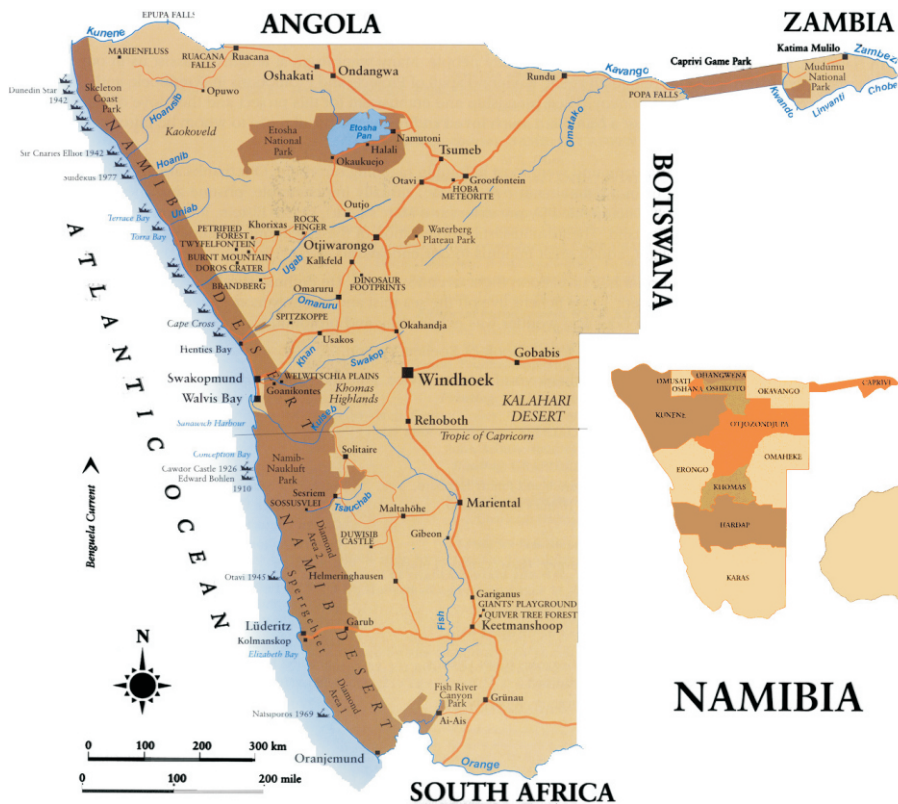


A Business and Investment Guide for Namibia





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This Guide is a business and investment guide for Namibia, and is based on the latest available information as at 31 March 2008. The Guide is published by PricewaterhouseCoopers **Namibia**.

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This guide on business and investing in Namibia has been compiled with the foreign investor in mind. Since the country gained its independence in 1990, Namibia has undergone a period of tremendous change, both politically and socially, which has led to a positive re-evaluation of the country as an investment market. In the following chapters, you will find details on the business environment, the taxation system and various regulations governing business, as well as other relevant information.

As a global network, PwC is 10 years old on 1 July 2008. This publication is launched as part of our 10 year celebration.

We trust that you will find this publication useful. If you require further information about our services or the investment climate in Namibia, please contact any of our offices in Namibia.

A handwritten signature in black ink, appearing to read 'Albé Botha'.

Albé Botha
Territory Senior Director

Foreword

This Guide has been prepared for the assistance of those interested in investing and doing business in Namibia. It does not cover exhaustively the subjects it treats but is intended to answer some of the important, broad questions that may arise. When specific problems occur in practice, it will often be necessary to refer to the laws, regulations and decisions of the country and to obtain appropriate accounting and legal advice.

The material contained in this Guide was assembled in March 2008. Unless otherwise indicated, it is based on information available at that time.

A Business and Investment Guide for Namibia

This guide is divided into the following sections:

1. Investment climate
2. Doing Business
3. Audit and accounting
4. Taxation
5. Education
6. Introduction to PricewaterhouseCoopers
7. Appendices

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Chapter 1

Namibia—A Profile

Investor considerations

- Stable, democratically elected government.
- Developed infrastructure
- Efficient transport system.
- Efficient communication system, including cellular networks.
- Sophisticated financial sector.
- Moderate inflation rate.
- Relatively stable exchange rate, linked to the South African Rand.
- Rich diversity of fauna and flora.

Geography and climate

Namibia is situated on the south-western coast of Africa, bordered by the Atlantic Ocean in the west, Botswana and Zimbabwe in the east, South Africa in the south and Angola in the north. Namibia gained its independence in March 1990 and the democratic South West African People's Organisation (SWAPO) has held government office since independence.

Namibia covers approximately 823,000 square kilometres consisting of arid and desert regions in the south and southwest to lush fertile areas in the north and northeast, with the eastern part of the country being semi-arid. The wetland on the western coast just south of Walvis Bay provides part of the international ecological breeding grounds for several types of migratory birds, including flamingos.

Namibia's climate is arid, semi-arid and sub-tropical. The hottest months are January and February, with average maximum day temperatures of between 20°C and 35°C. The average day temperatures in winter range between 10°C and 20°C. The average rainfall varies from none in the Namib Desert, about 100 mm in the southern regions, and 400 to 500 mm in the eastern and northern regions.

Capital

The capital city of Namibia, Windhoek, has a population of approximately 365 000. It is situated in Namibia's central highlands, at 1650m above sea level. Windhoek gained municipal status in 1909 and was proclaimed a city in 1965. The climate is typical of a semi-desert country, with hot days and cool nights.

Windhoek serves as the administrative, legislative and judicial seat of government as well as the country's economic and commercial nerve center.

The city offers every modern amenity, including internationally rated hotels, restaurants, conference facilities, specialised shops, beer gardens and street cafes. Its infrastructure compares with the best in the world: well-maintained roads, world-class medical services, educational institutions and reliable municipal services. To top it all, it is a very clean and well functioning metropolis.

History

Namibia was under German rule from 1884 until 1915 when South African expeditionary forces defeated German forces. In 1920, South Africa was granted a C-class mandate by the League of Nations to administer Namibia. Obligations to promote the welfare of the indigenous people were generally ignored and a legislative assembly for whites was established in 1925. In 1945, the newly formed United Nations (UN) declared South West Africa, as the territory was then known, a trust territory with the right to self-determination. South Africa's refusal to negotiate a trusteeship with the UN resulted in a progressively intensified Namibian and international campaign to secure the country's independence in line with the UN resolutions. Eventually, Namibia became independent on 21 March 1990.

Political system

The Namibian Constitution, the supreme law of the land, entrenches multiparty democracy as well as fundamental rights and freedom. The constitution lays down the division of powers between the executive branch, the legislature and the judiciary. The president, who is elected by direct popular vote for a term of five years and can be re-elected for a second term of office, heads the executive branch.

Since independence, Namibia has built a strong democratic foundation. All institutions necessary to ensure democratic governance have been established. Presidential and local authority elections have been held regularly and conducted freely and fairly. The Judiciary operates with total independence, while the Auditor-General's office has gained stature as a watchdog over the conduct of financial governance. Also operational is the office of the ombudsman and the Anti Corruption Commission. Over the last ten years, Namibia has maintained an environment conducive to the existence of a vibrant and free press. The government has also remained steadfast in its commitment to the free market economic system, which acknowledges the centrality of the private sector in the development process.

Legal system

For historic reasons, the law in Namibia is rooted in South African legislation and legal principles. Therefore, Namibia's law was effectively founded on a system known as Roman-Dutch law. Roman law forms the cornerstone of most modern European legal systems.

Common law in South Africa consists of the writings of the 17th and 18th century Dutch jurists, known as the glossators, and is known as the common law of South Africa. Roman-Dutch law was brought to South Africa by the Dutch settlers and to the then South West Africa, which was administered as a mandate by South Africa.

With independence in 1990, the Namibian Constitution was written and adopted as the fundamental law of the Republic of Namibia. The main organs of the state are the executive branch, the legislature and the judiciary.

Namibian courts

In terms of Article 78 of the Namibian Constitution, the judicial power vests in the courts of Namibia, which consist of the following.

- A Supreme Court
- A High Court
- The Lower Courts
- Special Courts

The Supreme Court

The Supreme Court consists of a Chief Justice and a number of judges who preside and adjudicate upon appeals from the High Court, including interpretation, implementation and upholding of fundamental rights and freedoms guaranteed under the constitution.

The High Court

The High Court consists of the Judge-President and a number of other judges. The High Court has jurisdiction to hear and adjudicate upon all civil disputes and criminal prosecutions. The High Court also has jurisdiction to hear appeals from the Lower Courts.

The Lower Courts

The Lower Courts were established by an Act of Parliament and have the jurisdiction and are required to adopt the procedures stated in the Act. The Lower Courts are presided over by the magistrates.

The Special Courts

The most important special courts for the businessperson are the Income Tax Court and the Lands Tribunal.

The Income Tax Court consists of a judge assisted by assessors with special tax knowledge and appeals are made directly to the Appellate Division.

The Lands Tribunal is established by section 63 of the Agricultural (Commercial) Land Reform Act 6 of 1992, as amended. It consists of five members with special knowledge of legal matters, economical and financial matters, as well as agricultural matters.

Any decision, order or determination of the Lands Tribunal may be executed as if it were a decision, order or determination made by the High Court of Namibia.

Also of note is the fact that there is currently no Arbitration Court in Namibia. Informal arbitration is made use of, as per prescribed agreements. The applicable legislation is the Arbitration Act, Act No. 42 of 1965. There is no formal arbitration structure in place, but there is a voluntary association that handles arbitration matters.

