, Schwab, Klaus, and Lopez-Claros, Augusto, *The Africa Competitiveness Report, 2004*, World Economic Forum, pg. 170.

² Government of Namibia, Vision 2030, pg. 38.

II. The Process Group Areas

The Investor Roadmap is organized in four major chapters related to a series of related procedures. The individual procedures examined are grouped into four Process Group Areas—Employing, Reporting, Locating, and Operating. The major findings for each of these outlined below.

A. Employing

The government should disseminate to all ministries the criteria for visitor entry. Official websites, as well as actual practice among immigration authorities at ports of entry, offer examples of inconsistent, sometimes conflicting, information and implementation. It should be a top responsibility of Home Affairs to publish, in brochures and on a website, all relevant information concerning visas and immigration and to train officials in consistent application of the laws.

Define clearly the purpose of the business visa. The visa application form does not make clear what constitutes a business activity. While not an anomaly in international practice, the business visa is only necessary because the work permit does not encompass entry and exit conditions. Many countries issue a type of visa granting the right to work for a defined period of time, so that a single document serves immigration and work permit purposes. Namibia should consider this option.

Eliminate the requirement for investors to submit a comprehensive business proposal in the work permit application. Health and security clearances are indispensable, and a background check on the general bona fides of the individual is advisable. In addition, it is normal that the investor provide a clear, brief description of his or her business intentions. Neither the NIC nor the Ministry of Home Affairs, however, should be in the practice of screening comprehensive business proposals in order to determine whether or not an investor should be barred from the country.

Delete the requirement of the marriage certificate for the work permit. The sole condition on which the marriage certificate should remain is if its submission assures a concomitant work permit for the spouse.

The NIC should eliminate its screening of work permit applicants. The NIC should screen the applications, not the applicants, and it should screen them against a checklist for completeness and clarity. The NIC should in general adopt a mentality and a *modus operandi* of promotion rather than selection. Screening applications, furthermore, should be the task of one competent person. The NIC should set its own rigorous deadline for turning applications over to the Ministry of Home Affairs.

Home Affairs must reengineer and computerize its systems in the Department of Immigration. Even within the NIC, internal procedures for facilitating the work permit are bureaucratic and in consequence excessively dilatory; delays only accumulate further in the Ministry. There is in Namibia no reason related to human or technological resources that this department cannot modernize its operations so that paperwork is not lost. Routine, tedious, manual searches for files should become a thing of the past, and records should be easily and immediately shared with other agencies, such as the NIC. Furthermore, obtaining accurate, timely information on inward travelers to Namibia is

important to other government agencies in their efforts to promote investment and guide policy. For example, the Ministry of Environment and Tourism and Namibia Tourism Board rely on data on the number, nationality, purpose, and season in which foreigners come to the country to sell the tourism potential of Namibia, and only the international airport has computerized systems to capture this information.

Allow employers to make the final decision in cases of proven gross misconduct.

The complexity of termination allows an undesirable employee to affect the company for an excessive period of time. Even when judged guilty by a group of peers, a terminated employee may appeal to the Labor Court. Unions often assume an attorney/client responsibility towards an offending employee. The option to issue a warning where an employee has committed theft, or has been warned by supervisors for repeated smaller offenses, only encourages substandard performance on the part of other employees disinclined to render good service. The cost to business is too high, and this cost is passed on to society at large and has a negative impact on employment.

Establish a system of binding arbitration. In cases where an employee's dismissal for gross misconduct has been approved by the internal company committee, or in cases in which that committee cannot arrive at consensus, binding arbitration would relieve the courts of additional burdens and expedite decisions which affect the lives of employees and the productivity of companies.

Maintain a single definition of disadvantaged groups. The burgeoning of so-called black empowerment enterprises and the generalized social discourse on the subject of black empowerment has created a *de facto* double system for affirmative action. Current legislation sets out affirmative action goals for black Namibians, women, people of mixed ethnicity, and the handicapped. Yet overtime another layer of preference, not codified in law or officially proclaimed in national policy, has emerged in the guise of black empowerment. Several observers note that such requirements as making existing companies take on black Namibian partners not only represents an unproductive intrusion on the private sector but does little to help presently disadvantaged people. Rather, such policies create a class of privileged individuals and confuse the broader goals of affirmative action. Namibia will not create greater social justice by adding additional complexity to the affirmative action system, much less by allowing a concept not condoned by law to affect competition in the business world.

Reduce the complexity of the Affirmative Action Reports and the frequency of full reports. The Affirmative Action Report may embody a complexity that exceeds its usefulness. The important factor is progress under the legislation, not simply fulfilling reporting requirements. The numbers and complexity of reporting tables should be reduced and simplified, as well as the periodicity of reports from compliant firms. Both business efficiency and employment equity may benefit by focusing more on the ends than the means, and by reducing the burden of excessive data.

Lower the threshold for classifying employers as subject to affirmative action requirements less drastically than what is proposed. Two reasons argue in favor of not reducing the threshold from firms with 50 employees to firms with only 25. First, the number of Affirmative Action Reports will increase exponentially and will be likely to clog the review system. Secondly, the burden on small businesses could prove intolerable under the current requirements for producing the Affirmative Action Reports.

Reinforce the system of alternative dispute resolution. The legal framework for alternative dispute resolution exists in Namibia and its principle enjoys widespread favor. The Government will need to invest further in the training of mediators and arbitrators, perhaps with assistance from international donors. There is also much work to be done through education of the public and through efforts with the legal community, which stills tends to steer its clients towards formal litigation in the courts.

B. Reporting

Overhaul the Foreign Investment Legislation. The Foreign Investment Act sets forth an incentive scheme that has been rendered obsolete by the liberalization of currency flows and thus has become virtually nonperforming in respect of its original purpose. Its provisions for national treatment are subject to ambiguities and it presents no clear distinction between pre- and post-establishment phases for foreign enterprises, thereby undermining the essential function of an incentive—namely to induce a company to invest or expand when it would likely not do so otherwise. A new Foreign Investment Act should make clear that the business landscape is stable and sheltered from fundamental changes made on the basis of political expedience.

Submit procedures at the Registrar of Companies to process reengineering. The internal procedures in the Registrar of Companies are inefficient, casually organized, and entirely manual. A complete overhaul rather than incremental improvements will be required to ensure a business registration system that is responsive to increased demand in the future. At the present time, even a single computer with a word processing program would reduce the time for a name search from hours or days to one minute and would maintain a cumulative value of revenue for instant reference. It would also reduce the possibility of error to improper data entry.

Make automation of the Registrar's Office progressive and built around process solutions. The Ministry of Trade intends to develop a computerized system for the Registrar of Companies. There is some indication that inadequate consideration has been given to rationalizing procedures prior to creating the databases. There would be lamentable consequences to building a management information system that simply incorporates the procedures as they now exist.

Draft a new, modern Close Corporations Act. The Close Corporations Act of 1988 has become a patchwork of successive amendments which now equal or exceed the Act itself. The more customary usage in the Western World is to embody all forms of business entities into a single commercial or civil code. Nonetheless, since Namibia has retained the discrete act for companies, it should follow suit with a revision of the Close Corporations Act.

Do not exclude foreign investors from the alternative of the close corporation. Two justifications were cited for this measure, which is currently under debate. These are to ensure the protection of Namibian small business and to control the movement of fraudulent foreign entrepreneurs who establish an inactive close company simply to obtain visa status to come and go from Namibia. The idea that local entrepreneurs cannot learn to compete effectively has been given the lie in country after country. Affording this sort of protectionism is almost guaranteed to maintain low productivity and inferior standards of customer service in local small businesses. As for controlling

immigration, the issue should be addressed at the source with appropriate safeguards to de-register close corporations that are dormant for a certain period of time.

Make the Registrar of Companies a true full-service, one-stop window. Investors are the customers of this office. Staff must be trained to conceive of customer orientation in the modern sense. The discretionary room available must be clear to all personnel. Acceptance or rejection of names and of the business objectives of new firms must be made according to legislation. The modern principle behind allowing an investor to select a business name according to his or her whims is that the investor should know better than anyone else what name is most appropriate for the market served.

Simplify the documentary requirements for formation of a company. It takes up to three months and the submission of 15 to 20 separate documents to establish a company in Namibia. The costs are minimal and the multiple submissions something akin to a nuisance, but the requirements are old-fashioned and will complicate future efforts to permit full or partial electronic submission. The Ministry of Trade and Industry, along with the Ministry of Finance, should study international best practices in order to modernize the company matriculation process.

Target investment promotion materials compatible with fisheries policy. Investors did not consider that the fisheries license regime was problematic. As the NIC prepares for its next active promotional campaign, however, it will need to coordinate with the Ministry of Fisheries and Marine Resources over FDI promotion. The policy in place is to indigenize the fishing industry and existing rights and total allowable catch (TAC) quotas are allocated to full potential, allowing for no new players in the industry except through the buyout of an existing company. Therefore, FDI is not wanted in the sector nor likely to be forthcoming. However, according to the Ministry FDI is wanted in aquaculture. This objective requires appropriate targeting in the NIC's investment promotion efforts.

Improve response times for reviewing mining license applications. The Ministry of Minerals and Energy notes that it receives a large number of applications and reports an average three-month timeframe for reviewing them. Private sector sources suggest that delays can be longer and applications are not appropriately prioritized. This period should be shortened to improve facilitation of inward investment into the sector, including among both large multinational companies and domestic small-scale miners. The Ministry should assess where delays occur in the process and make appropriate changes to eliminate them. In particular, the Ministry should assess whether the legislation or policy should be changed to eliminate the upfront review of the licensing committee and rather emphasize effective post-licensing monitoring. While the requirements for issuing mining rights are reasonable, the upfront delay in approving licenses represents a bottleneck for the sector. Similarly, it should be determined whether or not the requirement of the Minister's personal signature and attention to all licenses is necessary and, as some in government have suggested, causes delays.

Prescribe Change of Tariff Heading as the single criterion for determining whether manufacturing has taken place, and publish it in the official gazette together with the steps for granting the Registered Manufacturer Status. This would create transparency and allow for reasonable predictability of results of applications on the part

of investors. These are conditions of sound foreign investment policy and good governance.

Establish an “Industrial Development Committee” that would consider applications for both EPZ and Registered Manufacturer status. If this would require legislation, which cannot be enacted expeditiously, the Minister of Finance could establish a committee made up of the present members of the EPZ Committee to consider applications for the status of Registered Manufacturer. This would be a short-term solution for achieving transparency in the process of granting the status.

Prepare an incentives handbook for investors. There are numerous publicly available documents concerning incentive programs in Namibia, but the information is inadequately detailed. The NIC should spearhead preparation of a comprehensive “Investor’s Handbook” that would explain the special incentives and the procedures and costs for obtaining them. The handbook should be available in paper copy and—most importantly—in electronic format in the website of the Ministry of Trade and Industry or of the NIC.

Review applications for the Registered Manufacturer Status before the enterprise is established. Under the current system, a potential investor must establish the business and start operations before the enterprise can be considered for the Registered Manufacturer Status. This procedure runs contrary to the main objective of the incentive, which is to attract investment.

C. Locating

Improve and speed up the land acquisition process in rural areas through capacity building. While land acquisition in Namibia’s major cities was seen as an easy and clear process, some observers note that acquiring land under the jurisdiction of smaller municipalities and regional councils is much less easy and efficient than in the Type I cities. Working with the Ministry of Regional and Local Government and Housing, each individual council should assess its process for land allocation with the goal of improving transparency and speed. As needed, the Ministry should coordinate the delivery of technical assistance to improve capacity at the local level so that all cities can perform more or less equally and efficiently in allocating land.

Reevaluate restrictions on rural land access for foreign investment. At present, foreign investors who wish to invest in rural areas and agriculture must obtain pre-approval from the Minister of Land, Resettlement, and Rehabilitation, and majority ownership of certain companies is forbidden. Yet foreign investment in the agricultural sector could bring Namibia new technology and create jobs. As such, the restrictions of foreign ownership of agricultural land should be revisited. Given Namibia’s high unemployment rate, keeping the agricultural sector closed to FDI may be unwarranted.

Delegate ministerial signature power for Ministry of Lands, Resettlement, and Rehabilitation agreements. Given that requiring ministers to sign approvals or leases personally can cause unnecessary delays, these powers could be delegated to lower level officials. Effective delegation will enable approvals to be made more quickly without delays. To do this the Ministry of Lands, Resettlement, and Rehabilitation may need to ensure that their internal decision-making criteria are clear and that staff are appropriately trained.

Solidify and enact environmental clearance regulations. Namibia's environmental clearance regime is characterized by a lack of legal infrastructure and only voluntary compliance with EIA requirements. It is in the national interest to enforce suitable environmental standards. This deficit needs to be addressed by the passage of the law and robust regulations that both protect the country's natural resources and environment and also foster sound commercial development. Environmental impact assessments should be compulsory for a defined set of commercial activities. The law should ensure that state-owned enterprises are not exempt from the same environmental regulations to which private companies must adhere.

D. Operating

Increase resources to expedite the processing of income tax returns and issuing of final assessments. Several investors were concerned about delays in processing income tax returns and issuing final assessments. Inland Revenue pointed out that the Department's staff is very small for the number of reporting taxpayers. The Ministry of Finance should study staffing levels of Inland Revenue and increase staff accordingly. Inland Revenue should also consider establishing a Client Service Charter that would spell out timeframes for carrying out processes and its obligations in terms of service delivery.

Analyze the information technology needs of Inland Revenue and update the present system. The private sector also pointed out that the computer system used by Inland Revenue is old and its modules are not integrated. As the various modules do not interface, much time is wasted in repeated data input. It will pay dividends for Inland Revenue to establish its current needs and update or replace the present system. The Department can study excellent examples in the fiscal services of many countries that continually update their information technology systems.

Revise and consolidate the income tax legislation. The Income Tax legislation dates back to 1981. Amendments and regulations are not readily available, and there is no guide or a single source of reference with comprehensive information for the taxpayer. Inland Revenue should initiate a project to revise and consolidate the legislation.

Compile a taxpayer's user manual. Since tax legislation is invariably complex, one internationally recognized good practice for revenue authorities is to prepare user-friendly manuals for taxpayers. The Namibian Department of Inland Revenue should prepare a manual for taxpayers. The publication, and associated information, should be available on the website of the Government of Namibia.

Increase technical staff at the Walvis Bay Customs regional office. Investors noted that the office has only a single officer with authority for the supervision of loading and sealing of containers. Technical staff should be increased to enable the Customs to carry out adequate controls. This is important for export cargo security requirements for imports into the United States and elsewhere, as well as for revenue.

Consider establishing a Revenue Authority. In most countries where a Revenue Authority has been introduced customer service and revenue collection improved. The Ministry of Finance should consider establishing a Revenue Authority or centralized Revenue Service as the other countries in the Southern African Customs Union (SACU)

are doing. As a first step the government should commission a study on the matter, which would, *inter alia*, examine what the introduction of a Revenue Authority may entail. For example, in some countries a large number of existing staff has been retired. The government must make budgetary provisions for such an eventuality.

Update regularly the list of goods requiring import permits and make it public. Often importers realize that certain goods require an import permit only when they are so informed by the authorities at the time of customs clearance. They then go to the Ministry of Trade and Industry where permits are granted as a matter of routine. The Ministry of Trade and Industry should update the list of restricted goods regularly and publish it in public media, including on its website.

Compile information on exchange control requirements and allowances and make it readily available to the public. Although the Bank of Namibia does not directly deal with the public in matters of exchange control, it should compile a document on exchange control requirements and allowances that can serve as an authoritative source of such information. The commercial banks would give out this document to the public on request. The document would be very handy to investment facilitators that have to advise executives or potential investors.

Table ES.1 below summarizes the Investor Roadmap recommendations, noting the Process Group Area involved, estimated priorities based on private sector feedback, and the actors involved in implementing reforms.

Table ES.1: Recommendations Summary Chart

Process	Recommendation	Priority	Implementation Timetable ³	Responsibility
Macro-policy Issues	Improve dialogue and relations related to labor-employment matters	High	Medium to long-term	Unions, Private Sector Associations, Labour Commissioner
	Study efficacy of competition law and anti-dumping measures	Medium	Short-term	Ministry of Trade and Industry (MoTI)
	Study Namibian incentives, including the efficacy of their targeting, ease of access and transparency, and cost-benefit ratio	High	Medium-term	Namibia Investment Centre (NIC)
	Evaluate the mandate, structure, and organizational location of the NIC	High	Medium-term	NIC
Acquiring Business Visas, Work Permits, and Permanent Residence	The government should disseminate to all ministries the criteria for visitor entry	Medium	Short-term	Ministry of Home Affairs (MoHA), NIC
	Define clearly the purpose of the business visa	Low	Medium-term	MoHA, NIC
	Eliminate the requirement for investors to submit a comprehensive business proposal in the work permit application	Medium	Immediate	MoHA, NIC
	Delete the requirement of the marriage certificate for the work permit	Low	Immediate	MoHA, NIC
	The NIC should eliminate its screening of work permit applicants	Medium	Medium-term	NIC
	The Department of Immigration at Home Affairs should incorporate into its procedures regular communication with applicants	Medium	Medium-term	Immigration Department, MoHA
	Home Affairs must reengineer and computerize its systems in the Department of Immigration	High	Medium to long-term	Immigration Department, MoHA
	Make the criteria for approval of permanent residence clear, objective, and transparent	Medium	Short-term	Immigration Department, MoHA
Labor Regime	Increase employer rights to remove workers charged with gross misconduct and vet cases brought before the labor court	High	Medium to long-term	Labour Commissioner, Employers Federation, Unions
	Establish a system of binding arbitration	Medium	Long-term	Labour Commissioner, Employers Federation, Unions

³ Immediate: 0-3 months
Short-term: 3-6 months
Short to medium term: 6-12 months
Medium term: 12-18 months
Medium to long term: 18-24 months
Long term: 24 months or more.

	Maintain a single definition of disadvantaged groups	Medium	Short-term	Employment Equity Commission
	Reduce the complexity of the Affirmative Action Reports and the frequency of full reports	Medium	Short-term	Employment Equity Commission
	Lower the threshold for classifying employers as “relevant” less drastically than what is proposed	Medium	Medium-term	Employment Equity Commission
	Allow progressive rights to increased annual leave	Medium	Medium-term	Labour Commissioner
	Reinforce the system of alternative dispute resolution	Low	Long-term	PAMAN, Labour Commissioner
The Investment Policy Environment	Overhaul the entire Foreign Investment Act	High	Medium-term	NIC
	Eliminate clauses that potentially undermine the assurances of the Act	Low	Medium-term	NIC
	Create an unambiguous position in regard to national treatment consistent with the GATS and Namibian priorities	Low	Medium-term	NIC
Company Registration	Submit procedures at the Registrar of Companies to process reengineering	High	Short-term	Company Registrar
	Make Company Registrar automation progressive and built around process solutions	Medium	Medium to long-term	Company Registrar
	Draft a new, modern, Namibian Close Corporations Act	Medium	Long-term	MoTI
	Do not exclude foreign investors from the alternative of the close corporation	Medium	Medium-term	Company Registrar
	Make the Registrar of Companies a true full-service, one-stop window	Medium	Long-term	Company Registrar
	Simplify the documentary requirements for formation of a company	Low	Short-term	Company Registrar
Obtaining Sectoral Licenses	Target investment promotion materials compatibly with fisheries policy	Low	Medium-term	NIC, Ministry of Fisheries and Marine Resources
	Apply mining policy and law consistently	Medium	Short-term	Ministry of Mines and Energy (MoME)
	Improve response times for reviewing mining license applications and reduce backlog	High	Medium-term	MoME
Acquiring Investment Incentives	Prescribe Change of Tariff Heading as the single criterion for determining whether manufacturing has taken place, and publish it in the official gazette together with the steps for granting the Registered Manufacturer Status	High	Short-term	Inland Revenue, MoTI, NIC

	Improve transparency in incentives issuance through the establishment of an “Industrial Development Committee” that would consider applications for both EPZ and Registered Manufacturer status	High	Medium-term	Inland Revenue, MoTI, NIC, Offshore Development Company (ODC)
	Prepare an incentives guide for investors	Medium	Immediate	NIC
	Review applications for the Registered Manufacturer Status before the enterprise is established	High	Short-term	Inland Revenue, MoTI, NIC
Acquiring Land	Improve and speed up land acquisition process in rural areas through capacity building	Medium	Long-term	Local governments, Ministry of Regional and Local Government and Housing
	Improve central government responsiveness to rural investors	High	Medium-term	Government of Namibia
	Improve information availability related to non-urban land	Medium	Medium to long-term	NIC, Ministry of Lands, Resettlement, and Rehabilitation (MoLRR), Ministry of Agriculture, Ministry of Environment and Tourism, Namibia Tourist Board, Namibia Wildlife Resorts Company
	Speed up local deeds registration process in Walvis Bay	Low	Medium-term	Walvis Bay Municipality
	Re-evaluate restrictions on rural land access	Medium	Medium to long-term	MoLRR
	Improve response time by the Ministry of Lands, Resettlement, and Rehabilitation and other actors in approving of land sales	Medium	Long-term	MoLRR, Local governments
	Improve transparency and consistency in municipal land allocation	Medium	Long-term	Local governments
	Lengthen ODC leases	Low	Immediate	ODC
	Improve response time of Walvis Bay Export Processing Zone Management Company Board	Medium	Medium-term	Walvis Bay Export Processing Zone Management Company
	Consider enabling investors to pay land taxes once per year	Low	Medium-term	Local governments
Site Development and Obtaining Utilities Connections through Cities	Consider if privatization would reduce costs and improve services	Medium	Medium-term	Government of Namibia
	Streamline rezoning procedure	Medium	Medium-term	Municipalities, Namibia Planning Advisory Board (NamPab), Ministry of Regional and Local Government and Housing
	Enact municipal environmental regulations in Windhoek	High	Medium to long-term	Windhoek Municipality
Environmental Clearance	Solidify and enact environmental clearance regulations	High	Long-term	Ministry of Environment and Tourism (MoET), Cabinet

	Environmental procedures should address needs of all sectors	Medium	Short-term	MoET
	Improve coordination among local and national environmental authorities	Medium	Medium-term	Municipalities, MoET
Income Tax and Other Inland Revenue Taxes	Improve resources to expedite the processing of income tax returns and issuing of final assessments	High	Medium-term	Ministry of Finance (MoF), Inland Revenue
	Analyze the computerization needs of Inland Revenue and update the present system	Medium	Short-term	Inland Revenue
	Revise and consolidate the income tax legislation	High	Long-term	Inland Revenue
	Copies of the income tax legislation should be made available in Namibia irrespective of where the legislation is printed	Low	Short-term	Inland Revenue
	Compile an income tax user manual or guides in the form of booklets	Medium	Short-term	Inland Revenue
Importing and Exporting	Increase technical staff at Walvis Bay Customs regional office	Low	Medium-term	Walvis Bay Municipality
	Consider establishing a Revenue Authority	High	Long-term	MoF, Inland Revenue, Customs
	Update regularly the list of goods requiring import permits and make it public	Medium	Short-term	MoF, MoTI
Complying with Currency Controls	Compile information on exchange control requirements and allowances and make it readily available to the public	Medium	Immediate	Central Bank, NIC

Chapter 1: Introduction

I. Project Context

Namibia boasts many favorable conditions for attracting foreign direct investment (FDI): political stability, a functioning democracy, adequate infrastructure, and low levels of crime. The legal and regulatory regimes are largely transparent and well documented, and rent-seeking on the part of government officials does not seem to be regarded as a prevalent activity. The country offers ready access to the Southern African market through several regional and bilateral trade agreements, and access to the U.S. market through the Africa Growth and Opportunity Act (AGOA) and to the European Union (EU) through the Cotonou Agreement. The World Bank has classified Namibia as a lower middle income country.

Despite a GDP per capita of approximately US \$2,000, Namibia's internal market is small. The country has a population of only two million and a GDP of less than \$5 billion. In its "Human Development Index," the UNDP rates Namibia 126 out of 177 countries surveyed and attributes to the country the most severe income disparity in the world.⁴ These factors suggest that FDI in Namibia will continue for many years to focus largely on exportable commodities.

In terms of business and investment competitiveness, Namibia as an economy falls into a middle ground. According to international indices, Namibia's performance is neither brilliant nor dismal. The "Index of Economic Freedom" ranks the country 81 out of 155.⁵ The "Corruption Perceptions Index" puts Namibia at only 4.1 out of a best possible score of 10.⁶ In terms of global and business competitiveness, Namibia again falls about midway down the scale.⁷ Except for the virtual tie with Botswana in the Porter Business Competitiveness Index, Namibia performs less well—even considerably less well—than its two important neighbors in SACU.

Table 1.1: Comparatives Indices

Source	Namibia	South Africa	Botswana
Index Of Economic Freedom	81	56	37
Corruption Perceptions Index	4.1	4.6	6.0
Global Competitiveness Index	52	42	36
Business Competitiveness Index	51	25	52

Since 2001 FDI in Namibia has declined in both absolute terms and as a percentage of gross capital formation. From a high of \$365 million in 2001, inward flows diminished to \$84 million in 2003.⁸ This is a worrisome trend that could have a significant negative

⁴ *The Human Development Report* (UNDP: New York, 2004). For the Gini coefficient that measures income disparity, see http://hdr.undp.org/statistics/data/indic/indic_138_1_2.html.

⁵ See The Heritage Foundation web site: www.heritage.org.

⁶ See the Transparency International site: www.transparency.org. Also in this regard an internal study conducted for the Office of the Ombudsman, *National Integrity Survey 2004* (Windhoek: NEPRU, 2005).

⁷ The World Economic Forum, "Global Competitiveness Index" and the Michael Porter "Business Competitiveness Index." www.weforum.org.

⁸ *World Investment Report, 2004*. (Geneva: UNCTAD, 2004). See www.unctad.org/fdistatistics.

impact on Namibia's economy with attendant effects on employment and social stability should the trend continue. Namibia ranks 84 in UNCTAD's "FDI Potential Index."⁹

Given a recent demographic growth rate of 3% (somewhat diminished by 2003), unemployment conservatively estimated at between 20%–30%, and the phase-out of the WTO Multi Fiber Agreement diminishing its attractiveness for garment exports, Namibia cannot afford to neglect FDI as a major component of its economic security. The moment is propitious for a close look at all factors impeding increased external direct investment in the country. Among the diverse factors affecting investors' decisions, the regulatory and administrative systems for implementing a country's policies invariably weigh in the balance of considerations. The Investor Roadmap is an ideal instrument for assessing the regulations and procedures that are sometimes characterized as second-tier to macroeconomic structures and that can strongly affect FDI flows. It is in this context that the Namibia Investment Centre (NIC) requested assistance of the USAID-funded Southern Africa Trade Hub based in Gaborone, Botswana, in support of a Roadmap exercise.

II. The Namibia Investor Roadmap

USAID established the Southern Africa Trade Hub (the Hub) in Gaborone as a vehicle for providing technical assistance to client countries throughout the region. The Hub's emphasis rests primarily in promoting trade, competitiveness, and the enabling environment for private enterprise. Sound policy and regulatory systems for attracting foreign direct investment fall squarely into the primary avenues of the Hub's interventions, and the main instrument for documenting and analyzing a country's attractiveness for FDI is the Investor Roadmap.

An Investor Roadmap involves a comprehensive analysis of the general and specialized procedures that constitute public-private regulatory interaction. It is at once a detailed descriptive document, an analytic tool, and a catalyst for meaningful change. While some of the administrative and procedural barriers that the Roadmap identifies may seem to be mere nuisances at first glance, taken as a whole they can become overwhelming, thereby raising the cost of investment, lowering rates of formal business establishment, and diminishing national competitiveness.

The objectives of the Namibia Roadmap are to:

- Identify and analyze all of the steps, timeframes, costs, and submission requirements involved with starting up and operating a business in Namibia;
- Collect and review the relevant legislation establishing the various administrative procedures considered;
- Analyze the efficiency of the present investment procedures in Namibia;
- Craft recommendations for meaningful, practical reform; and
- Present findings in a manner that will catalyze reforms and lead to improvements in the country's investment climate.

The Roadmap methodology segments the critical path of business startup and operations into four Process Group Areas—*Employing, Reporting, Locating, and Operating*—as elaborated below.

⁹ *Idem.*

- **Employing:** securing visas, obtaining residency and work permits, procedures for hiring and dismissing employees, compliance with employment regulations, and settling labor disputes.
- **Reporting:** registering business entities, obtaining business licenses and permits, and acquiring incentives.
- **Locating:** buying and leasing land and facilities, developing a site, obtaining utility hook-ups, and complying with environmental legislation.
- **Operating:** registering for and paying taxes, importing and exporting, adhering to mandatory standards, and complying with currency controls.

The Southern Africa Trade Hub commissioned a consulting team to carry out the Roadmap study in close collaboration with the NIC. The diagnostic phase of the study involved reviewing manifold data sources in order to present an accurate, qualitative snapshot of the regulatory environment at the time the research was conducted. The consulting team met with 65 public officials, 45 business owners and managers from the private sector, and 20 representatives of business associations, trade unions, and the economic offices of donor agencies. Most of the interviews with the public sector and associations occurred in Windhoek; nearly half of the private sector meetings took place in Walvis Bay. Based on these meetings and a review of official documents, including forms and process guides, the consulting team produced a series of draft descriptions of the procedures and submitted them to the relevant regulators for review, correction, or validation. An additional source of public sector source of information reviewed for the report is relevant legislation.

The issues identified in the Roadmap Report's analyses are not assumed to be exhaustive; they represent an accounting of constraints based on the data available. The Roadmap analysis draws from three main sources: a) the expressed perception of barriers as voiced by the private sector; b) an assessment of procedural efficiency; and, where appropriate, c) a comparison of procedures and practices in Namibia with international best practice. The recommendations in the report are designed to be practical and based on international experience in administrative reform. They should not, however, be considered definitive. The recommendations are best viewed as proposals for implementing change and should be reviewed and revised to suit local conditions, including political realities and resource constraints.

While the primary focus of the Namibia Investor Roadmap is the generic foreign investor, it is important to note that the analysis is also pertinent to domestic companies as well. The analysis, which is informed by private sector feedback, was derived from interviews with both foreign and domestic companies from a range of sectors and of varying size. These interviews confirm what has been established elsewhere through Investor Roadmaps – while a domestic firm and a foreign investor may have different priorities among the constraints identified, they tend to agree overall about the existence of those constraints. For example, a foreign investor may consider problems in immigration more significant than in company registration, while a domestic investor that does not need work permits may feel that a slow or expensive company registration process is a higher priority for reform. Both, however, would recognize that inefficiencies exist in both immigration and company registration procedures. Indeed, in many cases administrative

barriers have a disproportionate impact on smaller and domestic companies because large foreign companies tend to have the resources to hire facilitators, such as lawyers and accounting firms, who can more quickly resolve administrative issues.

It is also important to note that FDI can have a significant impact on the domestic economy through interaction with local firms. Foreign companies tend to establish a web of relationships with local companies, thereby raising demand for locally produced goods and services. Therefore, in addition to creating jobs and adding to tax revenue, the presence of FDI in a country can produce beneficial economic impacts throughout the private sector economy.

This draft report was prepared by a three-person Roadmap team that conducted a two-week assessment mission in Namibia from June 19–July 5, 2005. Team members were Donaldo Hart, Sutherland Miller III, and Theodore Lyimo. They benefited greatly from the knowledge and helpfulness of their counterparts at the NIC.

III. Report Outline

Corresponding to the Process Group Areas, this report comprises four major chapters plus the Executive Summary and this Introduction. Following the Introduction, Chapter 2 addresses procedures, policies, and administrative concerns related to Employing, including acquiring visas and work permits and hiring and terminating workers. Chapter 3 is devoted to matters related to Reporting, including company registration, obtaining licenses, and acquiring incentives. Locating procedures, including acquiring land, developing a site, obtaining utility hook-ups, and complying with environmental laws, are the subject of Chapter 4. Chapter 5 focuses on issues related to Operating, including registering for and paying taxes, importing and exporting, and complying with currency controls. The last chapter, Chapter 6, presents a strategy for implementing the Roadmap reforms on a multi-agency basis.

Annex A contains a list of individuals interviewed for this report.

Annex B presents the forms collected during the research phase and used to complete the various regulatory procedures referenced in this report.¹⁰

Wherever the report cites values in Namibian currency (which is pegged to the Rand), it uses the symbol N\$. For conversion purposes it uses an exchange rate of US \$1=N\$6.5.

¹⁰ Annex B will be included in the final report only.

Chapter 2: Employing

This chapter covers policies and procedures related to business and residence visas, work permits, hiring workers and terminating employment, affirmative action regulations, social security requirements, and the resolution of organized labor disputes.

I. Acquiring Business Visas, Work Permits, and Permanent Residence

Visas, work permits, and residence permits are issued by the Department of Immigration of the Ministry of Home Affairs. Visas and permits are regulated by the Immigration Control Act of 1993. As noted in table 2.1 below, nationals of the several countries do not require a visa to enter Namibia for tourist or visitation purposes.

Table 2.1: Visa Exempt Countries

Angola	France	Luxembourg	South Africa
Australia	Germany	Malawi	Spain
Austria	Hong Kong	Malaysia	Swaziland
Belgium	Iceland	Mozambique	Sweden
Botswana	Ireland	Netherlands	Switzerland
Brazil	Italy	New Zealand	Tanzania
Canada	Japan	Norway	United Kingdom
Cuba	Kenya	Portugal	United States
Denmark	Lesotho	Russia	Zambia
Finland	Liechtenstein	Singapore	Zimbabwe

Nationals of nonexempt countries should apply for entry visas at a Namibian consulate; they may also apply at the border, but customs authorities may reject entry, and there is no immediate appeals procedure.¹¹

A. Business Visas

Although some ambiguities can be found in government web sites,¹² current practice at the Department of Immigration—a practice accepted by the Namibia Investment Centre—is to require a business visa for any entrant coming to Namibia with a business or commercial purpose. Simple explorations of investment or commercial opportunities and feasibility studies are common examples of purposes requiring a business visa. The business visa can also be issued for the purposes of short-term work from three to six months, but the visa alone does not grant the right to work. A work permit is also required.

Business visas can be obtained through consular offices (embassies) overseas or from the Ministry of Home Affairs in Windhoek. The charge for a business visa is N\$136 (US \$21). The form used is the same form for ordinary visas and is available from the government web site, from the Home Office, or from the NIC. The NIC will expedite a

¹¹ These are the visa requirements of the Ministry of Foreign Affairs as currently published in its web site: www.mfa.gov.na.

¹² Visa information published by the Ministry of Trade and Industry indicates that exempt countries may enter for business purposes. See www.mti.gov.na.

visa for foreigners already in country. It is normally issued within two to three working days.

B. Work Permits

The purpose of the work permit is to allow a non-Namibian to conduct work for compensation in Namibia. An applicant may be an employee or an independent businessperson. The permits are either short-term (three to six months) or long-term (one year or more). Only the Ministry of Home Affairs can issue the permit; embassies do not have this authority. In the case of foreign investors, Home Affairs advises the interested party to apply through the NIC.

1. Employees

If the applicant is an employee, the employer must demonstrate the efforts it made to identify a Namibian national for the position. If these efforts have been unfruitful, the employer will then provide, or behalf of the prospective employee, the following documents and forms to the Ministry:

- Main application form
- Radiological report
- Medical report
- Deed of Surety/Repatriation
- Multiple-entry visa
- Work offer from employer
- Payable fees
- Two passport photos
- Highest education diploma
- Previous work references
- Police clearance from country of origin and of latest residence of over 12 months
- Marriage certificate
- Copy of advertisement of position
- Motivating letter
- Curriculum Vitae

2. Investors

If the applicant is an investor and proceeds through the NIC, he or she must provide the following completed forms and documents, which vary in several details from the requirements of a foreign employee:

- Main application form
- Radiological report
- Medical report
- Deed of Surety/Repatriation
- Multiple-entry visa
- Business questionnaire
- Outline of business plan
- Payable fees

- Two passport photos
- Highest education diploma
- Previous work references
- Police clearance from country of origin and of latest residence of over 12 months
- Marriage certificate
- Curriculum vitae
- Namibian registration certificate of business
- Comprehensive business proposal
- Proof of financial resources in Namibia
- Lease agreement or proof of ownership of business property in Namibia

The NIC then conducts an initial screening and provides the Ministry of Home Affairs with its opinion regarding the admissibility of the applicant. Within Home Affairs an Immigration Selection Board (ISB) deliberates on applications during three weekly sessions. Chaired by the Permanent Secretary of the Ministry, the ISB comprises representatives from the ministries of Trade, Finance, Justice, and Labor as well as from State Security and the Office of the Prime Minister.

The fee for a short-term permit—usually not of interest to business investors—is N\$230 (US \$35) for three months; a fee of N\$500 (US \$77) is required for both six and twelve-month permits.

Temporary (short-term) permits can be issued in a few days when urgency dictates, for example in the case of a surgeon brought in to operate on a patient. Twelve-month permits can take up to three months to approve.