Population and social patterns

Population and languages

Namibia is one of Africa's three most sparsely populated countries. Dubbed the land of wide-open spaces, Namibia has an average population density of only 2.6 people per square kilometer. The total population is estimated at 2.3 million. Approximately 37 percent of the population lives in urban areas. English is the official language; Oshiwambo, Afrikaans, Herero, Nama/Damara, German, Lozi, Kwangali and Tswana are also spoken.

Religion

Namibia is a predominantly Christian nation, with Lutheran, Roman Catholic, Methodist, Anglican and various other church denominations present in all major cities and towns.

Education

Primary and secondary schools exist in all cities and towns, some of which are managed by the Ministry of Education. There are also a number of private schools in Namibia, mainly within Windhoek but also situated throughout the country, (Refer to Chapter 28).

Health

The doctor patient ratio is one of the best in Africa, with one doctor for every 10 062 persons, and a ratio of 0.27 beds per 1,000 people within 13 regions in Namibia which is the third best in Africa.

Besides the government hospitals in most major cities and towns, there are several private hospitals and nursing homes that provide emergency services. The following are all private hospitals in Namibia.

Cottage Hospital	Swakopmund
Tsumeb Private Hospital	Tsumeb
Welwitschia Hospital	Walvis Bay
Catholic Mission Hospital	Windhoek
Medi-Clinic	Windhoek
Rhino Park Private Hospital	Windhoek
Medipark Hospital	Ongwediva

Recreation

Fauna, flora and game parks

The Ministry of Environment and Tourism controls some 12 wildlife and recreation parks in Namibia. Amongst these is the world famous Etosha National Park, where various animal and plant life can be viewed. Accommodation at these venues ranges from camping and self-catering to luxury bungalows and tented camps. In most of the game parks it is possible to view indigenous flora such as the welwitschia plant on the west coast, and the kokerboom in the south.

There are various privately owned guest farms and hunting lodges throughout Namibia. Tourists travelling to Namibia should make use of the publication 2008 Namibia Travel Guide “Where to Stay” www.wheretostayonline.com for sourcing their ideal holiday destination. A hunting rifle may be brought into

Namibia during the hunting season. One would need to confirm the dates and relevant documents required before entering Namibia. Various hunting and ammunition shops are located in the main cities and towns.

Coast

Namibia’s western coastline is an angler’s haven for local species such as kabeljou, steenbras and catfish and permits are required to catch these fish. The coastal towns provide all the necessary “stop-over” points for fishermen not wanting to camp. Various camping sites with ablution facilities on the beach are available at Mile 4, Mile 14, Mile 72, Jakkalsputz, Mile 108 and Torra Bay and Shark Island in Luderitz. Luderitz and Walvis Bay, being harbour cities, offer deep-sea fishing excursions. Fishing licences are available at information kiosks at the coastal towns at a minimal fee. Licenses are available at Swakopmund, Walvis Bay and Henties Bay. Crayfish diving takes place during November and April each year.

Approximately 120 kilometres north of the coastal town of Swakopmund, the visitor to Namibia can view colonies of Namibian seals in their natural habitat. Viewing times are restricted and further information can be obtained from the local authorities along the coast. Various water sports, such as yachting and windsurfing, are available at Walvis Bay. Equipment can be hired from various clubs.

Utilities

Broadcasting, television and the press

The Namibian constitution guarantees freedom of expression. There are ten commercial newspapers, of which four are daily; four are weekly and two are biweekly. These newspapers are available in English, Afrikaans, German and some of the indigenous languages.

There are two local television stations, Namibia Broadcasting Corporation (NBC) and One Africa. Satellite television services are available to subscribers. International programmes such as CNN, BBC, Sky-TV, CNBC, SABC, Euronews and Al Jazeera, etc., are available through this service. The NBC also operates nine radio channels, which are available in English and most indigenous languages. Radio stations such as Namibia FM 99, Radiowave, Radio Kudu, Radio 100 and Radio Kosmos and Channel 7 are all privately owned stations which are broadcast daily.

MWEB, Verizon, Africa Online, Namib Net, MTC, Business Connexion and Cell One to mention a few are providers of internet facilities. These companies provide daily internet connectivity to customers across Namibia.

Telephone and postal services

Telecom Namibia Limited provides a wide network of telephone and related services. The modern telecommunications infrastructure in Namibia is 97 percent digital, and provides direct dialing facilities to 242 countries, or 97 percent of the world. Mobile cellular telecommunication services have roaming capabilities in 108 major international countries with 28 networks and are provided by MTC. Cellular One operates as the second mobile cell phone company in Namibia.

Namibia has one of the most modern postal infrastructures in Africa. Namibia Post Limited (affiliated to the Universal Postal Union) has 85 post offices, six satellite post offices, 11 postal agencies, 37 mobile postal units and 80,000 registered mail box holders throughout Namibia.

Electricity

Nampower Limited is responsible for Namibia's electricity network. Various projects are underway to enhance the existing network.

The economy

General description

The growth of the Namibian economy has been positively influenced over the recent years by the global economic growth, high commodity prices and our prudent and sound macro-economic policies.

Industry contributions to the growth of the Gross Domestic Product for the years 2004 to 2006 are illustrated in the table below:

Industry	2004	2005	2006	AVG
Primary Industries	13.2	1.9	7.9	7.7
Secondary Industries	2.5	3.6	0.3	2.1
Tertiary Industries	7.1	7.0	4.4	5.6
GDP at market prices	6.6	4.8	4.1	5.2

Source: CBS, National Accounts: 1996 – 2006

The above years had a relatively high average growth in GDP of 5.2 percent per annum. The main contributing factors to the high growth were diamond mining with an annual average rate of 20.2 percent (primary industry), the construction sub-sector with an average growth rate of 12.2 percent (secondary industry) and tertiary industries such as transport and communication at 13.7 percent, financial intermediation at 12.0 percent, and wholesale and retail trade and repairs at 8.2 percent.¹

The primary industries had an average growth rate of 7.7 percent due to the growth in the diamond mining, agricultural and forestry sub-sectors, although the fishing sector contracted during this period.

The secondary industries had an average growth rate of 2.1 percent compared to a 7.4 percent during 2001 to 2003. The decline was mainly due to the manufacturing sub-category of fish processing.

The tertiary industries showed an average growth rate of 5.6 percent mainly attributable to post and telecommunications, transport and storage, financial intermediation and wholesale and retail trade and repairs.

¹ The 2008/09 Budget Speech and the Macro-Economic Framework 2008/09 – 2010/11

The following table illustrates the estimated economic growth for 2007 and the forecasted economic growth for the years 2008 – 2011:

Sub-Sector/ Industry	2007	2008	2009	2010	2011	'07 – '11
	Estimated	Forecast	Forecast	Forecast	Forecast	Average
	%	%	%	%	%	%
Primary Industries	1.7	5.8	-1.5	4.6	-0.6	2.0
Agriculture & forestry	3.7	3.7	3.7	3.7	3.7	3.7
Fishing	2.5	2.5	2.5	2.5	2.5	2.5
Mining & quarrying	0.2	8.2	-5.9	5.9	-4.4	0.8
Secondary Industries	5.5	6.1	7.3	7.4	7.4	6.7
Manufacturing	4.3	5.0	5.0	5.0	5.0	4.9
Electricity, gas & water	3.4	3.4	3.4	3.4	3.4	3.4
Construction	9.3	9.5	13.5	13.5	13.0	11.8
Tertiary Industries	4.9	4.7	5.6	7.4	8.1	6.2
Wholesale & retail trade, repairs	6.5	5.0	6.2	10.5	12.0	8.0
Hotels & restaurants	5.0	6.5	6.5	11.5	11.5	8.2
Transport & communication	10.0	10.6	11.5	12.6	12.6	11.4
Financial intermediation	5.0	4.5	5.0	11.0	15.2	8.1
Real estate & business services	3.6	3.5	3.8	4.0	4.0	3.8
Community, social & personal services	2.8	3.0	3.0	3.0	3.0	3.0
Producers of government services	2.3	1.9	2.8	2.7	2.7	2.5
Other producers	2.0	2.0	2.5	2.0	2.0	2.1
Less: Financial services indirectly measured	15.7	15.8	16.6	16.0	16.1	16.0
GDP at basic prices	4.2	5.0	4.2	6.6	6.2	5.2

Sub-Sector/ Industry	2007	2008	2009	2010	2011	'07 – '11
	Estimated	Forecast	Forecast	Forecast	Forecast	Average
	%	%	%	%	%	%
GDP at basic prices	4.2	5.0	4.2	6.6	6.2	5.2
Taxes less subsidies on products	2.7	2.6	2.5	2.5	2.5	2.6
GDP at market prices	4.0	4.7	4.0	6.2	5.8	5.0

Source: Macroeconomic Working Group

The estimated economic growth for Namibia during 2007 is 4.0 percent and it is expected to increase to 4.7 percent in 2008 primarily due to the increase in uranium production. A reduction in growth rate is projected in 2009 due to the significant decline in diamond mining, but is expected to reach a peak of 6.2 percent in 2010 partly due to the expected recovery of diamond mining (primary industry), and the acceleration of growth in the tertiary industry due to the 2010 Soccer World Cup to be held in South Africa and the African Cup of Nations to be held in Angola. In 2011, diamond mining is again expected to decline significantly, thereby decreasing the growth rate to 5.8 percent.