3. Renewal of Permit

The employee must submit the following:

- Letter of Motivation from Employer
- Local Police Clearance Certificate
- The Renewal Application form
- Multiple-Entry Visa Form

The Investor submits:

- Letter of Progress on the business
- Company financial statements
- Social Security list of employees
- Tax certificate of company
- The Renewal Application form
- Multiple-Entry Visa Form

C. Residence Permits

Applications for permanent residence require all of the documents and forms demanded for work permits plus a birth certificate and, where applicable, divorce or death certificates of a spouse. A deed of surety is required for those applicants who will not be employed during their residency, which is the case for many older Europeans who

choose Namibia for retirement. If the applicant intends to launch a business, he or she is required to submit a brief business proposal. The ISB applies a number of criteria in considering applications.¹³ The Board must be satisfied, *inter alia*, that the applicant:

- is of good character;
- will assimilate with the inhabitants of Namibia;
- will not be harmful to the welfare of Namibia;
- has material means to sustain a living or such professional qualifications as to render remunerative employment likely; and
- is unlikely to pursue employment in which a sufficient number of persons are already engaged in Namibia.

A foreigner who has already lived in Namibia for five years enjoys some advantage in securing the permit. According to officials at the Department of Immigration in the Ministry of Home Affairs, a foreign person who invests US \$500,000 can be approved on that basis, as long as the individual meets other criteria as listed above.

The cost to submit an application for permanent residence is N\$40 (US \$6). The fee for the permit, once approved, is N\$7,130 (US \$1,097) per individual or per family.

There is no statutory time for approval of an application for permanent residence. It can take as long as five years.

D. Analysis

Investors cite difficulties in obtaining work permits for themselves and for employees as obstacles to business efficiency and as a potential deterrent to FDI. They are less vociferous about permits for permanent residence, but they openly acknowledge that these, too, represent potential obstacles to investors. In neither instance is cost regarded as a barrier.

Issues

Government web sites give conflicting, or inconsistent, information about visas.

The site of the Ministry of Foreign Affairs gives a list of countries whose nationals may visit Namibia without a visa. It makes this statement: "Nationals from the countries listed below are not required to obtain Visas to travel to Namibia for visits shorter than three months." It is silent in regard to business purposes. The site of the Ministry of Trade and Industry states: "Nationals of the following countries do NOT require a visa to travel to Namibia for visits or business purposes." The MFA site also lists Hong Kong and Macau as exempt countries, while the MTI site fails to mention either place.¹⁴ Since the modern investor will invariably visit a host country's official pages on the Internet, such inconsistencies are both misleading and compromising of the government's image.

The purpose of the business visa is poorly defined. The visa application form does not make clear what constitutes a business activity. If a tourist suddenly sees a commercial opportunity and speaks with local merchants, is he in violation of his entry conditions? Does simple prospecting constitute a business activity? Do consultants

¹³ The *Immigration Control Act* as promulgated August 19, 1993, Article 26.

¹⁴ www.mfa.gov.na and www.mti.gov.na.

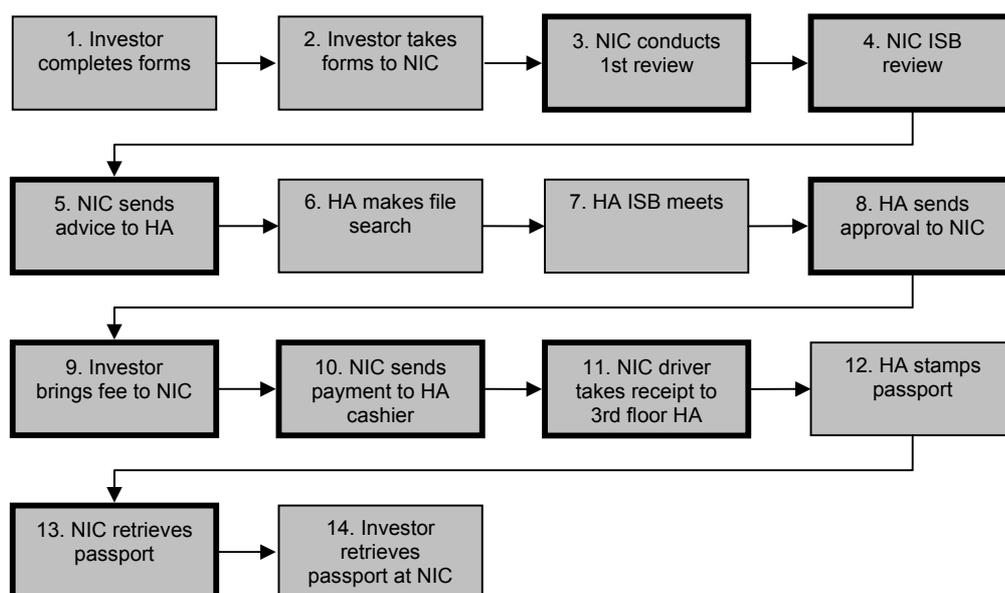
require business visas?¹⁵ The answers to such obvious questions are unclear. The only unambiguous aspect of the business visa requirements is that it is a precondition of the work permit.

The requirement that an investor submit a “comprehensive business proposal” to obtain a work permit is excessive. Comprehensive business proposals are intended for lending institutions. Even brief business proposals are of questionable usefulness in the process of authorizing a work permit for investors. It is unlikely that the members of the ISB have the expertise, much less the time, to evaluate business proposals.

The requirement of a marriage certificate seems archaic and irrelevant. Its only relevance would be if in granting an investor a work permit his or her spouse automatically received a permit to work as well. If there is no intention for the spouse to work, the grounds for requiring a marriage certificate must lie in reasons of social propriety.

The NIC’s internal procedures for facilitating the work permit are bureaucratic and in consequence sometimes dilatory. The whole process is represented in figure 2.1 below. In the figure, the Ministry of Home Affairs is represented as HA and the NIC interventions are in boxes with bold outlines.

Figure 2.1: Work Permit Application Procedures



The NIC certainly relieves the investor of considerable legwork, and in this it serves a valuable role. The NIC also can act as an advocate for the investor, ensuring that he or she receives just treatment. Some of the NIC’s work has become important owing to the inefficiencies in Home Affairs, but other aspects appear redundant—perhaps in compensation for laggard processing at the Ministry.

¹⁵ At immigration the answer seems to be, Some do, some don’t. Two short-term consultants interviewed entered without visas; a SADC consultant on similar assignment was obliged to secure a business visa.

Obvious compensation for inefficiencies in the Ministry are conspicuous in the NIC's having to take documents to the cashier for payment. Redundancies, or partial redundancies, lie in two screenings by separate selection boards. The NIC's screening may bolster the chances of an investor's receiving the work permit, but it is not a substitute for the ISB's work at the Ministry. Furthermore, the NIC has its own selection committee that often fails to meet owing to the absence of one or more members. At the Ministry there is a similar problem. Consequently, the NIC's procedures can delay even further the already lengthy process of review and approval.¹⁶

The Home Office keeps open no lines of communication with the investor. Once an application has been submitted, the investor has no real means at his disposal to learn of the status of his submission. The same can be said of applications on behalf of employees. Knowing neither when nor if a request will be approved adds a considerable degree of uncertainty to investors and employers and has definite costs for businesses.

Investors' and employers' experience shows that applicants' paperwork is often temporarily lost at the Ministry. Several respondents to the present research told of their files having been temporarily lost. In some instances applicants may have to resubmit all of the many forms. This kind of frustration involving costs, time, and uncertainty does not enhance the environment for FDI.

Criteria for permanent residence are highly subjective. Good character is vital, but it is also difficult to assess. The likelihood of "assimilating" is too vague even to understand. Left to the judgment of individuals, it could imply anything from racial to religious preferences.

Recommendations

The government should disseminate to all ministries the criteria for visitor entry. One public official commented that with every change of minister at Home Affairs there are changes to the immigration system. Clearly the admissibility of other nationals to Namibia is not simply a decision of Home Affairs. Nonetheless, it should be a top responsibility of Home Affairs to publish, in brochures and on a website, all relevant information concerning visas and immigration.¹⁷

Define clearly the purpose of the business visa. At worst a minor annoyance, this issue is possibly reflective of inadequate communications between ministries. For tourists, Namibia has liberal entry policies, and few would question the value of tourist revenues. Some parts of society do, however, seem to question the importance of FDI, which not only has the potential of dwarfing tourist revenues in its impact on national accounts, it is also a leverage factor in tourism. While not an anomaly in international practice, the business visa is only necessary because the work permit does not encompass entry and exit conditions. Many countries issue a type of visa granting the right to work for a defined period of time, so that a single document serves immigration

¹⁶ This statement is not hypothetical. At the end of June, the NIC sent to Home Affairs applications they had received in March, April, and May but were unable to process owing to the absence of committee members.

¹⁷ The Ministry of Home Affairs does not at the time of this report have a functioning web site on the Internet.

and work permit purposes. Namibia should consider this option. In the meantime, the government should make clear if the business visa is to regulate temporary entry of any person who, while in the country, will engage in remunerative activity, even if the source, currency, and payment destination are all foreign, as in the case of short-term consultants for international donors.

Eliminate the requirement for investors to submit a comprehensive business proposal in the work permit application. Health and security clearances are indispensable, and a background check on the general bona fides of the individual is advisable. In addition it is normal that the investor provide a clear, brief description of his or her business intentions. Neither the NIC nor the Ministry of Home Affairs should be in the business of evaluating comprehensive business proposals.

Delete the requirement of the marriage certificate for the work permit. The sole condition on which it should remain is if its submission assures a concomitant work permit for the spouse.

The NIC should eliminate its screening of work permit applicants. The NIC should screen the applications, not the applicants, and it should screen them against a checklist for completeness and clarity. It may then draft a summary statement and compile the tabular agenda to facilitate the meetings of the ISB at the Ministry. The NIC should in general adopt a mentality and a *modus operandi* of promotion rather than selection. Screening applications, furthermore, should be the task of one competent person, and the NIC has many on its staff. One of the directors—even the executive director—can perform spot checks as a quality control measure. The NIC should set its own rigorous deadline for turning applications over to the Ministry, and it should notify the applicant that this has been done.

The Department of Immigration at Home Affairs should incorporate into its procedures regular communication with applicants. Governments today are increasingly adopting an attitude of customer service. A first step towards treating investors as customers would be to send them an acknowledgment of the fact that their applications are being processed. The communication should also provide an estimated time for completion, a registration number to identify their file, and a contact person or at least a phone number for inquiries.

Home Affairs must reengineer and computerize its systems in the Department of Immigration. There is in Namibia no reason related to human or technological resources that this department cannot modernize its operations so that paperwork is not lost. Routine, tedious, manual searches for files should become a thing of the past, and records should be easily and immediately shared with other agencies, such as the NIC. Furthermore, obtaining accurate, timely information on inward travelers to Namibia is important to other government agencies in their efforts to promote investment and guide policy. For example, the Ministry of Environment and Tourism and Namibia Tourism Board rely on data on the number, nationality, purpose, and season in which foreigners come to the country to sell the tourism potential of Namibia, and only the international airport has computerized systems to capture this information.

Make the criteria for approval of permanent residence clear, objective, and transparent. Such personal attributes as good character and ability to assimilate are hard to evaluate, which creates opportunities for immigration officials to exercise excess

discretion in making decisions about permanent residence. It is recommended that the officials involved revisit the criteria that are judged to merit permanent residence and publish them in a manner that is clearer than the current description available.

II. Labor Regime

Labor and employment are governed by the Labor Act, No. 6 of 1992 until by ministerial decree the new Labor Act of 2004 is fully implemented. Given the anticipated imminence of this implementation, analyses in the present report refer to the new Act.

A. Hiring

No prescriptions define the hiring process in Namibia, and no procedural obstacles impede its ease and rapidity. An employer may engage a worker on-the-spot. No written agreement or contract is required. In addition, Namibian law permitting fixed-term contracts specifies neither minimum nor maximum terms. Affirmative action legislation affects the overall employment scenario (see section B below) but has no direct impact on the actual hiring process. The new Labor Act also stipulates that discrimination is prohibited on all grounds and that sexual harassment in the hiring of employees is expressly forbidden.

B. Termination

Firing is another matter altogether. Termination of employment is defined typologically and is governed by rigorous legislation. The labor law defines four types of termination:¹⁸

1. Automatic termination
2. Termination on notice
3. Termination for redundancy
4. Unfair dismissal

1. Automatic Termination

This form of termination occurs upon the dissolution of the business in which the employee's services have been engaged. Instances include the death of a sole proprietor, dissolution of a partnership, or bankruptcy of a company or corporation. The employee's contract ends automatically following one month of any of these occurrences.

Notice is given the employee by an executor, partner, or liquidator at any time during the one-month period following the closure of the business entity.

The terminated employee is by law a preferred creditor in respect of any payments owed.

¹⁸ The Labor Act of 2004, sections 29–33.

2. Termination on Notice

Both employer and employee are subject to regulations on the period of notice given:

- One day for four weeks or less of employment
- One week for employment over four weeks but less than one year
- One month for employment greater than one year

Written notice is required, it must provide reasons and the date of the notice. Even in the case of dismissal for misconduct, strict procedures must be adhered to. The following steps are illustrative of such a case, which could be suspicion of theft, disobedience of reasonable orders, negligence of duty, or similar offences. The steps below assume that the dismissed employee denies wrongdoing, even in the face of evidence.

Step 1) Provide notice to employee. The notice must be in writing and include the reasons for and the terms of the dismissal. These terms may dictate suspension with or without pay.

Step 2) Constitute an internal hearing committee. The committee should include management, the employee, and an employee representative (usually a union leader). A chairperson will make an oral pronouncement concerning the putative guilt or responsibility of the employee—the terms of the dismissal.

Step 3) Employer and employee provide evidence supporting their cases.

Step 4) Make decision on case. The decision may take several days. If the employee is found guilty, the committee will choose the terms of the punishment. It could be a warning or termination.

Step 5) Dissatisfied employee takes case to Labor Court. Regardless of the decision made by the committee, the offended party always has the right to open a case in the Labor Court.

3. Termination for Redundancy

Redundancy terminations imply reduction in workforce for reasons of reorganization or economic considerations. The employer must follow the following procedures:

Step 1) Provide advance notification. The notification must occur four weeks in advance of the intended dismissals and should go to the Labor Commissioner, the concerned union, and the employees. It must delineate details of the proposed reduction in force, with justifying reasons, and numbers and types of employees to be terminated.

Step 2) Enter into multiparty negotiation. Multiparty negotiations will typically include the union representative, employee, and employer. These negotiations are to take the following into consideration:

- Alternatives to dismissal;

- Minimization of dismissals;
- Criteria for selecting employees for dismissal;
- Conditions on which dismissals will take place; and
- Means to avoid adverse effects.

Step 3) Refer unsatisfactory negotiations to the Labor Commissioner. The Commissioner has the authority to approve the dismissals, to approve them subject to specified terms, or to disallow the terminations.

Step 4) Party aggrieved by the Labor Commissioner's decision takes the matter to the Labor Court. This option is open equally to an employer as to an employee or employee group.

4. Unfair Dismissal

Improper dismissal is a serious offence in Namibia. Termination of employment must present a valid reason and follow fair procedures. The burden of proving fairness rests with the employer. Termination is unfair if it occurs because an employee:

- Discloses information that the employee is legally entitled to
- Refuses to do something unlawful
- Exercises rights conferred by the Labor Act or by the terms of employment
- Belongs to a trade union
- Participates in lawful activities of a union

The above reasons constitute automatic classification of unfair termination. An employee may in any termination procedure question its fairness by bringing the matter to the Labor Commissioner. The procedures are then the same as outlined above for termination for redundancy.

While employee groups are represented by the Labor Commissioner, individual employees may lodge their grievances, including those concerning dismissal, at the Directorate of Labor Services in the Ministry of Labor.

C. Affirmative Action

1. The Legislation

Affirmative Action in Namibia is governed by the Affirmative Action Act No. 29 of 1998. Both legal and common discourse refer to *previously disadvantaged persons* as the beneficiary group of Namibian affirmative action. The Act defines designated groups as:

1. the racially disadvantaged,
2. women, and
3. the physically disabled.

Racially disadvantaged is further defined as "all persons who belong to a racial or ethnic group which was or is, directly or indirectly, disadvantaged in the labor field as a

consequence of social, economic, or educational imbalances arising out of racially discriminatory laws or practices before the Independence of Namibia.”¹⁹

Preferential treatment for the designated groups belongs only to Namibian citizens. Employment preference shall always be for a Namibian citizen. If various candidates belonging to designated groups are all of Namibian nationality, then preference is given to the candidate who belongs to more than one designated group.

2. Compliance

The body charged with implementation of the Affirmative Action Act is the Employment Equity Commission.²⁰ Only relevant employers are required to comply with the Affirmative Action Act, and the criteria of relevance are left to the determination of the Minister of Labor.²¹ At the present time, a relevant employer is one with 50 or more employees.

Relevant employers must submit to the Employment Equity Commission an Affirmative Action Report within 18 months of being so classified. The employer must submit follow-up reports every 12 months thereafter until a new, full Affirmative Action Report is required. At the present time, the Commission expects to require full Affirmative Action Reports every three years.²² An Affirmative Action Report comprises the following components:

- A Statistical Report;
- An Affirmative Action Plan;
- A Summary of goals, benchmarks, objectives;
- Names of non-Namibian employees and their understudies; and
- Records and documents used in preparation of the reports.

The procedures for preparing and filing the Affirmative Action Report are outlined below.

Step 1) Constitute an internal consultative committee. This entity should comprise employee, union, and management representatives. It has an ongoing role in the preparation, implementation, and monitoring of affirmative action policies and achievements in the company.

Step 2) Compile the Statistical Report. The Statistical Report that the employer will have to complete consists of numerous tables with data on job categories, numbers of employees, numbers hired and terminated, salaries, and persons qualifying under the current categories of previously disadvantaged.

Step 3) Prepare and submit the Affirmative Action Plan. The plan should present targets for improvement, set a timeline, design a performance monitoring plan, and identify a person from the ranks of employees with overall responsibility for

¹⁹ The Affirmative Action Act, Section 18.

²⁰ The Commission was established under Section 5(e) of the Affirmative Action Act.

²¹ *Ibid.*, Section 20.

²² The requirement for a full, new an Affirmative Action Report every third year does not appear in the legislation (Sections 27 and 28) or in the Commission’s excellent brochure, *The Employer’s Guidelines to the Affirmative Action Act*.

implementation of the plan. The employer must submit the Affirmative Action Report within 18 months of the company's designation as "relevant."

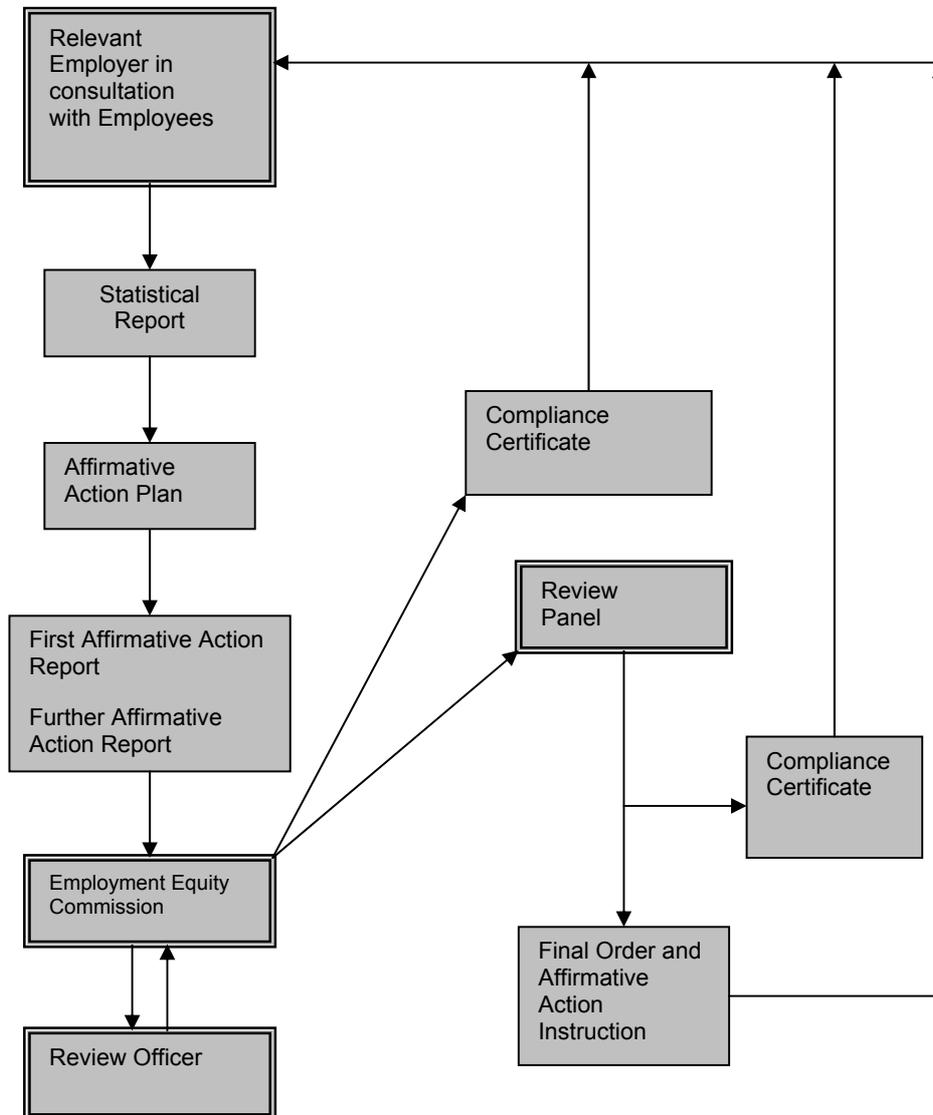
Next, the Commission will assign a review officer. The officer will come from Ministry of Labor staff and is responsible for analyzing the compliance of the Affirmative Action Report with the Affirmative Action Act. His or her recommendations should take into consideration the good faith efforts of the employer and the economic circumstances surrounding the business.

The Review Officer sends his written report to the Commission and sends a copy to the employer. It then notifies the employer of its decision, setting forth terms to be met, if any.

Upon acceptance, the Employment Equity Commission issues to the employer an Affirmative Action Compliance Certificate. The certificate is normally valid until the Commission requests a revised Plan. The certificate is indispensable for contracting with public entities and for securing loans, licenses, permits and so forth granted by or on behalf of the State.

The compliance flowchart looks like the plan below:

Figure 2.2: Affirmative Action Compliance Procedures



Source: *The Employer's Guide to the Affirmative Action Act.*

D. Workers' Benefits

1. Social Security

Social security benefits are administered by the Social Security Administration (SSA), an autonomous agency wholly owned by the State. Registration with the SSA is mandatory for all employers, who must withhold 0.9% of wages and match an equal amount from their own funds. The minimum monthly contribution per employee is N\$2.7 (US \$0.40) and the maximum N\$27 (US \$4.00). Currently the SSA is highly liquid and possesses significant reserves in the secondary market. It has three satellites in the country.

The SSA pays out three types of benefits to employees:

1. Sick leave
2. Maternity leave
3. Death benefits

Sick leave pays out for up to two years at a maximum rate of N\$1,800 (US \$277) per month for the first six months and half of whatever the amount is for the remaining time. For lost wages owing to illness, the employer must pay full salary for up to thirty days in any three-year period, or a right of 12 days per year based on a six-day work week.

The maximum pay-out for maternity leave is N\$2,400 (US \$369) per birth. The maximum death benefit is N\$3,000 (US \$462).

There are also in Namibia many private pension funds.

2. Workers' Compensation

Employers pay into the Workers Compensation Fund once per year. There are 106 different rates, but all are regarded as low. The maximum pay-out is N\$5,000 (US \$769) as compensation to the injured party after all medical expenses are covered.

3. Leave Time

By statutory requirements, employees have 24 days annual leave in addition to 12 public holidays. Maternity leave is three months.

E. Labor Disputes and Industrial Actions

The Office of the Labor Commissioner is responsible for registering unions, trade federations, and employers' associations and for dealing with labor disputes and industrial actions. The Commission receives its budget from the Ministry of Labor but acts as a semi-autonomous agency.

Twenty-eight unions, ten federations, and eight employers' organizations are formally registered with the Labor Commission. The freedom of association which includes "the freedom to form and join associations or unions, including trade unions" is written into the Namibian Constitution, as is the country's affiliation with the International Labor Organization (ILO).²³

The two kinds of labor dispute are *disputes of right* and *disputes of interest*. The former concern disagreement about the application of a right that exists in the law or in a contract. They are subject to adjudication and are in principle disallowed as objects of industrial action. Disputes of interest concern demands for rights or privileges not yet in place, such as increased wages or better working conditions. These are subject to bargaining, industrial action, and mediation. The Labor Court adjudicates disputes of right. For disputes of interest, the Labor Commissioner will either establish a conciliation board or return the dispute to the interested parties. The steps followed in a normal process of labor dispute are as follows:

²³ Articles 21 and 95.

Step 1) Report the matter to the Labor Commissioner. The Commissioner will decide on the nature of the dispute and the steps to be taken.

Step 2) Agree to conciliation board chair. The Commissioner then establishes a conciliation board. Each party must agree to the chairperson and be represented by an equal number of people of their own choice.

The conciliation board will attempt to resolve the dispute. If the dispute remains unresolved, the following steps may take place.

Step 3a) For a dispute of rights, either party may enter the case in the Labor Court. Failure to participate in a conciliation board disqualifies the party from entering a case in the court system.

Step 3b) In a dispute of interest, mediation, arbitration, or industrial action (strike) are the alternative. A party to a dispute of right cannot embark on legal industrial action but can have recourse to the Labor Court if mediation or arbitration fail. Disputes of interest in essential services and in the EPZs must be referred to arbitration in the absence of resolution.²⁴

F. Analysis

In terms of ease of hiring, Namibia performs exceptionally well in international benchmarks, and this factor is a marked advantage in the country's struggle against unemployment.²⁵ It does not do nearly so well in its difficulty of firing rating, even though it outperforms some other countries in the region. The following table is illustrative:

Table 2.2: Hiring and Termination

Country	Hiring	Firing
Namibia	0	40
Botswana	0	40
South Africa	56	60
Angola	44	100
France	78	40
Chile	17	20
Singapore	0	0
United States	0	10

Source: The World Bank *Doing Business 2005*

It is well to remember that a barrier to firing can be a barrier to hiring, since employers will always remain on the side of caution in hiring an unknown or unproven worker if terminating his or her service poses significant administrative obstacles and costs.²⁶

²⁴ *Continuity and Change: Labor Relations in Independent Namibia* (Windhoek: Gamsberg MacMillan, 1997), p. 329.

²⁵ Unofficially estimated at over 30 percent.

²⁶ See the relevant discussion in *Doing Business in 2005* (Washington, DC: World Bank, 2005), pp. 20–30.

Issues

The complexity of termination allows an undesirable employee to affect the company for an excessive period of time. In order to win the case of first instance, the employer must document extensively poor performance, tardiness, disobedience of reasonable orders, or dereliction of duties. Even during this period of warnings and documentation, the employee can affect the costs of production both directly and indirectly, through his or her substandard performance and through impact on the morale and productivity of fellow employees. Once hearings have begun, the termination procedures can take days or weeks and may be inconclusive.

Even when judged guilty by a group of peers, a terminated employee may appeal to the Labor Court. Small businesses cannot afford frequent litigations at the courts. The cost of firing an unproductive or insubordinate worker rises disproportionately to any benefit hiring him may have had. Such heavy regulation in the protection of workers has been shown time and again to be associated with increased levels of unemployment. The World Bank's Rigidity of Employment Index combines a simple average of hiring, hour rigidity, and firing indices. The table below is suggestive of the effects of excessive rigidity of employment on national economies. While Namibia ranks high on the ability to hire it scores less well on the ease of termination. It should be noted that rigidity in termination procedures can undermine the benefits of easy access in hiring.

Table 2.3: Rigidity of Employment Index

Hong Kong	0	Angola	75
Singapore		Sierra Leone	76
Malaysia	0	Central African Republic	76
U.S.	3	Rwanda	76
Canada	3	Togo	76
Uganda	4	Democratic Republic of Congo	77
New Zealand	7	Chad	80
Slovakia	7	Congo	86
Jamaica	10	Burkina Faso	90
Namibia	33		

Source: The World Bank, *Doing Business 2005*

The usefulness of “previously disadvantaged persons” as the accepted definition for the prime beneficiary group for affirmative action is under question. This questioning is taking place on three fronts: semantic, racial, and socioeconomic. While Namibians are in broad agreement that the groups identified were disadvantaged economically and socially in the past, some parties argue for a change of wording to “presently disadvantaged.” Behind this notion, however, lies more than semantics, as such commentators argue that the profiles of the disadvantaged have changed since independence. There is a group of black and other previously disadvantaged who, today, are highly advantaged. They are at the forefront of the Black Empowerment movement, which is beginning to eclipse the concept of previously disadvantaged, yet the movement has so far achieved no official status. This advent of a new concept superimposed on an official one is causing businesses to rethink their policies.

The Affirmative Action Report may embody a complexity that exceeds its usefulness. The report comprises five separate components and 14–15 tables. Some

of the tables are potentially useful in compiling national statistical data; others are useful only in judging individual firms. Some provide hard data, while others only projections. Even the tables for projections require full analysis of eight labor categories. At present the Commission receives about 350 reports. Even with this relatively low number, the simple average is one report for review per calendar day. As the number of reports increases, this amount of data may surpass the ability of the review officers to analyze properly. The result could be counterproductive for the worthy objectives of the legislation. Investors do not disagree with the goals of affirmative action, but some report that the cost of compliance in terms of management dedication is unusually high.

The Employment Equity Commission is considering lowering the employment threshold for classifying employers as “relevant” from 50 to 25 employees. In a labor intensive economy such as Namibia's, a small business with only 25 employees will be unlikely to have more than a single senior manager. Depending on the nature of the business, the firm may employ one or two highly qualified technicians. To enforce a strict level of compliance and progress under the affirmative action program could threaten the viability of certain businesses currently owned and managed by individuals who do not fall into a designated group.

Statutory paid leave (including holidays) of 36 days per year, in addition to sick and maternity leave, is a burden for the small investor to pay. The single relief for the small businessperson is that the Labor Law mandates no thirteenth-month bonus.

Alternative dispute resolution mechanisms are not functioning optimally. Although alternative dispute resolution receives widespread acceptance in theory, both ignorance and distrust of mediation and arbitration systems among employers, employees, and the unions impede its effectiveness. There is too small a body of trained and competent mediators and arbitrators.²⁷ Also there is no system of binding arbitration in Namibia.

Recommendations

Increase employer rights to remove workers charged with gross misconduct and vet cases brought before the labor court. Several investors said that right now in Namibia even in circumstances where an employee is clearly guilty of gross misconduct, unions or the worker can insist in being reinstated. In such cases the employer cannot easily remove the offending employee quickly, regardless of whether or not the misconduct involved such things as theft of the harassment of coworkers. This allows for work place disruption and potentially high costs for employers that must defend themselves in court. Although an employer may win his or her case, the process still requires a commitment in time and money to mount a case. Some of the issues relate to a company's internal policies and proper documentation. Unions, however, often assume an attorney/client responsibility towards an offending employee, defending his right to continued employment against all other parties. The option to issue a warning where an employee has committed theft, or has been warned by supervisors for repeated smaller offenses such as late arrival or workplace negligence, only encourages substandard performance on the part of other employees disinclined to render good

²⁷ PAMAN, the Professional Association of Arbitrators and Mediators in Namibia, has a membership of some 36 active arbitrators and mediators. Not all of them could meet international standards, but the number is growing.

service. The cost to business is too high, and this cost is passed on to society at large and has a negative impact on employment.

Establish a system of binding arbitration. In cases where an employee's dismissal for gross misconduct has been approved by the internal company committee, or in cases in which that committee cannot arrive at consensus, binding arbitration would relieve the courts of additional burdens and expedite decisions which affect the lives of employees and the productivity of companies. Binding arbitration can also reduce costs of settling disputes by reducing the necessity of relying on lawyers for certain parts of the process.

Maintain a single definition of disadvantaged groups. The burgeoning of so-called black empowerment enterprises and the generalized social discourse on the subject of black empowerment have created a *de facto* double system for affirmative action. The double system, while nonexistent in legislation, embodies a redundancy, since black Namibians already qualify under the present designation of previously disadvantaged persons. Namibia will not create greater social justice by adding additional complexity to the affirmative action system, much less by allowing a concept not condoned by law to affect competition in the business world. Investors already report that a company's success in public tenders is increased by embracing black empowerment enterprises as portfolio investors.

Reduce the complexity of the Affirmative Action Reports and the frequency of full reports. A company that indicates satisfactory progress in its annual reports should not be required to submit an entirely new full report after three years. The important factor is progress under the legislation, not simply fulfilling reporting requirements. Furthermore, the numbers of job categories could be reduced to three or four from the current eight. Casual and temporary labor should be eliminated from affirmative action reporting as these categories have little impact on real progress. The Promotion table may be unnecessary, since other data will demonstrate if members of the designated groups are filling more senior positions. In other words, the Employment Equity Commission may benefit by focusing more on the ends than the means, as well as by reducing the burden of excessive data.

Lower the threshold for classifying employers as "relevant" less drastically than what is proposed. Two reasons argue in favor of not reducing the threshold from firms with 50 employees to firms with only 25. First, the number of Affirmative Action Reports will increase exponentially and will be likely to clog the review system. One consequence could be far less efficient monitoring of businesses, as well as delays in the issuing of the Compliance Certificates, which would impede companies' ability to bid on tenders. Secondly, the burden on small businesses could prove intolerable under the current requirements for producing the Affirmative Action Reports. If the threshold is reduced, the reporting requirements for small businesses should be made considerably simpler.

Allow progressive rights to increased annual leave. There are good arguments for increasing the annual leave of employees according to the length of service in a company. Namibia can maintain a minimum leave policy, but there is justice in permitting companies to establish schedules of annual leave for various periods of service.

Reinforce the system of alternative dispute resolution. The legal framework for alternative dispute resolution (ADR) exists in Namibia and its principle enjoys widespread favor. PAMAN, the Professional Association of Arbitrators and Mediators in Namibia, is working to improve the skills of its members and has published information regarding these efforts.²⁸ The Government will need to invest further in the training of mediators and arbitrators, perhaps through PAMAN and with assistance from international donors. There is also much work to be done through education of the public and through efforts with the legal community, which stills tends to steer its clients towards formal litigation in the courts.²⁹ As ADR increases in visibility and prominence in Namibia, it is hoped that costs associated with labor disputes in the formal court system will decline.

²⁸ PAMAN Newsletter, July 2005.

²⁹ For a slightly dated but extremely well-informed discussion of the subject, see Clement Daniels *et al.*, "Dispute Resolution in Namibia," published in *Continuity and Change* (Windhoek: Gamsberg MacMillan, 1997).

Chapter 3: Reporting

Introduction

This chapter discusses the policy, administrative, and procedural aspects of establishing a business in Namibia and gaining the necessary licenses and permits to commence business operations. While the primary concern is with the foreign investor, nearly all of the procedural requirements mentioned herein are equally relevant to the domestic business investor. In order to provide a fuller context to the subject of business formation, the chapter will begin with a discussion of Namibia's foreign investment legislation and will look briefly at the laws governing various types of business entities. The chapter will then cover company registration, mandatory licenses, and the acquisition of incentives.

I. The Investment Policy Environment

A. The Foreign Investment Act

The Foreign Investment Act (Act No 27, 1990) was last amended in 1993 and is the overarching framework for foreign investment in Namibia. In two important statements it establishes the principle of national treatment by allowing a foreign national "to invest and engage in any business activity ... which any Namibian may undertake," and in stipulating that "for the purposes of the law ... a foreign national shall be in no different position than any Namibian." While it provides no negative list of prohibited sectors, it contains a provision that the Minister of Trade may at any time reserve specific sectors exclusively for Namibians. The primary objective of the Act is to define the terms of Status Investments, reserved only for foreign nationals with assets of a certain value and in which a series of criteria related to Namibia's development objectives, employment and training, and foreign exchange are deemed to be met. The bearer of a Certificate of Status Investment is eligible for a number of benefits conferring access to and transfer of foreign currency. As such, the Foreign Investment Act is primarily a law related to special incentives.

B. Analysis

Issues

The Foreign Investment Act is obsolete in its incentive provisions. All of Part II and most of the remainder of the Act are devoted to the Certificate of Status optionally available to the foreign investor. Historically, the chief advantages of the Certificate lay in easier access to foreign exchange and greater freedom of foreign currency transactions than allowed to non-Status firms. Since 1993 these advantages have been almost entirely superseded by progressive liberalization of currency controls in Namibia. Anecdotal evidence suggests that a very small percentage of foreign investors even bother to apply for the Certificate, showing that it has largely outlived any usefulness it may have had in attracting FDI.³⁰

³⁰ Nearly ten years ago the Foreign Investment Advisory Service commented similarly on the confused purpose of the Act and the meager value of the Status provisions. "Namibia: Administrative Barriers to Investment," (Washington, DC: World Bank, 1996), p.11.

The Act allows the Minister of Trade to reserve sectors for nationals. In Part I Article 3 (4) the Minister is permitted, by a simple notice in the official Gazette, to “specify any business or category of business . . . which can be provided or produced adequately by Namibians” and in which, from the date of the notice, foreign participation would be disallowed. The decision to exclude foreign investment from an entire sector can have extraordinary consequences for the economy as a whole, for national competitiveness, and for foreigners already invested in the sector. This kind of clause raises serious concerns among potential foreign investors and runs contrary to best practice in foreign investment acts internationally. To place this authority into the portfolio of a single minister leaves decisions of long-term national consequence to the shifting environment of political pressures.

Recommendations

Overhaul the entire Foreign Investment Act. Since the majority of the document sets forth an incentive scheme that has been rendered obsolete and virtually nonperforming in respect of its purpose, the Foreign Investment Act cannot be improved through simple amendments. Given Namibia’s and the region’s evolution since the last amendment in 1993, new foreign investment legislation will require national reflection at the highest levels. The entire issue of special incentives for FDI must be subject to both economic analysis and international best practice comparisons. Its provisions for national treatment are subject to ambiguities and it presents no clear distinction between pre- and post-establishment phases for foreign enterprises, thereby undermining the essential function of an incentive—namely to induce a company to invest or expand when it would likely not do so otherwise. Box 3.1 outlines typical content of a FDI law based on international experience.

Eliminate clauses that potentially undermine the assurances of the Act. A new Foreign Investment Act should make clear that fundamental changes affecting its terms can only be made through parliamentary decision. This will assure investors that the business landscape is stable and not subject to political expedience. At a minimum, economic decisions with consequences for national competitiveness should be made by an inter-ministerial committee chaired by the Prime Minister.

Create an unambiguous position in regard to national treatment consistent with the GATS and Namibian priorities. WTO provisions under the GATS only concern commercial presence, i.e., the post-establishment phase of a business admitted into the country. Namibia will be in a position consistent with these provisions and in alignment with current trends—uniformly adapted in OECD countries—according equal status to businesses irrespective of their national origin or ownership. This does not necessarily mean that Namibia must allow FDI in any sector in which nationals are allowed to invest, as the present Act states. Even the OECD countries typically reserve investment in such sectors as the arms industry (the military-industrial complex) and some parts of the public media (newsprint, television, radio). One of the best options to consider is a small negative list. In any event, a negative list is preferable to the kind of open-option written into the present Act, where a ministerial decision can, with little or no advance notice, exclude sectors of the economy.³¹

³¹ For a useful discussion of the subject, see *World Investment Report 2003* (New York: UNCTAD, 2004), pp.102-110.

Box 3.1: Typical Content of an FDI Law

An investment law should treat both foreign and domestic investors equally, be attractive to investors, and should provide only those fiscal facilities that are affordable.

Some countries do not have an investment law at all, but deal with investment through a combination of a company law, banking laws, tax laws, foreign exchange laws, and similar legislation. If Antigua and Barbuda chooses to have a specific law on investment, in order to help promote investment and send a positive signal to investors, typically an FDI law would have an outline like the one below.

Preamble (purpose and objectives of the law)

The preamble states the purpose of the law and the Government's objectives in passing it.

Scope and Definitions

To maintain legal clarity and consistency, it is recommended that an investment law exclusively cover *direct investment* (i.e., an investment that creates a controlling interest in an enterprise), and that separate laws and regulations related to the stock market should address *portfolio investment* (i.e., investment in a non-controlling interest). Definitions include terms like: Forms of Investment; Direct Investment; Foreign Direct Investment; Foreign/Domestic Investor; etc.

General Guarantees (for all investors)

Guarantees to be found in an FDI Law are: National treatment; most favored nation treatment; freedom to invest; freedom to own land; access to foreign exchange; repatriation of profits; and compensation for government expropriation.

Guarantees for Foreign Investors

These include international arbitration and freedom to hire expatriate personnel.

Investment Incentives

Depending on the country incentives may include: duty-free imports of equipment and machinery; duty-free imports of raw materials, intermediate inputs, and components for the production of exports; accelerated depreciation; investment tax allowance; and lower corporate tax rates; etc.

Institutional Framework

The Investment Promotion Agency might be established by the law and its functions, authority vis a vis other agencies, and budgetary rules might be described.

Transitional Measures

This may include a grandfather clause, the revoke of previous laws or the application of the law to existing or already started investment projects.

Source: The Services Group, 2003.

III. Business Registration

A. Company Law

1. The Statutes

Businesses in Namibia are regulated under two separate legislative acts and by common law practice. The Companies Act of 1973, as amended, governs public and private shareholding companies. It will be entirely superseded during the course of 2005 by the new Companies Act No. 23 of 2004. The act has been promulgated by

Parliament and is awaiting the implementing ordinance of the Minister of Trade. Given the imminence of its effective implementation, this report will refer exclusively to the new Companies Act of 2004. The Companies Act governs both shareholding and non shareholding companies. It also provides the legislative framework for associations.

The Close Corporations Act No. 26 of 1988 governs the form of limited liability company known in Namibia as a close corporation. To maintain consistency with Namibian nomenclature, this chapter will reference as *companies* only those business entities governed under the Companies Act; it will reserve the terms *corporation* and *close corporation* exclusively to those entities described in the Close Corporations Act.

No formal statutes govern sole proprietorships or partnerships; these are regulated by case history under common law.

2. Business Types

a. Companies

Businesses incorporated under sections 20 and 21 of the Companies Act of 2004 may be any one of the following:

1. A public company with share capital
2. A public company without share capital
3. A private company with shares of par or no par value
4. An association

Public companies require a minimum of seven founding shareholders; private companies normally have at least two founding shareholders, although it is permissible, per Article 37, for a single member to form a private company. Branches of foreign companies and of foreign nonprofit organizations may incorporate in Namibia under Article 21 under specified conditions.

Private companies may convert into public shareholding companies and vice-versa. Companies may also convert to close corporations, but a company cannot be a member (shareholder) of a close corporation.

No statutory restrictions bar foreigners from membership in or sole ownership of companies.

b. Close corporations

Designed especially for the promotion of formal small business, the close corporation is Namibia's counterpart to common forms of limited liability firms found across the world today (LLCs, SARLs, etc.). It has, however, its own peculiarities.

A close corporation may be founded by a single member or by up to ten members. All members must be owners, and their ownership must add up to 100% of the equity of the corporation. As long as the business is solvent, a close corporation can pay dividends to members. Membership is restricted to natural persons, meaning that a company, or other corporation, cannot be a member of a close corporation, although a close

corporation may be a shareholding member of a company. As a juristic person, a close corporation provides limited shelter from personal liability to its members.

For the small to medium investment, the close corporation offers several advantages, including far easier incorporation procedures than for companies and less rigid—and less costly—fiscal compliance requirements. For large investments, the limitations on membership, shareholding, and dividend payments of close corporations may be too restrictive. The fact that a juristic person cannot become a shareholder of a close corporation and the obvious limitation on issuing debentures or raising funds through public offerings may equally steer the investor to the choice of a company over a corporation.

No statutory restrictions exclude foreigners from participating in or owning close corporations.

c. Sole proprietorships and partnerships

Sole traders and partnerships are regulated by the Ministry of Trade and Industry and do not constitute the object of specific legislation. As in most countries, these business entities are not juristic persons and are indistinguishable before the law from their owners, who are jointly and severally liable for all of the business's debts and obligations. Both entities operate under a "defensive name" which must be annually renewed. There are no formal liquidation procedures for either a proprietorship or a partnership. Partnerships are allowed a maximum of 20 members. Foreign nationals may form proprietorships and be partners.

B. Registration Procedures

This report will document procedures for close corporations and for companies. The process of registering a proprietorship is simpler, but very similar, to that of a close corporation.

1. Registering a Close Corporation

Step 1) Purchase forms and revenue stamps. The investor purchases forms CC1 and CC8 from an authorized vendor of statutory documents and two revenue stamps in the amounts of N\$50 (US \$7.69) and N\$100 (US \$15.38) from a post office or the Receiver of Revenue. He or she affixes the stamps and completes form CC8 for the reservation of business name.

Step 2) Deliver Form CC8 to the Registrar. The investor must either take the form physically to the counter of the Registrar of Companies (the Registrar) on the second floor of the Ministry of Trade and Industry or send it by mail (few opt for the latter alternative). At this point the clerks follow a series of internal, manual procedures:

- The receiving clerk places both forms on stack of recently received forms on table in receiving room.
- Another clerk takes applicant's forms, along with others that have accumulated, to working room and manually records the amount of the revenue stamps in a bookkeeping ledger.

- Several clerks then conduct a manual name search against list of names held in a standing revolving file.
- If the search discloses no identical or similar existing name, clerk sends form CC8 to the Chief Registrar for approval.
- The Registrar, or designee, returns the approved form to the clerical office for registration, and a clerk records the new name in the Defensive Registry Book.

Step 3) Receive approved trade (defensive) name on Form CC8. The applicant returns physically to the Registrar and either receives a duplicate of the form indicating an approved name or learns of any omission or irregularity on the original submission. If there is a problem, the investor may have to purchase a new form and repeat the process.

Step 4) Procure an Appointment Letter from a registered accountant. For a close corporation it is unnecessary to hire a chartered accountant, or CPA. Namibia has other forms of professional certification for accountants that do not have the chartered status. The Appointment Letter indicates that a given accountant, duly registered with a recognized certification body, is designated to oversee the books and financial reports of the corporation.

Step 5) Submit form CC1 along with the Appointment Letter. The investor must return to the Registrar in the Ministry of Trade and submit form CC1 (the Founding Statement) along with the Letter. If the applicant is a foreign national, he or she must also submit a statement indicating nationality along with a photocopy of passport that includes name page and visa entry. Once again the clerks must follow a series of internal procedures that all involve manual transcription, transmission, and sealing:

- Clerks allocate a registration number, enter the number on the form and in a dedicated book, and place the form in a stack of the day's accumulated CC1 forms.
- A clerk takes the stack of forms CC1 each day to the Registrar of Companies for signature and returns with previously signed forms.
- A clerk separates the triplicate copies of approved CC1 forms, filing the original copy, placing one copy in a stack for the Revenue Office of the Ministry of Finance, and one copy in a stack for the applicants.
- At end of each week, a messenger from the Revenue Office comes to the Registry of Companies and retrieves all waiting copies of form CC1.

Step 6) Retrieve signed and sealed duplicate of CC1. The investor receives with this duplicate the formal registration of the close corporation.

The total cost for registering a close corporation is N\$175 (US \$27) plus transportation expenses, if any. Attorneys typically charge N\$1,200 (US \$185), all costs included, if they complete the paperwork and do the filing. The time from submission to final approval varies from 14 days to three months.

2. Registering a Company

Under the Companies Act an investor may register a public or private company or a non-governmental organization (NGO), the last of which is regarded as public without shares. Public companies require a minimum of seven shareholders at incorporation and have no upper limit; private companies may incorporate with a single shareholder and may have a maximum of 50. The law requires public companies to include the word “Limited” at the end of the name; private companies must include “(Proprietary) Limited” or (Pty) Ltd.³²

Invariably, qualified attorneys handle the incorporation procedures for companies in Namibia. While an investor can hire an attorney to complete several of the individual steps outlined below, all involve specific efforts made by the investor such as selecting an auditor and completing forms based on company ownership and structure. The precise steps they follow may vary according to each attorney’s practice, but the requirements remain identical and are largely dictated by the documentary submissions called for. The following steps, therefore, are illustrative and assume that the attorney either has or will procure the documents and revenue stamps.

Step 1) Complete and file a power of attorney. This document authorizes the attorney to represent the investor before the Registrar of Companies.

Step 2) File Form CM5 for reservation of the name. Steps 2-7 can in some cases be completed simultaneously. However, to complete each form or document requires a distinct action from the investor, such as convening shareholders’ meeting or ensure that the company is audited. Therefore, each individual document filed is described as an individual step. This is the same form used for sole proprietorships and partnerships but different from the one assigned to close corporations. It must be filed at the Registrar of Companies, and the internal office procedures are virtually identical to those described for close corporations.

Step 3) Complete and file the Memorandum of Association. Along with the Articles of Association, the Memorandum is one of the fundamental founding documents of a company. At a minimum, the Memorandum includes the company name, the objects, or general business purpose, of the company, description of shares, and any special conditions. All shareholders must sign the Memorandum.³³

Step 4) Complete and file the Articles of Association. Like the memorandum, the Articles, which deal with internal management, must be completed on a prescribed form.³⁴ The Articles are filed along with the Memorandum.

Step 5) File Form CM31 (Consent of Auditor). Unlike close corporations, companies are required to have audits. Before incorporation, a company must present a statement from its chosen auditor giving the latter’s agreement to audit the firm.

³² Companies Act, 2004, Articles 37 and 55.

³³ *Idem*, Articles 59 and 60.

³⁴ See Schedule 1 in the Companies Act.

Step 6) File forms related to directors, address, and incorporation. These forms include:

- CM22—physical and postal addresses
- CM29—particulars of directors
- CM47—statement signed by directors affirming adequacy of share capital
- CM1 —certificate of incorporation
- CM46—Application of certificate to commence business.

Step 7) File other forms according to the type (public, private, etc.) of company to be incorporated. There is neither a statutory nor an informal schedule for delivery of certificate of incorporation and authorization to begin trading. The generally recognized convention is that it takes at least three months. It may require more time if the company is foreign owned, or if shareholders are foreign nationals—either natural or juristic—and official recognition of translations is required.

In Namibia the cost of establishing a corporation is ubiquitously cited as the equivalent of the attorneys' fees, which currently vary between N\$3,000–N\$4,000 (US \$462–615) and are all-inclusive.

C. Analysis

The new Companies Act represents a true modernization over its predecessor (still in effect at the time of this report). Among its many advances is the decriminalization of most business offenses, relegating the issues to the civil courts. Important documents are available in PDF format on the site of the Ministry of Trade and Industry, including the Companies Act of 2004 and a useful booklet entitled “How to Register a Business in Namibia.”

Neither Namibian nor foreign businesspeople consider the process of establishing a company to constitute a barrier to investment. With the occasional exception, they find incorporating a close corporation easy and inexpensive. Despite the several months required to establish a new company, investors do not consider the procedures a significant obstacle.³⁵

One of the reasons that investors do not object to the delays for establishing corporations and companies in Namibia is that the subsequent procedures for obtaining permits and licenses to begin trading are simple and quick. Despite a relative current satisfaction with the business matriculation process, however, the status quo will prove untenable in any growth scenario. It also lies remote from international best practice. These facts represent the primary motivation for the analysis and recommendations that follow.

³⁵ Both national and foreign investors who wish to set up a company without the normal delays may purchase a “shelf company” from any of the law firms that deal with company law. Shelf companies have been set up by the attorneys for the purpose of attending to investors' needs; the transaction is well known and perfectly legal.

Issues

The internal procedures for processing applications are unduly burdensome and subject to error. The internal procedures in the Registrar of Companies are inefficient, casually organized, and entirely manual. Given the number of applications submitted per day, it is to the credit of the dedicated staff of that office that the turnaround time is relatively swift for close corporations and that customer complaints are few. The name search is illustrative. Reserved names are cut out in small strips of typewritten paper and placed in slots in a revolving metal stand. It is difficult to keep them alphabetized, and it is easy to lose a slip. The names in the stand have not been updated since 2003. Searches, therefore, are slow and particularly subject to error. Equally illustrative is the procedure for recording the amounts of revenue stamps received on the applications. These amounts are handwritten in a journal. At the end of the fiscal year, the entire clerical staff spends one full day or more calculating the sums by hand or with simple desk calculators. Again, the procedure is painstaking and highly vulnerable to error. The office does not possess a single computer. As seen in Box 3.2, name searches in other countries can be completed quickly and with greater reliance on information technology.

Current plans to computerize the office risk solidifying archaic and inefficient processes. The Ministry of Trade intends to develop a computerized system for the Registrar of Companies. There is some indication that inadequate consideration has been given to rationalizing procedures prior to creating the databases. The risk has been characterized since the 1980s as “paving the cow paths.”³⁶ Once the current procedures have been built into an electronic system, they will become far more resistant to change than before, and the databases will have simply put an information technology shelter over a flawed process.

The Close Corporations Act of 1988 has become a patchwork of successive amendments. The Act was written prior to Namibia’s independence and was based entirely on a South African model that had been in existence for decades. As measured in numbers of pages, the amendments now equal or exceed the actual Act. The Act itself is not available over the Internet or in the bookstores that carry statutory documents. Given that the close corporation is Namibia’s most accessible limited liability company and the structure best suited for small to medium size firms, the current situation calls for corrective action.

There is talk of limiting foreign investment to companies alone. This measure, if enacted, would for all purposes bar the foreign investor from small business—service,

Box 3.2: Name and Company Registration

In Venezuela the name search requires two visits to the Commercial Registry. In the first visit the investor purchases, completes, and deposits the application for the business name. Three working days later the investor returns to receive the results. The first visit takes less than twenty minutes. During the second visit, the investor actually watches a computer screen as the clerk conducts a final verification search and registers the new name. This procedure takes about three minutes. Even in the absence of an interactive Internet site for registration, the existence of a functioning database makes the name search quick and sure.

In Singapore, the investor himself can perform the name search over the Internet in a matter of seconds: www.business.gov.sg/start/reg-check.htm.

³⁶ The phrase was first used in the context of process reengineering by Michael Hammer: “Reengineering Work: Don’t Automate, Obliterate,” *Harvard Business Review*, July 1990.

retail, and manufacturing. The concomitant consequence is effective total protectionism of Namibian small business. Namibia does not have systems or mechanisms to ensure the competitive growth of domestic small business in the total and enforced absence of foreign competition. The measure would not be the equivalent of infant industry protection, and even though it would not be in flagrant violation of the GATS, it would compromise the spirit of national treatment currently adopted.

Clerks in the Office of the Registrar may exercise inappropriate discretion.

Research for this report has disclosed two instances in which investors lose time owing to arbitrary and sometimes improper interpretation of the legislation. One instance is in acceptance of proposed business names. The Companies and the Close Corporations Acts dedicate considerable text to the matter of trade and company names and authorize the Registrar to reject proposed names on the basis of their being repetitive or too similar to existing names or on the basis of their being undesirable (e.g., vulgar or obscene in English or another recognizable language).³⁷ The clerical staff often rejects names on the grounds that they fail to indicate the purpose of the business or that a name has no identity with the owner or owners.³⁸ Nowhere in the statutes do such requirements exist. Furthermore, they would be an unreasonable imposition on a business owner, whose trade name may also serve as a marketing tool.

Company registration procedures and times are not reflective of the best international benchmarks. According to the World Bank's recent research, Namibia requires of an investor ten steps and an average of 85 days to start a new company.³⁹ The World Bank's analysis assumes that the investor will undertake all steps required, including those involving a lawyer drafting and certifying documents directly. The *Doing Business in 2005* analysis is largely consistent with that of the Investor Roadmap. While these figures make the country reasonably competitive in the SADC region, they do not stand up so well in comparison with highly competitive, globalized economies.

³⁷ Respectively Part II Articles 47-58 and Sections 19 and 20.

³⁸ One Namibian business owner had proposed the name *Connector Post* for a newspaper. The officiating clerk in the Registry informed him the name was unacceptable because of its similarity to *Continental Hotel*.

³⁹ *Doing Business in 2005* (Washington, DC: World Bank, 2005).

Table 3.1: Registration Times

Country	Steps	Days
Namibia	10	85
Botswana	11	108
South Africa	9	38
Angola	14	146
France	7	8
Chile	9	27
Singapore	7	8
United States	5	5

Source: World Bank, *Doing Business 2005*

Recommendations

Submit procedures at the Registrar of Companies to process reengineering. While even a simple time and motion study would bring improvements, what is required is not incremental change but a complete overhaul. Such an operation is not as formidable as it sounds. A qualified expert would examine every single procedure for its logic and necessity. Redundant operations would be cut away.⁴⁰ Installation of a basic desktop computer with a simple word processing or spreadsheet program will be essential—even before a database or advanced IT system is in place. The computer need not be connected to the Internet for the basic purposes of recording names and revenue stamp values. Properly set up, a basic system would reduce the time for a name search to one minute and would maintain a cumulative value of revenue for instant reference. It would also reduce the possibility of error to improper data entry alone. A small investment of this nature will increase the Registrar's accuracy and efficiency exponentially, improving customer service, alleviating staff of unnecessary tasks, and preparing the office for growth in demand.

Box 3.3: A Simplified Company Registration Regime

Throughout North America and the EU, a firm incorporates and proceeds to acquire the permits and licenses required for its type of operation. In most of the industrialized countries there is no such process as separate registration of foreign-owned firms or enterprises with foreign capital. Companies may register with specific agencies in order to enjoy certain incentives—for example with the Small Business Administration in the United States—but this is a voluntary act with no bearing on the legitimacy of the firm. Once a business has incorporated and received a tax number, it is assumed to exist for the purpose of trading or manufacturing; its name is already in the books of the Commercial Registry and the Tax Bureau. In contemporary best practice there is no compelling reason to register separately enterprises with any percentage of foreign ownership from those with purely domestic capital. The existence of foreign capital can be recorded by the Central Bank and the Ministry of Finance at any point in the registration process.

⁴⁰ The classic text, *Reengineering the Corporation*, by Michael Hammer and James Champy (New York: HarperCollins, 1993), is written for the layperson and remains a highly useful presentation.

Make Company Registrar automation progressive and built around process solutions.

The temptation exists to create a fully automated IT system for the registration of companies with external portals. It is advisable to proceed with prudence, ensuring that the process reengineering exercise has been satisfactorily completed. Purely technical IT firms frequently do not possess the skills to work out procedural solutions—or they may not have the mandate to do so. Once office

procedures are rationalized, a relational database should be built, preferably on an easily accessible platform such as MicroSoft Access. The database will contain a number of tables with ∞-∞ or ∞-1 relationships. Illustrative tables would be Trade Names, Stamp Revenue, Close Corporations, Liquidated Businesses, Registration Numbers, and so forth. For an internal office database with the potential for external links, a fully qualified expert should be able to complete, trial, and refine the program in 15 to 20 working days. Box 3.3 provides an example of how company registration is handled in a U.S. state with the use of information technology.

Box 3.4: Corporate Registration in the United States

In the U.S., company registration takes place at the state level. Typically it cannot be completed over the Internet, although all information and forms are normally available from a state's website. In the State of Maryland, for example, incorporation takes ten business days but requires only one visit, and there is an accelerated one-day process for a fee. (See: www.blis.state.md.us.)

Tax registration, however, can be done by Internet, or it may be done by mail. One is obliged to file at the federal level (Internal Revenue Service), and states automatically use the federal number.

Draft a new, modern, Namibian Close Corporations Act. The more customary usage in the Western World is to embody all forms of business entities into a single commercial code, or, increasingly (as in Brazil in 2003) into the civil code. Nonetheless, since Namibia has retained the discrete act for companies, it should follow suit with a revision of the Close Corporations Act. Some of the original provisions will require full change, such as that establishing a separate Registrar for close corporations; others would best be deleted, such as the references to affixing revenue stamps, an antiquated procedure that Namibia should eventually abolish in favor of more modern methods of payment; and others modified, such as the minor offences liable to criminal prosecution.⁴¹ Given the prevalence of this type of business structure, the new act should be as concise as possible and made available on the website of the Ministry of Trade and Industry.

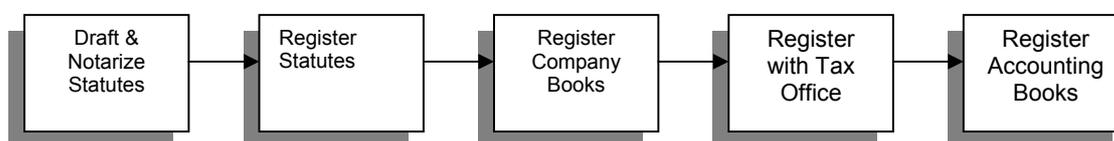
Do not exclude foreign investors from the alternative of the close corporation. Two justifications were cited for this measure, which is currently under debate. These are to ensure the protection of Namibian small business and to control the movement of fraudulent foreign entrepreneurs who establish an inactive close company simply to obtain visa status to come and go from Namibia. The idea that local entrepreneurs cannot learn to compete effectively has been given the lie in country after country. Affording this sort of protectionism is almost guaranteed to maintain low productivity and inferior standards of customer service in local small businesses. As for controlling immigration, the issue should be addressed at the source with appropriate safeguards to de-register close corporations that are dormant for a certain period of time.

⁴¹ Respectively Part II Articles 3, 5, and 10.

Make the Registrar of Companies a true full-service, one-stop window. Investors are the customers of this office. Staff must be trained to conceive of customer orientation in the modern sense and to think of their office as representing an excellent example of the one-stop facility that so many countries discuss and so few achieve. The discretionary room available must be clear to all personnel. Acceptance or rejection of names and of the business objectives of new firms must be made according to legislation. The modern principle behind allowing an investor to select a business name according to his or her whims is that the investor should know better than anyone else what name is most appropriate for the market served. As long as that name does not infringe on others' rights or signify to the public something obscene or offensive, it should be accepted. Much the same can be said of the stated purpose of the business.

Simplify the documentary requirements for formation of a company. An investor may have to submit 15 to 20 separate documents to register a company. Contrast such requirements with those in Ireland where essentially only two documents are required to form a public limited company.⁴² While the costs are minimal and the multiple submissions only a nuisance in Namibia, the requirements are old-fashioned and will complicate future efforts to permit full or partial electronic submission. Some requirements could be eliminated, such as the auditor's consent (CM31). If audits are at all required, they should be in the post-establishment phase. Other documents should be merged, such as the one for addresses (CM22), which could simply be included in the Memorandum. The application for a certificate to commence business (CM46) looks like a business license in disguise with no function other than raising minimal revenue. Streamlining is in order. Figure 3.1 illustrates an option for a streamlined document registration system.

Figure 3.1: Simplified Document Registration Scheme



III. Obtaining Sectoral Licenses

A. Obtaining a Fisheries License

The Namibian Ministry of Fisheries and Marine Resources (MoFMR) regulates the fisheries sector and issues fishing rights, quotas, and associated fishing boat licenses. Fishing in Namibia is governed by the Marine Resources Act, 2000, and a policy developed in 2004. Among the Ministry's priority goals are to rebuild the fishing stock, ensure sustainable fishing, promote empowerment in the industry of

Box 3.5: Namibia's Fishing Sector Targets the EU	
Top fish species:	Hake, pilchard, horse mackerel, rock lobster, line fish, monkfish, orange roughy, deep sea red crab, and Cape fur seal
Export volume to EU:	99,410 tons per year
Export value to EU:	N\$1.576 billion (US \$242.5 million)
Top developing country suppliers to EU:	Argentina, China, Thailand, <i>Namibia</i>

⁴² See the excellent site: www.basis.ie and the tab for "Starting a Business."

Namibian companies and previously disadvantaged indigenous peoples, and create jobs in the fishing industry.

On-land processing is not regulated by the Ministry but by other agencies. Processing fish at sea is regulated by the Ministry through the vessel licensing and registration process.

The government does not offer any incentives to promote investment in fishing. Rather, the fee structure in place favors local investment over foreign investment in accordance with the Ministry's goal to promote and develop a locally-owned commercial fishing industry. As seen in Box 3.4, Namibia is a leading exporter of fish, including to the European Union.

1. Obtaining a Fishing Right, Quota, and License

Namibia allocates limited fishing rights to specific fish species to commercial entities. In Namibia, leading commercial species include hake, crab, monkfish, horse mackerel, rock lobster, pilchard, orange roughy, and various pelagic or inshore species. Rights are allocated for periods of 7, 10, 15, and 20 years. The duration given to a company is dependent on the size of the investment.

Presently, all of Namibia's rights are allocated and rights seldom become available. Each company with a right to fish a certain species is allocated an annual quota based on a survey of existing fish stocks. The individual quotas comprise the annual total allowable catch (TAC) determined by the Ministry in advance of each season for each type of fish and last to correspond with the particular fishing season. A company must apply for and accept its quota allocation on an annual basis. Due to the quota system, a company's catch must be offloaded at a Namibian port before being exported and regional fisheries officers inspect and count a company's catch. If a company wants to relieve itself of its quota, it may do so three months in advance, thereby reducing the fees a company would pay. Quotas cannot be traded but are relinquished back to the Ministry for reallocation.

To be allowed to undertake commercial fishing in Namibia, an investor must complete the following steps.

Step 1) Obtain fishing right. Rights become available either when an existing right holder relinquishes his or her claim or if fish stocks increase. When a right becomes available the opportunity to obtain it is advertised in the government gazette. If requested, the Ministry will give an investor a list of the right holders for the particular species in which the investor is interested.

Assuming a right is advertised, the interested applicant would submit an application for obtaining the right. The Act contains an application form for this purpose; applicants must complete a separate application for each species. Applications remain sealed until they are all opened after the bid deadline expires. An internal *ad hoc* Ministry technical committee will review the applications based on a Terms of Reference prepared for the committee by the Minister of Fisheries and Marine Resources. The committee will prepare a shortlist of the most qualified applicants and submit this list to the Minister. The Minister will make the final selection.

As outlined in the Act, the Minister’s decision-making criteria may include:

- Citizenship of the applicant;
- Extent to which a corporate applicant is controlled by Namibian citizens;
- Vessel ownership;
- Ability of the applicant to exercise his or her right;
- How granting a right to an applicant will effect advancement of Namibians who have been socially, economically, or educationally disadvantaged by discriminatory laws in the past;
- Regional development in Namibia;
- Cooperation with other countries, especially within SADC;
- Conservation and economic development of marine resources;
- Experience of the applicant in utilizing an exploratory right;
- “Socio-economic concerns;” and
- Contribution to food security.

According to the Ministry, the Minister’s decision typically takes one month and after he or she decides the allocation of rights is sent to Cabinet for final ratification. The ratification process by Cabinet usually takes two or three weeks, say Ministry officials. The Ministry aims to ensure that right holders are notified six months in advance of the start of the relevant fishing season.

Each applicant will be informed by letter once the rights are allocated. The investor will have 30 days to respond and accept or relinquish the rights allocated.

Unsuccessful applicants can request for an explanation of why their bid failed.

Step 2) Obtain a vessel and vessel license. To be allocated a quota, a right holder must also have a registered and licensed vessel. Application forms for this purpose are included in the Act; there are different forms depending in which country the vessel is registered and whether or not the applicant seeks to fish in Namibian or international waters. The vessel Licensing fees for the vessel vary based on its gross registered tonnage as noted in table 1.1 below.

Table 3.2: Vessel Licensing Fees

Vessel’s Gross Tonnage	Licensing Fee
Less than 10 tons	N\$20 (US \$3.08)
10 tons to less than 50 tons	N\$50 (US \$7.69)
50 tons to less than 100 tons	N\$100 (US \$15.38)
100 tons to less than 2,500 tons	N\$200 (US \$30.77)
2,500 tons to less than 4,500 tons	N\$500 (US \$79.92)
4,500 tons to less than 9,000 tons	N\$1,000 (US \$153.84)
9,000 tons or more	N\$1,500 (US \$230.77)

Step 3) Obtain a quota. After the right is granted and a vessel is secured, an investor will need to then apply for a quota, competing against other right holders for the largest possible share of the TAC. The Ministry evaluates an applicant’s plans and capacity but does not require that any particular form or information be included in a quota request. The Ministry will assign a deadline for quota applications and quotas are to be

announced at least on month prior to the opening of the fishing season for which the quota applies.

A Permanent Secretary in the Ministry and the Minister will sign the quota approval and the investor is then notified of his or her allocation. The investor must accept or decline the quota within seven days.

After this, the investor will pay the first of four quarterly installments of his or her quota fee to the Ministry. The current quota fees are gazetted in amendment No. 134, 2004, of the Marine Resources Act. Changes in the fee schedule are gazetted. The fees are tied to the metric ton of a particular species and assessed when a catch is off-loaded in a Namibian port. The fees vary depending on the type of fish caught, nationality of the vessel, and whether or not the catch is processed on land or at sea. In general, foreign flag vessels pay at least 60% more than Namibian owned vessels, and vessels based in Namibia typically pay a quota fee in between. The quota fees range from a low of N\$2 (US \$0.31) per metric ton for Namibian vessels harvesting seal pups to N\$14,000 (US \$2,154) per metric ton for non-Namibian ships that harvest rock lobster. In all, the amendment lists quota fees for nine species.

Step 3a) Register business in Namibia, if applicable. Additionally, if the applicant has not already done so he or she will need to register as a company or sole proprietor in Namibia prior to obtaining a quota.

2. Operational Requirements

In addition to the licensing fees, a royalty fee is charged based on the tonnage of the catch. Fishing companies also pay a Marine Resource Fund Levy, based on the actual catch and assessed when ships offload at the docks, and a Fisheries Observer Fund Levy. The fees charged for a foreign-owned and registered vessel are higher than a locally-owned and registered ship. A bi-catch fee is assessed when species are caught other than those for which a fishing company or person is licensed to catch.

The Marine Resource Levy is based on the metric tons of marine species harvested and calculated when a ship lands and off-loads its catch. Ownership and the nationality of registration do not affect the amount of the Levy. The fees range from a low of N\$2.50 (US \$0.38) for panga, reds, gurnards, jacobever, john dory, skate, squid, angelfish, roes, offal, and any other species to N\$375 (US \$58) for orange roughy.

Fishing companies have to allow observers on board as requested by the Fisheries Observer Agency, which is part of the MoFMR. Fisheries inspectors may also access a vessel, vehicle, or premises (other than private dwellings) where fishing gear is kept or being transported.

B. Obtaining a Mining License

Operating under the Mining Act, 1992, the Mining Commissioner's office of the Ministry of Mines and Energy (MoME) issues various licenses related to mining and seeks to attract and facilitate investment in the sector. Several important mineral resources are commercially extracted in Namibia including diamonds, copper, fluorspar, gold, lead, salt, uranium, zinc, semi-precious stones, and dimension stone. The Ministry issues five types of licenses:

- Exclusive Reconnaissance License meant for the preliminary surveying of minerals resources. This license includes allowing air surveys but not sampling.
- Exclusive Prospecting License designed to allow for sampling, drilling, and preparing feasibility studies for exploiting mineral resources short of commencing mining operations.
- Mining License conveying permission to exploit mineral resources.
- Mineral Deposit Retention License, which allows for an investor who has identified a mineral resource to reserve the right to exploit the resource when conditions become economically favorable. This license is valid for five years, renewable, and designed to take into account changes in world prices for mineral commodities.
- Mining Claims License designed for small-scale Namibian miners (companies or individuals) to undertake small scale mining. The company or individual with a Mining Claims License can exploit a maximum of ten individual claims at one time amounting to a maximum area of 300 by 600 square meters.

1. Application Procedures

To apply for any one of the various licenses issued by the Ministry, the investor will undertake more or less the same three-step process. The investor will obtain an application form from the Ministry and complete it for consideration. In each case, the applicant will complete and submit a designated form, submit the supplementary submissions required, and pay the requisite fee. In some cases, the investor will be required to undertake an Environmental Impact Assessment.⁴³ The applications are checked for completeness upon submission by Ministry staff.

Once the application is completed and the fee is paid, the Commissioner will review the petition and craft a recommendation for consideration of the Minister of Mines and Energy. The Minister has the authority to personally approve or reject all Reconnaissance License applications.

According to the MoME approval of all licenses takes between two and three months on average.

The requirements for each license are noted below.

Exclusive Reconnaissance License: The Exclusive Reconnaissance License form asks for such particulars as:

⁴³ This process is described in Chapter 3 – Locating.

- Name, address, and nationality of applicant;
- The amount deposited;
- Type of mineral to be reconnoitered;
- Reason for requesting an exclusive right;
- Location of area to be reconnoitered;
- Geological description of the area to be explored;
- Details of other mineral licenses in the past ten years;
- Personnel involved; and
- Financial resources available to undertake the reconnaissance.

Additional submissions include:

- Namibian identity card or passport;
- Copy of company registration certificate (Namibian or foreign);
- Letter of appointment of an agent, if applicable;
- Detailed locality map;
- *Curricula vitae* and letters of consent for specified key personnel and consultants;
- Proof of financial resources, such as bank statements; and
- Letter of consent from any existing holders of a license for the area to be explored.

In issuing the Reconnaissance License the MoME is chiefly interested ensuring that the area sought is not already claimed for mining activity and the applicant has the capacity for undertaking the activities required. For example, the MoME will assess the qualifications and experience of the geophysicists and geologists assigned to the project and the applicant's ability to conduct aeromagnetic surveys.

Upon submission of the form the investor will pay an application fee linked to the area to be surveyed. The fee is N\$500 (US \$76.92) per quarter degree of the Ministry's exploration map (roughly 250,000 HA). There is no firm, fixed size limit for a Reconnaissance License but the Ministry can limit the size if it sees fit. The applicant is issued a receipt and a reference number.

The license is valid for six months. If more time is required, an investor can apply for a new license.