The average growth rate for 2008 to 2011 is projected to be 5.2 percent mainly due to the growth in construction (secondary industry) and the recovery in subsectors of the tertiary industry such as wholesale and retail trade, hotels and restaurants, transport and communications and financial intermediation.

The government sector did play an important role in the Namibia economy. The largest contributor to the Gross Domestic Product (GDP) is construction (average 11.8 percent), and secondly transport and communication with an average growth rate of 11.4 percent.

The tables below illustrate the industry contribution to GDP for the years 2004 to 2007:

GDP per Activity	2004	2005	2006	2007
Current Prices	N\$ million	N\$ million	N\$ million	N\$ million
Primary Industries	6,909	7,704	10,910	12,090
Agriculture & forestry	1,873	2,398	2,905	3,356
Commercial	1,294	1,681	1,941	2,313
Subsistence	579	717	964	1,043
Fishing & fish processing on board	1,547	1,916	1,932	2,202
Mining & quarrying	3,489	3,391	6,073	6,532
Diamond mining	3,048	2,782	4,054	3,105
Secondary Industries	6,298	6,639	8,348	10,716
Manufacturing	4,001	4,055	5,402	7,521
Meat Processing	126	121	84	88
Fish processing on shore	750	466	662	793
Food & beverages	1,690	1,772	1,979	2,328
Electricity & water	1,197	1,344	1,253	1,399
Construction	1,100	1,241	1,693	1,796
Tertiary Industries	20,116	21,884	23,701	25,462
Wholesale & retail trade, repairs	3,985	4,235	5,218	5,200
Hotels and restaurants	653	670	724	803
Transport & communication	2,671	3,015	2,673	3,092
Transport & Storage	1,497	1,639	1,552	1,983
Post & telecommunication	1,173	1,376	1,121	1,108
Financial Intermediation	1,213	1,455	1,567	1,827
Real Estate and business services	3,542	3,764	4,073	4,431
Community, social & personal services	282	320	405	448
General government services	7,124	7,752	8,319	8,879
Other producers of services	647	673	721	784
All industries at basic prices	32,930	35,787	42,413	47,555
Taxes less subsidies on products	3,567	3,970	4,424	4,972
GDP at market prices	36,496	39,757	46,837	52,527

Source: Central Bureau of Statistics, National Planning Commission: Preliminary National Accounts 2007

GDP per Activity	2004	2005	2006	2007
Current Prices	%	%	%	%
Primary Industries	18.9	19.4	23.3	23.0
Agriculture & forestry	5.1	6.0	6.2	6.4
Commercial	3.5	4.2	4.1	4.4
Subsistence	1.6	1.8	2.1	2.0
Fishing & fish processing on board	4.2	4.8	4.1	4.2
Mining & quarrying	9.6	8.5	13.0	12.4
Diamond mining	8.4	7.0	8.7	5.9
Secondary Industries	17.3	16.7	17.8	20.4
Manufacturing	11.0	10.2	11.5	14.3
Meat Processing	0.3	0.3	0.2	0.2
Fish processing on shore	2.1	1.2	1.4	1.5
Food & beverages	4.6	4.5	4.2	4.4
Electricity & water	3.3	3.4	2.7	2.7
Construction	3.0	3.1	3.6	3.4
Tertiary Industries	55.1	55.0	50.6	49.5
Wholesale & retail trade, repairs	10.9	10.7	11.1	9.9
Hotels and restaurants	1.8	1.7	1.5	1.5
Transport & communication	7.3	7.6	5.7	5.9
Transport & Storage	4.1	4.1	3.3	3.8
Post & telecommunication	3.2	3.5	2.4	2.1
Financial Intermediation	3.3	3.7	3.3	3.5
Real Estate and business services	9.7	9.5	8.7	8.4
Community, social & personal services	0.8	0.8	0.9	0.9
General government services	19.5	19.5	17.8	16.9
Other producers of services	1.8	1.7	1.5	1.5
All industries at basic prices	90.2	90.0	90.6	90.5
Taxes less subsidies on products	9.8	10.0	9.4	9.5
GDP at market prices	100.0	100.0	100.0	100.0

Source: Central Bureau of Statistics, National Planning Commission: Preliminary National Accounts 2007

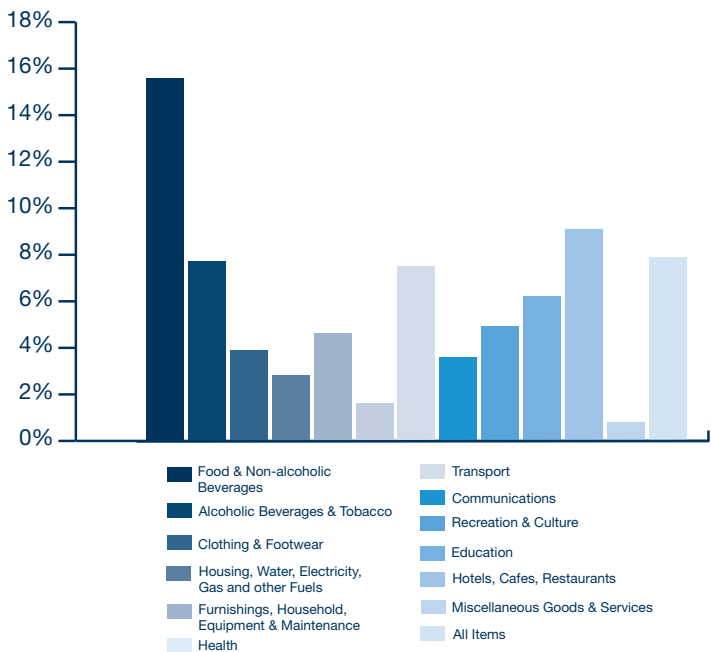
The industries that made the largest contributions to GDP in 2007 were the mining industry (primary industry) with a 12.4% contribution, the manufacturing industry (secondary industry) with a 14.3% contribution, and the following tertiary industries; such as wholesale & retail trade with a 9.9% contribution, real estate and business services with a 8.4% contribution and government services with a 16.9% contribution.

Inflation

The inflation rate in Namibia is largely determined by the price and interest rate developments in South Africa due to the large component of its imports from that country and the common monetary policies.

The annual inflation rate for February 2008 was 7.9% compared to a 6.0 % for February 2007.

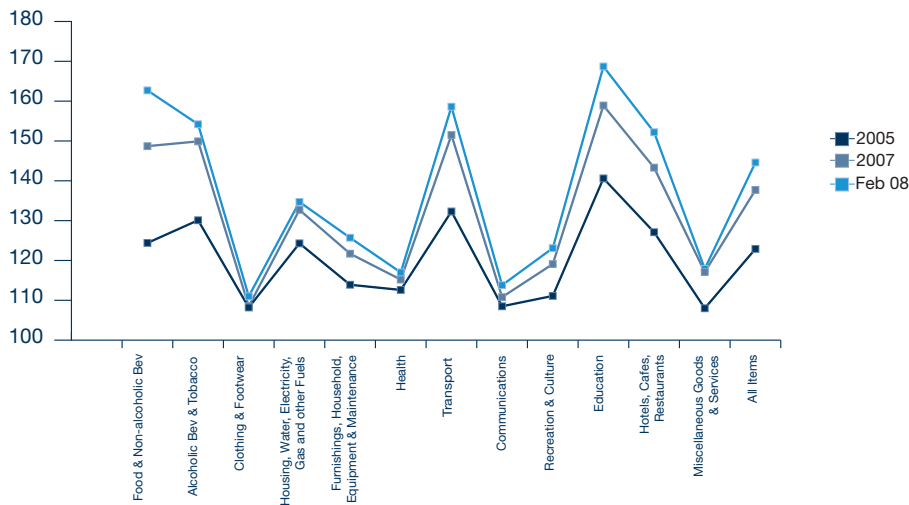
Namibia February 2008 Annual Inflation Rate



Source: National Planning Commission Secretariat, Central Bureau of Statistics, NCPI February 2008

The Namibia Consumer Price Index ('NCPIs') for the years 2005 & 2007 and for February 2008 was as follows:

Namibia Consumer Price Index by Main Groups



Source: National Planning Commission Secretariat, Central Bureau of Statistics, NCPI February 2008

Per capita income

Namibia enjoys a relatively high GDP per capita for Africa and was ranked 80th in the world according to the World Bank. The GDP per capita for the years 2006 and 2007 are as follows:

2006	2007
N\$ 23,333	N\$ 25,544
USD 3,387	USD 3,553

Source: Central Bureau of Statistics, National Planning Commission: Preliminary National Accounts 2007

Namibia falls within the group of countries with lower-middle-income economies:

Lower-middle-income economies (55)		
Albania	El Salvador	Namibia
Algeria	Fiji	Nicaragua
Angola	Georgia	Paraguay
Armenia	Guatemala	Peru
Azerbaijan	Guyana	Philippines
Belarus	Honduras	Samoa
Bhutan	Indonesia	Sri Lanka
Bolivia	Iran, Islamic Rep.	Suriname
Bosnia and Herzegovina	Iraq	Swaziland
Cameroon	Jamaica	Syrian Arab Republic
Cape Verde	Jordan	Thailand
China	Kiribati	Tonga
Colombia	Lesotho	Tunisia
Congo, Rep.	Macedonia, FYR	Turkmenistan
Cuba	Maldives	Ukraine
Djibouti	Marshall Islands	Vanuatu
Dominican Republic	Micronesia, Fed. Sts.	West Bank and Gaza
Ecuador	Moldova	
Egypt, Arab Rep.	Morocco	

Source: The World Bank

Employment

The creation of employment opportunities was included as one of the main objectives of the National Development Plan of the Namibian Government, while several incentive schemes to promote manufacturing activities were implemented, with the aim of diversifying the economy.