Exclusive Prospecting License: Applicants who are not resident in Namibia must appoint an agent in writing, the agent must accept in writing, and be approved of by the Commissioner of Mines. The Prospecting License form asks for such particulars as:

- Name, address, and nationality of applicant;
- The amount deposited;
- Location of area to be reconnoitered;
- Status of applicant's possession of an exclusive Reconnaissance License;
- Geological description of the area to be explored;
- Details of other mineral licenses in the past ten years;
- Existence of environmental damage to the area to be prospected;

- Statement of proposed effect and steps to remediate potential damage to the area during prospecting;
- Personnel involved; and
- Financial resources available to undertake prospecting.

Additional submissions include:

- Namibian identity card or passport;
- Copy of company registration certificate (Namibian or foreign);
- Document indicating the appointment of an agent, if not a Namibian resident;
- Document indicating the agent's acceptance of the appointment, if not a Namibian resident;
- Proof of the agent's acceptance by the Commissioner of Mines;
- Reconnaissance License report, if applicable;
- Detailed locality map;
- *Curricula vitae* and letters of consent for specified key personnel and consultants;
- Proof of financial resources, such as bank statements; and
- Letter of consent from any existing holders of a license for the area to be prospected.

The license is valid for three years with two renewal periods of two years each available. Under certain circumstances, a longer renewal period may be granted. The cost of the license is related to the size reserved. For example, an area of up to 20,000 HA costs N\$2,000 (US \$307.69) and each additional 1,000 HA or portion thereof costs an additional N\$1,000 (US \$153.85) up to a maximum of 100,000 HA, costing N\$10,000 (US \$1,538.46).

To obtain an Exclusive Prospecting License investors will need to complete an environmental questionnaire that is reviewed by the MoME and MoET. The investor will be required to prepare an environmental management plan and in most cases conduct an EIA. After the environmental management plan is approved and required studies are finished, the investor will be required to sign a contract with the MoET regarding environmental responsibilities. The investor is told to contact the MoET regarding environmental clearance after he or she pays the licensing fee.

Retention License: For the Retention License the cost is N\$5,000 (US \$769.23) per year regardless of the size of the area reserved.

The Retention License form asks for such particulars as:

- Name, address, and nationality of applicant;
- The amount deposited;
- Minerals to be explored when extraction begins;
- Location of area to be retained;
- Status of applicant's possession of a Prospecting License;
- Geological description of the area to be explored;
- A technical report related to the minerals to be extracted, including a plan for doing so, and why extraction is not now currently feasible;
- Existence of environmental damage to the area to be retained;

- Statement of proposed effect and steps to remediate potential damage to the area during extraction;
- Details of other mineral licenses in the past ten years;
- Personnel involved; and
- Financial resources available to undertake eventual exploitation.

Additional submissions include:

- Namibian identity card or passport;
- Copy of company registration certificate (Namibian or foreign);
- Document indicating the appointment of an agent, if not a Namibian resident;
- Document indicating the agent's acceptance of the appointment, if not a Namibian resident;
- Proof of the agent's acceptance by the Commissioner of Mines;
- Exclusive Prospecting License report, if applicable;
- Ore reserve technical report;
- Feasibility study;
- Copy of Prospecting License, if applicable;
- Detailed locality map;
- *Curricula vitae* and letters of consent for specified key personnel and consultants;
- Proof of financial resources, such as bank statements; and
- Letter of consent from any existing holders of a license for the area to be retained.

The License is valid for a maximum of five years, with two two-year extension periods available for a total of nine years. After a total of nine years, an investor will either be required to apply for a mining license for the designated area or seek a special extension from the Minister of Mines and Energy. Otherwise the area is reopened for exploration or exploitation.

Mining License: The cost of the Mining License is linked to the estimated annual revenue from the enterprise. For example, companies that estimate revenues of less than N\$1 million pay N\$1,000 for a license. The fee is N\$5,000 for a mine earning gross annual revenue in excess of N\$ 10 million. In addition, mining attracts a royalty paid to government of up to 10% of the value of the commodity mined. Diamonds attract a 10% royalty and dimension stone attracts a 5% royalty. Royalties are paid to the MoME and corporate tax is paid to the Ministry of Finance.

The Mining License form asks for such particulars as:

- Name, address, and nationality of applicant;
- The amount deposited;
- Minerals to be mined;
- Location of area to be mined;
- Details of previous ore mining activity;
- Geological description of the area to be mined;
- A technical report related to the minerals to be extracted, including a plan for doing so;
- Details of other mineral licenses in the past ten years;

- Existence of environmental damage to the area to be mined;
- Statement of proposed effect and steps to remediate potential damage to the area during extraction;
- Personnel involved;
- Financial resources available to undertake the mining activity; and
- Plan for mining extraction.

Additional submissions include:

- Namibian identity card or passport;
- Copy of company registration certificate (Namibian or foreign);
- Document indicating the appointment of an agent, if not a Namibian resident;
- Document indicating the agent's acceptance of the appointment, if not a Namibian resident;
- Proof of the agent's acceptance by the Commissioner of Mines;
- A plan indicating previous ore mining activity;
- Environmental Impact Assessment;
- Environmental Management Plan;
- Geological report;
- Ore reserve calculations;
- Detailed locality map;
- *Curricula vitae* and letters of consent for specified key personnel and consultants;
- Proof of financial resources, such as bank statements;
- Feasibility plan with reference to the plan for mining and financial projections; and
- Letter of consent from any existing holders of a license for the area to be prospected.

The Mining License can be valid for an indeterminate period of years as requested by the investor up to a maximum of 25 years. The Mining License can be renewed by repeating the procedure.

C. Analysis

In contrast to many developing countries, obtaining local and sectoral licenses in Namibia is not a significant concern among investors. The two licensing procedures studied are easy to understand, relatively well administered, and reasonable in terms of cost and the approval timeframe. However, reported delays in approving of mining licenses are a concern that requires attention from government, especially considering the importance of the sector to the overall national economy and as a potentially lucrative small-scale activity. Additionally, while many types of enterprises will need to obtain a municipal health certificate, local authorities in Namibia do not require a multitude of licenses at the city or regional level. This relative lack of licensing clutter should be maintained and applauded. Nonetheless, a few considerations are noted below.

Issues

Fishing licensing regime not a barrier, but sector is reserved for indigenous investment. Investors had few complaints about the process for obtaining a right,

quota, and fishing license. Indeed, the costs and timeframes associated with the procedure compare favorably to similar procedures in many countries. It should be noted, however, that except for in aquaculture the Ministry's policy is to discourage FDI in the sector in favor of localizing the industry. Therefore, unlike other procedures represented in the Roadmap, the NIC should be cautious about how it represents information about the fishing industry in promotional materials.

Lack of clarity on if non registered companies need to register a Namibian company to prospect. According to Ministry officials, a company should be registered in Namibia to obtain the Prospecting License but the Act is not very clear about this. In practice, the Ministry does not strictly enforce this requirement. Especially if an investor is looking for diamonds, registration with Namibian tax and company registration officials is required because a significant number of diamonds can be found during the prospecting phase.

Timeframe for approving of mining applications can be slow. Some investors note that the MoME can be slow to approve of applications. In some cases, say investors, applications can sit under review for a period of several months with no clear indication from the Ministry of if there is a problem with the status of the application. Some investors suggest that the current committee system causes delays because the committee does not meet as regularly as required, applications are not prioritized, and the Ministry lacks a sense of urgency in responding to investors. The Ministry reports average review timeframes of two to three months because of the volume of applications received—an average of 30 per month—and the technical nature of the information required to make a determination on a licensing application. In addition, the Minister must personally review and approve applications, which some in government suggest may be a source of delay given the busy schedule required of a Minister.

Recommendations

Target investment promotion materials compatibly with fisheries policy. As the NIC prepares for its next active promotional campaign it will need to coordinate with the Ministry of Fisheries and Marine Resources about FDI promotion. The policy in place is to indigenize the fishing industry, so foreign investment is not wanted and existing rights and TAC quotas are allocated to full potential. However, according to the Ministry FDI is wanted in aquaculture. This requires appropriate targeting in the NIC's investment promotion efforts.

Apply mining policy and law consistently. The Ministry should consistently apply its policy on the need for foreign companies to register prior to obtaining a Prospecting License. This would improve transparency in the process and also reduce the chance that the public would perceive inequitable treatment by the MoME.

Improve response times for reviewing mining license applications and reduce backlog. The Ministry of Minerals and Energy notes that it receives a large number of applications and reports an average two to three-month timeframe for reviewing them. Private sector sources suggest that delays can be longer and applications are not appropriately prioritized. This period should be shortened to improve facilitation of inward investment into the sector, including among both large multinational companies and domestic small-scale miners. The Ministry should assess where delays occur in the process and make appropriate changes to eliminate them. In particular, the Ministry

should assess whether the legislation or policy should be changed to eliminate the upfront review of the licensing committee and rather emphasize effective post-licensing monitoring. The upfront screening of applicants is in place to ensure that applicants do not tie up significant tracts of land without the financial or personnel resources to effectively exploit the land. However, it is likely that a regulatory system that makes entry into the sector easier and semi-annual or annual monitoring more rigorous would maintain the regulatory integrity desired while encouraging more efficient exploration and utilization of resources. While the requirements for issuing mining rights are reasonable, the upfront delay in approving licenses represents a bottleneck for the sector. Similarly, it should be determined whether or not the requirement of the Minister's personal signature and attention to all licenses is necessary and, as some in government have suggested, causes delays.

It is also notable that given the presence of several experienced multi-national corporations in the country, solutions to the current delays could include feedback from practitioners with experience in developed as well as developing countries. A process re-engineering intervention that includes an improved reliance on information technology and private sector input could readily improve the current regime and reduce delays.

IV. Acquiring Investment Incentives

This section discusses Namibia's current incentive packages from the perspective of administrative and procedural logic and efficiency. It is not intended as an assessment of the economic benefits of the policies.

In addition to the incentives provided in the Foreign Investment Act discussed above in this chapter, Namibia offers special incentives to investors through three facilities:

- Registered manufacturer,
- Exporter of manufactured goods, and
- Export Processing Zones (EPZ).

Table 3.3 below lists the incentives and the enterprises entitled to each kind. The incentives can be either tax-related or non-tax.

Table 3.3: Summary of Special Incentives

Type of Incentive	Registered Manufacturers	Registered Exporters	EPZ Enterprises
Corporate tax	Set at a rate of 18% for a period of 10 years, thereafter the prevailing general rate.	80% allowance on income derived from qualified exports.	Exempt.
VAT	Exemption on purchase and import of manufacturing machinery and equipment.	Normal treatment.	Exempt.
Stamp &	Normal treatment.	Normal treatment.	Exempt.

Transfer Duty			
Creation of Tax Package	Negotiable rates and terms by special tax package.	Not eligible.	Not eligible.
Special Building Allowance	Factory buildings written off at 20% in first year and balance at 8% for 10 years.	Not eligible.	Not applicable
Transport Allowance	Allowance for land-based transportation by road or rail of 25% deduction from total cost.	Not eligible.	Not applicable
Export Promotion Allowance	Additional deduction from taxable income of 25%.	Not eligible.	Not applicable
Incentive for Training	Additional deduction from taxable income of between 25% and 75%.	Not eligible.	Not applicable
Industrial Studies	Available at 50% of cost	Not eligible.	Not eligible.
Cash Grants	50% of direct cost of approved export promotion activities.	Not eligible.	Not eligible.

The tax incentives surpass the allowances provided in the Income Tax Act, which is discussed in Chapter 5. The non-tax incentives are given by the Ministry of Trade and Industry. The Offshore Development Company (ODC) develops industrial parks and leases factory buildings in the parks, while the Walvis Bay Export Processing Zone Management Company (WBEMCO) facilitates the acquisition of land and facilities in Walvis Bay.⁴⁴ The Namibia Investment Center is responsible for facilitating the establishment of investors.

A. Registered Manufacturers

As the Table 3.3 shows, Registered Manufacturers enjoy a number of incentives designed to give a competitive edge to Namibian-based entrepreneurs in manufacturing and export trade. The incentives are available to local and foreign enterprises, and to both existing and new investments. To qualify for the status, the enterprise must be engaged in manufacturing in any sector, including value-added processing of minerals, fish, and agricultural products.

⁴⁴ Currently, only one EPZ Managements Company exists in Namibia, the Walvis Bay Export Processing Zone Management Company, but the law allows for others to come into operation.

Manufacturing is defined as “the physical or chemical transformation of materials or components into new products, whether the work is performed by machine or by hand, whether it is done on or off-site, and whether the products are sold wholesale or retail.”⁴⁵ Ministry of Trade and Industry inspection guidelines give examples of operations that qualify, e.g. wood curving and assembly line production, and those that do not qualify, like repairing of machines and packaging of goods. The status is granted only after an enterprise has started operations so that the production process can be inspected to confirm whether it qualifies for the status.

1. Procedures for Obtaining Registration

An investor seeking the Registered Manufacturer Status should contact the NIC or the Industrial Development Directorate of Trade and Industry, which processes applications and makes recommendations to the Ministry of Finance. The investor will receive a questionnaire designed to solicit information proving that the processes constitute manufacturing. The procedure is described below.

The investor submits an application and the completed questionnaire to the Industrial Development Directorate. If the enterprise is located outside Windhoek, the directorate will in turn send the documents to the regional office of Trade and Industry where the enterprise is located.

Next, an official from the directorate or the regional office conducts an on-site inspection. The official communicates his findings to the Industrial Development Directorate in a written report.

If the operations qualify as manufacturing, the Directorate prepares a recommendation letter for the Ministry of Finance (MoF). The Permanent Secretary usually signs the letter. The investor will have to follow up the application with the Ministry of Finance, Inland Revenue Directorate.

Inland Revenue then carries out its own inspection. One purpose is to ascertain whether the production process constitutes manufacturing. This, however, represents only one of the factors considered. Other factors include the revenue targets for the year, the number of applications received during the budget year, and so forth. According to Inland Revenue, there are no set criteria.

Next, Inland Revenue approves or rejects the application. It does not have to consider the recommendations of the Ministry of Trade and Industry. In fact it does not even send feedback to Trade and Industry. If approved, the MoF publishes the approval in the Official Gazette in the name of the Minister of Finance.

According to the Directorate of Industrial Development, the process in Trade and Industry takes between three weeks and one month, depending on where the operations are located. The number of offices involved influences the timeframe. According to Inland Revenue, there is no definitive timeframe for processing applications.

⁴⁵ Ministry of Trade and Industry: Guidelines for the Inspection of Possible Manufacturing Companies.

2. Income Tax incentives for Registered Manufacturers

All but two of the incentives available to a Registered Manufacturer are tax-related. The remaining two—industrial studies and cash grants—are non-tax incentives given by Trade and Industry.

3. Non-tax Incentives for Registered Manufacturers

The general objective of the non-tax incentives is to provide financial assistance to exporters of Namibian manufactured products to enable them to:

- Engage in primary export market research;
- Attend regional and international trade fairs and exhibitions; and
- Engage in any other related activity.

To meet the objective, Trade and Industry has established an Export Marketing Assistance Program for manufacturers (EMAP).⁴⁶

The following are the conditions for obtaining market research support:

- The investor must submit an application together with a market research plan for a particular market and a traveling schedule;
- 30 days after the research the investor must submit a report detailing the findings;
- The relevant tickets stubs and invoices/receipts must be submitted with the claim; and
- When hiring a consultant the investor must submit the terms of reference, including the curriculum vitae of the consultant before approval can be given.

The following are the conditions for obtaining assistance for participating in trade fairs and exhibitions:

- An application for assistance or for participation should be submitted with an export market plan;
- The applicant must have an authorized representative at the stand on a full-time basis;
- The applicant must complete and submit an Exhibitors Questionnaire/Trade Fair Performance Check Form within 30 days after the event together with the claim;
- The applicant must submit a report after six months and another one after twelve months to show if there are any developments resulting from participation in the event; and
- Should the required reports not be submitted, further financial assistance will not be provided under any of the EMAP activities.

Only 50% assistance is given on the basis of the actual expenditure for transport and subsistence of company representatives at the event, rental of a stand, transportation of exhibition samples, and production of promotional brochures. Table 3.4 summarizes the allowances available under the EMAP program.

⁴⁶ The information contained here about EMAP is extracted from the guide on the program that published MTI.

Table 3.4 Allowances Given under the EMAP

Cost Item	Contribution by MTI
(i) Economy class return airfare	50%
(ii) Fuel costs if by road (restricted to regional markets)	Equivalent economy airfare
(iii) Daily subsistence allowance (up to ten days including weekends)	N\$1,000 (US \$154)
(iv) Transport of samples: regional markets and Africa	IATA rate x 100kg
(v) Transport of samples: Overseas	IATA rate x 50kg
(vi) Design and production of promotional brochures (annual maximum)	N\$3,000 (US \$462)
(vii) Use of marketing consultants	N\$10,000 (US \$1,538)

B. Exporters Incentives

Enterprises which export manufactured goods, excluding meat and fish products, whether manufactured in Namibia or not, are given 80% income tax allowance on income derived from exporting manufactured goods. This being a tax incentive, it is claimed in the income tax returns. There are no special criteria for qualifying as an exporter of manufactured. The registered business activity of the enterprise must be exporting, or exporting must be one of the business lines of the enterprise.

C. Export Processing Zone Enterprises

The status of Export Processing Zones is provided for by the Export Processing Zones Act No. 9 of 1995. In Namibia a single stand-alone factory can qualify as an EPZ.⁴⁷ An enterprise granted EPZ status could therefore locate operations in a single factory located anywhere in Namibia, at specially developed industrial parks, or at an estate managed by an EPZMC. Industrial estates are located at Walvis Bay, Oshikango and Katima Mulilo, and a new one is being built at Katwitwi.

The ODC's provision of factory shells is predicated on the belief that the availability of factory buildings and industrial parks or estates that already have the necessary infrastructure and utilities reduces the lead-time for starting operations. It also enables enterprises to locate in a region where they would not otherwise locate because of lack of developed infrastructure. This is true especially for companies that have short to

⁴⁷ Section 2 of the Act.

medium term investment plans, or which would close operations if the current market opportunities were exhausted.

1. Conditions for Obtaining EPZ Status

Sectors such as mining, fishing, agriculture, retails and services are excluded from the EPZ incentives. Any form of manufacturing or value added process is eligible, provided the final product is exported outside the Southern Africa Customs Union. After one year of operations, up to 30% production may be allowed into the SACU market on condition that all taxes are paid on the products. An enterprise with a greenfield manufacturing project for exports can apply for EPZ status. Warehousing and packaging companies, other than ones involved in fish or meat processing, can also be considered for EPZ status if they are to locate in the village towns with export potential.

An application will generally be granted if the operations of the enterprise will result in the achievement of the objectives of EPZs. According to the Act,⁴⁸ the objectives of EPZs are to:

- attract, promote or increase the manufacture of export goods;
- create or increase industrial employment;
- create or expand export earnings;
- create or expand industrial investment, including foreign investment; and
- encourage technology transfer and develop management and labor skills.

The Act⁴⁹ specifically forbids issuing an EPZ Certificate for any enterprise whose activities could compromise the environment, will not generate employment or export revenues, or which intends to conduct retail business in the zone.

2. Procedures for Obtaining EPZ Status

EPZ status is granted in the form of an EPZ Certificate signed by the Minister of Trade and Industry; the certificate states the terms and conditions under which the enterprise may operate. The steps to obtain EPZ status are outlined below.

Step 1) The investor to holds initial consultations with ODC/NIC or the relevant EPZ Management Company. Through these consultations the investor will know the requirements and assess the prospects of getting a certificate. At this meeting, the ODC or the EPZ Management Company will give the investor an application form, free of charge.

Step 2) The investor submits the application form and required supporting documents. The form asks for details about the company ownership structure, proposed business activity, projected employment of Namibians, and expected training programs for Namibians. It also requires the applicant to state the location and area of land required for the project and whether the premises will be owned or leased.

The supporting documents required include:

⁴⁸ Section 3 of the Act

⁴⁹ Section 14 of the Act

- A comprehensive business plan;
- Documentation of company history and references;
- Certified copy of Certificate of Incorporation;
- Certified copy of Memorandum of Association and Articles of Association;
- Draft organization chart of EPZ company; and
- Draft organization chart of parent or holding company, if applicable.

Applications submitted to EPZMCs are forwarded to the ODC in Windhoek, which is responsible for bringing applications before the EPZ Committee. Where it is clear that an application does not meet all the conditions for EPZ status, the ODC will reject it without sending it to the committee. The ODC Secretariat can also submit an application directly to the Minister of Trade and Industry with recommendations for approval where a meeting of the EPZ cannot be convened expeditiously and the application does not give rise to any issues requiring resolution by a meeting of the EPZ Committee. Where an application requires input from members of the EPZ Committee, a meeting will be convened.

The key members of the Committee are the Minister of Trade and Industry, the Minister of Finance, and the Governor of the Bank of Namibia. Other participating officials include the Director of Customs, the Receiver of Revenue, the Permanent Secretary of the Ministry of Education, the Director of Industrial Development in the MTI, and representatives of the Ministry of Labor, the NIC and the ODC, and the Walvis Bay EPZ Management Company (WBEPZMC).

Next, the Minister signs the EPZ Certificate, and, where no meeting of the EPZ was convened, sends a copy with details of the enterprise to the Committee members individually to inform them of the approval.

According to the ODC, it takes a day or two to study the business plan and make recommendations. It takes a minimum of one week and a maximum of one month from the time the form and business plan are submitted to the time a certificate is approved.

The EPZ status entitles the enterprise to enjoy EPZ incentives and to locate either at an industrial estate or in a single factory after signing a lease.

3. Incentives Available to EPZ Enterprises

As shown in Table 3.4 EPZ enterprises enjoy the following incentives:

- Exemption from corporate tax, Value Added Tax, Stamp Duty and Transfer duty;
- Import duty exemption on capital goods and raw materials; and
- Developed infrastructure and ready to use premises, where applicable.

Once an enterprise has obtained the EPZ Enterprise certificate its operations are treated as if they were located outside national territory, i.e. off shore, for purposes of taxes and import duties. The status certificate is all that is required and no additional procedures for obtaining the exemptions. It should be noted, however, that enterprise employees pay income tax.

D. Incentives Relating to Import Duty and Taxes

In addition to the tax incentives for registered manufacturers, manufacturing enterprises can also enjoy incentives granted under the SACU Customs laws. These include:

- Rebate of duty on specified goods used as inputs for production: this is applicable only if the enterprise will engage in specified industries specified in the rebate schedule, and if the goods specified by the rebate schedule coincides with goods that the enterprise will import as inputs or raw materials.
- Rebate on goods temporarily imported: the goods must be used in the processing or manufacturing of goods for export and such goods must be exported within twelve months from the date the imported goods were declared to the Customs for importation. The period may be extended on request, but the request must be submitted before the expiry of the twelve months.
- Rebates and drawback of excise duty and VAT: the duty rebates apply equally to excise duty and VAT.

4. Procedures for Obtaining Import Duty and Tax Incentives

To obtain tax and tariff incentives, the investor will undertake the following procedure.

Step 1) Register with Customs. The enterprise must register as a rebate or drawback beneficiary. Application as a manufacturer is made on Form DA 185 and DA 185.03.

Step 2) Register premises with Customs. The premises that will be used for manufacturing or processing must be registered with Customs. Application is made on Form NA 100 and NA 102. The premises must have a “rebate store” for storing dutiable goods. Both the premises and the store will be inspected by Customs before they are approved for the purposes of the application.

Step 3) Obtain a security bond from financial institution. The enterprise must obtain a bond guarantee from a bank or insurance company to cover the duty and taxes that would be due on dutiable goods should they not be accounted for to the satisfaction of Customs. The form for the bond is CE 110. The amount of the bond is arrived at by calculating the amount of duty and taxes that would be payable on the goods. The amount of the bond must be equal to the amount of duty and taxes.

E. Analysis

Issues

There are no established criteria for granting the Registered Manufacturer Status. As explained in previous paragraphs, although there is a definition of “manufacturing” Inland Revenue takes into account other factors when determining if an investor is qualified for Registered Manufacturer incentives. These include the status of government revenue—perceived constraints in achieving projected government revenue for the year may bar an application from qualifying. According to Inland Revenue there are no fixed criteria. Trade and Industry point out that very often the findings of Inland Revenue differ from those of Trade and Industry.

The criteria used in Non-preferential Rules of Origin could be used in determining processes that result in manufacturing. One of these is change of tariff heading—when the processing of material of a certain tariff heading results in a product with a different heading, e.g. processing of cotton resulting in yarn, manufacturing is deemed to have taken place. Another criterion is value added: manufacturing is deemed to have taken place where the value added to produce the final product reaches a prescribed value threshold, e.g. 40% of the original material. The change of tariff heading is probably more appropriate because it clearly signifies creation of a new product.

Unlike the process for granting EPZ status, the process for granting Registered Manufacturer Status is not transparent. As explained in previous paragraphs, on receiving an application for Registered Manufacturer Status, an official in Trade and Industry inspects the manufacturing processes of the applicant and prepares a letter of recommendation to the Ministry of Finance, which is signed by the Permanent Secretary. The Ministry of Finance does not involve other ministries or agencies in the process of deciding on applications. It does not even give feedback to Trade and Industry regarding the outcome of the latter's recommendations.

To make the process more transparent, there is need to harmonize the procedures for deciding on EPZ and Registered Manufacturer applications. The ODC proposes that the present EPZ committee be turned into a new committee to be called "the Industrial Development committee" that would be responsible for deciding on both types of applications. However, the ODC is not certain whether the proposal will require amending both the Foreign Investment Act and the EPZ Act to provide for the establishment of the committee.

Alternatively, the Minister of Finance could constitute a committee made up of the same members as those of the EPZ Committee— the Minister of Trade and Industry, Governor of the Central Bank, and the Minister of Finance as chair—that would decide on applications. Admittedly, when the members meet to consider an application for EPZ status they would be meeting as the EPZ Committee, and as another committee when they meet to consider an application for a Registered Manufacturer status. However, the goal of having a transparent process of considering applications will have been achieved.

There is no source with comprehensive information for investors. There are various publications with information on the investment incentives available in Namibia, but they do not have adequate details concerning the procedures for obtaining the incentives and the regulatory requirements for operating a business in the country. Information on the latter is important especially for new investors. The information in some of the publicity booklets is not accurate⁵⁰ and some of the booklets that are still being distributed are outdated⁵¹.

⁵⁰ See for example table on page 9 of "NAMIBIA – Prospect, Possibility, Promoting and Profitable" (Trade and Industry). "Not applicable" should replace "Not eligible." The latter implies that EPZ enterprises are not eligible for the tax incentive, which is not correct; they do not pay corporate tax.

⁵¹ There are two booklets with the title "Special Incentives for Manufacturers and Exporters." The one with the Namibia Coat of Arms on its cover is outdated. The newer version has the flag of Namibia on its cover.

An enterprise must be operational before the investor can apply for Registered Manufacturer Status. This procedure runs contrary to the main objective of the incentives, which is to attract investment. A potential investor cannot be certain that the incentives will be available. Under the current system the incentives represent a reward for investing instead of an inducement to investment.

Recommendations

Prescribe Change of Tariff Heading as the single criterion for determining whether manufacturing has taken place, and publish it in the official gazette together with the steps for granting the Registered Manufacturer Status. This would create transparency and allow for reasonable predictability of results of applications on the part of investors. These are conditions of sound foreign investment policy and good governance.

Improve transparency in incentives issuance through the establishment of an “Industrial Development Committee” that would consider applications for both EPZ and Registered Manufacturer status. If this would require legislation, which cannot be enacted expeditiously, the Minister of Finance could establish a committee made up of the present members of the EPZ Committee to consider applications for the status of Registered Manufacturer. This would be a short-term solution for achieving transparency in the process of granting the status.

Prepare an incentives guide for investors. The NIC should spearhead preparation of a comprehensive “Investor’s Handbook” that would explain the special incentives and the procedures and costs for obtaining them. The handbook should be available in paper copy and—most importantly—in electronic format in the webpage of the Ministry of Trade and Industry or of the NIC.

Review applications for the Registered Manufacturer Status before the enterprise is established. Before committing his investment, the investor should be able to submit an application with adequate information to enable a decision to be made on the basis of the published criteria. Once operations have begun, the authorities would conduct regular checks to ensure compliance with the stipulated conditions.

Chapter 4: Locating

Investors in Namibia can access land from both public and private sector sources. Most of the country's investment outside of the mining and tourism sector is located within the borders of the country's 17 municipalities.⁵² Other options include two Export Processing Zones managed by a parastatal government organization and land outside municipal boundaries. For the latter, jurisdiction could be held by one of many town councils, Headmen, or regional councils. The Ministry of Lands, Resettlement, and Rehabilitation has jurisdiction over some rural land in areas where there is no other competent authority.

Approximately 37.1% of Namibia's land is owned by the state, much of which is inhabited by subsistence farmers and traditional communities, and 43.3% is privately held, large farmsteads.⁵³ About 4% of the land in Namibia is classified as urban and other government land, 1.5% of the land remains the province of exclusive diamond mining right holders, and 14.1% is protected, including nature preserves and coastal areas.⁵⁴ While development in this land is possible, including in mining and tourism, it is restricted and under the administration of the Ministry of Environment and Tourism.

The Namibian constitution provides for regional and local governmental bodies. The Country and the Regional Councils Act establishes 13 regional councils. The Local Authorities Act constitutes 17 municipalities of which three are classified as "Part I" cities and 14 are considered "Part II" cities based on their administrative capacity.⁵⁵ There are 30 other local town or village councils in Namibia. Councils, which ultimately make decisions on allocating land and certain site development approvals, are freely elected in Namibia. Depending on the capacity of the council in question, the Ministry of Regional and Local Government and Housing may be involved in local council affairs.

I. Acquiring Land

A. Acquiring Land from the Private Sector within Municipal Boundaries

Commercial and industrial land in Namibia is readily available from private owners. Private sector land acquisition within municipal boundaries will involve several interactions with government, including registering a title, ensuring that outstanding taxes and utility charges are paid, and applying for utility connections. In Namibia basic utility services are provided by parastatal companies, and in municipal boundaries cities will service investors directly from power and water supplied by the parastatals.

The process for acquiring private sector land in Namibia in municipal boundaries involves several steps completed with assistance from the private sector.⁵⁶ First, an

⁵² Ministry of Regional and Local Government and Housing, "Manual for Local Authority Councilors in Namibia," pg. 7.

⁵³ Southern Africa Institute for Environmental Assessment, *Environmental Impact Assessment in Southern Africa*, pg. 150.

⁵⁴ *Ibid*, pg. 150.

⁵⁵ Ministry of Regional and Local Government and Housing, "Manual for Local Authority Councilors in Namibia," pg. 7.

⁵⁶ This process is based primarily on procedures in Windhoek. Slight variances among cities are likely.

investor will need to identify land that is suitable to his or her project. Information on land is available from several private sector real estate agents. Newspapers and other media also advertise land and buildings for sale and lease.

To obtain information on the zoning designation of a plot of land, an investor can inquire at the city's Economic Development Department or in the city's help center. According to city officials, if an investor comes to the municipality in person he or she can do a search for zoning use within about 30 minutes. At the help center an investor could also find out the tax rates, value of the plot, and cost of connecting utilities. Alternatively, an investor can write a letter of inquiry specifying the plot number to clarify zoning restrictions.

After the investor has identified the private sector property he or she wants and negotiated a sale, the first mandatory interaction with government is for the purchaser to determine if outstanding taxes or utility fees are owed. Clearing "rates and taxes" is done by inquiring at the city Cash Office as to whether or not the previous owner owes any municipal taxes or unpaid utility charges. If not, the purchaser will receive a Clearance Certificate. According to the city, the process of obtaining a clearance takes an average of one day if the property does not have debts. If the property does have debts, the buyer and seller will have to negotiate how these are settled. Reportedly, it is common practice for conveyancers, who typically handle the financial transactions in a land sale, to simply deduct any unpaid taxes and utility charges from the sale amount paid to the owner.

The next mandatory process is for the title transfer to be registered. Registering a title is a matter of preparing a series of documents for deposit with the national Lands Registry, and in Namibia it is compulsory for an investor to retain a lawyer to prepare and notarize certain documents. The conveyancer will collect the required taxes and fees from the investor, make the payments, and collect date-stamped receipts. The conveyancer will be required to prepare several documents to effect a transfer of title deed and lodge these with the Deeds Registry to record the transfer of property.

Upon receipt of a land transfer application, the Registry staff will conduct several internal investigations to ensure that all documents are complete, duly notarized, and correspond with land records. In addition to the deed of sale, a conveyancer will present the following on behalf of the investor:

- Bank guarantee or proof of deposit of funds in the conveyancer's account;
- Passport or official Namibian identification card;
- Marriage certificate, if applicable; and
- Local certificate of incorporation, if applicable.

The result of the deeds registry process is to receive a copy of the property deed with an official Registry signature, date, government stamp, and document number.

In all, an investor can expect to pay an average of 6.5-10% of the sale price in attorney's fees and transaction taxes, including transfer duty.⁵⁷ In addition, the sale of commercial and industrial property attracts a VAT tax of 15%, but this can be claimed back if the

⁵⁷ The cost range is estimated based on feedback from real estate agents, conveyancers, and architects.

purchaser registers with the tax authorities. Lawyers are paid flat fees prescribed by law and published in the government gazette for the conveyance of immovable property. The fees range from N\$800 (US \$123) for a property under N\$20,000 (US \$3,077) in value to more than N\$6,000 (US \$923) for a property over N\$500,000 (US \$76,923). As outlined in the Government Gazette from February 17, 2004, registering a deed of transfer costs N\$300 (US \$46.15) and obtaining a certified copy of a deed costs N\$225 (US \$34.61).

The examination and registration process typically takes seven or eight working days, according to Land Registry officials and local conveyancers.

B. Acquiring Land from a Municipality

The Local Authorities Act (Act 23 of 1992), as amended, articulates the broad powers and responsibilities of municipalities in Namibia. The procedures outlined below are more or less the same for other major cities in Namibia.⁵⁸ Like other cities in Namibia, Walvis Bay sometimes brings new land into the private sector property market through auctions, tenders, or through private transactions. Auctions are primarily used to dispose of land for residential purposes and the Municipality of Walvis Bay very rarely auctions off land for industrial or commercial uses. Officials estimate that 90% of the industrial land owned by the city has been disposed of through private negotiations or tenders. As stipulated in its "Policy on Sale/Lease of Land," the city can lease or sell serviced or un-serviced land to developers, excluding un-surveyed land. Sales are much more common and preferable for investors. In Namibia, banks generally do not lend to someone based on a lease. In Walvis Bay at present there is very little commercially zoned land in public hands, but the city does retain land zoned for industrial uses.

Private land sales in Walvis Bay involve limited local government involvement. The transaction would involve a check of any outstanding taxes or utility fees and an assessment of whether or not the present valuation of the property reflects the value-added of all improvements. The valuation, conducted by the city, determines the amount of land tax paid. This process is handled within 24 hours.

1. Unsolicited Negotiation for Land

An investor can approach the city council with a proposal to lease or purchase and develop municipal land for residential, commercial, or industrial purposes. In most cases, the land allocated would be serviced at a basic level. The process of acquiring land through private negotiation is summarized in figure 4.1 and outlined below.

Step 1) Write letter requesting land. The investor will first write to the city to request buying land from the city for a particular purpose. The investor will also indicate the zoning required for whatever enterprise is desired.

The city will review the request and write back to the investor noting what land corresponding to the zoning needed is available. The city will also evaluate whether or not the proposal fits in with Walvis Bay's 15-year structure plan.

⁵⁸ These procedures are based on how Walvis Bay allocates land.

Step 2) Choose specific plot and prepare development proposal. Once the investor is aware of the plots of land available for development and has chosen the specific one he or she wants, the investor will prepare a site development plan that includes specifying the water and energy needs and the price he or she is prepared to offer. There is no fixed minimum cost for land allocated by the city and the price is negotiated. A committee of technical personnel from the city will review the plan and may request modifications. The plan can be presented verbally, as a written report, or in a Power Point presentation.

Step 2a) Conduct Environmental Impact Assessment (EIA), if required. If indicated by city guidelines, an investor will be required to get an Environmental Impact Assessment prior to completing the sale. The investor will be informed of whether the EIA is required at the presentation of the development proposal. The final sale will be subject to completion of the EIA and presentation of a successful plan to mitigate potential environmental threats. Not all companies require an environmental management plan. Certain heavy industrial projects such as smelters or refineries would require environmental scrutiny by the Ministry of Environment and Tourism.

The technical committee will make a recommendation to the City Council's Management Committee, comprised of elected councilors. The Management Committee meets twice per month and their recommendations are submitted once a month to full Council.

The Management Committee will in turn make its recommendation and put the proposed sale up for final approval by the full Council. In some cases, a proposal can be sent back to the developer for modifications. Among the Council's criteria for making a decision are the feasibility of the project, potential for job creation, and offer price for the land.

Step 3) Advertise potential sale. Once a land sale is approved by the City Council, the investor must advertise twice in the local media and allow for a public objection period of ten days. If there is an objection that convinces the City Council to void the sale, the sale transaction will not proceed.

Step 4) Sign contract and pay deposit. If there is no objection, the investor will next execute the sale by signing a contract with the City Council and paying a deposit for the land. The deposit amount is equal to 10% of the land's total value. When the contract is signed, the City Council will also begin the process of registering the Erf number.

After furnishing the 10% deposit, previously disadvantaged persons and "fledgling entrepreneurs" are able to pay the balance of the purchase price in 36 monthly installments plus 5% interest.

Step 5) Finalize bank guarantee. The investor will need to obtain a bank guarantee within 21 days of signing the contract.

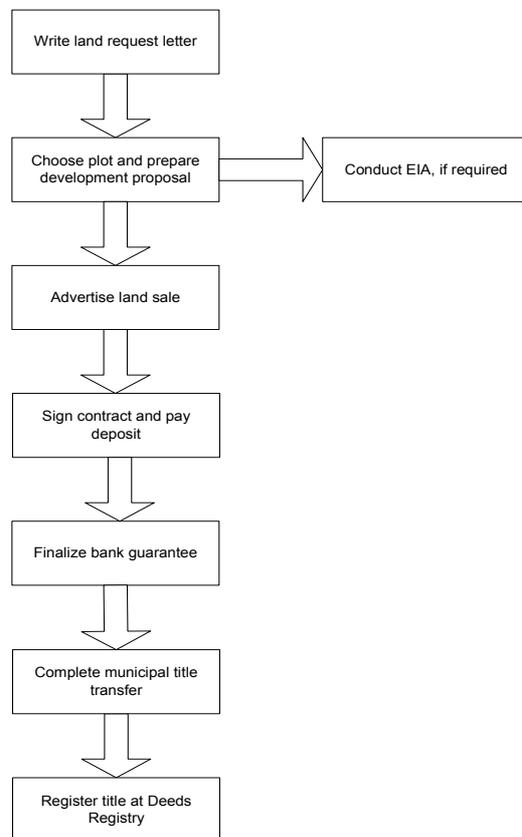
Step 6) Complete title transfer registration from municipality. After the bank guarantee is secured, the investor will seek the paperwork required to transfer the title into his or her name. The registration process will take about 14–15 days before the property is registered in the local Deeds Office.

Step 7) Register title deed at national Deeds Registry. By law, a conveyancer must draft and notarize certain documents in order for a title to be duly registered. The conveyancer will collect the required taxes and fees from the investor, make the payments, and collect date-stamped receipts. The title will be registered in the normal fashion through the national title Deeds Registry in Windhoek as described in the previous section on private land sales.

The purchaser would commence with the development within 12 months from date of sale, and that such development be completed within 36 months from date of sale.

According to local guidelines, the definition of development is the completion of improvements, including buildings and infrastructure (i.e., the issuance of a Completion Certificate by the city).

Figure 4.1: Process of Acquiring City Land through Negotiation



2. Solicited Tender

Walvis Bay's tenders are publicly announced and open to all interested bidders, including foreign investors. When the city offers land for tender, price is the most important criteria. The reserve price is often included in the tender documents. A special Tender Board comprised of civil servants and private sector representatives handles the review of tenders.

The tender process is outlined below and summarized in figure 4.2.

Step 1) Purchase tender documents. Once a tender is advertised, an investor must pay the city a nonrefundable deposit for the tender documents. Typically, the city will charge N\$50 for the tender documents. Tenders must be advertised for 21 days to allow for sufficient public notice of the opportunity.

Step 2) Register with the Tender Board. In addition to paying the deposit, an investor will register with the Tender Board.

Step 3) Submit development plans. Typically, an investor will have three weeks to prepare and submit his or her development plans. While the tender documents will generally avoid providing detailed content requirements, as noted previously the reserve price of the land will generally be provided.

Upon the deadline for bid submissions, the relevant city departments will review the bids. These departments have between two and three weeks to make a recommendation to the Tender Board either approving or rejecting a bid. In cases where the tender is not linked to any specific town planning or development objective price is the most important criteria used to award the bid.

Step 3a) Make formal presentation to the Tender Board. In a minority of cases, the bidders will be asked to make a formal presentation to the Board. Generally, presentations are required when the City Council has asked for investors to bid on a specific type of development.

Step 4) Sign contract and pay deposit. Once the Board selects the winning bid, it will inform the proponent in writing. Within 21 days, the investor must execute the sale by signing a contract with the City Council and paying a deposit for the land. The deposit amount is equal to 10% of the land's total value. When the contract is signed, the City Council will also begin the process of registering the ERF.

Step 5) Finalize bank guarantee. The investor needs to obtain a bank guarantee within 21 days of signing the contract.

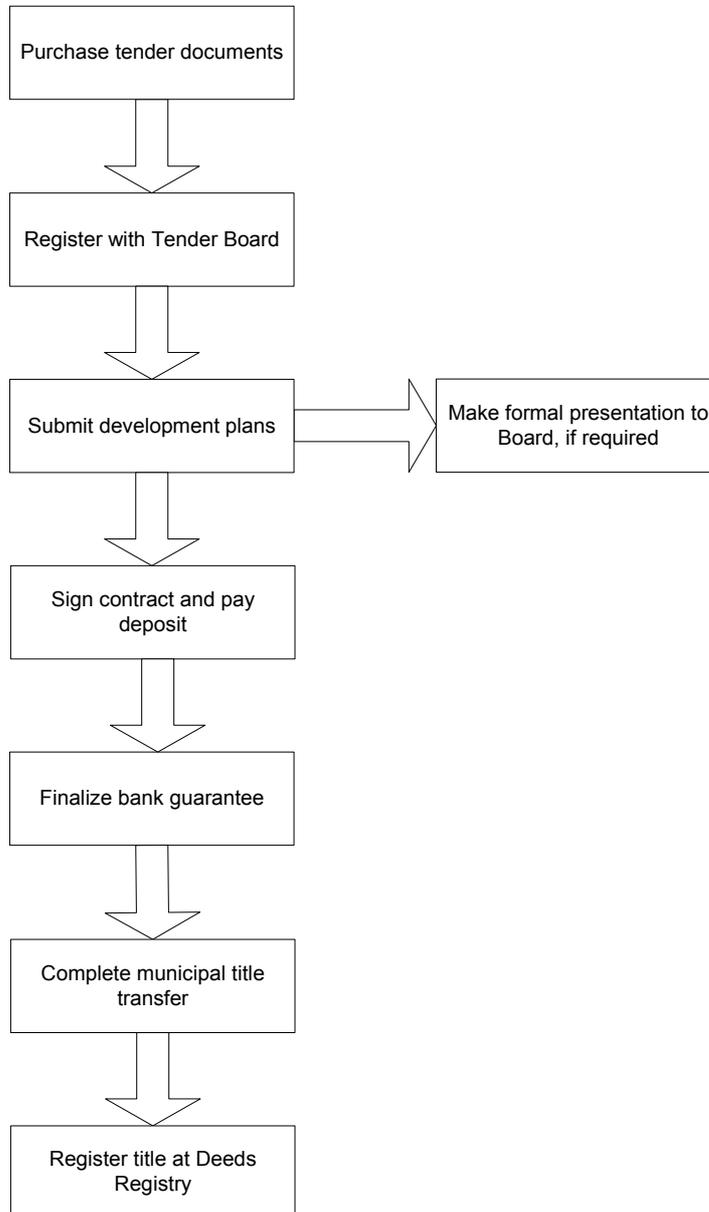
Step 6) Complete title transfer registration from Walvis Bay municipality. After the bank guarantee is secured, the investor will seek the paperwork required to transfer the title into his or her name. The registration process will take about 14–15 days before the property is registered in the Deeds Office.

Step 7) Register title deed at national Deeds Registry. The city will register the title in the normal fashion through the national title Deeds Registry in Windhoek.

Municipal guidelines state that the purchaser must commence with the development within 12 months from date of sale and the development shall be completed within 36 months from date of sale.

According to local guidelines, the definition of development is the completion of improvements, including buildings and infrastructure (i.e., issuance of a Completion Certificate by the city).

Figure 4.2: Process of Acquiring City Land through Tender



C. Acquiring Land from the Ministry of Lands, Resettlement, and Rehabilitation

In Namibia, the Ministry of Lands, Resettlement, and Rehabilitation (MoLRR) serves as the custodian of land outside municipal or town boundaries and seeks to advance land tenure of previously disadvantaged citizens. This is to be done primarily through redistributing land from large farm estates, formalizing land title of poor people living in peri-urban areas, and withholding approval for certain land sales on the private market. For example, the Ministry plans to purchase 15 million HA from white farmers for redistribution to the country's indigenous tribal groups.

According to Part VI of the Agricultural (Commercial) Land Reform Act, 1995, any foreign investor seeking to purchase a farm or rural land will need to get approval from the Minister first. Similarly, foreign investors are prohibited from buying the majority of shares in a close corporation farm business without prior approval from the Minister. To approve of such a foreign land sale the Minister must be satisfied that the acquisition of the land is:

- a) An "eligible investment as contemplated in section 5 of the Foreign Investments Act, 1990;"⁵⁹
- b) The land is capable of being used beneficially for the designated purpose; and
- c) The use of the land will not have a negative impact on the environment or will be appropriately remediated.

Land access from the state is governed by Agricultural (Commercial) Land Reform Act, No. 6, 1995 and its amendments as well as the Communal Land Reform Act, 2002. The Communal Land Reform Act governs the process for individuals, including foreigners, to obtain the right to use land under communal, traditional authority jurisdiction.

Several amendments to the Agricultural (Commercial) Land Reform Act outline the mechanism used by government to calculate the cost of leasing land, including Amendment 2, 2001, Amendment 16, 2000, Amendment 19, 2003, and Land Valuation Regulations, 2001. The tax rates are higher for non-Namibian owners and increase based on the number of farms owned. For example, a Namibian would pay a land tax rate of 0.75% of the assessed value plus and additional 0.25% for each additional farm owned. A foreigner would pay 1.75% of the assessed value plus and additional 0.25% for each additional farm owned. Presently in Namibia, actual tax amounts vary throughout the country and Ministry officials estimate the range to be between N\$10 (US \$1.54) and N\$300 (US \$46.15) per hectare.

If acquiring rural land that is still in government hands, in most cases investors will only be offered the opportunity to lease for up to 99 years. The specific steps required are noted below.

Step 1) Identify land and determine government jurisdiction. Rural land in Namibia could be completely or partially under the jurisdiction of various tiers of local governments, including smaller townships, traditional leaders, regional land boards, and village headman. The investor will need to determine what local actors have control of

⁵⁹ Agricultural (Commercial) Land Reform Act, 1995, section VI, (6), (a).

land allocation when selecting a rural site for development. The Ministry of Lands, Resettlement, and Rehabilitation can advise investors of such jurisdictional issues.

Step 1a) Survey land, if applicable. If the land is not surveyed, the investor may need to contract a private surveyor to have the land area's borders and main features demarcated. The surveyor will produce a standard survey diagram, sign it, and submit it to the Surveyor General's Office. Surveying is generally handled by the private sector in Namibia, so the fees and timeframes are negotiable and variable based on the practitioner selected, the size of the area to be surveyed, and the travel distance required.

For the purposes of land acquisition, plots that are under 50 HA can have a less involved land measurement done by a land use planner from either the public or private sectors.

Step 1b) Get survey approved by Surveyor General. The Surveyor General will inspect the survey and notify the surveyor of approval or any problems with the drawing.

Step 2) Complete and submit application form. The MoLRR has developed an application form for approval by relevant local authorities and the Ministry. The ten-page form asks for information about the investor and his or her project, including the following:

- Investor's nationality and local and international contact and marital details;
- Previous farming experience, including location and type of farms;
- Details about the land being sought; and
- Description of the proposed use the land.

Step 3) Sign lease with MoLRR. After all local authorities and the MoLRR have signed the form indicating their approvals, the investor will be instructed to come to the Ministry to sign the land lease. Guidelines for establishing lease rates are stipulated in the Act and based on the type of use as well as the size of the plot. Generally, the MoLRR will send a valuer out to the property to assign a lease value.

The whole process would take between one and two months, according to the Ministry not including whatever time is required to complete the survey.

D. Acquiring Rural Land from a Private Owner

The Ministry suggests that most suitable agricultural land is already in the hands of private owners, so acquiring rural land for agriculture is largely a privately negotiated transaction.

The process for acquiring rural land that is already in the hands of a private owner would involve four steps, the first of which is handled by private actors.

Step 1) Locate and negotiate sale. First, the investor will identify the desired land, most likely through a local private real estate agent, and negotiate a sale agreement with the seller.

Step 2) Obtain approval for transaction from MoLRR. Second, the investor would approach the Ministry for approval of the transaction. This involves completing a form and submitting a business plan. The Ministry of Lands would then review the application, consult with other Ministries as necessary (such as the Ministry of Agriculture if the enterprise is agricultural in nature and the Ministry of Trade and Industry if the business venture proposed is foreign-owned) and make a decision as to whether the sale transaction can be completed.

The decision-making process takes between one to four months, according to the Ministry, and no fees are charged. If the sale is approved, the investor will be issued a certificate of approval signed by the Minister.

Step 3) Draw up a contract of sale, hire conveyancer to draft legal documents, and pay required fees. After receiving approval for the Ministry, the investor would then contract with a local lawyer to register his or her title at the Registrar of Deeds, which is within the MoLRR. By law, a conveyancer must draft and notarize certain documents in order for a title to be duly registered. The conveyancer will collect the required taxes and fees from the investor, make the payments, and collect date-stamped receipts.

Step 4) Submit land title documents for registration. The conveyancer will be required to prepare several documents to effect a transfer of title deed and lodge these with the Deeds Registry to record the transfer of property.

E. Leasing Factory Shells from the Offshore Development Company

Founded in 1996, the Offshore Development Company (ODC) is a joint public-private partnership that administers Namibia's Export Processing Zone (EPZ) incentives regime and in some cases develops commercial infrastructure for industrial estates in order to facilitate the development of export-oriented enterprises. In so doing, the ODC operates under the Export Processing Zone Act, No. 9, 1995. According to ODC materials, the goals of the EPZ regime in Namibia, which inform approval criteria for EPZ status, are to: a) "facilitate imports of productive capital and technology; b) enhance job creation; c) promote the diversification of the local economy; d) transfer technical skills to the local people;"⁶⁰ and e) boost foreign currency earnings. A company can locate anywhere in Namibia and obtain EPZ status (see Chapter 3, Reporting, for the incentives section), and companies other than EPZ can locate on the ODCs industrial estates. As such, an investor does not need to locate in any specific, physically demarcated zone or estate to attain EPZ status.

1. ODC Land Holdings

The ODC has so far developed two industrial parks in the country in which it acts as the landlord. In these locations, the ODC sourced financing from Government and international strategic partners to defray the cost of infrastructure, built basic roofed factory shells, and leases factory shells in the area directly to companies. The ODC does not tend to develop properties in already developed markets, leaving such projects to the private sector or municipalities.

⁶⁰ "Enhancing Namibia's Manufacturing and Export Potential through Export Processing Zone (EPZ) Programme," ODC, pg. 1.

The ODC's estates are developed in large measure to spread development throughout the country. The ODC will rent buildings to exporters and export support industries like light manufacturing, cross-border traders, and for such activities as assembling, warehousing, packaging companies, and break bulk. As a policy, the duration for the lease arrangement is three to five years and renewable. Although there are no specific thresholds applied, in selecting potential tenants the ODC expresses a preference for companies that are manufacturing versus simply trading and favors companies that employ more people and invest more capital. At present, the park in Oshikango is 100% occupied, with a waiting list for potential tenants.

Working under the direction of a Cabinet decision, the ODC has developed an EPZ industrial park at the northern border village settlement of Oshikango and a multi-purpose industrial park at Katima Mulilo in 1997 and 2000, respectively. The Company is now in the process of constructing another multi-purpose industrial park at the north-eastern border point of Katwitwi. For these developments ODC bought the land from local authorities. The 12 HA site in Katima is designed to serve smaller companies than in the other ODC industrial estates. Warehouses are designed in 50 m², 200 m², 500 m², and 1,000 m² sizes. ODC owns the land at this site and acts as the landlord.

The site for the planned Katwitwi multi-purpose park at the north-eastern borders with Angola is not yet serviced. The ODC is waiting for funding from the Government to cover the cost of extending the requisite utility services to the site as well as to commission the construction of the park. As it is the case with the Oshikango and Katima Mulilo parks, the ODC has been mandated to spearhead the development of the Katwitwi park and to manage and lease it to interested business operators.

The Walvis Bay site is managed by the Walvis Bay EPZ Management Company (WBEPZMC), which is tasked to facilitate EPZ investment in Walvis Bay. The Company owns a limited amount of land for sale or lease by EPZ investors. The WBEPZMC is majority owned by government, including ODC itself with a 10% stake.

2. Lease Terms

Lease rates vary by region but all represent an "economic" rate. The economic rate is close to a market rate, but is not set to recapture the cost to ODC of developing the estate's infrastructure. In Oshikango warehouse rentals cost US \$2.20 per square meter. At the Katima EPZ, lease rates are noted in table 4.1 below.

Table 4.1: Katima Mulilo EPZ Lease Rates

Unit Size	Cost per Square Meter
50 m ²	N\$7.50 (US \$1.15)
250 m ² with office	N\$10.00 (US \$1.54)
500 m ² with office	N\$12.00 (US \$1.85)
1,000 m ² with office	N\$16.00 (US \$2.46)

The ODC leases are negotiated in terms of duration but by policy an investor cannot get a lease for more than five years in most cases. These leases can be renewed innumerable times with mutual consent from the investor and landlord.

Investors can modify a factory shell if so desired. The financing, ownership of the modifications, and actors involved in construction are all negotiable with the ODC. In such negotiations, the ODC may rely on external professionals, such as project engineers and private contractors, to undertake building modifications. However, the request for modification of the building's purpose has to be in writing. If an investor rents a purpose built facility, the ODC will offer a ten year renewable lease.

Either the ODC or the investor can break the lease if 90 days notice is given.

3. Process for Leasing Buildings in ODC Parks

The ODC does not lease land *per se* but rents factory shells and the quoted lease price includes access to the land on which the building sits. Except for in Walvis Bay, a company does not need to obtain EPZ status in order to be able to locate in an ODC industrial estate so long as the company is registered in Namibia, the proprietor has a valid work permit, and the company has an established bank account. As described in the Reporting Chapter, EPZ status is linked to fiscal incentives rather than access to land in an ODC industrial estate. The management of ODC assesses and approves lease applications for buildings. An investor wishing to lease a building in an ODC industrial estate has to first legally register a company in Namibia.

The following procedure outlines how a company would locate in an ODC industrial estate, excluding Walvis Bay. The process is summarized in figure 4.3.

Step 1) Meet with ODC staff to discuss business proposal. The investor will come to the ODC and/or Namibia Investment Centre for a meeting in Windhoek about the proposed venture. At this meeting ODC staff and the investor will discuss the company business plan, source of imports, targeted export products and markets, and availability of local suppliers. At the meeting, the investor will be given a lease application form if necessary.

Step 1a) Register with Ministry of Finance, if applicable. If the investor is operating a bonded warehouse, he or she will first have to register with the Ministry of Finance.

Step 1b) Obtain bond, if applicable. A bonded warehouse operator will need to obtain a bond in the amount determined by the Ministry of Finance to cover potential customs duties.

Step 2) Complete and submit application. The investor should next complete and submit the lease agreement with the business plan. The form asks for details about the company ownership structure, proposed business activity, projected employment of Namibians, and expected training programs for Namibians. In addition, the following submissions are required as part of the application:

- Comprehensive business plan, including description of the products or services to be offered, target markets, financial statements, and cash flow projections for the first three years;
- Documentation of company history and references;
- Notarized Namibian Certificate of Incorporation;
- Copy of Memorandum of Association;

- Copy of Articles of Association;
- Draft organization chart of EPZ company; and
- Draft organization chart of parent/holding company, if applicable.

The application will be processed by ODC management and a recommendation for approval or rejection will be articulated. In general, investment proposals and applications for EPZ status are screened by the EPZ Secretariat primarily consisting of the management of the ODC and NIC. Where necessary, the input of officials from other relevant Ministries or agencies are sought on any such project proposals. Applications that meet the set qualification criteria for admission under the EPZ regime are then referred to the EPZ Committee for final consideration and approval.

The Committee serves as a common forum for the Minister responsible for the EPZ Act to formally consult with and solicit advice from other stakeholders, such as the Minister of Finance and the Governor of the Bank of Namibia and their delegates on the substance and qualification of EPZ investment proposals and status applications. The outcome of that consultative process is expected to inform the Minister's decision whether or not to confer EPZ certification. The key members of the Committee are:

- Minister of Finance;
- Governor of the Reserve Bank; and
- Minister of Trade and Industry.

Other individuals and agencies that may be consulted include:

- Director of Customs, Ministry of Finance;
- Receiver of Revenue, Ministry of Finance;
- Permanent Secretary of the Ministry of Education;
- A representative of the Ministry of Labor;
- Permanent Secretary of the Ministry of Trade and Industry;
- A representatives of the NIC;
- A representatives of the ODC; and
- A representative of the Walvis Bay EPZ Management Company (WBEPZMC).

According to the ODC, the approval process takes one to four weeks. There is no fee for applying for EPZ status. Once a decision is made, the applicant is informed by an official letter and also called by the ODC. Simultaneously, Ministry of Finance offices in the regions and at the border are alerted to the approval of a company's EPZ status.

Approved EPZ enterprises are free to locate wherever they so choose in Namibia.

Step 3) Visit ODC park and choose unit(s). The ODC requires that investors visit the park in order to make their own assessment and select the specific building that they intend to lease.

Step 4) Register a company or sign ODC agreement. The next step is for the investor to set up a legal company or enter into business agreement with ODC.

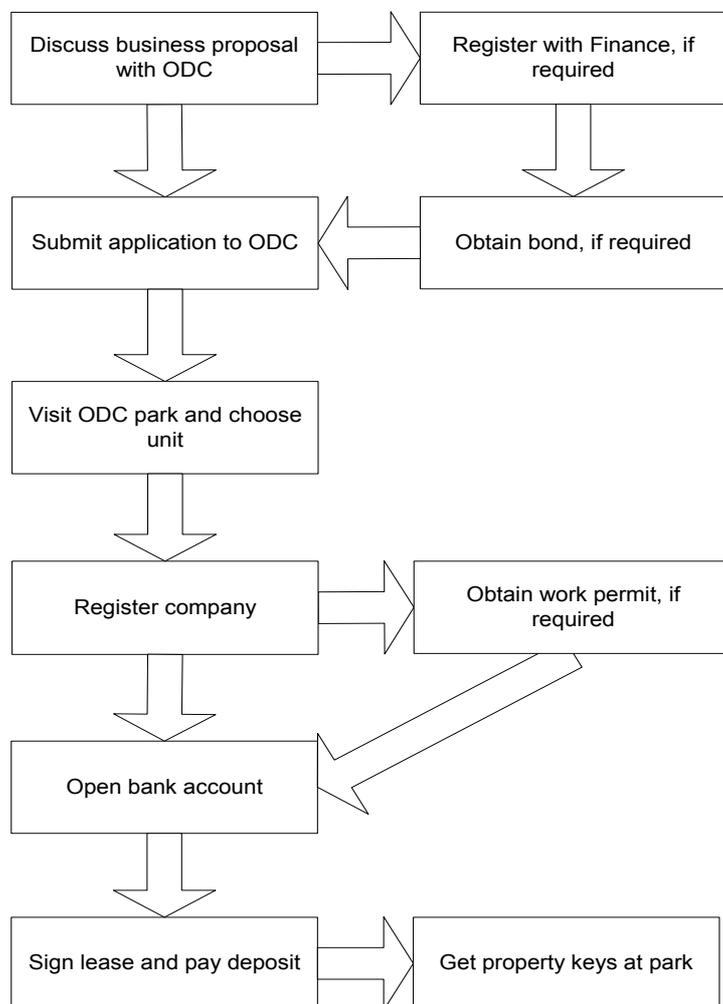
Step 5a) Obtain Work Permit, if applicable. In the case of a foreign investor, he or she will need to obtain a work permit prior to signing the lease.

Step 5b) Open bank account. To sign a lease with the ODC, an investor will have to have an open bank account and submitting proof of capital in the country.

Step 6) Sign lease and pay deposit. The investor will then be instructed to come to the ODC to sign the lease for the specific building that he or she wants to rent and pay the deposit directly into ODC bank account. The lease's validity depends on the ODC receiving the deposit receipts, equal to two months rent, and the first month's rent. The process of negotiating the lease and wiring the funds to the ODC usually takes between one day and one week, according to the ODC.

Step 7) Get property keys. The investor can then contact the park manager and get a copy of the keys to the building and site.

Figure 4.3: Process of Acquiring a Warehouse from the ODC



F. Obtaining Land from the Walvis Bay Export Processing Zone Management Company

Although the Walvis Bay Export Processing Zone Management Company can help facilitate the startup of an investor in the area, in practice the WBEPZMC does not have significant land holdings. Presently, the WBEPZMC owns approximately 20 HA of land divided into between 12 and 15 plots, two of which are currently occupied. The price of WBEPZMC land is highly subsidized and sold for fixed rates. Investors who locate on EPZ land are also free from paying land tax.

Unlike in the ODC's industrial estates, a company does need EPZ status or to be engaged in manufacturing to locate on land owned by the WBEPZMC. The WBEPZMC does not act as a traditional landlord. Rather, it serves to assist investors in the EPZ program identify an appropriate site, whether under terms of a freehold sale or lease from a private or public source, and assist in processing needed applications. In this way, the company can be seen more as a local operational representative of the ODC in Walvis Bay rather than an independent landlord. Applications for incentives will still be forwarded to the ODC in Windhoek for decision. The WBEPZMC's Board, comprised of three local officials, three private sector representatives, and one national level government official, makes decisions related to allocating land that the WBEPZMC owns.

Generally, investors will have made first contact with another regulatory agency, such as a line Ministry or the ODC, prior to coming to the Walvis Bay EPZ Management Company. Before being able to sign a lease, applicants for WBEPZMC land will need to obtain their EPZ Certificate from the ODC, as the land the Walvis Bay EPZ Management Company controls is reserved for the use of EPZ companies.

If a company comes to Walvis Bay to locate an EPZ, the following procedures take place.

Step 1) Meet with WBEPZMC Manager to discuss locating needs. In practice, if an investor wants land from the WBEPZMC he or she will be instructed to meet with the Manager in Walvis Bay. At this meeting, the WBEPZMC will discuss the investor's preferences for land and facilities, including whether or not the investor to lease or purchase land and buildings. The WBEPZMC has contacts with local real estate agents and can inform the investor of what local options are available. The WBEPZMC can also arrange for a driving tour around town to peruse locations.

Step 2) Obtain EPZ Certificate. If an investor has not already done so, he or she should obtain EPZ status from ODC before applying for Walvis Bay Export Processing Zone Management Company land. This step can be completed in advance of meeting with WBEPZMC management.

Step 3) Apply for land to the WBEPZMC Board. Assuming the investor chooses to locate on land owned by the Walvis Bay EPZ Management Company he or she will need to apply for the specific plot desired. There is no official application form but based on the initial meeting the investor will write a letter of application noting the area desired and proposed usage of the plot. The investor has the option of leasing or purchasing the land.

The Board will review the application and make a decision to grant or deny the request. Depending on the type of application and the information provided in the application on the usage of the land, it takes three to six weeks for the Board to make a decision.

Step 4) Sign lease and make required deposit payment. Assuming that the Board approves of a transaction, the investor is required to sign a sale or lease agreement and make the required initial payments.

For a sale, WBEPZMC guidelines suggest that a payment of 25% of the sale price be made when signing the contract for sale. For EPZ companies, the remaining amount must be paid to the WBEPZMC within four months from the date of sale or on the property transfer date, whichever is first, or such other arrangement that is approved by the Board. The development of the property must commence within six months of the date of sale and must be completed 15 months after the sale date. If any of these conditions are not fulfilled, the land reverts back to the WBEPZMC and the investor's deposit is forfeited.

The WBEPZMC's subsidized price guideline, over which the Board has some discretion in approving, is N\$25 (US \$3.85) per square meter for EPZ companies. This compares with a current market price of approximately N\$115 (US \$17.69) per square meter in Walvis Bay.⁶¹

For non-EPZ companies, the remaining amount must be paid to the WBEPZMC within four months from the date of sale or on the property transfer date, whichever is first. The development of the property must commence within four months of the date of sale and must be completed ten months after the sale date. If any of these conditions are not fulfilled, the land reverts back to the WBEPZMC and the investor's deposit is forfeited.

Non-EPZ companies engaged in manufacturing can also acquire land from the WBEPZMC but the recommended sale price is N\$40 (US \$6.15) per square meter.

After signing the lease, the investor can begin operating or developing the site. Site development on Walvis Bay Export Processing Zone Management Company land is subject to the same procedures administered by the city as any other property.

The Ministry of Trade and Industry and ODC, in collaboration with the Ministry of Finance, the National Planning Commission, and the Bank of Namibia, undertake periodic visits to EPZ companies and compile reports on these companies' performance. These agencies monitor EPZ status companies' compliance with the terms of their admission under the EPZ regime.

H. Analysis

Land acquisition does not figure prominently among investor complaints in Namibia. Overall, sufficient land is available for investment, acquisition procedures are fairly transparent and easy to complete, and officials and the private sector report few problems related to title surety. An exception to this is that some investors and observers suggest that the scarcity of land zoned for industrial uses in Windhoek is

⁶¹ Walvis Bay EPZ Management Company estimate.

inflating prices. While the city has procedures to service and zone new land for commercial and industrial development, some perceive demand is outpacing supply.

Another issue raised—beyond the scope of this analysis of administrative and procedural constraints to investment—is that investors in rural areas have difficulty obtaining loans from local banks. According to some investors, banks in Namibia will only lend against land in major urban areas, which limits the viability of businesses in rural areas. It is probable that the successful completion of the country's land reform program, which involves the redistribution of rural farmsteads, will improve the surety of rural titles and encourage banks to lend to rural enterprises.

As elaborated below, a few additional observations are warranted.

Issues

Land identification and acquisition is easy in urban areas but capacity and administrative integrity varies in smaller locations. According to the NIC and real estate agents, most investors outside of the natural resources and tourism areas are likely to pursue a location within one of the country's municipal boundaries. In Type I municipal areas (Walvis Bay, Swakomund, and Windhoek), the private market functions according to free market norms, and investors are free to buy or lease land on market terms with no undue state intrusion. Indeed, the relative ease of land acquisition should be highlighted as a reason for investment in Namibia by the NIC. Additional guidance on the land options and procedures for acquisition should also be included in future NIC promotional and facilitation materials. However, the timeframe, cost, and availability of land allocated by the country's local councils remains somewhat murky, and NIC staff would be well advised to find out more about how this rural land market works in practice.

However, some observers note that acquiring land under the jurisdiction of smaller municipalities may be less easy and efficient. Some investors suggest that the regional and smaller town and village councils do not meet regularly and are slow to approve of land transactions. In some instances, the transition of the communal land regime in which individuals could obtain an inexpensive right to land without any responsibility for developing it, thereby creating opportunities for speculation and local corruption, has not been effected. This means that individuals in rural areas can hold on to rights to land, paying very little money to government for such rights, and be in a position to sell the right for a large sum once an investor is interested in developing the land.

Rural investors cannot complete certain procedures locally. Related to the issue of local government capacity is the lack of local representatives of national government agencies. Many critical investment functions, including obtaining sectoral licenses, registering titles, and tax registration, can only be completed in Windhoek. This means that investors from elsewhere in the country must physically come to Windhoek to complete essential government business or rely on an intermediary, such as a lawyer. In either case, this represents a cost in time and money. Exacerbating this is the occasional unresponsiveness of civil servants. Several investors note that some government officials can be difficult to contact and few government agencies have voicemail or foolproof reception services. One investor noted that when coming to Windhoek from elsewhere in the country officials sometimes cancel appointments at the

last minute, requiring that he stay in the capital longer to reschedule the meeting, thereby incurring extra expenses and extending his time away from the company.

Information on land availability in rural areas is not easy to find. Identifying available land beyond Type I municipal boundaries can be challenging. While several government agencies, including the NIC, MoLRR, Ministry of Agriculture, Ministry of Environment and Tourism, Namibia Tourist Board, and the state-owned Namibia Wildlife Resorts Company, have some information on land, none can authoritatively or definitively advise investors about rural land availability, cost, and timeframe for acquisition. Further, the performance of local town councils varies and in some areas land access is slower and more difficult than others. This issue is particularly problematic for investors in such sectors as tourism and mining, which tend to locate well outside of municipal jurisdiction.

Local deeds registration process in Walvis Bay could be speedier. The 15 day timeframe for registering new title deeds in Walvis Bay could likely be shortened. The overall timeframe for acquiring land varies in part based on how quickly the investor can prepare his or her development plan, as needed, and obtain a bank guarantee but usually takes a period of a few months. Any reductions in this timeframe would shorten the timeframe for effective utilization of property for investment purposes.

Acquiring rural land and land from the Ministry of Lands, Resettlement, and Rehabilitation is restrictive. Land acquisition in rural areas can be cumbersome and foreigners cannot purchase farm land nor purchase a majority share in an existing farming enterprise without special approval from the Ministry. From an investment promotion and jobs creation point of view it is not clear why foreign investment in agricultural activities would be prohibited. Encouraging foreign investment in the agricultural sector is particularly useful in a country like Namibia where water is scarce, food imports are high, and 94% of rural household cite agriculture as their main activity.⁶² Modern agricultural techniques developed in similarly arid climates may help create jobs and improve local food security but also contribute to innovations in the sector.

Acquiring rural land and land from the Ministry of Lands, Resettlement, and Rehabilitation can be a slow process. The process of acquiring rural land involves seeking approval from up to four stakeholders, including the Ministry of Land, Resettlement, and Rehabilitation, tribal chiefs, and village or regional councils.. The process can also be impacted by the status of the land reallocation process. In all, the process can take several months; an average of three is cited by the Ministry. This delay will have particular impact on the tourism sector, as many major anchor projects, such as resorts, will be delayed in becoming operational while waiting for approval to acquire or lease land from the MoLRR and local officials.

Perception of a lack of consistent transparency of negotiation and tender processes. Some observers raised concerns about the transparency of some municipal negotiations and tender processes. While most investors suggest that the procedures in place provide for needed transparency, including advertising plans to allocate land and ensuring for built-in comment periods for potential objections, in some cases these

⁶² Southern Africa Institute for Environmental Assessment, *Environmental Impact Assessment in Southern Africa*, pg. 151.

procedures may not be followed in full. Some investors note that it is not clear why cities decide to use one mechanism rather than another. Particularly given that the cities have procedures for public auctions, some question why private tenders should be allowed. A recent high profile scandal resulting in the resignation of a Windhoek city official and earning public ire only underscore the need for such vigilance.

Unclear if Namibian incentives programs are well-targeted and cost effective. Namibian investment incentives in general should be reevaluated to assess their cost-effectiveness and how well targeted they are. Similarly, the institutional landscape related to incentives and promoting the country for investment and trade should be reexamined. The NIC, ODC, Namibian Tourism Board, and Walvis Bay Export Processing Zone Management Company all have a role in promotion and advising on or approving of incentives. It is likely a more streamlined institutional structure could be introduced. Part of a review of incentives should look into whether or not the ODC's development of industrial parks continues to contribute to the country's development and if the physical assets managed by the ODC and WBEPZMC are leased at appropriate rates. Based on demand, it seems that industrial land could be developed by private actors, thereby reducing government's expenditures and role in the economy. Given that the ODC's industrial estates are oversubscribed, it is clear that the lease rates offered could be market-based. Estimates vary, but in Walvis Bay, for example, WBEPZMC land is sold for approximately 80% of its market value.

Short length of ODC leases discourages long-term investment. One of the critical factors investors consider when making a locating decision is the cost and availability of land. The ODC's policy of only signing five year lease agreements with investors is likely to discourage investors from making larger, more permanent investments. In many countries, leases in industrial estates are much longer, often extending up to 99 years. Rather than making all tenants only get a five year lease, maintaining ODC power to evict tenants that are behind on their rent or otherwise violating lease provisions can be better addressed by making modifications to the lease agreement to empower eviction if the tenant violates the contract.

EPZ Committee meetings are not as regular as intended. Although the process outlined above is the set procedure for all applications for EPZ status the ODC concedes that in practice it has often been difficult to have all the three key EPZ Committee members available. As such, quite often it is not possible to convene and have applications received considered through a formal committee meeting. In this case where the other Committee members are not available, applications that have been passed the screening by the EPZ Secretariat and also checked with other relevant Ministries/stakeholders at the officials' level are referred directly to the Minister. This is the only instance or reason that can result in applications not going through the committee stage and instead referred directly to the Minister responsible.

WBEPZMC Board decision process is unnecessarily slow. The WBEPZMC Board takes three to six weeks on average to approve of a sale of land. It is not clear why the Board cannot make such decisions in a shorter timeframe. The WBEPZMC has a reputation among investors for being generally responsive and helpful, but shortening this timeframe would further improve service for potential investors.

Paying monthly taxes increases transaction costs. Land taxes are paid in monthly installments along with the municipal fees for such services as water and power. This

schedule, rather than the annual land tax payments common in many countries, increases the administration required of investors to pay taxes.