The current unemployment rate is set at about 35%.

The tables below illustrate the employment rate per industry and per occupation respectively:

Employment by Industry	Namibia		
	Total	Females	Males
	%	%	%
Agriculture	26.6	22.3	30.0
Fishing	3.3	2.8	3.7
Mining & quarrying	2.0	1.0	2.7
Manufacturing	6.2	6.9	5.6
Electricity, gas & water	1.6	0.7	2.3
Construction	5.1	0.8	8.4
Wholesale & retail trade, repairs	14.0	15.9	12.5
Hotels and restaurants	3.4	4.3	2.7
Transport & communication	4.1	1.8	5.9
Financial Intermediation	2.0	2.4	1.6
Real Estate and business services	2.4	2.4	2.4
Public Administration, Defense & Social Security	8.0	6.2	9.3
Education	8.1	11.2	5.7
Health & social work	3.6	6.2	1.6
Community, social & personal services	3.3	3.1	3.5
Private households with employed persons	6.2	11.9	1.9
Ex-territorial organizations & bodies	0.0	0.0	0.0
Not reported	0.1	0.1	0.1
Total	100.0	100.0	100.0

Source: Namibia Labour Force Survey 2004

Employment by Occupation	Namibia		
	Total	Females	Males
	%	%	%
Legislators, senior officials & managers	2.8	2.3	3.2
Professionals	8.9	11.3	7.0
Technicians & associate professionals	5.2	5.6	4.9
Clerks	6.6	11.0	3.2
Services, shops & market sales workers	13.7	16.4	11.5
Skilled agricultural & fishery workers	13.6	14.1	13.2
Craft & trade workers	14.6	8.1	19.6
Plant & machine operators & assemblers	4.5	0.7	7.5
Elementary occupations	29.1	30.1	28.4
Armed forces	0.8	0.4	1.2
Not reported	0.1	0.1	0.1
Total	100.0	100.0	100.0

Source: Namibia Labour Force Survey 2004

International trade

The country's exports are dominated by the export of primary commodities, representing an average of about 50 percent of exports during the past decade. Exports mainly comprise unprocessed commodities i.e. minerals, meat and fish. More than half of the income generated by the mining industry consists of diamond exports, followed by uranium. Imports mainly comprise manufactured goods and consumer goods. Namibia's dominant trading partners are members of the European Union and South Africa. Potential growth areas and trade opportunities are set out in Chapter 3.

Namibia's Planning Framework

Namibia's policy framework for long-term national development is set out in the "Namibia Vision 2030" or "Vision 2030".

The aim of Vision 2030 is to establish a long-term planning framework for Namibia that would foster a sense of direction, ambition and destiny for all Namibians. An extensive consultative process resulted in the following Vision Statement for the year 2030:

"A prosperous and industrialised Namibia, developed by her human resources, enjoying peace, harmony and political stability"

Vision 2030 is founded on theme-based development objectives, which integrate economic, social and environmental dimensions and which are based on key concerns identified in the Namibian Nation.

The Vision is based on the following three themes:

- Quality of Life (Relating to People & Economics);
- Enabling Environment; and
- Sustaining the Resource base (Relating to Ecosystems).

The national issues addressed by the formulation of Vision 2030 are:

- Inequalities and social welfare
- Peace and political stability
- Human resources, institutional- and capacity-building
- Macro-economic issues
- Population, health and development
- Natural resources and environment
- Knowledge, information and technology
- Factors of the external environment

The major objectives of Vision 2030 are to:

- Ensure that Namibia is a fair, gender responsive, caring and committed nation, in which all citizens are able to realise their full potential, in a safe and decent living environment.

- Create and consolidate a legitimate, effective and democratic political system (under the Constitution), and equitable, tolerant and free society, that is characterised by sustainable and equitable development and effective institutions, which guarantee peace and political stability.
- Develop a diversified, competent and highly productive human resources and institutions, fully utilising human potential, and achieving efficient and effective delivery of customer-focused services which are competitive not only nationally, but also regionally and internationally.
- Transform Namibia into an industrialised country of equal opportunities, which is globally competitive, realising its maximum growth potential on a sustainable basis, with improved quality of life for all Namibians.
- Ensure a healthy, food-secured and breastfeeding nation, in all preventable, infectious and parasitic diseases are under secure control, and in which people enjoy a high standard of living, with access to quality education, health and other vital services, in an atmosphere of sustainable population growth and development.
- Ensure the development of Namibia's 'natural capital' and its sustainable utilization, for the benefit of the country's social, economic and ecological well-being.

- Accomplish the transformation of Namibia into a knowledge-based, highly competitive, industrialised and eco-friendly nation, with sustainable economic growth and high quality of life.
- Achieve stability, full regional integration and democratised international relations; the transformation from an aid-recipient country to that of a provider of development assistance.

The broad strategies for Vision 2030 are listed below:

- Maintaining an economy that is sustainable, efficient, flexible and competitive.
- Operating a dynamic and accessible financial sector.
- Achieving full and gainful employment.
- Providing excellent, affordable health care for all.
- Mainstreaming HIV/AIDS into development policies, plans and programmes.
- Creating access to abundant, hygienic and healthy food, based on a policy of food security.
- Providing full and appropriate education at all levels.
- Leveraging knowledge and technology for the benefit of the people,
- Promoting interpersonal harmony among all people.
- Operating a morally upright and tolerant society that is proud for its diversity.
- Ensuring an atmosphere of peace, security and hope for a better life for all.
- Maintaining stable, productive and diverse ecosystems managed for long-term sustainability.
- Establishing and sustaining business standards of competence, productivity, ethical behaviour and high trust.
- Upholding human rights and ensuring justice, equity and equality in the full sense for all, regardless of gender, age, religion, ethnicity, ability or political affiliation.
- Maintaining a low-level, responsive bureaucracy.
- Implementing a land- and natural resource policy that ensures fair access by all to the means of production.
- Establishing and operating a fiscal policy that distributes wealth fairly, and encourages production, employment and development of wealth in a stable and sustainable economic climate.
- Operating a responsive and democratic government that is truly representative of the people, and able to adhere to transparent, accountable systems of governance, proactively.

- Achieving collusion between public, private and Civil Society organisations, in policy formulation, programming and implementation.
- Maintaining sound international policies that ensure effective cooperation, favourable trade relations, peace and security.

Hints for the business visitor

Visa requirements

A valid passport is required to enter Namibia. Entry visas are also required for visitors from certain countries. Visitors are advised to check their local High Commission or embassy before departing. Before entering Namibia to work, a temporary work permit has to be granted by the Ministry of Home Affairs. An application for such a work permit should be made six months before entering Namibia. Foreigners are prohibited by law from working in Namibia unless they have an approved temporary work permit.

Currency

In September 1993 Namibia introduced its own currency, the Namibia Dollar (N\$), divided into 100 cents. The Namibia Dollar is linked to and is on par with the South African Rand (R), which is also legal tender in Namibia.

Banking

Local banks provide comprehensive domestic and international banking services. The Namibian banking sector is linked to major international communications networks, ensuring fast and efficient transfers of funds to and from any centre in the world. Auto-teller machines are available throughout Namibia and Master, Visa and Electron cards (if clearance is obtained from your local bank) can be used to withdraw funds.

Business hours

Most of the shopping malls in major towns and cities are open from 8:30 a.m. to 7:00 p.m. during weekdays, until 7:00 p.m. on Saturdays and until 1:00 p.m. on Sundays. Most of the shops accept Master, Visa and Electron cards.

International time

Namibia is one hour ahead of GMT from April to August, and two hours ahead of GMT from September to March. This provides for a common time zone and is of course to the advantage of its main trading partners in Africa and Europe. Time is set the first Sunday in April to GMT +1 and to GMT +2 the first Sunday of September.

Public holidays

New Year's Day	1 January
Independence Day	21 March
Good Friday	The Friday after the full moon in March. It varies each year e.g.: 2008 21 March 2009 10 April 2010 2 April
Easter Monday	3 days after Good Friday
Worker's Day	1 May
Ascension Day	40 days after Good Friday
Cassinga Day	4 May
Africa Day	25 May
Heroes Day	26 August
International Human Rights Day	10 December
Christmas Day	25 December
Family Day	26 December

Chapter 2

Business environment

Investor considerations

- Independence and the election of a democratic government in 1990 have resulted in the normalisation of international trading relations.
- There is an open government attitude toward foreign direct investment, with the exception of farmland.
- Incentives are available, especially with regard to manufacturing and the export of manufactured goods.
- Government policy supports free enterprise.
- The country possesses a highly sophisticated banking system.

Industrial climate

While agriculture (livestock farming) and natural resource products (minerals, fishing) have always been important to the economy, tourism is expanding rapidly. The industrial base is still small and appropriate government structures have been established aimed at facilitating investment in this sector.

Framework of industry

Namibia possesses a well-developed and formally regulated company law regime, as well as a diversified internal sector.

A number of public services have been commercialized and are government owned (telecommunications and postal services, water, electricity, transport, seaport and airport services). Privately owned businesses are mostly

small and are an important component of the economy. As described more fully in Chapter 7, the financial sector is highly developed and is dominated by a few large banks.