Recommendations

Improve and speed up land acquisition process in rural areas through capacity building. Working with the Ministry of Regional and Local Government and Housing each individual council should assess its process for land allocation with the goal of improving transparency and speed. The councils should adjust meeting schedules so that requests for land do not wait for approval unnecessarily. As needed, the Ministry should coordinate the delivery of technical assistance to improve capacity at the local level so that all cities can perform more or less equally and efficiently in allocating land. The government should also consider if it needs to improve legislative and administrative protections against speculative land ownership.

Improve central government responsiveness to rural investors. Improving government service for investors nationwide requires a two-fold approach. First, increasing local government capacity and authority is required on an on-going basis. In some instances, devolution of some central government functions may be possible as local administrative capacity improves nationwide. In parallel, national government officials should be sensitized to the importance of customer service and being responsive to the public.

Improve information availability related to non-urban land. Identifying available land beyond Type I municipal boundaries can be challenging. While several government agencies, including the NIC, MoLRR, Ministry of Agriculture, Ministry of Environment and Tourism, Namibia Tourist Board, and the state-owned Namibia Wildlife Resorts Company, have some information on land, none can authoritatively or definitively advise investors about rural land availability, cost, and timeframe for acquisition. Further, the performance of local town councils varies and in some areas land access is slower and more difficult than others. This issue is particularly problematic for investors in such sectors as tourism and mining, which tend to locate well outside of municipal jurisdiction.

Speed up local deeds registration process in Walvis Bay. The 15 day timeframe for registering new title deeds in Walvis Bay could likely be shortened if the deeds office reengineered its review process and prioritized improving speed. This would shorten the overall timeframe required for land allocation in the city.

Reevaluate restrictions on rural land access. While land redistribution is an important goal for the Government of Namibia and a sensitive subject given the country's history, restrictions on foreign ownership of agricultural land should be revisited. Given Namibia's high unemployment rate, keeping the agricultural sector all but closed to FDI may be unwarranted. Further, there is considerable confusion among investors as to precisely what government policy is in regard to allowing FDI – whether in agriculture or tourism – on the commercial farm areas. At the very least the policy should be better articulated.

Improve response time by the Ministry of Lands, Resettlement, and Rehabilitation and other actors in approving of land sales. The process of acquiring rural land involves seeking up to four separate approvals. It is not clear if any of the agencies involve commit to any particular timeframe and the process can take months. It is

recommended that all actors improve their approval procedures so that decisions can be made quickly. Each agency should also commit to a quick review period and include deemed consent provisions in their governing legislation that would allow an investor to proceed with a sale if the government does not complete its review within in the timeframe allowed.

Improve transparency and consistency in municipal land allocation. Present land allocation procedures in Namibia's Type I cities contain safeguards to ensure that auctions and tenders are transparent. Cities should ensure that these procedures are followed assiduously. At the same time, cities should do a better job of explaining to the public why it would use a tender, private negotiation, or auction process for a particular plot of land. Cases of corruption should be vigorously punished.

Lengthen ODC leases. The ODC states that its short lease terms enable it to ensure that its factory shells are productively used and rent is collected. It also suggests that none of its tenants have complained about the lease lengths. However, to encourage larger and longer-term investments, the ODC should increase the maximum length of time an investor can rent in an ODC property. At the same time, the ODC should revise its lease so that it can evict a tenant for non-payment of rent and other egregious breaches of contract. As seen in Box 4.1, longer-term leases tend to encourage longer-term investments.

Improve response time of WBEPZMC Board. Understanding the internal decision-making mechanism used by the WBEPZMC Board is beyond the scope of this analysis and it should be studied by the ODC. This analysis should pinpoint the bottlenecks in the process of making a decision on a lease application and make appropriate remedies so that the process is shortened.

Consider enabling investors to pay land taxes once per year. The minor nuisance of requiring investors to pay land tax 12 times a year could be eliminated if the cities switched to a single annual tax payment. This would simplify tax administration for both the investor and municipality.

Box 4.1: The Structure of North American Long-term Ground Leases and their Applicability in Transitional Land Markets

Long-term leases are often described as suitable alternatives to outright land ownership for foreign investors in countries where foreigners are excluded from real property ownership. In general, this is true if foreigners can conclude lease agreements that contain:

- *Sufficient lease terms*, usually between 30 and 99 years, with clear renewal conditions;
- *Transferability of leases* to third parties, including mortgage lenders;
- *Protection of lenders' rights*, including the right to foreclose;
- *Lessee's right to develop flexibly*, including market-driven design changes and sub-leases; and
- *Clear contract breach provisions* governing non-performance and termination.

The modern North American long-term ground lease model typically covers a period of 50 to 99 years and is most commonly used to develop transportation infrastructure (ports, airports, etc.) or to re-develop existing municipal property. Both municipal governments and developers tend to prefer land sales as the most appropriate vehicles for more generic development. In cases where outright government participation in a project is deemed desirable, public/private ventures are sometimes preferred to lease agreements.

Even though long-term leases may be less desirable than outright land sales for generic development, many transitional economies have adopted long-term lease regimes as pragmatic solutions to overcome political opposition to foreign land ownership. Especially in post-communist and formerly centrally planned economies, long-term lease regimes have allowed policy makers to:

- *Provide land to foreign investors* to meet economic development objectives in a politically acceptable way;
- *Conclude contracts that are similar to those available in market economies* and with which international investors are already familiar;
- *Impose modern land use controls on specific properties*, in the absence of good planning controls in the rest of the economy;
- *Collect revenue from property* to develop related infrastructure, especially where property taxation is weak;
- *Participate in income from property appreciation*, especially in cases where public investment and participation helps to create increased property values;
- *Play a strong role in determining future land use*, especially in cases where planning controls have been weak or absent; and
- *Dispose of property in a flexible, low-risk manner* and postpone final sale until a stable property market is established.

Sources: TSG; David Dale-Johnson & W. Jan Brzeski, *Long-term Public Leaseholds in Poland: Implications of Contractual Incentives*, Lusk Center for Real Estate, University of Southern California, June 2000.

II. Site Development and Obtaining Utilities Connections through Cities

As elaborated below, the site development process in Namibia is fundamentally the same in the major cities. The procedures for both Windhoek and Walvis Bay are represented herein. Because obtaining utility connections is often done through the municipality and is integrated into the site development process in most cases, obtaining utilities connections from the municipalities is also covered in this section.

A. Site Development in Windhoek

Developing a site is regulated by several departments within the Windhoek Municipality, including the planning, economic development, infrastructure, health, and environment departments. The process involves the submission of building plans for approval by the various technical departments, undergoing inspections, and then registering for specific services. In municipal areas, electricity, water, and wastewater services are handled by the municipality and connections are obtained from the city during the site development process. The state water and power companies contract with the city to distribute power and water to end-users.

The process to get a site development plan approved is summarized below.

Step 1) Submit plans for approval. After finalizing his or her development plans, the investor will present them to the municipality for scrutiny. In most cases, the investor or his architect or engineer will arrange for a meeting with relevant municipal officials to discuss aspects of the development. For example, given Namibia's arid climate water usage is an important planning consideration that may constrain the feasibility of certain projects. The Town Planning Department will inform an investor of the zoning designation of a particular area or plot. The individual departments involved in the review can vary based on the complexity and location of the development, but typically involve managers from the city's infrastructure services, Health, Environment, and Planning Departments in addition to the local fire services.

Plans can either be approved or sent back for modifications. The response to building plans, which can be an approval, conditional approval, or rejection, generally comes within one month.

This approval would be signified by the issuance of a building permit. The building permit is valid for 12 months and can be renewed if construction is not completed within one year.

Step 1a) Undertake municipal Environmental Impact Assessment, if applicable. In some cases, a new project will require an EIA. The Properties Department or Customer Care Center may inform the investor if he or she should contact the Environmental Department. If the Environmental Department judges that a development is likely to have a significant environmental impact, it will request an EIA be undertaken. Pending approval of the EIA and corresponding plan to mitigate potential environmental damage, the investor can proceed with site development.

The Department's review of an EIA takes between three and six weeks and may involve a site visit. There are no fees associated with this review.

On an on-going basis, the Environmental Department may also inspect facilities if it suspects potential problems. Health and labor inspectors may also contact the department if an environmental question arises during their normal inspections.

Step 2) Write to request the installation of a new utility connection. The investor will write a letter to the city's Chief Executive Officer requesting the installation of a new connection. The city will respond and ask the investor to come into to a meeting with relevant city officials.

Step 3) Attend project planning meeting and complete application form. Next the investor will attend a meeting at which the property’s utility requirements are discussed. At the meeting the investor and city officials will negotiate on the cost and timeframe for completing the new connections. The meeting will include city representatives prepared to discuss the costs and feasibility of developing needed water, power, and road transport services. A single application form can be used to request both services. The form asks for an investor’s current and former address, the use designation (“domestic/shop/office/other”), and electricity or water meter number.

Step 4) Pay connection deposits. Next, the investor is required to pay an upfront deposit designed to capture the estimated cost of installing new connections. The deposit is paid for at the city Cash Office and a receipt is issued. Investors are required to pay a water connection deposit amount based on the size of the connection, as noted in table 4.2 below. The deposit for a water connection is designed to equal the estimated cost of building the connection plus 15% of that cost charged as an administration fee. Overpayment will be refunded to the investor if the deposit amount exceeds the cost of installing a new water connection. Meters will be installed to measure water and power use.

Table 4.2: City of Windhoek Water Connection Fees

Water Connection Size	Minimum Deposit Amount	VAT Surcharge
15 mm connection	N\$1,140 (US \$175) + 15%	15%
20 mm connection	N\$1,260 (US \$194) + 15%	15%
25 mm connection	N\$1,490 (US \$229) + 15%	15%
40 mm connection	N\$2,240 (US \$345) + 15%	15%
50 mm connection	N\$3,530 (US \$543) + 15%	15%
80 to 99 mm connection	N\$16,920 (US \$2,603) + 15%	15%
100 mm connection	N\$19,990 (US \$3,075) + 15%	15%
Larger than 100 mm connection	Estimated actual cost + 15%	15%

Power connection costs are fixed in relation to the type of connection required. Table 4.3 summarizes the power connection costs presently charged by the City of Windhoek.

Table 4.3: City of Windhoek Power Connection Fees

Type of Connection	Tariff, including VAT
Cable connections	
10 mm ² X 2 Core PVC Cable	N\$2,531.15 (US \$389)
16 mm ² X 2 Core PVC Cable	N\$2,635.80 (US \$406)
16 mm ² X 4 Core PVC Cable	N\$3,257.95 (US \$501)
T-joint Connections	
16 mm ² X 2 Core PVC Cable	N\$3,869.75 (US \$595)
16 mm ² X 4 Core PVC Cable	N\$4,571.25 (US \$703)
Electrical Pole Connection	
16 mm ² X 2 Core PVC Cable	N\$2,957.80 (US \$455)
16 mm ² X 4 Core PVC Cable	N\$3,558.10 (US \$547)
Overhead Connection	
Single phase	N\$1,424.85 (US \$219)
Two phase	Based on an estimate at application
Three phase	Based on an estimate at application

Step 4) Establish billing account. After the deposit is paid, the investor will establish a billing account with the Billing and Revenue Collection Department. Bills are issued on the 15th of each month. Payments can be made through use of a company check, speed points, cash, or through a bank account.

Regulators from the city of Windhoek suggest that new power and water connections can be installed and functioning within an average of seven days. In areas where existing power and water lines are not well established, this timeframe can be exceeded.

Step 5) Host foundation inspection. As construction proceeds, city officials will inspect the construction at certain critical phases. The first inspection is done when the foundations have been laid. If the foundations deviate from the building plans or are physically flawed the city will impose a re-inspection fee of N\$50 (US \$7.69) and come back to re-inspect the foundations once improvements have been finalized.

Step 6) Host additional inspections, if required. In some cases, city officials will conduct other inspections. In general, the city will rely on the assurances of the professionally certified engineer that is working on behalf of the investor that other phases of construction are being completed up to standards and according to the approved plans. However, in some cases inspectors may physically inspect at other critical junctures of the site development process, such as when on-site drainage is completed.

Step 7) Transfer or finish utility connections. Before the final inspection, the normal water, wastewater, and power connections should be installed. Generally, the contractor will complete the final connections under the supervision of city engineers. Only certified and licensed contractors, including electricians and plumbers, can complete electrical wiring and water connections. Meters that measure water and electricity use will be installed or repositioned depending on their existing status.

In some cases, the investor can merely take over the accounts established by the consulting engineer by completing a form to establish new permanent connections and paying the deposit required. In other cases, the connections may already be established in the investor's name.

Establishing an account for city services requires the completion of a form and the payment of a deposit. At present, all companies are required to pay the city for water, wastewater, and electricity services.⁶³ While an investor is also required to pay a fee for solid waste disposal, he or she can also contract with private trash companies for waste removal.

Step 8) Host occupation/completion inspection. Prior to the use of the building, the city requires a final inspection to ensure that the construction can be occupied and used as planned.

8a) Register with health department and host health inspection, if required. Certain types of businesses are required to register with the department of health and undergo a health inspection prior to becoming operational. Investors must complete a

⁶³ During 2005 there are plans for three new public companies to handle power distribution.

form, pay an annual inspection and registration fee, and show proof of identify to register. The registration must be renewed annually. Presently, about 20 types of companies, including factories, must undergo a health inspection at the end of the site development phase. Inspection fees depend on the classification of the enterprise but range from N\$59.45 (US \$9.15) to N\$442.75 (US \$68.12). A Fitness Certificate is issued at the completion of a successful inspection. This Certificate remains valid unless a firm fails an inspection.

Investors will receive a monthly bill from the city summarizing the fees due for public services and taxes. Payments can be made by check, cash, or an electronic transfer of funds.

Including completing construction, passing inspections, and obtaining services connections, investors and facilitators estimate that developing an average project meeting the established, and original zoning designation takes between three and five months.

1. Transferring Ownership of an Existing Connection

To obtain water and power services in a location where services are already installed, an investor will complete an application form and present a form of government identification, including a passport, and a copy of the deed of sale or lease for the property needing service. The form, "Application for the Supply of Electricity/Water/Refuse Removal," is used to request connection of services. It is assumed that the previous tenant will have filed a disconnection form to notify the city that the old account should be closed.

Regulators suggest that it takes on average two days to connect to services where an existing water line exists. The result of the process is the establishment of an account for water service billing.

2. Solid Waste

All companies and individuals within Windhoek's urban boundaries are also charged a solid waste fee. The city gives each company or person a 260 liter garbage can. During an initial conversation with the Economic Development Department an investor will be asked about any specific solid waste needs.

B. Site Development in Walvis Bay

Site development in Walvis Bay is regulated by several departments within the municipality. The process to get a site development plan approved is summarized below and in figure 4.4.

Step 1) Submit plans for approval and pay scrutiny fee. After finalizing his or her plans, the investor will present them to the municipality for scrutiny. In most cases, the investor or his architect or engineer will arrange for a meeting with relevant municipal officials to discuss aspects of the development. For example, given Namibia's arid climate and Walvis Bay's particular geography, water usage is an important planning consideration that may constrain the feasibility of certain projects. The individual departments involved in the review will vary based on the complexity and location of the

development, but typically involve managers from the city's infrastructure services, health, and planning departments in addition to the local fire services. In some cases, the development may require engineering certificates.

The review of building plans costs N\$50 (US \$7.69) plus N\$1 (US \$0.15) per square meter of improvements proposed. This cost includes fees for issuing the building permit and hosting municipal site development inspections.

Plans can either be approved or sent back for modifications. City officials suggest that their approval of plans takes an average of 28 days.

This approval would be signified by the issuance of a building permit. The building permit is valid for 12 months and is renewable if construction is not started within the given time. Once work has started there is no need for any further approvals as the plan expires after one year of approval if building work has not commenced.

Step 2) Apply for temporary water and power connections. Once the building plans are approved, the investor will apply for the installation of temporary power and water connections required to complete the construction process. The investor will complete one form to get temporary electricity and one of two forms to get water services. A separate application form is required for "circuit breaker revision." The investor can obtain a connection for purified effluent used for irrigation and for potable water. In practice, these connections are often arranged and paid for by the engineer or construction company hired to undertake the work. Meters that measure water and electricity use will be installed.

City officials suggest that temporary connections are generally installed within one week.

The electricity connection deposit amount required varies based on the type and size of the connection. The fees range from N\$133.06 (US \$24) for large special power consumers to N\$7,500 (US \$1,154) for three phase bulk cable connections.

The current Walvis Bay water deposit amounts are included in table 4.4 below.

Table 4.4: Walvis Bay Water Deposit Costs

Service	2005 Tariff	+ VAT
Connection/disconnection	N\$86.52 (US \$13.31)	15%
Testing of meter	N\$99.83 (US \$15.36)	15%
Special meter reading request	N\$46.59 (US \$7.17)	15%
Connection where no service is available	Actual cost of labor and materials + 15%	15%
Consumer connection deposit	N\$514.69 (US \$79.18)	15%
Temporary connection deposit	N\$83.79 (US \$12.89)	15%
Replacement of broken/tampered with seal	N\$86.52 (US \$13.31)	15%

Construction sites in Walvis Bay are required to have appropriate sanitation facilities for workers as discussed in Regulation 10 of the Standard Building Regulations, 1973.

Step 3) Host foundation inspection. As construction proceeds, city officials will inspect the construction at certain critical phases. The first inspection is done when the

foundations have been laid. If the foundations deviate from the building plans or are physically flawed the city will impose a re-inspection fee of N\$50 (US \$7.69).

Step 3a) Host additional inspections, if required. In some cases, city officials will conduct other inspections. For example inspectors may inspect the site when on-site drainage is completed. In general, however, inspectors will rely on the assurance of the professionally certified engineer that is working on behalf of the investor that other phases of construction meet applicable standards.

Step 4) Transfer or finish utility connections. Before the final inspection, the normal water, wastewater, and power connections should be installed. Generally, the contractor will complete the final connections under the supervision of city engineers. Only certified and licensed contractors, including electricians and plumbers, can complete electrical wiring and water connections. Meters that measure water and electricity use will be installed or repositioned depending on their existing status.

In some cases, the investor can merely take over the accounts established by the consulting engineer/construction company by completing a form to establish new permanent connections and paying the deposit required. In other cases, the connections may already be in the investor's name.

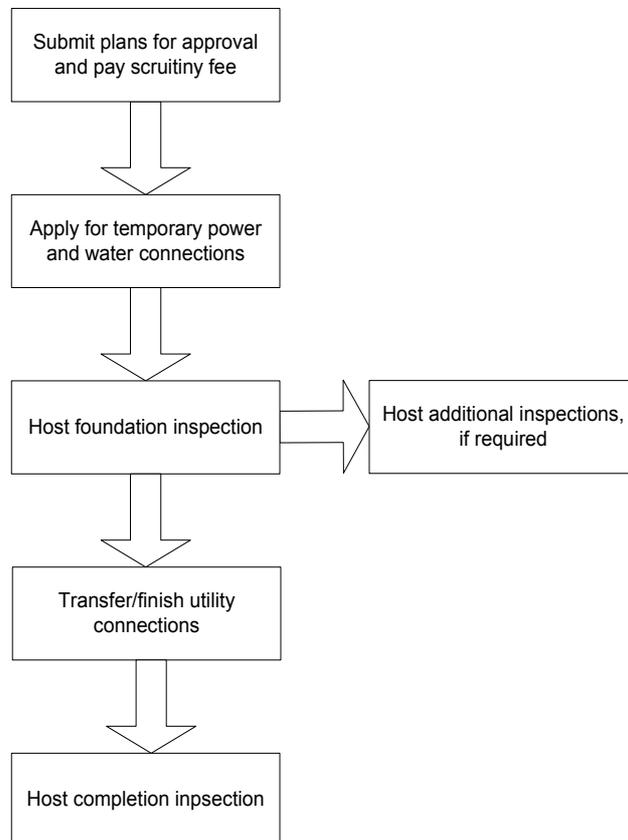
Establishing an account for city services requires the completion of a form and the payment of a deposit. At present, all companies are required to pay the city for water, wastewater, and electricity services.⁶⁴ While an investor is also required to pay a fee for solid waste disposal, he or she can also contract with private trash companies for waste removal.

Step 5) Host occupation/completion inspection. Prior to the use of the building, the city requires a final inspection to ensure that the construction can be occupied and used as planned. The result will be a Certificate of Completion conferring city approval to operate.

Investors will receive a monthly bill from the city summarizing the fees due for public services and taxes. Payments can be made by check, cash, or an electronic transfer of funds.

⁶⁴ As of July 1, 2005, there are plans for a new public company to handle power distribution.

Figure 4.4: Site Development



C. Rezoning

To obtain permission to use a plot of land for a purpose that does not correspond with the established zoning, an investor must apply to rezone the land. To change zoning designation involves the legal process of changing a town's planning scheme. In practice, in Namibia investors will tend to hire an architect or consultant to handle the process of rezoning land.

To obtain a change in zoning the investor will undertake the following process.

Step 1) Write a letter to the city to request rezoning a property. Rezoning begins by expressing in writing one's desire to develop a property in a manner that does not correspond to the existing zoning.

Step 2) Advertise intentions in local media. The investor must advertise his or her intention to change the zoning designation and describe the project and use proposed. The advertisement must include an address where objections can be mailed. The investor must allow two weeks for opponents to file an objection in writing. This advertisement must appear in two different national newspapers for two consecutive weeks.

Step 3) Inform contiguous neighbors in writing. The investor must also notify the owners of adjacent properties of the request to change the zoning to undertake the project proposed.

Step 4) Post signs on property indicating rezoning proposal. Signs must be posted on the property boundaries in a prescribed manner alerting the public that the plot demarcated is pending approval for rezoning.

Step 5) Prepare a response to objections and submit a proposal to the Town Planning Department. The investor will review the objections and respond in writing to them. The investor's proposal should seek to convince regulators of the benefits of the change of zoning.

The Town Planning Department will review the request and circulate it among the relevant departments within the municipality. This review takes approximately one month. If the technical staff agrees with the rezoning request, it is passed to the City Council's Management Committee.

If the zoning request is not approved, the city will inform the investor that modifications or further discussion is required.

The Management Committee, which meets monthly, will review the request and either approve or reject it. If approved, a recommendation is forwarded to the full council for a vote. The request must be put on the Council's agenda for consideration, which can take time as it must compete with other Council business scheduled for deliberation. One process expert suggests that the process of clearing the Management Committee and being approved as a resolution by the full Council takes three months on average.

When approved by the City Council, the proposal is forwarded to the Namibia Planning Advisory Board (NamPab) in the form of an amendment to the town planning scheme. NamPab is constituted to advise the Minister of Regional and Local Government and Housing, who must ultimately personally approve of a rezoning request. If the City Council or Management Committee denies a rezoning request, the investor can appeal to NamPab.

In practice, the city tends to consolidate numerous individual rezoning requests. Even if an individual rezoning request has been approved by the Council, if it is bundled together with a group of other proposed zoning changes the consolidated package must be re-approved by Management Committee. The proposed amendment must be advertised in the government gazette for two weeks and again objections can be filed for consideration. If there are no objections, this re-approval typically takes one month. If there are objections, the process can take longer while city officials weigh the proposal and objections.

After the Management Committee has approved of an individual or consolidated rezoning request, the recommendation is submitted to NamPab. NamPab meets five or six times per year. NamPab will review the rezoning request and make a recommendation for the Minister. The minutes of the NamPab meeting in which the rezoning request was approved must be signed by all members in attendance before the Minister will sign the final approval.

If the Minister concurs, he will sign the final approval of rezoning and this will be advertised in the government gazette. Obtaining the Minister's signature takes an average of two to three months.

Step 6) Pay betterment tax. When rezoning is approved, the municipality will collect a betterment tax based on the value added of the new property. A city valuer will come to the property to assess the new value. The tax rate is 50% of the value of improvement.

After this, the regular site development process, as outlined above, can begin.

D. Analysis

Site development procedures in Namibia are cited as relatively clear and well-administered. Developing a site is generally not considered cumbersome or onerous in major urban areas. As with land allocation, smaller towns are likely to be less efficient and lack similar capacity to properly review building plans. Investors and process experts suggest that boundary disputes are very rare and procedural requirements are fairly transparent. Nonetheless, a few areas where improvements can be made are noted below.

Issues

Utilities access, quality, and availability are also generally well-rated but cost is a factor. As an arid country with limited natural water resources, several investors noted that water in Namibia is comparatively expensive. However, most investors suggest that they do not face significant problems from delays in obtaining connections, the accuracy of billing, or reliability and quality of service provision.

Rezoning procedure plagued by unnecessary delays. The rezoning process includes some procedures that could be shortened to make the process less time consuming. Specifically, advertising rezoning applications both individually and as part of a larger amendment duplicates the process of soliciting objections, thereby adding time. Similarly, the Management Committee approves rezoning requests individually and as part of a bundled request to amend the city master plan. Finally, reportedly NamPab can delay the process by not getting a quorum for some meetings and not finishing official minutes in a timely fashion.

Windhoek municipal environmental regulations are not in effect. Regulations that govern environmental clearance in Windhoek are incomplete, leaving environmental protection largely a voluntary activity. This leaves development in the city vulnerable to unnecessary environmental risk. This also means that investors will have difficulty understanding what to do in regard to EIAs and other environmental mitigation issues.

Recommendations

Consider if privatization would reduce costs and improve services. In many cases, the well-regulated private sector participation in the provision of water, power, and telecommunications services has been demonstrated to improve services and produce competition that lowers costs. In Namibia's case, the feasibility and desirability to introduce competition should be studied.

Streamline rezoning procedure. The rezoning process in Namibia, lengthy in most countries, should be shortened to make the process less time consuming. Specifically, the requirement to advertise and take objections to rezoning applications both individually and as part of a larger amendment should be abolished. Once an individual rezoning request has been advertised it should be clear to proceed before the Management Committee. The Management Committee should condense its two reviews of individual and bundled rezoning requests into one evaluation. Finally, NamPab must ensure that its members show up to meetings and finish minutes in a timely fashion.

Enact municipal environmental regulations in Windhoek. To effectively ensure that investment in the Windhoek area is environmentally safe, the city must pass appropriate regulations. These regulations should clearly indicate which projects require a full EIA versus a lesser review and ensure that companies implement appropriate environmental management plans. The regulations should outline appropriate penalties so that environmental regulations are taken seriously. The regime should be designed to facilitate the establishment of environmentally compliant businesses without delay and punish bad actors in order to discourage bad corporate behavior.

III. Obtaining Utility Connections not from Municipalities

A. Obtaining Water Services outside Municipal Boundaries

Urban water services in Namibia are most often provided by the local city council, and investors will interact directly with municipal personnel to obtain a connection and pay water bills. The national water company, the Namibia Water Corporation Ltd. (NamWater), acts as a bulk water supplier to the city in these cases. The Ministry of Agriculture and Natural Resources is the custodian of all on-land water sources and NamWater must apply to the Ministry for permits to utilize water resources.

An investor may contract directly with the state water company for water supply services if the property is beyond the boundaries of a municipal or town government. In such cases, the investor will need to negotiate with NamWater about the availability of water, cost of connections, and supply arrangements. Mining concerns, which are often in remote areas, are one type of company that might approach NamWater to negotiate a direct supply agreement.

NamWater's service contracts, or Memoranda of Agreement, are subject to the provisions of the Namibia Water Corporation Act, 1997, and its associated regulations. The Act includes guidance to classify and analyze water quality with reference to standards for allowable amounts of bacteria, chemicals, and minerals/metals.

1. Applying for a Direct Service Contract

At present, the investor's first point of contact within NamWater would likely be the Project Management Unit, but a New Business Manager Position has been proposed to take on the function of managing direct client relationships. NamWater's Project Management Unit includes project engineers and project management personnel.

There is no specific form used to apply for a direct NamWater service contract. Rather, the investor will be instructed to come in for a meeting at which the business plan, water resource needs, and location preferences will be discussed. As Namibia is a largely arid country, in some cases supplying some remote locations can be infeasible or expensive, and, according to NamWater, it seeks to present options realistically at this first meeting with the investor.

At the conclusion of an agreement a Memorandum of Agreement, supplemented by documentation outlining specific agreements on such factors as development costs and administrative arrangements, will be signed between NamWater and the investor. The contract will specify NamWater's responsibilities for such things as the quality of water supply, invoicing cycle, metering, and notification of the customer in case of an interruption in supply. Customer obligations are also stipulated in the Agreement, including payment terms, applicable tariffs, and penalties for breach of contract.

NamWater notes that it can provide quotes for its construction, engineering, and project management services or an investor can seek to contract out the connection work. In some cases, NamWater will negotiate with the investor to finance the cost of connections upfront and recover capital costs through payment of a monthly charge over a fixed period of years. The costs and timeframes for completing connections can vary significantly depending on the distance a new investment is from an established water line.

2. Standard Tariff Rates

The rate supply tariffs, which must be published in the national gazette, are fairly standard from project to project. The tariff rates may change on an annual basis. The current tariff rates, gazetted in 2005, for treated water outside of municipal boundaries range from a low of N\$3.96 (US \$0.61) per cubic meter in Namibia to a high of N\$6.25 (US \$0.96) in several other parts of the country including Omaheke. Irrigation water ranges from N\$0.10 (US \$0.02) to N\$0.28 (US \$0.04) per cubic meter. A special rate for mining operations ranges from N\$3.32 (US \$0.51) to N\$5.15 (US \$0.79).

B. Obtaining Telephone Connections

Land line telecommunications are served by Namibia's state-owned service provider NamTel. At present NamTel is a public shareholding company but 34% of the shares are slated for public sale.

NamTel offers two types of connections, business and residential. Assuming a telephone line is already installed in a property, fees are fixed at N\$284.07 (US \$44) for a business connection, including the installation fee and rental fee, and N\$288.87 (US \$44) for a residential connection. Foreigners will be charged an additional N\$5,000 (US \$769) for a security deposit for a business line and N\$500 (US \$77) for a residential line. In rural areas, fees may be higher.

To obtain a connection, an investor will complete an application form that asks for information such as the personal details, credit references, and conditions of accessibility of the connection. In addition, the following submissions are required:

- Identification or passport;

- Proof of income, such as a bank statement;
- Copy of business registration certificate;
- Deed of sale or lease agreement; and
- A deposit of N\$500 (US \$77) per line for the business line of a sole proprietor.

On average obtaining a connection takes between one and two weeks. This timeframe is largely dependent on the status of existing phone lines. For example, if new construction is required or there are insufficient lines in an area connection times can take up to two weeks. NamTel suggests that some connections can be completed within one day, especially in urban areas. The company's target is to install business connections within 24 hours and residential connections within 48 hours.

NamTel will negotiate with a customer about financing connection infrastructure and technology. For example, rural lodges can obtain V-SAT services if they commit to a minimum monthly usage fee of N\$4,000 (US \$615).

Tariffs can change annually and are published in the national gazette. An increase in tariffs of more than 10% must be approved by the Ministry of Post and Telecommunications, which acts as NamTel's regulatory body.

NamTel will bill customers on a monthly basis. Payment mechanisms include paying at a cash office, through one's bank, or with a check. NamTel offers a great variety of services. For non-rural customers, basic business line installation costs N\$266.59 (US \$41.01) and monthly exchange connection rental costs N\$60.09 (US \$9.24).

C. Analysis

The provision of utilities outside of municipal areas received no particular criticism from investors interviewed for this study. As noted previously, in general investors do not see access to utility connections or the quality and price of services as a barrier to investment in Namibia.

IV. Environmental Clearance

The Namibian Ministry of Environment and Tourism (MoET) has oversight of environmental clearance at the national level and in situations where a municipality seeks additional technical support. The Ministry's activities are guided by the 1994 Environmental Assessment Policy; accompanying legislation is still being drafted. The Ministry's policy specifies what type of activities or businesses require an Environmental Impact Assessment (EIA) or a lesser environmental screening; at the time of writing, the Environmental Management and Assessment Act is not yet in force.

For projects that are located within municipal boundaries, city environmental regulations would apply in most instances.

A. Obtaining National Environmental Approval

Depending on the type of activity in question, an investor will first approach the appropriate line Ministry to begin the overall licensure and approval process. For example, mining enterprises will first contact the Ministry of Mines and Energy to obtain

an Exclusive Prospecting License and a manufacturer would first contact the Ministry of Trade. Both the Minerals Prospecting and Mining Act, No. 33 of 1992, and the Petroleum Exploration and Production Act, No. 3 of 1991, specifically require companies to undertake an EIA as part of the licensing process.

The specific steps for obtaining environmental clearance are summarized below.

Step 1) Begin licensing process with line Ministry. As part of the licensing process, the line Ministry would refer the investor to the MoET to obtain environmental approval. The exact manner and timeframe for a line Ministry to inform the investor varies from Ministry to Ministry but at a minimum the investor should provide a business plan that describes the type of project to be undertaken. Chapter 3, Reporting, outlines two licensing procedures and notes when and how investors in the mining and fisheries sectors are instructed to contact environmental approval from national regulators.

Once the line Ministry informs the MoET of a proposed project, the project will be registered with the MoET. This involves entering the project into a database and creating a file of all available information. The line Ministry should send the MoET as much information on the project as is provided during the licensure process, including a business plan.

Once the project is registered, environmental officials will review the existing information to make a determination as to whether or not the project requires a full EIA or a lesser scoping study. Annex B of the environmental policy outlines 54 activities and business types that would require an EIA, including:

- Rezoning applications;
- Land acquisition in national parks, nature reserves, and other protected areas;
- Pest control programs;
- Mining, mineral extraction, and related activities;
- Power generation of more than one megawatt;
- Forestry projects;
- Genetic modification of organisms;
- Major roads, canals, aqueducts, and river diversions;
- Major agricultural activities; and
- Water intensive industries.

At the discretion of the MoET, activities not included in Annex B should be subject to a less exhaustive scoping study. The policy suggests content and outline for a scoping study.

In some cases, the MoET will contact the line Ministry to contact the investor for additional details. According to the MoET this review typically takes fewer than two weeks.

Step 2) Attend meeting with MoET officials. It is the practice of the MoET to have an in-person meeting with investors to discuss the nature of the project and environmental requirements. At this meeting officials will inform the investor of if he or she needs to conduct a complete EIA or a lesser study. The Ministry can furnish the investor with a list of consultants that can undertake the EIA. All investors are required to prepare an

environmental management plan. The MoET will also give the investor certain applicable documents to assist him or her in understanding environmental requirements. These documents are:

- MoET environmental assessment policy document;
- Guidelines for sector specific projects, if applicable; and
- If in the mining sector, a pro-rata questionnaire.

The Namibian Environmental Assessment Policy outlines the activities that will likely require an EIA, the contents of the required environmental management plan, and other important facets of the regulatory regime for environmental protection.

Step 3) Investor drafts and submits a Terms of Reference (ToR) for an environmental impact assessment and/or prepare environmental management plan. If the investor is required to prepare an EIA, the investor will be asked to prepare a Terms of Reference that outlines the content and details of the study. The MoET suggests that investors consult with Ministry staff on the content of the ToR of the EIA. Officials suggest that it takes one week for the Ministry to provide an investor with feedback on an EIA ToR. Environmental officials state that if requested by the investor they are willing to visit a site to offer guidance to investors.

If an EIA is not required, the investor will be asked to submit a scoping study that outlines the company's environmental management plan. If the plan is approved by the Ministry, the investor can proceed with developing the project.

Step 4) Submit EIA to line Ministry for approval by MoET. When completed, the investor will submit the EIA to the line Ministry, which will in turn send a copy to the MoET. The MoET's policy is to review the EIA and respond with an approval or request for modifications or clarifications within three weeks. The MoET will send a formal response to the investor through the line Ministry. If the EIA is adequate, the MoET's formal response will indicate an approval for the project to progress according to the environmental management plan included in the EIA.

If changes are required, the investor will need to make the necessary modifications and resubmit the EIA to the line Ministry. The MoET will again receive the EIA from the line Ministry, review the document, and respond through the line Ministry.

The Ministry of Environment and Tourism charges no fees for processing EIAs or the less detailed scoping studies. However, costs associated with conducting an EIA, as well as its review by external experts as needed, are to be borne by the investor.

B. Monitoring

As indicated in the environmental policy, the investor is required to submit annual reports to the MoET. The MoET can audit companies if there is suspicion of environmental damage or significant deviations from the environmental management plan.

C. Analysis

Issues

Environmental clearance regime is in flux. Environmental clearance procedures are generally adhered to voluntarily in Namibia, as the legal regime remains incomplete. While a national policy has been in place since 1995, the supporting laws remain in the drafting phase, reportedly after ten years of consideration by government. This creates some instability in the environmental regime and also offers the potential for environmental harm. For example, it is unclear how much legal authority government has to compel investors to do an environmental impact assessment or prepare a corresponding environmental management plan. At the municipal level, both Windhoek and Walvis Bay suggest that more stringent environmental regulations are being considered. It is also unclear if Namibia's many state owned companies, including the water and power companies, are required to undertake EIAs for their infrastructure projects and adhere to EMPs. As seen in Box 4.2, previous donor-funded analysis of regional environmental regulatory regimes has noted the lack of a legal framework as a problem in Namibia.

Box 4.2: Weaknesses Related to Namibia's Environmental Regime

A recent review of Southern African environmental regimes sponsored by the World Bank and International Association for Impact Assessment identified several shortcomings in Namibia's present practice, including the lack of a finalized laws and regulations governing the practice. Some of these recommendations, echoed in this analysis, are listed below:

- Environmental Management Act has not yet been passed and contains loopholes;
- Environmental policy and EIA legislation is not readily accessible to or understood by the public;
- Inconsistencies remain in sectoral legislation in regard to environmental matters;
- The MoET is very weak and vulnerable to staff turnover;
- Government lacks sufficient specialists in environmental protection;
- Procedures exist on paper but are inconsistently operationalized;
- EIAs are selectively used and their rigorousness varies;
- Post-EIA monitoring is inadequate and inconsistent; and
- Senior policy-makers have not demonstrated clear commitment to ensuring environmental protection and EIA process is followed.

Source: Southern Africa Institute for Environmental Assessment, *Environmental Impact Assessment in Southern Africa*, pg. 162.

Environmental procedures focused mostly on mining and petroleum. While it is appropriate for environmental regulations to specifically address potentially damaging industries like mining, in Namibia's case the administrative system, forms, and guidelines seem to be exclusively concerned with mining. It is not clear if other sectors that could have significant environmental impacts, such as commercial farming and tourism, receive focused attention of environmental regulators. For example, the Southern Africa Institute for Environmental Assessment (SAIEA) reports that only three tourism projects have undergone an EIA in over a decade of Namibian independence.⁶⁵

⁶⁵ SAIEA, *Environmental Impact Assessment in Southern Africa*, pg. 161.

This figure is disputed by government officials, but an analysis of the current national environmental regime confirms that forms and guidelines in use thus far are focused almost exclusively on mineral and petroleum extraction while other activities and not well calibrated to assess other activities.

Questionable capacity and coordination. Some investors and other observers suggest that the officials in the Ministry of Environment and Tourism and local city environmental officials tend to lack sufficient experience and technical capacity to review the full range of EIAs and monitor EMPs. At the same time, it is not clear how effectively city and national officials interact in regard to environmental compliance. Particularly given Namibia's arid climate and delicate water resources, appropriate environmental controls should be seen as an asset – not deterrent – to good investment in the country.

Recommendations

Solidify and enact environmental clearance regulations. Namibia's environmental clearance regime is characterized by a lack of legal infrastructure and only voluntary compliance with EIA requirements. While the lack of comprehensive mandatory environmental clearance procedures, aside from in the mining and petroleum sectors, creates a more unfettered environment, it is in the national interest to enforce suitable environmental standards. Furthermore, rather than always being in an investor's interest the lack of appropriately finalized environmental regulations can create uncertainty and risk. Additionally, when foreign companies adopt more stringent regulations based on their prevailing international standards that local competitors are not required to follow, this creates a competitive disadvantage for foreign investors. This deficit needs to be addressed by the passage of the law and robust regulations that both protect the country's natural resources and environment and also foster sound commercial development. Environmental impact assessments should be compulsory for a set of defined commercial activities and a lesser scoping study should be required for others. The law should ensure that state owned enterprises are not exempt from the same environmental regulations to which private companies must adhere.

Environmental procedures should address needs of all sectors. Namibia's environmental regime should focus on sectors other than mining and petroleum, notably tourism and manufacturing, each of which can be located in environmentally sensitive areas and pose the potential for undue damage to the environment. While industries such as mining clearly require considerable scrutiny and remediation measures, Namibia's environmental regulations should also be able to address the needs of other sectors.

Improve coordination among local and national environmental authorities. Given that Namibia's cities seem to lack fully elaborated regulations (or any at all in Windhoek) the MoET should develop a program to assist cities in adopting sound environmental regulations. As required, staff training, new hiring, and relying on expertise among donor funded non-governmental organizations should be coordinated to ensure that MoET and municipal environmental staff have the capacity to review an increasingly broad range of projects. Box 4.3 outlines international best practice principles that guide an EIA regime.

Box 4.3: Principles of Environmental Impact Assessment (EIA) Best Practice

An Environmental Impact Assessment (EIA) can be defined as the process of identifying, evaluating and mitigating the biophysical, social, and other relevant effects of development proposals prior to major decisions being taken and commitments made.

Objectives of an EIA, to:

- Ensure that environmental considerations are explicitly addressed and incorporated into the development decision making process
- Anticipate and avoid, minimize or offset the adverse biophysical, social and other relevant effects of development proposals
- Protect the productivity and capacity of natural systems and the ecological processes which maintain their functions; and
- Promote development that is sustainable and optimizes resource use and management opportunities.

There are two sets of principles that address EIA: the Basic and the Operating. The Basic Principle applies to all stages of an EIA; they also apply to Strategic Environmental Assessment (SEA) of policies, plans and programs. The list of Basic Principles should be applied as a single package, recognizing that the Principles included are interdependent and, in some cases, may conflict (e.g., rigor and efficiency). A balanced approach is critical when applying the Principles to ensure the environmental impact assessment fulfills its purpose and is carried out to internationally accepted standards. An EIA thus produces both complete analyses and the means of reconciling apparently conflicting principles

Basic Principles

- *Purposive* – the process should inform decision making and result in appropriate levels of environmental protection and community well-being
- *Rigorous* – the should apply “best practicable” science, employing methodologies and techniques appropriate to address the problems being investigated
- *Practical* – the process should result in information and outputs, which assist with problem solving and are acceptable to an able to implemented by proponents
- *Relevant* – the process should provide sufficient, reliable and usable information for development planning and decision making
- *Cost-effective* – the process should achieve the objectives of EIA within the limits of available information, time, resources and methodology
- *Efficient* – the process should impose the minimum cost burdens in terms of time and finance on proponents and participants consisting with meeting accepted requirements and objectives of EIA
- *Focused* – the process should concentrate on significant environmental effects and key issues; i.e., the matters that need to be taken into account in making decisions.

Source: FIAS, *Brazil Administrative Barriers Diagnostic*, pg. 120.

Chapter 5: Operating

Introduction

Businesses must comply with a number of regulatory requirements governing their operations in Namibia. This chapter first reviews the main provisions of the Namibian income tax legislation and the steps for registering and paying both corporate and individual taxes. This section is followed by a brief description of the other taxes administered by the Inland Revenue Directorate of the Ministry of Finance. Next the chapter discusses importing and exporting starting with duties and taxes on imports, and treating the steps for importing and exporting. Finally the chapter examines exchange control issues.

Like the other countries in the SADC region, Namibia has a number of diverse taxes, as shown in Table 5.1 below. Internal taxes fall under the responsibility of the Inland Revenue Directorate while the Customs Directorate is responsible for duties on imports, except for the Value Added Tax. The VAT is the responsibility of Inland Revenue, although Customs collects the tax from importers that do not have a VAT import account with Inland Revenue.

Table 5.1 Taxes payable in Namibia

Tax	Legislation	Authority Responsible
Income tax	Income Tax Act, 24 of 1981	Inland Revenue
Petroleum Income Tax	Petroleum (Taxation) Act, 1991	Inland Revenue
Value Added tax	Value Added Tax Act (VAT), 10 of 2000	Inland Revenue
Stamp duty	Stamp Duties Act, 15 of 1993	Inland Revenue
Transfer duty	Transfer Duty Act, 14 of 1993	Inland Revenue
Import duties	Customs and Excise Act 20 of 1998	Customs and Excise Directorate
Excise duty	Customs and Excise Act 20 of 1998	Customs and Excise Directorate
Passenger tax	Namibia Airports Company Act, 25 of 1998	Collected by airline agents and remitted to Namibia Airport company

I. Income Tax and Other Inland Revenue Taxes

Income Tax in Namibia is governed by the Income Tax Act 1981 as amended from time to time. The Act provides for a series of steps to be followed in arriving at the taxpayer's taxable income, the starting point being to determine the taxpayer's gross income⁶⁶.

⁶⁶ Section 1 of the Act.

This is the total amount of income, in cash or otherwise, received by or accrued to a taxpayer from a source within or deemed to be within Namibia during the year of assessment. The next step is to arrive at “income,” which is the result of deducting all receipts and accruals that are exempt from tax under the Act. Finally, “taxable income” is arrived at by deducting all the amounts allowed to be deducted or set off in terms of the Act from “income.”

The steps for determining taxable income are thus:

Step 1) Calculate the gross income for the year.

Step 2) Deduct exempt income from gross income to arrive at income.

Step 3) Deduct allowable deductions from income to arrive at taxable income.

Income Tax in Namibia is source based. Income from the following is deemed to be derived from a Namibian source:⁶⁷

- Contracts made by a taxpayer within Namibia for the sale of goods;
- The use or right to use patents or designs, or grant of permission to use in Namibia even if the permission was granted outside Namibia;
- Any business carried on by a person as owner or charterer of any ship or aircraft who is ordinarily resident wherever the ship or aircraft may be operated;
- Any annuity from a purchased annuity that accrues to or is received by a person ordinarily resident in Namibia; or
- Any interest which has been received or accrues to a domestic company or a person ordinarily resident in Namibia.

A. Income Tax on Resident Companies

For tax purposes, the term “company” is broadly defined and includes.⁶⁸

- Any association, corporation, or company (other than a close corporation) incorporated or deemed to be incorporated in Namibia or established by or under any law;
- Any association, corporation, or company incorporated under the law of any country other than Namibia;
- Any association formed in Namibia to serve a specified purpose beneficial to the public or a section of the public;
- Any unit trust scheme managed or carried on by any company registered in Namibia as a management company; or
- Close corporation.

A company’s year of assessment coincides with its financial year.

⁶⁷ Section 15 of the Act.

⁶⁸Section 1 of the Income Tax Act.

1. Corporate Tax

The following are the current rates of corporate tax:⁶⁹

Table 5.2: Current Rates for Corporate Tax in Namibia

Tax Description	Rate of tax
Basic rate (other than specified below)	35%
Registered manufacturer	18%
Mining (other than diamonds and petroleum)	37.5%
Diamond mining—effective rate	55%
Petroleum mining	35%
Branches of foreign companies	35%
Retirement funds	Exempt

Mining companies pay tax on non-mining income at 35%. In addition to the taxes, there is also annual duty on share capital at the rate of N\$4.00 (US \$0.61) per N\$10,000 (US\$ 1,538) and a minimum of N\$80 (US \$12).

2. Withholding Taxes

Certain payments to non-residents are subject to withholding taxes. Dividends⁷⁰ are taxable at 10% and royalties at 10.5%.⁷¹ Certain dividends declared to foreign-held Namibia holding companies are subject to non-resident shareholder's tax (NRST). It was announced in the 2005 Budget that a withholding tax would be introduced on interest paid by Namibian financial institutions.

3. Exemptions

Exemptions include dividends,⁷² but subject to Non-Resident Shareholders Tax⁷³. Amounts derived by the following taxpayers are exempt from tax:

- Temporary building societies, pension fund, provident fund, retirement annuity fund or benefit fund;
- Institutions that in the opinion of the Minister of Finance are a mutual savings bank, mutual loan association, a fidelity or indemnity fund, a trade union, a chamber of commerce, local publicity association, or a non-proprietary stock exchange;
- Institutions that in the furtherance of their sole object or one of their principal objects, conduct scientific, technical or industrial research or provide necessary or useful commodities, amenities or services to the State;

⁶⁹ June 2005.

⁷⁰ S 42 of the Act.

⁷¹ S 35 of the Act.

⁷² S16 of the Act.

⁷³ S 42 of the Act.

- Amateur sporting associations;
- The Government and local authorities;
- Ecclesiastical, charitable and educational institutions of a public character; and
- Unit trust schemes.

4. Deductions⁷⁴

The Act provides for a general deduction formula as well as for special deductions. Under general deductions, a taxpayer who conducts a trade may deduct expenditure and losses actually incurred in the production of income during the year of assessment provided that the expenditure and losses are not of a capital nature. Although, as a general rule, expenditure is deductible in the year in which it was actually incurred, special provision is made in certain instances for the spreading of expenditure over a number of years.

Special deductions include legal costs. Legal business expenses actually incurred by the taxpayer during the year of assessment are deductible subject to certain limitations:

- Costs incurred to repair of property occupied for the purpose of trade;
- Subject to certain limitation, expenditure incurred to acquire means of transport, machinery, equipment and utensils for the purpose of trade;
- Allowance in respect of buildings-A taxpayer may deduct an allowance equal to 20% of the cost of erecting buildings in the year during which a building is brought into use and 4% a year for the remaining amount. If the building is used solely for manufacturing purposes by a registered manufacturer an allowance equal to 20% is deductible in the year of assessment during which such buildings are brought into use and 8% a year for the remaining amount; and
- Expenditure on scientific research: such expenditure is allowed provided it is not of a capital nature.

5. Non-deductible Expenses⁷⁵

Certain expenses that may not be deducted include:

- Expenses incurred to produce exempt income: expenditure incurred on amounts that are exempt from tax cannot be deducted;
- Non-trade expenditure: expenditure is only deductible to the extent that it has been expended for the purposes of trade; and
- Provisions and reserves: income carried to a reserve fund or capitalised in any way.

⁷⁴ Section 17.

⁷⁵ Section 24 of the Act.

6. Depreciable Allowances⁷⁶

Expenditure incurred on the acquisition of means of transport, machinery, equipment and utensils used by the taxpayer in his business is deductible in equal installments over three years. An allowance of 20% is granted on the cost of erecting business buildings in the first year during which they are brought into use, and 4% in each of the following 20 years. Additions to existing buildings (not alterations or repairs) qualify for the same 20% and 4% deductions. A registered manufacturer is entitled to an initial allowance of 20% and a subsequent annual allowance of 8% for ten years, provided the building is used solely for manufacturing purposes. Mining exploration expenditure incurred before commencement of production is deductible in full in the first year of production against income derived from the mine. Subsequent development expenditure is written off in three equal annual installments⁷⁷. There is no requirement for book and tax treatment of depreciation to be the same.

7. Treatment of Losses

Assessed tax losses may be carried forward indefinitely provided the company continues to trade. Losses may not be carried back or transferred to other group companies. Should a company cease to trade for a full fiscal year, its assessed loss falls away, regardless of subsequent activity. Losses incurred on a trade conducted by a taxpayer outside Namibia cannot be deducted against income derived from carrying on a trade in Namibia.

8. Treatment of Foreign Exchange Losses and Gains

Where a gain or loss is realized on the repayment or rollover of a foreign loan taken out for the purposes of the taxpayer's business in Namibia, this must be included or deducted from income. The gain (or loss) is computed on the difference between the dollar equivalent when the loan was taken out and the amount actually paid. The deduction of realised losses on loans raised for working capital and fixed capital is permitted. The categorization of a foreign exchange loss as capital in nature does not prevent its deduction. Similarly, capital gains on foreign exchange differences are taxable⁷⁸.

9. Branch Profits Tax

Profits or losses of all branch operations of a company that carries on business in Namibia are combined. Income from branches operating entirely outside Namibia is not taxable in Namibia, and losses connected with these operations may not be claimed.

B. Income Tax on Individuals

The term "individual" is not defined in the Act and therefore takes its ordinary meaning. A partnership of individuals does not have a separate legal existence, but tax is levied on the individual partners. Trusts are treated as individuals for tax purposes. Tax is

⁷⁶ Section 17 of the Act.

⁷⁷ Section 18 and 36 of the Act.

⁷⁸ Section 25A of the Act.

levied either on the date the taxable amount is received or on the date it accrued to the taxpayer, whichever is earlier. The term “accrued to” is in practice considered as the date on which a person becomes unconditionally entitled to an amount. Income deemed to derive from Namibian source is the same as for company tax. In addition a number of amounts are deemed to derive from a Namibia source.⁷⁹ These include:

- Any service rendered by a person whether payment is made from outside Namibia and whether a person resident in or outside Namibia makes the payment;
- Any service rendered outside Namibia by a person who is ordinarily resident in Namibia;
- Any service rendered outside Namibia by a person on behalf of the Government of Namibia or a regional council or local authority; and
- Any services rendered outside Namibia by a person ordinarily resident in Namibia as a crewmember of any ship or aircraft.

The year of assessment for individuals covers a period of 12 months and generally commences on March 1 of a specific year and ends on the last day of February the following year.

1. Rates of Individual Income Tax

The following are the current rates of individual income tax.⁸⁰

Table 5.3: Rates of Tax for Salaried Individuals

Annual Taxable Income	Rate of Tax
N\$0—N\$24,000 (US \$3,692)	Not taxable
N\$24,001—N\$40,000 (US \$3,692—US \$6,153)	N\$0 + 17.5%
N\$40,001—N\$80,000 (US \$6,154—US \$12,307)	N\$2,800 (US \$430) + 29.5%
N\$80,001—N\$200,000 (US \$12,307—US \$30,769)	N\$14,000 (US \$2,153.) + 34.5%
Over N\$200,000 (US \$30,769)	N\$56,000 (US \$8,615) + 35%

2. Exemptions⁸¹

The following are among the partial exemptions (amounts exempt irrespective of the identity of the recipient):

- Interest from stock or securities: interest from stock or securities (including Treasury Bills) are exempt from tax;
- Interest in respect of subscription shares: any amount credited as interest in respect of any subscription shares in any building society is exempt from tax;
- Dividends from Special Tax-Free Indefinite Period Shares: amounts derived as dividends on Special Tax-Free Indefinite Period Shares in building societies in Namibia up to an amount of N\$100 000 (US \$15,384); and
- Dividends, subject to the provisions of Non Resident Shareholders Tax.

⁷⁹ Section 15 of the Act.

⁸⁰ June 2005.

⁸¹ Section 16 of the Act.

Absolute exemptions (taxpayers enjoying complete exemption from tax on income) are the same as for companies.

3. Deductions

Except for minor differences, individuals are entitled to the same deductions as companies. In addition, any sum contributed by a taxpayer to any pension, provident, retirement annuity, preservation fund and study policy is deductible.⁸² Contributions cannot exceed N\$30,000 (US \$4,615) per tax year.

4. Non-deductible Expenses

Non-deductible expenses are the same as for companies. In addition, no deduction is allowed in respect of cost incurred in the maintenance of any taxpayer, his family or establishment. Deduction is also not allowed for domestic or private expenses.

5. Treatment of Losses

Assessed losses may be carried forward, irrespective of whether the individual conducted a trade in the subsequent year or if income was derived in that year.

6. Fringe Benefit Taxes

Any benefit or advantage granted to an employee in respect of employment falls within the ambit of gross income.⁸³ There is a special schedule specifying the treatment of fringe benefits.

7. Treatment of Pension, Provident or Retirement Annuity Fund Income

Annuities received from these funds are taxed as ordinary income. The capital portion of a purchased annuity is exempt from tax. Lump sum benefits (one-third) derived from these funds are not subject to tax on retirement or death. The remainder is taxed at the marginal rate. Contributions to these funds are allowed as a deduction. The limit is N\$30,000 (US \$4,615) for a year of assessment and it also includes contributions to a study policy.⁸⁴ No excess may be carried forward to a next year of assessment.

8. Withholding Taxes

The treatment of withholding taxes for individuals is similar as for companies.

C. Procedures for Paying Income Tax

Step 1) Appoint a Public Officer. In order to facilitate interaction between companies and the Commissioner of Revenue in matters of income tax, the law requires a company carrying on business or establishing an office in Namibia to appoint an individual

⁸² Section 17(2) of the Act.

⁸³ Section 1 of the Act.

⁸⁴ Section 17 (2) of the Act.

designated “Public Officer” (PO) of the company, who shall represent the company in all matters relating to Income tax. The PO of a company is personally responsible for the payment of the company’s taxes as if he or she were the taxpayer.

Both companies and individuals that are not paid remuneration but earn income from business activities must register as taxpayers. If they have people employed for remuneration, they must also register as “employers.” Employer is in fact any authority or person who, as a principal, pays or is liable to pay to any person any amount by way of remuneration. Every person who is or becomes employer must register with the Commissioner of Revenue Management. This includes every individual, partnership, company, and even administrative authorities.

Employees pay tax but it is deducted at the source by the employer. The tax deducted from employees’ remuneration is called “Pay As You Earn” (PAYE). It is the duty of employer or representative of employer to deduct income tax from certain payments made to employees, and to account to the Commissioner for the tax withheld.

Step 2) Register as employer. Application for registration as employer is made on Form 6-0/0044. In addition to information on the applicant, the form calls for information on the date the applicant became employer and the date of registration where the applicant is a company. If the company has branches, a supplementary PAYE 1 form must be completed and submitted with the main form.

Step 3) Register for tax. In the case of a company, the Public Officer is required to file with the Commissioner the application for registration,⁸⁵ which must be accompanied with a copy of the Memorandum and Articles of Association of the company. The application for registration must take place within two months of the company’s registration with the Registrar of Companies.

The same form is used for the registration of individual business, provisional taxpayers and farmers. In addition to personal details, the form requires details of estimated income from the business being registered and also from any other business, employment, pensions, property, and any other income, and estimated total.

On registration the Commissioner of Revenue will allocate an Income Tax File Identification Number that the taxpayer must use in all dealings with the Commissioner of Revenue.

Tax returns forms may also be completed and returned with the first income tax payment.

Step 4) Pay provisional tax. Following registration, the applicant is expected to make the first payment of provisional tax. Provisional taxpayers must make compulsory tax payments every six months after the beginning of a year of assessment and at the end of a tax year. A final payment of tax return showing the taxable income calculated by the taxpayer, PAYE deducted, the first and second provisional tax payments and the tax owing must be filed within 120 days or seven months after the tax year end. This is called a top-up payment.

⁸⁵ The form is not numbered.

Step 5) Prepare self-assessment and return of income. The year of assessment starts from March 1 and ends on February 28 or 29. At the beginning of March taxpayers must collect income tax return forms: Form 6-0/0031 in the case of companies and closed corporation; Form 6-0/0014A for individual businesses and farmers; and Form 6-0/0014C/1 for individuals that are not salaried. Form 6-0/0014B is for individual salaried persons/pensioners. Companies and close corporations must submit their returns within seven months of the company's financial year-end. Returns by individual businesses and farmers must be submitted by or before September 30 and individual salaried persons/pensioners by June 30. The returns of unsalaried individuals are due also before June 30. A taxpayer may apply for extension.

As regards salaried individuals, a distinction is made between filers and non-filers.⁸⁶ A non-filer is a person that worked for one employer during the tax year, did not receive interest in excess of N\$500 (US\$ 76.92) and not entitled to any deductions other than contributions to a pension, provident, preservation or retirement annuity fund. The employer has to deduct PAYE in such a way that the taxpayer's obligation is met. This is called PAYE as a Final Tax and the taxpayer does not have to file a return.

The forms require detailed information that will enable the Commissioner to assess the tax payable taking into account all taxable income less any exemptions and deductions and any provisional tax and PAYE that have been paid in the case of provisional taxpayers and employers.

Step 6) Adjust tax filing, if applicable. On receipt of the return, the Commissioner assesses the amount of tax due after making adjustments to the loss or profit declared. The taxpayer is informed through a letter of any adjustments made. Finally a notice of assessment indicating tax liability is sent through the mail to the taxpayer. The tax due is payable within 30 days for the assessment date.

Step 7) Remittance of assessed tax. All payments must be made at the cash office by cheque, cash, or postal orders. Payments may be brought by hand to the cash office or posted. If posted, the taxpayer will be held liable in case there are delays, and may consequently pay interest or penalties.

1. Appeals, Rulings, Refunds and Penalties

If the taxpayer does not agree with an assessment issued by the Tax Office, the taxpayer may object to the assessment. Objection must be made in writing within 21 days from the date of the assessment and must specify in writing the grounds of objection. The Commissioner may allow or disallow the objection, and must communicate his decision in writing.

If the Commissioner does not allow the objection, and the taxpayer is not satisfied with that decision, the taxpayer may appeal to the Court in writing within 21 days after the date of the decision of the Commissioner.

The Inland Revenue Directorate does not issue advance rulings on income tax issues, and there are no published rulings. The directorate issues practice notes, which are currently not gazetted.

⁸⁶ Section 56 of the Act.

When the Commissioner is satisfied that a taxpayer has overpaid tax he may authorise a refund. There is no time limit on such refunds. The Commissioner may also set off the refund against other taxes owed by the taxpayer.⁸⁷

Interest is payable to Revenue at a rate of 20%, calculated daily and compounded monthly. Interest is not payable by Revenue on credits.⁸⁸ Penalties may be imposed up to 200% on outstanding taxes.

D. Petroleum Income Tax⁸⁹

This tax was introduced in 1991 because the general income tax legislation could not cater for the peculiarities of the petroleum industry starting from prospecting and mining to processing, marketing and distribution. Amending the Income Tax Act to take account of the petroleum industry would have made it too complex. Since the petroleum income tax legislation is not of general application it is not discussed further here.

E. Value Added Tax⁹⁰

The Directorate of Inland Revenue is responsible for Value Added Tax (VAT), which is levied on all supplies of goods and services made by registered persons⁹¹ (individuals and enterprises) in the course of their business. As a general rule, a supply of goods or services takes place at the time the invoice is issued by the supplier or recipient or when payment is received, whichever is the earlier. Special “time of supply” rules are applicable in certain circumstances.

1. Rates of tax

The rates of tax are 0% and 15%.⁹² At the time of doing this research there were also plans to introduce a rate of 30% for certain goods considered luxury goods.

2. Registering for VAT

Registration is compulsory where the turnover of the business turnover in a period of 12 months exceeds N\$200,000 (US \$30,769.23).

In certain circumstances registration may be allowed where the turnover does not exceed the registration threshold.⁹³ Voluntary registration is beneficial because the taxpayer is able to reclaim the VAT charged on supplies.

⁸⁷S 94 of the Act.

⁸⁸S 79 of the Act.

⁸⁹Income Tax, Petroleum (Taxation) Act, 1991.

⁹⁰Value Added Tax Act (VAT), 10 of 2000.

⁹¹In section 1 of the Act.

⁹²At the time of doing the research it was reported the second rate of 30% that had been abolished might be reinstated to compensate for lost revenue.

⁹³Section 15 and 16 of the Act.

The registration process requires the taxpayer to complete and submit Form VAT 1. This is designed to obtain all the information that will enable the Commissioner to assess the correct taxable value and the amount of tax payable.

Cancellation of registration may be allowed if the turnover of the business can no longer reach the registration threshold. However, cancellation is not allowed before two years from the date of registration.

3. Payment of VAT

VAT is payable on or before the 25th day of the month following the end of the tax period. A person involved in farming activities can elect to pay VAT every two, four, six or twelve calendar months ending on the last day of the last month of each such period. All other persons are divided into two categories, with Category "A" paying the 25th of January, March, May, July, September and November, and Category "B" by the 25th of February, April, June, August, October and December. The Commissioner determines whether a person falls within Category A or B.

A VAT Import Account allows a registered person to import goods and only pay the VAT on or before the 20th of the month following the month of import⁹⁴. To benefit from this the taxpayer must apply on a special form,⁹⁵ "Application for VAT Import Account," to the Commissioner for approval. If approved, details of the amount due on the date of payment and the import transactions in respect of payment are submitted on Form 6-0/037.⁹⁶

4. Zero-rated Supplies and Exemptions

The VAT legislation provides for about 15 cases where VAT is zero-rated. These include supply of goods that are exported, or supply of where the goods are not situated in Namibia at the time of supply, supply under a rental agreement where the goods are used exclusively in another country, supply of goods to an export processing zone enterprise or an export processing zone management company for use by the enterprise or company in an export processing zone. Also zero-rated are supplies of international transport services and supply of goods where both persons are registered for VAT.

There is a shorter list of goods and services that are exempt from VAT.⁹⁷ This includes, for example:

- Supply of goods or services to Heads of State (including vice-presidents and prime ministers) of foreign States;
- Supply of services by a trade union to the benefit of members if the costs are met out of the members' contribution;
- Supply of goods or services as a fringe benefit to an employee; and
- Supply of financial services.

⁹⁴ Section 14 of the Act.

⁹⁵ The form has no reference number.

⁹⁶ Return for Remittance of Value Added Tax on Imports.

⁹⁷ Section 10 of the Act.

F. Other taxes

1. Stamp Duty⁹⁸

This is payable on a wide range of legal documents like affidavits, cheques, and deeds. The rate of duty varies from document to document or on the value of the transaction.

2. Transfer Duty.⁹⁹

This is paid by a person who has acquired land or for whose benefit any interest in land is held. It is charged as percentage of the value of the property

G. Analysis

The general feeling of the private sector is that the tax regime is fairly conducive to investment. The rates of corporate tax are not the lowest in the region, but other countries have many more taxes. The exemptions and allowances are considered fairly generous. Tax administration is fairly good, but an investor would be advised to make use of professional tax facilitators.

Table 5.4: The Corporate Tax Rates of SADC Member States

Ranking	Corporate Tax Rate	Country
1	25%	Botswana Mauritius
2	30%	Malawi South Africa Swaziland Tanzania Zimbabwe
3	32%	Mozambique
4	35%	Lesotho Namibia Zambia

It was reported that delays in processing returns and making final assessments were the major weaknesses of Inland Revenue. These were attributed to lack of a modern computer system. Since the modules of the present system do not interface much time is wasted in data inputting. It was also said that the current system is not appropriate for handling, for example, problems relating to transfer pricing. It requires replacement with a more sophisticated system.

Issues

There are delays in processing income tax returns and issuing final assessments.

The private sector expressed concern about long delays in processing tax returns and issuing final assessment. They pointed out that it can take between one and four years for the taxpayer to receive an assessment. They attributed these delays to lack of training, noting that many officers do not know the basics of the tax system they are

⁹⁸ Stamp duties Act, 15 of 1993.

⁹⁹ Transfer duty Act, 14 of 1993.

managing. It was also pointed out that as a result of discriminatory job promotions, there are a few frustrated officials who are no longer dedicated to their work. On their part, Income Tax officials attribute any weaknesses to inadequate staffing. They point out that a staff of only 328 people is serving 264,000 individual taxpayers, 16,000 VAT registered entities, 28,000 close corporations, and 6,823 employers registered for PAYE. The officials believe that the staff is doing their best under the circumstances.

Inland Revenue lacks a modern computer system and trained operators. The private sector also pointed out that the computer system used by Inland Revenue is very old and its modules do not interface. Much time is therefore wasted in repeated data input for various purposes. The quality of data input was also said to be very poor. It often happens that one is penalized for not submitting returns in time, but investigations reveal that returns were submitted in time but only that they were not input into the system. The taxpayer or facilitator can waste much time rectifying errors or investigating the fate of a tax return.

Income tax legislation is not codified and amendments are not easily available. The Income Tax legislation dates back to 1981 and has seen a number of amendments. The principal legislation does not therefore accurately reflect the current situation, and does not include regulations that might have been issued under it.

Income Tax legislation is not easily available to the taxpayer. The printing of the Income Tax Act (and other laws inherited from the South African administration before independence) remains outsourced to the company in South Africa that printed the initial publication. It is the practice in other countries in the region for legislation to be printed by the Government Printer. In Botswana, for example, legislation passed in Parliament is still available at the Government Printer. Nowadays it is also good practice to post legislation on the Government website.

There is no income tax guide or manual for taxpayers. Since Income tax is invariably complex, an internationally recognized practice for income tax authorities is to publish user-friendly guides or a manual for taxpayers. Inland Revenue has a guide for VAT, presumably because it is a fairly new tax (2000). Swaziland is one of the countries that has simple but very helpful pamphlets. In some countries, like South Africa, income tax guide is available on the website of the South African Revenue Services (SARS).

Recommendations

Improve resources to expedite the processing of income tax returns and issuing of final assessments. The Ministry of Finance should study staffing levels of Inland Revenue and increase staff accordingly. Training should also be provided to existing and new staff.

Analyze the computerization needs of Inland Revenue and update the present system. Computer technology is changing very fast and revenue services are continually upgrading their systems not only to improve data input but also to introduce new methods of control like risk management. This will enable Inland Revenue to increase its enforcement capability with limited human resources and to effectively deal with emerging threats like transfer pricing and valuation fraud.

Revise and consolidate the income tax legislation. Inland Revenue should initiate a project to revise and consolidate the legislation. This could start with establishing a task force for the purpose.

Copies of the income tax legislation should be made available in Namibia irrespective of where the legislation is printed. Inland Revenue or the Government printer should stock copies of the principal legislation, amendments, and regulations. The cost could be recovered from sales, although in other countries copies of government laws are sold at a subsidized price, at cost, or posted on the internet and accessible for free.

Compile an income tax user manual or guides in the form of booklets. This task could be carried out by the Taxpayer/Customer Care Service Department or by an officer with the right experience. If the option is for a manual with substantive information, it should include rulings and practice notes, which are currently not published. The user or manual should also be accessible on the GoN website.

Box 5.1: SADC Tax Information

In 2002 Inland Revenue prepared detailed and very useful information for inclusion in the SADC website. However, the SADC Tax Database is yet to be posted on the SADC website. For the moment this information should be included on the GoN website.

II. Importing and Exporting

Import duty and excise duties, which are administered by the Customs and Excise Directorate, are governed by the Customs and Excise Act No. 20 of 1998, and are SACU taxes. The Act enables the implementation of the SACU External Tariff in Namibia, and the revenue is paid into the SACU revenue pool from which it is distributed to all Member States according to an agreed formula.

A. Import Duties

The Import Duty Tariff is contained in Part 1 of Schedule No. 1 of the Act, but for practical purposes it is published separately. The tariff is based on the Harmonized Commodity Description and Coding System (Harmonized System) of the World Customs Organization. Subdivisions of the tariff code are at 8-digit level. The SACU tariff has a column for European Union preferential rates of duty, and another for South African Development Community (SADC) preferential rates in addition to the general "Most Favored Nation" column.

Most of the rates are *ad valorem*, but a large number of products have both *ad valorem* and specific rates of duty. The *ad valorem* rates of duty range from 0-40%. The SACU countries apply the WTO Agreement on Customs Valuation for the purposes of assessing *ad valorem* duty on imports. The countries have opted for FOB price as the basis for calculating duties. Most products originating in SADC countries are duty free.

As explained in Chapter 3, there are duty rebates for goods imported as inputs for manufacturing goods for export, and for goods imported for temporary use and later re-exported in the same state. Certain industrial inputs are also admitted duty free even if the subsequent manufactured product is not exported.

B. Excise Duties

Excise duty is levied on alcoholic and non-alcoholic beverages, tobacco products, fuel and hydrocarbon oils, and on a number of products considered luxury goods.

1. Excise Duty on Alcohol

The duty applies to both imported and locally manufactured alcoholic beverages, and the rate is specific, i.e. so many cents per liter. Usually the higher the alcohol content the higher the rate of excise duty.

2. Excise on Tobacco Products

The duty applies to both imported and locally manufactured cigarettes, cigarette tobacco, cigars and pipe tobacco, and the rate is on the basis of weight, except for cigarettes where the rate is charged per unit.

3. Excise on Non-alcoholic Beverages

This is charged at a specific rate per liter on a number of beverages, including waters, mineral and flavored waters.

4. *Ad Valorem* Excise Duty

The duty is charged on certain goods such as motor vehicles, cosmetics, computers, televisions, and audio equipment. The duty is chargeable on the value of finished goods and is collected from the manufacturer or importer

5. Tax on Fuel and Hydrocarbons

The tax consists of the Fuel Levy, which accrues to the state, and the Road Accident Fund Levy (imposed under the Motor Vehicle Accidents Act, 1990), which is used to meet claims from victims of road accidents. The tax is collected at retail fuel outlets, and is charged per liter. To illustrate, the retail price of N\$4.00 of a liter of unleaded petrol includes the following charges:

- N\$0.04 (US \$0.0056) SACU Excise
- N\$0.95 (US \$0.147) General fuel levy
- N\$0.037 (US \$0.0055) Road Accident Fund Levy
- N\$0.10 (US \$0.0154) Equalization Fund

A rebate scheme exempts fuel for certain purposes like farming, primary production, and sea transport.

C. Import and Export Procedures

1. Registration and Import Permits

Investors will need to complete several steps before being allowed to legally import or export in Namibia. These steps are detailed below.

Step 1) Registering with the Customs. Importers claiming rebates of duty and taxes must be registered with the Customs Department. Regular importers are also registered if they have to make use of certain facilities like duty deferral and manufacturing under bond. Exporters to the U.S.A., the European Union, and to COMESA and SADC countries are registered for the purposes of controlling the origin of goods that can enjoy preferential treatment in these markets.

Step 2) Apply for an import permit. Import permits are required for certain imports, including used motor vehicles and motor vehicle parts, drugs, and electrical appliances. According to Trade and Industry officials, the South Africa Tariff Board often decides which products require an import permit. A permit can be for a single consignment, e.g. a car, or for a given value over a period of time. The application¹⁰⁰ for a permit is completed at the Ministry of Trade and Industry, where it is approved by a designated official. According to the official, an application to import from outside SACU can be denied if the goods are available in SACU. An application is given the same day if all the necessary information is provided with the application. This includes description of the goods including the tariff heading, their value and quantity, and the supplier and the country of exportation.