The Ministry of Trade and Industry

Recognising the important role of the private sector in the industrial development in Namibia, the Ministry of Trade & Industry has established the appropriate instruments and mechanisms that enable investment, trade and industrial activities to flourish.

The Ministry of Trade and Industry is accountable for the development and management of Namibia's economic regulatory regime, on the basis of which the country's domestic and external economic relations are conducted. Furthermore, the Ministry's key objective is to ensure the promotion of growth and development for the Namibian economy through the formulation and implementation of appropriate policies to attract investment, increase trade and develop and expand the country's industrial base.

The Ministry is divided into various structures aimed at creating an environment conducive to the promotion of Namibia's products in external markets. The main structures of government policy are dealt with below.

Namibia Investment Centre

The Namibia Investment Centre ('NIC') is Namibia's official investment promotion and facilitation office. Established by the Foreign Investment Act of 1990, the Centre focuses on the promotion of foreign and domestic investment and provides a service to all investors, from the inquiry through to the operational stage.

The Centre is the first point of call for potential investors. It provides general information packages and tailor-made advice on investment opportunities, incentives and procedures. It facilitates interaction between the government and the private sector and assists investors in minimising bureaucratic obstacles. The Centre works closely with key productive sector ministries, as well as with service and regulatory bodies.

In addition to general promotion and facilitation services to local and foreign investors, the Centre administers Status Investment Certificates (for foreign investment) and investment incentive packages. The Centre has also been central to the launching of the Export Processing Zone (EPZ) regime in Namibia, and now works closely with the Offshore Development Company (ODC) in promotion of the EPZ regime and general export-led industrialisation of the Namibian economy.

In 1997 the Centre was elevated to the level of a Department within the framework of the Ministry of Trade and Industry in order to give greater effect to the government's vision of increased levels of private sector investment, both domestic and foreign.

The Namibia Investment Centre has Commercial Counselors stationed of in Berlin, Kuala Lumpur, Mauritius, New Delhi, Paris, Port Louis, Pretoria, Sao Paolo and Washington. These counselors promote Namibia as a favourable investment destination by organising investment promotion events and participating in trade fairs and exhibitions in their respective areas of jurisdiction.

In addition, the Centre provides advice to Government on investment trends and policies.

The Centre has 3 divisions with the following sub-divisions:

1. Investment Promotion Division
 - Sub-Division External Investment Promotion (Commercial Offices)
 - Sub-Division Investment Promotion (Head Quarters)
2. Projects and Incentives Management Division
3. Investor Services Division
 - Sub-Division Investment Facilitation & Aftercare

- Sub-Division Investment Agreement Negotiations
- Sub-Division Investment Support Services

The Department of Trade and Commerce

This Department is responsible for national policies and programs geared towards management, regulation, promotion, development and facilitation of internal trade, commercial and business activities, and international trade activities such as bilateral, regional and multilateral trade relations.

Its functions include amongst others the development and management of Namibia's foreign trade policy and external trade relations, spearheading Namibia's membership in international and regional trade organisations and promoting Namibian products and services on international markets.

The Directorate of International trade

The Directorate of International Trade is the national focal point for Namibia's external trade. All activities of the Directorate are geared towards the formulation and management of Namibian's foreign trade policy, and towards increasing the country's exports.

The Directorate's main functions are:

- Handling bilateral and multilateral trade relations as well as formulating Namibia's position on trade issues

discussed in international forums such as WTO and UNCTAD;

- Promotion of intra-regional trade and enhancement of regional economic co-operation and integration through active participation in SACU and SADC activities and programmes;
- Planning, formulating and implementing Namibia's export promotional strategies;
- Assisting and supporting efforts of the local business community; and
- Optimising cost and quality of imports through an efficient import management system.

The Directorate has the following divisions:

- Trade Policy and External Trade Relations division with two subdivisions –
 - Trade Policy; and
 - Research.
- Trade Promotion division with three subdivisions –
 - Export Promotion;
 - Trade Information; and
 - Import and Export Management.

The Directorate of Internal trade

The principal objective of the Directorate of Internal Trade is to create an environment that is conducive to business in Namibia through its Weights, Measures and Standards Division and the Registration of Companies, Patents, Trade Marks and Design Division.

The Weights, Measures and Standards Division of the Directorate consists of the following subdivisions:

- Trade Metrology and Trade Inspections; and
- Licence and Standards.

Through regular calibration of weights and measuring instruments, the Trade Metrology and Trade Inspections Subdivision ensures that business in Namibia is conducted in a fair manner.

Directorate of Commerce

This Directorate's objectives are to facilitate and contribute to the creation of a conducive commercial environment for the effective functioning of the domestic market and trading environment. Its functions include among others the development of policy and a legal framework for the management of quality, standards, company registration, intellectual property rights, traditional knowledge and domestic market regulations.

Directorate of Industrial Development

It is a cliché in Namibia that economic growth is sustainable only if efficient use is made of the country's considerable natural resources, taking due account of the fragile environment. Namibia's industrial base is at present both small and underdeveloped.

The government believes that the share of industrial development in the national economy should increase.

This Directorate spearheads the promotion and development of industrialisation, SMEs, and entrepreneurship with the primary aim of promoting growth and diversity within the economy, addressing poverty reduction, income disparities and unemployment. Its functions include amongst others industrial planning and appraisal, policy and strategy formulation and monitoring the implementation of such plans and programmes.

The Directorate of Industrial Development has three divisions:

- Entrepreneurial Development
- Regional Economic Development
- Industrial Policy, Planning & Development

The Directorate also co-ordinates the work of the Ministry's six regional offices situated in Katima Mulilo, Keetmanshoop, Opuwo, Ondangwa, Otjiwarongo and Rundu, serving as advisory centres at local level.

Offshore Development Company

Namibia established the Offshore Development Company (ODC) as the flagship of the Namibian Export Processing Zone (EPZ) regime, working closely with the Namibian Investment Centre. To operate in the Namibia

EPZ regime, companies must apply for EPZ status. Such applications are processed by the EPZ secretariat, run by the ODC. The ODC is also co-ordinating government initiatives aimed at establishing an Offshore Financial Services industry.

The EPZ programme is expected to contribute significantly to the growth of the manufacturing sector. Several companies are currently registered in the regime plan to become, or are already, engaged in the manufacturing of various products such as motor vehicle parts, bathroom accessories, foam mattresses, electronic equipment, teddy bears and ostrich products, polished diamonds and gemstones. The refurbishing, repackaging and re-export warehousing activities are also growing.

EPZ companies have made use of the advantage of being able to set up their operations anywhere in Namibia, either as single factory enterprises, or in one of the two specially developed EPZ Industrial Zones, namely Walvis Bay and the recently developed Oshikango EPZ Industrial Park. Elsewhere, single factory enterprises plan to establish or have already established operations in Windhoek, Swakopmund and numerous smaller towns, including a massive ostrich leather and meat processing facility set up in Keetmanshoop and a zinc refinery planned for southern Namibia.

The ODC, either singularly or in conjunction with the Namibia Investment Centre (NIC), performs the following functions for the benefit of investors

and in execution of Namibia's economic development objectives:

- Monitor and regulate EPZ regime nationwide.
- Management of the EPZ Secretariat
- Promote investments in the EPZ regime and the general economy.
- Provision of access to first class immigration facilitation and programme co-ordination to foreign investors.
- Dissemination of information on the domestic economy and business environment which includes potential investment projects
- Development and leasing of industrial parks for export-oriented economic activities.
- Management of investment funds for the benefit of local entrepreneurs.
- Co-ordination of Namibia's offshore financial services plan
- Provision of technical support to the Ministry of Trade and Industry.

Development Bank of Namibia

The Development Bank of Namibia ("DBN") was established in October 2002 through an Act of Parliament. The aim of the Namibian government was to contribute to economic growth, infrastructure and social development by providing financing in support of key development activities.

The DBN acts as a catalyst in the Namibian economy by making affordable financing available for development, via its links with regional bilateral and multilateral development finance institutions as well as non-governmental agencies involved in facilitating accelerated socio-economic development both in Namibia and the SADC region as a whole.

The mission of the DBN is "to mobilise investment capital and facilitate national and international cooperation among public and private entities, as well as community organizations, in the planning and implementation of larger scale projects capable of delivering sustainable economic growth and social development in the form of human capital development and empowerment to Namibia".

The DBN was launched on 29 April 2004 and offers the following broad product facilities:

- Public Sector;
- Private Sector;
- Enterprise Development; and
- SME Finance.

Public/private sector co-operation

Although it is Government's policy to promote private sector investment, there is no formalised process of joint decision making between the public and private sectors.

Labour/management relations

Namibia's labour market is characterised by imbalances between the demand and supply of different labour categories.

Lower skilled labour is large, abundant and increasing, while a demand exists

for certain highly skilled job categories.

Jobs are essentially protected for Namibians by a work permit system.

The Employment Equity Act furthermore provides for statutory measures to promote the employment of previously disadvantaged Namibians for all employers with a complement exceeding 25 staff members.

The formal labour/management relations are discussed in Chapter 14.

Overseas trade relations

Namibia's membership with trade blocks is discussed in Chapter 3.

Chapter 3

Foreign investment and trade opportunities

Investor considerations

- Government promotes and encourages foreign investment.
- All forms of business entities are available to foreigners.
- The same incentives are available to foreign and local investors.
- Favourable incentives exist for manufacturers and exporters.
- Established professional service skills of world-class standard.
- A well-established and resilient business community.

Investment climate

Government attitude toward foreign investment since Namibia gained its independence in 1990 is that it welcomes foreign investment. The Ministry of Trade and Industry has established the Namibian Investment Centre as Namibia's national investment promotion and facilitation office (see Chapter 2). The acquisition of farmlands, however, has been limited in terms of the Agriculture Commercial Land Reform Act 1996.

Foreign trade relations

Southern African Development Community (SADC)

As a member of SADC, Namibia is part of Africa's largest trade and co-operation pact, a pact comprising twelve member states in Southern Africa. Namibia

has a comparative advantage in its preferential access, via transport and trade links, to the 130 million inhabitants of the sub-region by virtue of its SADC membership.

Southern African Customs Union (SACU)

Namibia is a member of SACU along with South Africa, Botswana, Swaziland and Lesotho. Members of this Customs Union enjoy duty-free trade among each other. SACU consists of a market of over 47 million people and a GDP of US\$ 135.8 billion.

Common Monetary Area (CMA)

In addition to the SACU agreement there is the Common Monetary Agreement (CMA), including Namibia at the date of its independence, and including the membership of SACU, but excluding Botswana. The CMA established the Rand as common currency in these countries. The CMA is administered by the South African Reserve Bank, and makes South African monetary policy the de facto policy of all the members of the Common Monetary Area (see Chapter 5).

Preferential trade agreements

The EU-ACP Cotonou Agreement expired at the end of 2007 and access to the European market will be regulated by the new SADC Economic Partnership Agreements (“EPAS”). EPAS have not been finalised and are still being negotiated between the European Union and member countries of SADC.

The African Growth and Opportunity Act gives Namibia liberal access to the US market for manufactured products.

Products produced or manufactured in Zimbabwe may be imported free of Customs duties into Namibia provided certain conditions are met (e.g. exporter registration) in terms of the Namibia-Zimbabwe Free Trade Agreement.

Favourable infrastructure

Road network

Namibia has a well-established road infrastructure. The majority of towns and communities can be reached by a network of quality gravel trunk, main and district roads. Namibia has a surface area of 824 268km with 350+ air strips, 37 000km of gravel roads including 5 450 km of tarred roads.

The country is linked by road to Angola, Zambia, Zimbabwe, Botswana and South Africa. The Trans-Kalahari and the Trans-Caprivi highways provide a fast and comfortable road link between the Namibian port of Walvis Bay on the Atlantic coast, and her landlocked neighboring countries. In particular, the Trans-Kalahari highway links the port to Botswana and the Gauteng province, the industrial heart of South Africa. The Trans-Caprivi highway links Namibia’s landlocked neighboring countries of Botswana, Zambia, Zimbabwe and the Democratic Republic of Congo to the port of Walvis Bay.

The highways provide a regional transport corridor, intended to reduce the time-span for movement of imports and exports from the neighboring countries to the markets of Western Europe and the Americas by at least five days compared to traditional routes in Southern Africa.

Indeed, the Trans-Kalahari highway has turned Namibia into a gateway location and has led to the evolution of the western corridor concept and the development it portends for the entire SADC region.

Port development

While only a few years ago some talked of the port of Walvis Bay competing for cargo with the East Africa ports, the current strategy is for the port of Walvis Bay complementing the East Africa ports via the Walvis Bay-Maputo Corridor. The Trans-Kalahari highway is seen as an integral part of the Walvis Bay-Botswana-Gauteng-Maputo Development Corridor.

The Port of Walvis Bay, as a key element of this corridor, is now viewed as an emerging transit point for commercial traffic bound to or from landlocked countries in the region. Once the transport corridor is fully developed, the Southern Africa region can benefit from channelling its exports and imports via the Port of Walvis Bay. In particular, business in South Africa's Gauteng province will save up to seven days in shipping time via Walvis Bay as opposed to the use of traditional routes. This is

particularly attractive for the transport of time-sensitive cargo, such as fresh produce, fruit or just-in-time deliverables. Equally, the highway provides SADC countries north of South Africa with a very economical route for their exports and imports through the port of Walvis Bay. In non-fiscal terms, the port offers moderate climate all year round. Winds, though often far too strong, do not stop cargo work.

In terms of capacity, the port of Walvis Bay handles some two million tonnes of cargo annually. This mainly consists of dry bulk, break bulk, petroleum products and containerised cargo. Over the last 15 years, the Walvis Bay port has served its clients without a single loss of cargo on record. The port also prides itself on the fast transit times achieved for cargo, in particular, containerized cargo. Cargo throughput could be increased to five million tonnes per annum or more by introducing additional shifts and equipment to meet growing demand.

Air travel

Namibia has direct air links to major cities in sub-Saharan Africa, such as Cape Town, Johannesburg and Luanda. International flights from Frankfurt and London (Gatwick) land in and depart from Namibia regularly. The country's two international airports are Hosea Kutako International Airport and Walvis Bay Airport. There are numerous smaller aerodromes as well as private landing strips throughout the country. The Hosea Kutako International Airport services Air Namibia and other major airlines on a

daily basis. The international airport is situated 48 kilometres from the center of town. Smaller aircraft can land at Eros Airport on the outskirts of the city.

Telecommunication

Namibia has invested heavily in the modernisation and expansion of telecommunications. An international satellite service links Namibia to worldwide telecommunication services. The Namibian switching network is based on EWSD technology. Six primary exchanges are located throughout Namibia. These exchanges are in the following main cities and towns: Windhoek, Keetmanshoop, Walvis Bay, Tsumeb and Oshakati. Digital remote units connected to the primary exchanges serve smaller towns. An international exchange based in Windhoek facilitates the routing of calls to international destinations.

Telecom Namibia has also introduced optical fiber cable technology across the country with SDH transmission equipment for national transmission routes. The maximum capacity of STM-64 (9.6 Gb/s) already operational on high traffic routes and a minimum capacity STM-1 (155 Mb/s) on spur routes.

Ring networks to the South, East and North of the country exist while the West of the country will be completed by December 2008. In the long term a digital microwave overlay is planned to serve as alternative route to the existing fiber cable routes.

Domestic satellite communication links connect extremely remote sites to the rest of the network, while an international satellite link connects Namibia directly to the seven international destinations with the highest traffic patterns to and from Namibia. These destinations are South Africa, the UK, the USA, Germany, Sweden, Switzerland and Angola.

An IP/MPLS transport network was established with 11 points of presence with an IP interconnect with South Africa planned. Ethernet access to the IP/MPLS backbone is done with a fibre based Metro-Ethernet network. Broadband access technologies exist country-wide through technologies such as CDMA (Mobile 3G data), ADSL and WiMAX. Telecom Namibia is migrating to an all IP next generation network towards 2010. Mobile Telecommunications Company (MTC) provides internet access to subscribers at all times. The internet access is provided via GPRS/EDGE (2G) or SUPERFAST access via 3G/HSDPA.

SmartSwitch provides a UEPS-based transaction switch that effects and manages a variety of financial and non-financial smart card applications designed to address the needs of the banked, under-banked, and un-banked populations in Namibia. SmartSwitch will seek to offer the citizens of Namibia access to financial services and products, irrespective of whether they reside in urban, semi rural or deep rural areas of Namibia.

Value-added services

Value-added services like teleconferencing, call forwarding and call barring are currently available. ISDN was introduced in Namibia in mid 1998, making Basic Rate Interface and Primary Rate Interface available.

The Centrex service was introduced in February 1998. This service is mostly available for corporate customers. The service allows large customers to enjoy PABX-like facilities spread over the network of Telecom Namibia without incurring huge capital investments in equipment. These facilities are provided on Telecom's EWSD switching network.

A GSM mobile network is available in Namibia. The mobile network is operated by MTC a company established through a joint venture between NPTH, Telia International and Swedefund International and Cell One who operates under PowerCom.

Coverage in Namibia follows Telecom's digital transmission routes, and is available in all major economic centres.

Telecom Namibia provides customers with excellent quality international telecommunication service (voice, data and maritime), at competitive rates to more than 240 destinations around the world.

Taxation policy

The tax regime offers various concessions. These concessions are not aimed specifically at attracting foreign investment to Namibia, but rather are available to all who carry out targeted activities (see Chapter 4).

Local competitor attitude toward foreign investment

Namibian business and the local community welcome foreign investors.

Assistance and advice can be obtained from the Namibian Investment Centre and a well developed top-class business services sector.

Labour attitude toward foreign investment

Labour tends to be receptive if the foreign investment creates jobs with wages and working conditions comparable to those in the existing industry. Since trade unions are fairly strong, particular attention should be paid to monitoring good Labour relations.

Tourism

Tourism is the fastest growing economic sector in Namibia. It is expected that this sector will be the largest contributor to GDP in the next ten years. Namibia, which is as large as France and Germany combined, is blessed with extensive tracts of wilderness and a rich diversity

of scenery. The country's wildlife heritage is one of its richest assets. Varieties of game include more than 20 antelope species, and large mammals such as elephant, rhino, giraffe and lion abound. Namibia has the largest cheetah population in the world.

In contrast to many other countries on the continent, Namibia is increasingly becoming an attractive destination to tourists and investors alike because of its peaceful and politically stable character, and its sophisticated physical and telecommunications infrastructure. Medical services and hygienic conditions, including an excellent supply of first-class potable tap water in nearly all cities and towns, takes the trauma out of travelling.

Namibia is also strategically placed for easy access to the entire Southern African region, and is increasingly becoming a destination for package tours, which include Botswana and South Africa. Regional tours represent a fast-growing component of the tourist industry.