2. Procedures for Clearing Imports

The following are the steps for clearing imports:

Step 1) Prepare the necessary documents. Customs clearance requires a number of documents, the following of which are standard:

- The bill of entry Form SAD 500: this is a customs declaration prepared by the importer; the data required include the country and port from where the goods were consigned, the means of transport used, the point of entry into the country, the exporter, the importer, the nature and quantity of the goods, their tariff number, their value and the basis of the value, the rates of duty and taxes applicable to them, and the amounts; and
- Supporting Documents: these include the commercial and transport documents like invoices, bills of lading, road manifest, packing list, and administrative documents like import permits, SPS certificates, and certificates of origin.

Step 2) Submit documents to Customs for processing. Namibia Customs uses the Automated Systems for Customs Data (ASYCUDA) to process Customs clearance. The system verifies:

- The tariff headings entered for the goods;
- The basis of the value for the goods and the correctness of the calculation;
- The calculation of the amounts of duty and taxes; and
- Entitlement to rebates and exemptions.

Where the Customs concludes that the invoice price is too low, the importer will be required to justify the circumstances warranting such a low price. If the Customs are not

¹⁰⁰ It has no number.

satisfied with the importer's justification, the goods will be valued on the basis of previously imported identical or similar goods.

Step 3) Pay import duty and taxes. If all data entries are correct, the system will issue an assessment note showing the amount of duty and taxes to be paid.

Step 3a) Host physical examination of the goods, if applicable. If the goods fall within the set selection criteria for examining goods, the system will indicate that the goods are subject to physical examination before they are released but after the payment of duty and taxes.

If the physical examination shows that the declaration is correct, the goods are released to the owner.

Step 4) Pay port charges and any demurrage charges if the container is not released in time. The Namibia Port Authority (NAMPORT) allows seven days of grace before port storage charges are paid. Clearance of goods may start before the vessel arrives as long as the manifest for the port is available.

Step 5) Take delivery of the goods. If all the documents are in order and the importer is able to pay the duty and port charges on demand, it takes one to two days to clear goods at the port of Walvis Bay. NAMPORT guarantees three days as the maximum delay.

4. Customs Procedures for Exports

Namibian export procedures are described below.

Step 1) Load the transport unit. If the exportation of goods will result in the refund of duty or taxes or in the discharge of a security, the Customs should be called to supervise the loading if it is taking place at the exporter's premises. The supervising officer will write a record of the goods loaded or approve a packing list that will be submitted with the export bill of entry and supporting documents to get a refund or to discharge the security.

Step 2) Prepare export documents. These will include the export bill of entry, Form SAD 500, Exchange Control Form F178 and supporting documents like the invoice, road manifest, and certificates of origin. Processing of documents is straightforward, since no duties or taxes are paid on exports.

Step 3) Seal the unit of transport. Following document processing and examination of the goods, the unit of transport is sealed by the Customs with Customs seals and released for exportation. When a unit of transport is sealed, the Customs offices en route, even in South Africa, are supposed only to check the integrity of the seal. If it is intact the transport should be allowed to continue to its destination without further Customs intervention.

E. Analysis

Investors in Namibia are not concerned about import duties and taxes because they are not charged on imported inputs, thanks to the various incentives in place. There are no

customs duties on exports, although a levy may be charged for certain products, e.g. 8% levy on beef exports.

Import and export procedures are also very simple. The ASCUDA system is Version ++ (Plus-Plus) with capability of remote data input by trader (Direct Trader Input). Single Administrative Document (SAD) is used, which reduces the cost of documentation significantly.

Customs offices are well organized and customer friendly. None of the companies interviewed complained about irregular conduct on the part of Customs officials.

Issues

Certain Customs offices are not adequately staffed. As a result of this inadequacy, sometimes there is no officer available to seal export containers. There has been more than one instance where the Customs Clearing agent was given the Customs seal and authorized to act on behalf of the Customs to seal the container. The private sector points out that, although this is facilitation, it leaves the Customs ignorant of the contents of an export container. This situation is not acceptable to exporters because it may result in the perception that export containers from Namibia are a security risk at South African and overseas ports. This can result in Namibian exports being subjected to numerous security checks while in transit in South Africa and at overseas ports.

There is little collaboration between Customs and Inland Revenue. Although both provide revenue services, there is not much collaboration between the major revenue collection agencies in Namibia. The responsibility of Inland Revenue to manage the VAT requires close collaboration with the Customs in the area of tariff classification and Customs Valuation. The two agencies can also collaborate in enforcement by having a common Tax Identification Number for taxpayers and importers, and by sharing expertise in risk management.

Information on restricted imports that require permits is not easily available to importers. Often importers realize that certain goods require an import permit only when they are so informed by the Customs at the time of clearing the goods for home use. They then go to the Ministry of Trade and Industry where permits are granted as a matter of routine.

Recommendations

Increase technical staff at Walvis Bay Customs regional office. Investors noted that the office in Walvis Bay is understaffed with only one officer who can supervise loading and sealing of containers. Technical staff should be increased to enable the Customs to carry out adequate controls. For transit controls in countries of transit and for cargo security reasons, the Customs authorities of an exporting country must be certain about the contents of export containers.

Consider establishing a Revenue Authority. The Ministry of Finance should consider establishing a Revenue Authority or centralized Revenue Services as the other countries in SACU are doing. Centralized revenue services are more cost effective in collecting revenue and combating fraud (see Box 5.2 below). As a first step the government should commission a study on the matter, which would, *inter alia*, examine what the

introduction of a Revenue Authority may entail. For example, in some countries a large number of existing staff has been retired. The government must make budgetary provisions for such an eventuality.

Update regularly the list of goods requiring import permits and make it public. Often importers realize that certain goods require an import permit only when they are so informed by the Customs at the time of clearing the goods for home use. They then go to the Ministry of Trade and Industry where permits are granted as a matter of routine. The Ministry of Trade and Industry should update the list of restricted goods regularly and publish it in public media.

Box 5.2: Successes of Revenue Authorities

Some of the benefits of revenue authorities are noted below:

- They have been more responsive to policy demands and most of them have capacity to carry out studies and advise their governments (e.g. on tariff restructuring).
- They have improved revenue collection and abolished “nuisance taxes” (taxes with very small yield and difficult to collect).
- They have significantly succeeded to fight smuggling and improved voluntary compliance through taxpayer education and inducements; this has resulted in a level playing field for businesses and removal of price distortions.
- They have significantly succeeded in fighting corruption thus maintaining equitable treatment of all tax payers;
- They have introduced professionalism, efficiency and good corporate culture comparable to that of well-managed private sector corporations.

The success of revenue authorities is attributable to a number of factors including the following:

- Staff remuneration and other terms of service are improved significantly and made comparable to those of best paying institutions like the Central Bank.
- The staff of the old departments who have a record of doubtful integrity or poor performance are not absorbed into the new organization.
- Managers are recruited from strong candidates with private as well as public sector background.
- The organization has a very clear understanding of its mission and vision of what it needs to be to achieve its objectives and targets.
- Senior managers are employed on performance contracts, which can be terminated on account of poor performance or doubtful integrity.
- The centralized management creates a strong management team with each member accountable to management and management accountable to a board of directors.
- The board of directors is determined to achieve given goals within the period of its tenure.
- There is more transparency in individual activities and less opportunity for exercising personal influence on decision making and for pursuing personal gain.
- They work closely with the private sector stakeholders as partners sharing common national goals.
- Facilities are improved and operation resources are increased.

III. Complying with Currency Controls¹⁰¹

A. Exchange Control Authority

The national currency of Namibia is the Namibia Dollar, which is pegged to the South African Rand at parity. Namibia is a member of the Common Monetary Area comprising Lesotho, Namibia, South Africa and Swaziland.¹⁰² The Rand is used freely in Namibia, but the Namibia Dollar is not used outside Namibia.

Exchange Control in Namibia is regulated by the:

- Currency and Exchanges Act, 1933 (Act No. 9 of 1933);
- Exchange Control Regulations, 1961, Orders and Rules, as amended;
- Common Monetary Area (CMA) Multilateral Monetary Agreement;
- CMA Bilateral Monetary Agreement; and
- Bank of Namibia Act, 1997 (Act No. 15 of 1997) as amended—Section 46 (1& 2).

The Minister of Finance has delegated all the powers and functions to the Bank of Namibia (BoN), for the purpose of carrying out the functions and day-to-day administration of Exchange Control.¹⁰³ The BoN is the agent for the government in the administration of any law relating to exchange control¹⁰⁴. The Bank of Namibia has, in turn, delegated several of the exchange control functions to the commercial banks that were appointed by the Minister of Finance in terms of Article 3 of the Orders and Rules, to act as Authorized Dealers in foreign exchange, to assist the Bank of Namibia with the administration of Exchange Control. The Exchange Control Division of the Bank of Namibia's practice and procedure are formulated in Rulings issued to Authorized Dealers, copies of which are not made available to the public.

Where an Authorized Dealer is not empowered to approve the purchase or sale of foreign currency, an application must be made to the Exchange Control Division of the Bank of Namibia. The Exchange Control Rulings are amended as required and supplemented by Circulars.

B. Dealings in Foreign Currency

What may not be done or must be done depends on the exchange control residential status of the person concerned. There are three categories of residents: permanent residents; temporary residents; and non-residents.

No person is permitted to hold or deal in foreign currency other than an authorized dealer. A resident requiring foreign currency for must apply through an authorized

¹⁰¹ The information here was supplied on the basis of a questionnaire which was prepared ad hoc by a member of the research team at the request of the Exchange Control Department of the Bank of Namibia.

¹⁰² The Multilateral and Bilateral Monetary Agreements forms part of Namibian law in terms of Article 32(3)(e) read with Article 144 of the Namibian Constitution.

¹⁰³ In terms of Regulation 22(E) of the Exchange Control Regulations 1961, Orders and Rules, as amended

¹⁰⁴ Section 46(1) of the Bank of Namibia Act, 1997 (Act No. 15 of 1997) as amended.

dealer, and a resident who acquires foreign currency must sell it to an authorized dealer in exchange for local currency.

Residents wishing to buy or sell foreign currencies (currencies other than Namibia Dollar or Rand) or gold may do so only through an authorized dealer in foreign exchange.

C. Types of Bank Accounts

1. Blocked Accounts

A blocked account is an account in Namibia to which exchange control restrictions are being applied. For instance, excess balances on emigration are credited to such accounts and can only be dealt with in a manner prescribed to authorized dealers and/or be released. Generally blocked accounts may be dealt with in terms of specific conditions that the Control authorities impose at the time of blocking such funds. However, emigrants are allowed to spend their funds during vacation to Namibia. They may also use blocked funds to pay for expenses in Namibia and make gifts transfers to Namibian residents.

2. Non-resident Accounts

Non-resident accounts are maintained in the CMA on behalf of non-residents. Funds in these accounts may be used for payments to residents and non-residents of the CMA for any purpose and may be used to purchase foreign currency. They may only be funded with proceeds of sales to an authorized dealer of foreign currencies, payments from other non-resident accounts and payments that are not inconsistent with the authority delegated to the banks.

3. Resident Accounts

Resident accounts are the accounts of residents of Namibia, whether permanent or temporary.

4. Foreign Currency Investment/Deposit Accounts

Private individuals are allowed to invest in foreign currencies of their choice or in securities offshore. This they may do in any manner. They may hold foreign currency deposits with Authorized Dealer including foreign currency accounts up to a limit equivalent to N\$750,000 (US \$115,385).

5. Foreign Currency Accounts

Permanent residents and temporary residents of Namibia and non-residents of the Common Monetary Area can open foreign currency accounts with an authorized dealer in Namibia. The only condition is that they must be taxpayers in good standing, over the age of 18. Such accounts must be maintained in the Bank's "nostro" accounting system.

6. Foreign Bank Accounts Maintained by Residents

Permanent residents of Namibia may not maintain Bank accounts outside the CMA. However, Namibian natural persons may invest abroad up to an amount of N\$750,000 (US \$115,385) and may retain abroad foreign earned income. Temporary residents may maintain accounts abroad.

D. Foreign Exchange Out-payments

All foreign exchange transactions must be handled by Authorized Dealers. Where Authorized dealers cannot handle out-payments the Authorized Dealer authorization must be obtained from the Exchange Control Division of the Bank of Namibia via an authorized dealer.

1. Payment for Imports

Payments may not be made prior to the shipment or dispatch of the goods without prior approval of the Exchange Control Division of the Bank of Namibia except for import of capital goods. Advance payments of up to 33.3% ex-factory cost of capital goods may be allowed by the Authorised Dealers, provided it is required by the suppliers or if it is normal in the trade concerned. Cash with order advance payments of up to N\$250,000 (US \$38,462) per transaction for permissible imports other than capital goods may also be allowed.

The applicant must go to his or her authorized dealer with an original invoice and the necessary transport (proof of importation) documents such as airway bill, bill of landing, customs declaration forms duly endorsed and import permit when required to show that the goods have been shipped or have arrived in the country.

2. Foreign Travel

Adult Namibian residents travelling abroad for business or holiday are allowed to travel with an allowance of up to N\$160,000 (US \$24,615) and N\$50,000 (US \$7,692) for a child under 12 years per calendar year.

Companies qualify for a global travel allowance of up to N\$2 million (US \$307,692) per calendar year.

3. Medical Expenses

There are no restrictions of payments for medical costs abroad. However, proof of the need for such expenses is required.

4. Education Abroad

Namibian residents undergoing full time course outside the CMA may be allowed foreign exchange to cover the cost of board and lodging, books and other expenses. The allowance is N\$320,000 (US \$49,230) for a student accompanied by a spouse and N\$160,000 (US \$24,615) for a single student. Additionally, students may be accorded

with travel allowances per annum of up to N\$50,000 (US \$7,692) and N\$100,000 (US \$15,384) for single and those accompanied by spouses, respectively.

5. Maintenance, Gifts and Personal Loans

Permanent residents may transfer money to relatives residing outside the CMA. Transfers for purposes of maintenance are allowed up to the maximum of N\$9,000 (US \$1,384) per family unit per month, provided the proposed beneficiaries are the mother, father, brothers, or sisters of the applicant and are necessitous circumstances. They can also give monetary gifts and loans outside the CMA of up an amount of N\$30,000 (US \$4,615) per annum.

6. Current Transfers by Temporary Residents

Monthly Transfers

Temporary residents on secondment to a local entity or recruited under a definite contract may transfer two-thirds of their monthly earnings to countries outside the CMA their local.

Gratuity, Leave Pay, and Bonuses

Temporary residents are allowed to transfer their gratuities, leave pay and bonuses provided there is substantiating documentation confirming that the funds do in fact represent amounts earned in Namibia.

Accumulated Savings on Departure from the CMA

Temporary residents who are permanently returning to their countries of domicile on completion of their tour of duty or on expiry of their contracts may on their departure transfer savings accumulated from earnings in Namibia.

E. Emigration

Persons regarded as permanent residents of Namibia for Exchange Control purposes may be accorded a settling-in-allowance if they emigrate outside the CMA. The amounts allowed are N\$750,000 (US \$115,384) for a single person and N\$1.5 million (US \$230,769) for a family unit. They can also export their household and personal effects within the overall insured value of N\$1 million (US \$153,846) per family unit or single person.

F. Local and Foreign Currency Banknotes

1. By Residents

Namibian residents travelling outside the CMA are allowed to take out their allowance in foreign bank notes up to N\$160,000 (US \$24,615) if single and N\$320,000 (US \$49,230) per family unit.

It is not permitted to import Bank of Namibia notes or bank notes of any other member country of the CMA in excess of a total value of N\$5,000 (US \$769) per person

2. By tourists and Short-term Visitors

Visitors to Namibia, excluding foreign seamen, will be permitted on their arrival in the Republic from countries outside the CMA, to import bank notes of CMA countries up to the total value of N\$5,000 (US \$769) per person to meet their initial expenses.

Visitors leaving Namibia may be allowed to take with them up to a total value of N\$5,000 (US \$769) per person in the form of Bank of Namibia notes which must be reduced by the value of any bank notes issued by any other member countries of the CMA that are permitted to be exported. In addition, visitors may be allowed to take with them foreign bank notes provided it can be established that they imported the foreign bank notes into Namibia or alternatively, that such notes represent the proceeds of instruments of exchange imported into and exchanged in Namibia.

G. Capital Transfers, Capital Issues, Securities, and Local Borrowing by Non-residents

1. Inward Transfer of Investment Funds into Namibia

There are no restrictions on inward capital transfer for investment purposes. However, income earned abroad and own foreign capital introduced into the Republic on or after July 1, 1997 by private individuals resident in Namibia may be retransferred abroad, provided the Authorized Dealer concerned is satisfied that the income and/or capital had previously been converted to Namibia Dollars, by viewing documentary evidence confirming the amounts involved.

No particular declaration form is required, but the Authorized Dealer will have to notify the Exchange Control Division of the Bank of Namibia through the reporting system (BOPCUS).

2. Capital Issues

Authorized Dealers and their corporate customers are advised to seek the guidance and/or the prior approval of the Exchange Control Division of the Bank of Namibia before issuing, listing and/or purchasing any form of debt security. This is in view of the multiplicity of debt securities on offer, largely as a result of the securitization of many forms of debt or assets. The general rule, however, is that raising capital by means of local borrowing is limited to 200% of the investor's own funds introduced into Namibia.

The Exchange Control Division in conjunction with the Namibian Stock Exchange are responsible for considering approvals where they are required. The prospective investor must submit an application to the Exchange Control authority via his or her bank of choice.

3. Local Borrowing by Non-residents

Authorized Dealers may grant or authorize local financial assistance facilities to wholly foreign owned Namibian companies, provided that the facilities accorded will not cause the borrower to exceed the maximum limit calculated according to the financial assistance formula: "200% + (% Namibian interest)/(% Non resident interest) *100."

4. Transactions in Securities Between Residents and Non-residents

In view of the multiplicity of debt securities on offer, Authorized Dealers and their corporate customers are advised to seek the guidance and/or the prior approval of the Exchange Control Division of the Bank of Namibia before issuing, listing and/or purchasing any form of debt security.

H. Dividends and Profits, Interest, Director's Fees and Royalties

1. Dividends and Profits

Trading profits and dividends are freely transferable through an Authorized Dealer without referral to the Bank of Namibia, provided there are no local borrowings, or such borrowings do not exceed the permitted limits. However, where the local borrowing limit exceed, the Bank's prior approval will be required. Local credit facilities cannot be utilized for paying dividends.

2. Interest

All foreign loans require approval from the Exchange Control Division. The application must go through the applicants' commercial bank.

Interest may freely be remitted provided the loan has the approval of the Exchange Control Division of the Bank of Namibia. The rate for currencies other than the Namibian Dollar is the LIBOR rate for the applicable currency, for foreign denominated loans and prime+3% for local currency denominated loans.

3. Director's Fees

Authorized Dealers may allow the transfer to non-residents of directors' fees, provided there is substantiating documentation to that effect

4. Royalties

Authorized Dealers may approve applications by Namibian residents to make payments in the prescribed manner to persons resident outside the Republic in respect of royalties and fees due from the use of patents, trademarks, copyrights, and designs.

I. Foreign Exchange Receipts

Permanent residents are not permitted to keep foreign currencies, but they can maintain accounts abroad for investment purposes like any other residents.

1. Exports

When goods are exported, a declaration that export proceeds will be repatriated in the prescribed manner and within the stipulated period has to be made on Form F 178 and submitted to the exporter's commercial bank. The bank stamps it and a copy is returned for presentation to the Customs with other export documents. Exporters cannot waive or delay payment for more than six months after shipment or seven days after accrual.

Special exchange control approval should be obtained for any permissible and necessary disbursements to be charged against foreign exchange proceeds.

2. Other Income in Foreign Exchange (Invisible Exports)

By law, residents are obliged to repatriate amounts due to them by non-residents and to sell such amounts to an authorized dealer for exchange into Namibian Dollars. These would include dividends, interest, profits, salaries, wages, directors' fees, and commissions.

3. Borrowing Abroad

Residents require approval from the Exchange Control Division of the Bank of Namibia to borrow abroad. An application need to be launched through the Authorized Dealers and the requirements in terms of Section G (2) (2) of the Rulings need to be satisfied. Loan repayments can only start after six months. An agreement between the lender and the borrower should be presented with clear terms and conditions.

J. Analysis

Investors expressed satisfaction with the exchange control allowances, and none of the companies interviewed had experienced problems with remittance of funds. One investor pointed out that it is possible to borrow from overseas but the problem was that lenders want "sovereign guarantee" (guarantee by the State). This is not, however, an exchange control problem. Others noted that the strong South Africa Rand was harming the export market, but again this is not an issue concerning exchange control formalities.

Issue

Comprehensive information on the exchange control regime is not easily available to the public. A private sector executive pointed out that one applying for funds would always get information from one's commercial bank. However, potential investors located overseas would not be able to have access to a local bank.

Recommendation

Compile information on exchange control requirements and allowances and make it readily available to the public. Although the Bank of Namibia does not directly deal with the public in matters of exchange control, it should compile a document on exchange control requirements and allowances that can serve as an authoritative source of such information. The commercial banks would give out this document to the public on request. The document would be very handy to investment facilitators that have to advise investors or potential investors.

Chapter 6: Implementation Strategy

I. Immediate Next Steps

The immediate task facing the Government of Namibia is how to implement the proposed changes in the most effective way, balancing the costs associated with administrative reform and the beneficial impact it may have on the investment climate. Therefore, the implementation should be both broad and strategic. Streamlining administrative procedures can be an arduous undertaking because it often involves, simultaneously, process re-engineering, improving multi-agency coordination, changing the behavior of civil servants, and communicating changes to the public. Getting all agencies involved can also be a challenge. As noted elsewhere in this report, making the improvements advocated herein requires firm, visible, and deeply held commitment at the highest levels of government. This last chapter outlines some immediate next steps that can be taken to improve Namibia as a destination for investment, both foreign and domestic.

The recommendations in this draft, while based on international best practice and a thorough analysis of inefficiencies in the interface between investors and regulators, should not be seen as conclusive. Rather, it is the intention of the authors to provoke discussion within the government and between the private sector and the government and offer a path for change. When implementing specific changes, it is understood that additional study and dialogue will be necessary to craft appropriate solutions for the Namibian context. In some cases, alternative solutions to those articulated herein may achieve the same objectives of more transparent and efficient public service. Further, in some cases detailed analysis of internal government operations will be necessary to understand some of the root causes of the bureaucratic inefficiencies noted by the private sector. Ultimately, it is the government and the business community who must work together and find practical solutions for the many problems identified in this report. As highlighted previously, enhanced public-private dialogue and trust are required to move forward.

II. Creating an Implementation Strategy

Based on experience elsewhere implementing administrative and regulatory reform arising from an Investor Roadmap, the Southern Africa Trade Hub proposes a three-phase strategy to move forward with implementation of the recommendations included in this diagnostic, as elaborated below.

A. Create a Sense of Urgency and Build Political Will for Change

Probably the most critical factor in successfully implementing change across a broad spectrum of public agencies is strong and clear political will and the promulgation of a compelling vision for change. Policymakers at the highest levels need to demonstrate commitment to introducing administrative change and highlight the benefits at the end of the process. Top officials and leaders within the business community need to cultivate the recognition that removing administrative barriers should be among the top priorities of the country. The central argument for administrative reform – that reduced red tape and better functioning regulators improve national economic competitiveness and create jobs – must be clearly articulated, the message persuasively adapted to the local

context. It should also be clearly argued that administrative reform does not necessarily represent a sum loss to the agencies involved. As government agencies make change, it is important that these are communicated effectively and that the business community and public sector has an agreed upon series of benchmarks so that progress will be acknowledged.

It is also important to note that so doing is entirely within the power of the government itself. Hence, the following elements are critical components of developing a viable action plan for change:

Build consensus and urgency for change at the highest level. The negative consequences of ignoring the administrative impediments noted in this report should be brought to the attention of the top leaders in government and the public. The first step has already been accomplished. The September, 2005, Presentation of Findings, which was well-attended by government and business leaders and sponsored by the Deputy Prime Minister, was a necessary and successful first start, but more needs to be done. After reviewing the conclusions of this study, Namibia's top decision-makers should formally commit to move ahead with implementation of the priority recommendations included herein.

Identify change allies. Reform programs can be easily derailed by passive resistance from unmotivated executing agencies and officials. In choosing reform projects, especially at the beginning of a comprehensive change effort it is important to select officials who are sufficiently motivated and talented and can establish a positive example for others. At the same time, agency culture can sometimes stifle the initiative of talented individuals. Thus, organizational structure and environment must be considered to ensure that the agency involved can support making change. One way to avoid passive resistance is for the government to reward the best performing agencies and managers in relation to the change process goals.

Continue and strengthen public-private dialogue and cooperation. In Namibia, as in many countries, businesspeople often complain that government regulations and policies are created with insufficient input from constituents. The recommendations in this report can form the basis of an agenda around which government and the private sector can collaborate to ensure that the proposed changes are feasible and have a tangible impact on private sector operations. Hence, it is important to ensure that private sector feedback is sought and publicly recorded on a routine basis. For example, the NIC should note what existing public-private dialogue and consultation mechanisms exist to help solicit private sector feedback. For example, in many countries a statutory labor advisory board or senior level economic policy council exists to address issues related to a functional policy area. Depending on the efficacy of such mechanisms, they should be used to "host" consideration of the reforms advocated in the Roadmap.

B. Formulate an Action Plan for a Broad-based Support

To move forward in creating a meaningful Action Plan that outlines specific steps to be undertaken, timeframes for results, responsibilities for specific agencies and individuals, and performance measurement indicators, the GoN should take the following next steps:

Establish implementation priorities. While implementing all 181 recommendations included in the Namibia Investor Roadmap would have a dramatic effect on the investment climate, a realistic reform effort requires identifying priorities. In most successful reform programs, priorities are determined by considering several critical parameters: a) the degree of benefit expected; b) cost in time and money to implement the proposed change; c) timeframe for implementation; and d) political will for change. In other Roadmap reform efforts, a single change intervention can often implement several recommendations at once, such as when a procedure is re-engineered.

In the aftermath of the Presentation of Findings it is recommended that the NIC and Ministry of Trade and Industry review the summary recommendations matrix included in this report and confirm the priorities (which are based on private sector feedback and the consultants' assessment of the impact of implementing the recommendations), estimated timeframes for implementation, and actors responsible for undertaking steps to make the changes listed. Once these priorities are reaffirmed, the NIC will have a roster of issues to tackle over a given timeframe and with stakeholders identified.

Develop an inter-ministerial Steering Committee sponsored by the Office of the Prime Minister to champion the vision for change. Implementing the many investment friendly changes proposed herein will require the coordination and support of a number of public agencies. Indeed, many recommendations address administrative barriers caused by a lack of coordination and information sharing in relation to a process that requires the approval of several government entities. To effectively secure the support and coordination of these disparate agencies in a coherent change effort, it is recommended that the GoN establish an inter-ministerial Steering Committee to oversee and implement the priority policy actions at the highest level. In this way, the top decision-makers in all relevant areas will have input in and responsibility for ensuring that action plans are well informed and acted upon.

The committee should be comprised of senior government managers, including Ministers and Permanent Secretaries, as well as senior business leaders and chaired by the Deputy Prime Minister. The Committee should have a regular meeting schedule – perhaps once every one or two months – and a specific agenda for each meeting as well as its overall deliberations. Its first meeting should be focused on a presentation of the NIC's priority areas for reform based on the Roadmap recommendations matrix. It should serve as a champion for administrative reform throughout government and the business community, a sounding board for specific changes proposed, and a policy body to which challenges and successes are reported. The results of its deliberations should be made public. The Committee can be *ad hoc* and have a Terms of Reference lasting for a one to two year duration.

The sponsorship of the Prime Minister is important to resolve any “turf battles” that may arise among Ministries. While administrative change is beneficial for government and the private sector alike, in many cases it may not be perceived that way. In many countries far-reaching changes advocated by economic ministries may face resistance from other agencies especially because the positive impact may not be visible for some time while the costs – including the simple cost of overcoming inertia toward change – are readily apparent. Having a transparent committee structure and the full support of the Prime Minister to effect change in relation to the problems identified is vital.

Create Action Plan based on priorities identified. To be effective, the reform process should focus on a clear and precise master Action Plan. The recommendations included in the report and summarized in the matrix in the Executive Summary can guide the government in creating the Action Plan, and individual process action plans can be created subsequently. The mast Action Plan should be widely publicized to increase accountability. Success should be measured not in the number of laws changed but rather in the reduction of costs and time for investors and in qualitative improvements in government service delivery and transparency. As such, the development of appropriate performance measurement indicators is an integral part of the Action Plan. Indicators of successful change can include the reduction the length of time the average firm takes to receive a permit, elimination of the number of superfluous submission requirements, or the creation of useful process guides.

Ensure participation of the private sector. To have the desired impact and credibility, the private sector will need to form a partnership with government in the implementation of reforms. This involvement should have three dimensions. First, investors should be asked for feedback on the overall vision and direction proposed by government. Second, sufficiently knowledgeable and independent private sector representatives should be included in technical working groups to provide feedback and knowledge about critical proposals arising from the action plan. Third, the authorities should regularly disseminate details about the status or on-going reforms to keep the avenue for communication open for interested stakeholders.

Ensure participation and ownership of government managers. Many change efforts fail because the mid-level managers and frontline staff do not have sufficient ownership of the solutions they are charged with implementing. While the inter-ministerial Committee should provide overall policy direction and leadership, the “nuts and bolts” of the changes to be implemented must be developed with the input and buy-in of the individuals within the agencies that will be responsible for the work on a daily basis. As specific areas are identified for change, it may be desirable to establish a series of technical working groups comprised of government managers and private sector representatives. The technical working groups will report back to the Steering Committee on a regular basis and be responsible for developing specific administrative reform systems with the assistance of outside technical experts as needed.

It is also important to note that the changes proposed may be linked to on-going reorganization efforts in individual agencies. For example, in many countries as customs implements computerization programs, in parallel administrative reforms that reduce clearance timeframes, simplify paperwork, and improve the public interface can be successfully introduced. In this way, the administrative reform effort can synergize with momentum generated from other change efforts.

Establish technical working groups, as needed. While political commitment and direction at the highest level is indispensable to implementing administrative change, top government leaders cannot be expected to follow the specific steps of the implementation process on a regular basis. In most successful change efforts, a single, interested, and sufficiently powerful agency (often the national investment promotion agency or Prime Minister’s office) has been designated to ensure this role. The agency selected must be supported by the top echelons of government yet sufficiently independent to represent the private sector viewpoint when interacting with sister agencies. The coordinating body should also ensure that it is staffed appropriately and

receives appropriate performance incentives in order to guarantee that it achieves results.

In the case of Namibia, it is possible that an outside consultant resident in Namibia for a fixed timeframe would be invaluable in organizing the institutions, agenda, systems, and staff to start the change process. However, as the agency responsible for facilitating investment it is anticipated that the NIC will need to make a sincere commitment in resources to see the change process through.

Get agencies involved early in the process by creating business guide. Agencies tend to have more interest in the success of a reform process if they are involved early in the planning process. At the same time, decision-makers' time is valuable so outreach efforts, including multi-agency meetings and presentations, should be well focused and designed to elicit a specific outcome from all participants. One vehicle for engaging agencies early is to create a comprehensive and user-friendly business guide for investing in Namibia, including for incentives, tax filing, and land acquisition. To create this guide, individual agencies will need to review their procedures in detail and validate their accuracy. Indeed, as part of the process for preparing the Namibia Investor Roadmap all agencies were given the opportunity to review written drafts of procedures and correct the factual information presented herein. Therefore, it is anticipated that little change will be required, but the NIC should replicate the process with the specific intention of posting an updated investment guide on-line. This process alone often starts to highlight the fact that the overall procedural regime for business start-up and operation can be overwhelming. In cases where multiple agencies are involved in regulating a single procedure, the process of developing a firm consensus on the steps, costs, submission requirements, and timeframes for completion of procedures can quickly instill a need for improvement while enhancing coordination and clarity.

Plan some "quick wins." Many of the reforms championed in this report will require commitment and effort for an extended period of time. Some, however, can be accomplished quickly, offering a tangible example of the fruits of reform in a short time period. While the reform program should include a mix of long and short-term activities, it is often useful to be able to point to a model of successful change early on in a reform process to help maintain momentum. Quick wins are important because they visibly and speedily demonstrate impact and progress, thereby encouraging stakeholders and observers of the reform process.

Ensure accountability and transparency. To be successful, the action plan needs to clearly identify the specific actions to be undertaken and the specific individuals, departments, and agencies responsible for their implementation. Each action should be accompanied by a description of the expected outcome and a timeframe for completion.

Provide on-going support. It is important that the agencies involved receive adequate support to carry out the proposed actions. These agencies, if demonstrating the appropriate effort and sincerity, should receive adequate technical and financial resources. The GoN should allow for the agencies to finance request for outside technical assistance, training, capacity building, and technology as needed.

C. Monitor Improvements

As noted above, the Action Plan should include some performance measurement indicators so that progress and success can be measured and acknowledged in a transparent manner. The following steps should be undertaken to develop such performance monitoring plan.

Create transparent monitoring and evaluation system. Evaluation and monitoring should be an on-going element of the change process in Namibia. Streamlining administrative procedures is an interactive undertaking where adjustments have to be made to fine tune an administrative regime that both maintains regulatory integrity and responds to the needs of the public. For this reason, the authorities should consider the introduction of an evaluation system. Periodic assessments of the impact of change processes should be conducted to ensure that the on-going reforms are having the intended results for the end user – in this case investors. The use of periodic surveys, investor focus groups, or solicitations of e-mail responses has proved useful in other countries. As such, it is proposed that the following instruments be developed:

- Benchmark indicators based on internal agency information, including the time required to process applications, costs charged, and number of individuals involved in making a decision;
- A survey for investors on their perception of the performance among the relevant agencies;
- Feedback mechanisms for the public to communicate to individual agencies and the coordinating body;
- Periodic reports, press releases, or presentations on the results of the reforms and obstacles to successful implementation; and
- Link performance to external indicators, such as the World Bank's *Doing Business* survey and United Nations *World Investment Report*.

Involve the private sector. The private sector should be involved by providing feedback on reform goals, proposed solutions, and monitoring results. This involves informing the public and business stakeholders of the goals, expected outcomes, and timeframes for reform so that the private sector will know what successful change will look like. Then the private sector and Steering Committee should be tasked with periodically evaluating the pace and impact of the changes undertaken.

III. Priorities beyond the Scope of the Investor Roadmaps

The objective of the *Investor Roadmap for Namibia* is to document and analyze the regulatory, administrative, and procedural conditions a foreign investor faces when establishing and operating a business in the country. Implementation of Roadmap recommendations should have the effect of facilitating the investment process and of improving the overall investment climate. Some subjects of immense importance to foreign direct investment, nonetheless, lie beyond the scope of a Roadmap exercise. The four most salient and pressing of such issues are related to incentive policies, tourism sector improvement, the role Namibia Investment Centre, labor, and competition law.

Improve tourism regulation and marketing. Government studies suggest that tourism has considerable potential in Namibia to create jobs and increase foreign exchange earnings. Traditional tourism markets – notably Germany and South Africa – have contributed greatly to the national economy, but little focused effort has been made to expand beyond these target countries. Further, a host of improvements in the overall tourism experience could be made to increase the value of Namibia’s tourism product. To begin identifying a coherent set of policy priorities in this sector, an analysis of the regulatory and administrative regime for the sector should be conducted in parallel with a strategic assessment of Namibia’s potential to target new markets.

Evaluate structure, mandate, and efficacy of the Namibia Investment Centre. The promotion of foreign investment has historically been demonstrated as indispensable to countries not in possession of abundant reserves of petroleum or other natural resources of high value. The mandate, internal structure, and organizational location of the NIC all demand reexamination. There are many lessons learned about effective investment promotion, and Namibia should seek them globally, not just in the region or on the continent. Strengthening the Investment Centre and rationalizing its functions are important to attracting and keeping investors. This, too, is an effort that could be the object of a well-informed study.

Evaluate incentives policy and administration. The economic impact of the several incentives packages Namibia currently offers is unclear. The way they are structured makes them less of an inducement to new investment than a potential reward on a post-establishment basis, thus obscuring their purpose. Incentives can be useful for attracting investment but are no substitute for building a national competitive environment for business and trade. A study that includes, but is not limited to, an evaluation of where to target incentives and comprehensive cost-benefit analysis of Namibia’s incentives is overdue.

Improve labor environment. Arguably, nothing has the potential to affect the climate for foreign direct investment in Namibia more greatly than the current antagonism between labor and industry. The level of distrust is exceptionally high and is almost certainly having a negative impact on employment and economic growth. The situation is not, however, without hope, as there are scattered cases in which individual enterprises appear to have found solutions satisfactory to management and labor and in which the outcome of their efforts has ultimately brought not concessions but a general gain. This is a subject for concerted national discourse at all levels, beginning at the highest.

Improve application and understanding of competition law. The question of what constitutes dumping or other forms of predatory commercial practice is an issue of considerable debate in Namibia at the present time. There is a risk is that Namibia will take recourse to protectionism and to conventional antidumping actions, such as countervailing duties, even when the dispute is neither technically nor structurally one of dumping. Vigorous use of antidumping measures could have the economically disadvantageous effect of discouraging foreign direct investment. A preferable avenue to address most of the grievances is through an appropriate competition law framework. This subject could easily constitute the object of a study and of expert technical assistance.

Annex A: Persons Interviewed

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