After independence in 1990, a Tourism White Paper was developed, which the Cabinet approved in 1994. In February 1999, a commercial entity, the Namibia Wildlife Resorts Company (NWR) was launched. The NWR will be responsible for the functions previously undertaken by the Ministry of Environment and Tourism. This involves the administration and control of 22 resorts throughout the country. Currently, there are opportunities to work with smart partnerships with NWR with some of these resorts.

The projected growth in Namibia's tourism industry provides ideal opportunities for investment. New upmarket accommodation facilities in the three-star categories are needed, particularly in rural areas and country towns. The upgrading and renovation of existing one and two-star facilities are some of the investment propositions available. Additional tourist transport is also urgently needed and in particular more scheduled coach transport between tourism centers.

Investment Projects

Current investment projects² in Namibia are listed below:

Agri-Business

- Caprivi Farmers Services
- Caprivi Horticulture Project
- Casablanca Dairy (Oshikoto)
- Fresh Produce Market Infrastructure Development
- Goat's Milk Production
- Green Scheme Irrigation Project at Ndonga Linena
- Green Scheme Irrigation Project at Sendelingsdrif
- Green Scheme Irrigation Project at Sikondo

² Source: The Investor – Journal of the Walvis Bay Spatial Development Initiative (WBSDI) / Namibia International Investment Conference Centre 31 October – 01 November 2007

- Kakuro Agricultural Project
- Karakul Wool Processing
- Namibia Feed Producers
- Namibia Large Scale and On-Farm Feedlotting Fund
- Okahao Milling
- Omaheke Olive Production
- Otavi Poultry Project
- Rwashiyoyo Milling CC
- Tandjieskoppe Green Scheme Project

Aquaculture

- Establishment of a Shrimp Cultivation Facility in Henties Bay
- Fresh Water Fish Farming at Olushanda Dam
- Gemini Aquaculture
- Nondunge Fish Farm
- Oshikoto Aquaculture

Energy

- Baynes Hydro-Electric Project
- Kudu Gas to Power Project
- Orange River Small Scale Hydropower Projects
- Walvis Bay 400MW Base Load Power Station
- Wind Energy Projects
- Wind Energy Projects

Infrastructure

- Development of a dedicated fishing quay at the port of Walvis Bay
- Establishment of Freight Villages in Namibia
- Establishment of Truck Stops along Corridors
- Marina Development – Port of Walvis Bay
- Port of Walvis Bay Expansion & Development
- The Development of Fuel Facilities at the port of Luderitz
- Trans Kalahari Railway
- Walvis Bay Corridor Commercial Development
- Windhoek – Luanda Corridor Project Formulation

Manufacturing

- Automotive Manufacturing Hub in Walvis Bay
- Bush-Wood Fibre in Thermoplastic Production
- Caprivi Animal Skin and Hides Distributor
- Chlorine Manufacturing Plant
- Detergent Manufacturing
- Devil's Claw Production
- Eudafano Woman Marula Project
- Fertiliser Manufacturing Plant

- Hungry Men Pallet Manufacturers and Distributors
- Kalahari Wild Silk Processing
- Kapa Brick Manufacturing
- Khomas Roof Sheets Project
- Ohandje Glass Recycling
- Omuthiya Brick Block Manufacturing Plant
- Pena Manufacturers
- Wood Logging and Processing Project

Mining

- Black Range Graphite Project
- Cape Cross Salt Mining (Pty) Ltd
- Diamond Mining Plant
- Germanium Project
- Klein Aub Project
- Oshiku Salt Pan
- Sandmap North Gold Project
- Tailings (Copper) Project
- Tin/Tantalite Processing Plant

Services

- Development of the port of Walvis Bay as an Oil Supply Base and
- Ship Repair Hub
- Nickodemus Architectural Design

Tourism

- Ehirovipuka Conservancy Lodge
- Kanuni Arts and Crafts Centre
- King Nehale Conservancy
- Kombahoka Lodge
- Morokeni Recreational Resort – Goreangab Dam
- Namibia Wildlife Resorts – Reho Spa
- Namibia Wildlife Resorts – Shark Island
- Namibia Wildlife Resorts – Von Bach Campsite
- Namibia Wildlife Resorts – West Coast Recreational Area
- Ohangwena Hospitality Facilities
- Racutuka Travel & Tours
- Ruacana Waterfront

Chapter 4

Investment incentives

Investor considerations

- Incentives apply equally to domestic and foreign investors.
- The major goals of incentives are employment creation, industrial development and exports.
- Incentives are mainly tax based and are substantially approved by the Ministry of Finance.
- Export allowances apply to the export of manufactured goods generally, not only to goods manufactured in Namibia.

Investment policy

In both fiscal and non-fiscal terms, Namibia represents an ideal location for local and international investors. Independent experts credit Namibia with one of the lowest credit risk ratings in Africa. Part of the reason for this positive rating lies in the highly competitive incentive regimes the government has put in place, not only to mobilise foreign direct investments, but also to make doing business in Namibia attractive.

Foreign Investment Act

The cornerstone of Namibia's policy on foreign investment is the Foreign Investment Act (No. 27 of 1990, amended 1993). The Act brought into being the Investment Centre within the Ministry of Trade & Industry, to facilitate the promotion and administration of foreign investments. Potential investors should regard the Namibian Investment Centre as their first point of contact in order to obtain current information on, and assistance with, investment incentives, introductions and administration requirements.

The Act provides for the following.

- Liberal foreign investment conditions.
- Equal treatment of foreign and local investors.
- Openness of all sectors of the economy to foreign investment.
- No local participation requirements.
- The obtaining of a Certificate of Status Investment.

The Act was enacted to address the fears of potential foreign investors and to stimulate investment in Namibia. The Act states that any foreign national may invest and engage in any business activity in Namibia, which may be undertaken by a Namibian. Furthermore, for the purpose of any law governing the establishment and operation of any business, or the taxation of such business, a foreign national shall be in no different position than any Namibian.

Foreign nationals engaged in business activities or intending to commence activities in Namibia will not be required to have local equity participation, or to transfer their business or any part thereof to the government or to any Namibian. There is, however, one proviso: It may be a condition for the granting of a license, or authorization of an agreement for the granting of rights over natural resources, that the government shall be entitled to acquire an interest in any enterprise to be formed for the exploitation of such rights.

Status investment

Sections 4 to 7 of the Act deal with the concept of status investment. In broad terms, this means that the Minister of Trade and Industry may, under certain circumstances, issue a Certificate of Status Investment in respect of particular foreign investments in Namibia. The criteria for the issuance of such a certificate are as follows.

- Size of the proposed investment.
- Involvement of the foreign national in the management of the local company or joint venture.
- The extent to which the proposed investment is likely to contribute towards Namibia's development objectives, as well as towards the following:
 - The utilisation of Namibian resources, including Labour and natural resources.

- Increased employment opportunities.
- Providing for the training of Namibians.
- Earning or saving of foreign exchange.
- Generating development in the less developed areas in Namibia.
- The advancement of persons within Namibia who have been socially, economically or educationally disadvantaged by past discriminatory laws and practices.

The quid pro quo for satisfying these criteria and obtaining a Certificate of Status Investment is set out in Sections 8 and 9 of the Act. Holders of the certificate will at all times be able to buy convertible foreign currency freely to meet foreign financial obligations arising from the investment. In addition the Act provides assurance that holders will have free access to convertible foreign currency for the repatriation, without any restriction, of the following:

- Profits of a branch of a foreign company.
- Dividends, after deduction of non-residents' shareholders tax.
- Profits on the sale of the business or any part thereof to a person ordinarily resident in Namibia.
- Any reduction in share capital.

Incentives for manufacturers/exporters

Incentive regimes are designed to give Namibia-based entrepreneurs who invest in manufacturing and re-export trade a competitive edge. These tax and non-tax incentives are accessible to both existing and new manufacturers. Manufacturing activities in all sectors, including local value-added processing of Namibia's minerals, fish and agricultural products currently exported largely in raw form, stand to benefit from these incentives. Tax incentives are also available to exporters when exporting manufactured goods, irrespective of whether the goods are manufactured in Namibia or not (refer to Chapter 19).

A number of other special incentives are also available for manufacturing enterprises. The incentives are controlled and administered by the Investment Centre (Ministry of Trade and Industry), to whom application should be made. The incentives comprise the following.

- Subsidised loans from the Namibian Development Corporation.
- Cash grants for exporters of locally manufactured goods of up to 50 percent of the real cost of specified export promotion and marketing expenses incurred.

- Acquisition of industrial studies from the government at below cost.

Special Non-tax Incentives for manufacturers

These include the following:

- Export promotion funding of certain export promotion activities up to a maximum of 50% of direct costs;
- Industrial studies undertaken by Government can be made available at 50% of their production costs to companies that wish to develop investment opportunities

Other incentives currently under investigation include the following.

- Reduced airfreight for exporters.
- Subsidised transport.

- Subsidies on electricity, housing, training and relocation cost.
- Price preference on tenders.

Export Processing Zone (EPZ) incentives

The flagship of Namibia's tax-based incentives is the EPZ regime. Launched in 1996 through the enactment of the EPZ Act, the young regime is now vibrant and represents a whole new territory for the discerning investor to exploit. In its short lifespan, Namibia's EPZ has attracted and continues to attract local and international response.

The Namibia EPZ regime provides the most attractive fiscal incentives (refer to Chapter 19)

Chapter 5

Exchange Control implications on foreign investment and investors

Investor considerations

- No restrictions exist on transfers of dividends or profits.
- Local branches and subsidiaries are normally treated as residents.
- Corporations may invest unlimited amounts upon approval from Bank of Namibia per new investment abroad.
- Individuals are allowed to transfer N\$ 2,000,000 abroad.
- Limited restrictions on local financial assistance where there is foreign ownership (Affected Person / EPZ status)
- Foreign Capital introduced into the country may be repatriated back to its origin.

Exchange control territory

Different exchange control rulings apply to the transactions of residents of the Common Monetary Area (CMA), as well as to non-residents thereof. The CMA is comprised of the Republic of South Africa, Lesotho, Namibia and Swaziland. There are no trade and exchange restrictions between the members of the CMA, and the members form a single exchange control territory. Lesotho, Namibia and Swaziland have their own exchange control authorities as well as their own acts or regulations and rulings, but in terms of the CMA Agreement, the application of these authorities and rules must be at least as strict as that of South Africa.

Accordingly, investments and transfers of funds from South Africa to other CMA countries do not require the approval of Exchange Control, but may require the approval of the host country.

Settlements by residents of Namibia with the non-resident area may be made to and from a non-resident account and in any foreign currency.

Regulatory climate

Namibia's own currency, the Namibia dollar (NAD), was introduced in September 1993. The NAD remains linked to the South African Rand, which is accepted as legal tender in Namibia. Exchange control in Namibia is administered by the Bank of Namibia (the Central Bank) through authorised dealers, the latter being the commercial banks in the country. Control applies at present to all Namibian residents, which include foreign-owned business undertakings operating in Namibia.

Exchange control regulations prescribe procedures that must be followed for making payments for imports, freight and other services, interest on foreign loans, dividend transfers, etc. The payments are unrestricted on presentation of the prescribed supporting documentation to an authorised dealer in foreign exchange.

Foreign transfers

The CMA member countries have undertaken to gradually liberalize exchange control within the region.

To allow broader investment by private individuals offshore, and to facilitate greater flow of funds, maximum allowable foreign investment by private Namibian residents was increased to N\$ 2,000,000.

Corporate entities wishing to invest in countries outside the CMA are allowed to transfer an unlimited amount from Namibia per new investment abroad, upon the approval from the Bank of Namibia. Further, foreign portfolio investment by institutional investors, i.e., long-term insurers, pension funds, unit trust management companies and fund managers, was adjusted.

Direct investment

Direct investment in Namibia by a foreign investor, including the establishment of new subsidiaries and branches, the acquisition of controlling or non-controlling interests in existing Namibian companies, and the increase of capital funds of existing local subsidiaries and associates, may be provided by way of equity or loan capital, or a combination of the two. Exchange control permission is not required for the inward transfer of equity capital, but permission is required for loan funds.

Remittance of dividends

In general, distributions of profit, including dividends from foreign investment, can be made freely and without prior approval, except by concerns owned 75 percent or more by non-residents who have availed themselves of local borrowing facilities. In these cases, prior approval must be obtained before remittance. Evidence that the distributions have accrued as a result of trading or from income on investments must be produced. This would normally take the form of an auditor's certificate.

Withholding taxes on dividends (normally 10 percent, but reduced for some countries under the various double taxation agreements), and royalties (30 percent of the current tax rate, i.e., 10.5 percent, but also reduced for some countries) must be deducted before remittances are made.

Foreign investment on the Namibia Stock Exchange

Namibia provides a favorable regime for foreign investors. There is no capital gains tax or marketable securities tax. The only special tax on foreign nationals is the non-resident shareholders tax at 10 percent of dividends remitted, mitigated by double tax treaties with certain countries.

Furthermore, there are no general restrictions on foreign ownership of shares in Namibian listed companies, and all shares are freely tradable. Foreign exchange regulations are almost identical to those of South Africa, as both countries are members of the Common Monetary Area, and the Namibia Dollar is linked at par with the South African Rand. Investors must apply through an authorized dealer to ensure free remittance of dividends and proceeds of sales.

Other foreign remittances

Interest is transferable, provided exchange control approval has been granted for the loan capital, and the interest rate is reasonable. The rate should not normally exceed the lending rate in the country where the loan is sourced.

Royalties, technical, management and similar fees are also transferable, although prior approval of the terms of the underlying agreements must be obtained. Applications for the foreign exchange required must normally be supported by an auditor's certificate.

Normal selling commissions to independent agents abroad who have assisted in the export of goods are remittable.

Directors' fees are also permitted to be remitted to each non-resident director upon prior approval.

Repatriation of capital

The local sale or redemption proceeds on non-resident owned assets in Namibia may be regarded as freely remittable, or be used freely by non-residents for investment purposes within the CMA.

EPZ enterprises

EPZ enterprises operate outside the normal foreign exchange regime in Namibia. To address their foreign exchange and operational requirements, two types of banking accounts have been tailor-made to the needs of enterprises operating in the Namibian EPZ, as follows.

- EPZ Customer Foreign Current Account
- To facilitate the foreign company disbursements of EPZ enterprises, this account is kept in foreign currency in a local bank.
- EPZ Non-resident Account

This is a Namibia Dollar account funded with foreign currency, and used for the normal operational requirements/ expenditure of the EPZ enterprise. Balances on this type of account are freely convertible.

Restrictions on local financial assistance where there is foreign ownership

There are various restrictions on local financial assistance, having regard to the degree of non-resident participation in an enterprise. These restrictions are calculated in accordance with a formula that takes into account the percentage of foreign participation in the equity.

Where 75 percent or more of a Namibian company's capital or earnings is controlled directly or indirectly by non-residents, such a company may borrow locally up to an agreed percentage of its total effective capital. Effective capital consists of share capital, reserves and loans from shareholders as specifically approved by Exchange Control. Unrealized profits on revaluations of assets are not recognised as reserves for this purpose. That portion of inter-company current accounts for imports, which may be regarded as permanent in character, may, however be accepted as forming part of the shareholders' loans.

The normal local financial assistance allowed is determined by the following formula.

$$200\% \quad \text{plus } \frac{\% \text{ Namibian interest}}{\% \text{ Non-resident interest}} \times 100 \text{ of the effective capital}$$

The definition of local financial assistance embraces bank and other credit facilities including mortgage finance, hire purchase, factoring and financial leasing arrangements. Financial assistance does not include the granting of credit by a seller to a purchaser of equipment of a productive nature.

Sometimes temporary excess financial assistance is condoned, such as in situations where there is local expansion or modernization or where trading losses must be made good. In such circumstances the remittance of dividends or other withdrawals by non-residents would be restricted.

Temporary residents

Temporary residents are foreign nationals who are employed on specific contracts within Namibia or who are seconded to a local firm for a limited period. Provided they give a written undertaking to an authorized dealer that they will not place their foreign assets at the disposal of any third party resident in the CMA, they may deal freely with such assets and are not required to remit to Namibia any income earned thereon.

They are also permitted to transfer to their home countries on a regular basis a reasonable proportion of their local earnings, and on completion of their stay in Namibia, they are permitted to transfer all local savings.

When returning abroad on termination of contract, the temporary resident may take with them any savings accumulated from earnings. The realized profit from the sale of a house is deemed to be "savings."

Exchange Control is prepared to consider requests by contract workers to bring in funds to purchase residential property for their own occupation. If agreed, the basis would be that on conclusion of the contract, the same amount would leave the CMA, and any profit would be seen as savings. If the house is retained after their departure, the house would be regarded as an investment by the non-resident, and on eventual disposal, the total proceeds could be remitted.

Immigrants

Virtually all foreign exchange control on non-residents has been abolished.

Immigrants to Namibia, who are not former residents of a CMA country, are permitted to retain their foreign assets, but they must remit to Namibia any income thereon. They are required to give an undertaking that they will not make such assets available to other residents of the CMA.

On taking up permanent residence in Namibia, immigrants should complete the prescribed form MP 335(a), together with a declaration of their foreign assets and liabilities. On receipt of such documents, authorized dealers may permit the immigrants concerned, provided they are not former residents of the CMA, to dispose of or otherwise invest their foreign assets as declared without interference from Exchange Control. This concession is also applicable to foreign capital subsequently accruing to such immigrants, provided declaration thereof is made to their bankers.

Immigrants to Namibia are permitted, within five years of the date of their immigration, to retransfer abroad, all own assets introduced into Namibia during the five-year period, provided such transfers are not financed by local borrowing facilities.

Import and export controls

Namibia is open to trade with any country. However, in terms of import and export legislation, although some goods may be imported freely, permits are required for a wide range of imports and for certain exports (having regard to local needs for any product). Permits are generally available both for consumable and for capital items. Importation of products of plant or animal origin may be subject to additional, e.g. phyto-sanitary controls and permits.

For capital goods, advance payments not exceeding one-third of ex-factory cost are permitted, provided such payments are customary and are a condition of the transaction. Advance payments for imports other than capital goods are restricted to N\$ 500,000.

The proceeds of current export transactions must be received in Namibia within six months of the date of shipment and the foreign currency involved sold to an authorized dealer within 30 days of receipt. In exceptional cases, extended credit of up to 12 months may be granted by the exporter in order to maintain the foreign market.

Forward exchange cover may be obtained by both importers and exporters at prevailing market rates. The rates are determined by current interest differentials and ruling spot rates. Importers may obtain extended supplier credit, but import finance facilities may only be established abroad for periods of up to 12 months without prior permission of Exchange Control.

Similarly, local banks are permitted to provide exporters with overseas trade finance in respect of exports on a pre-shipment or post-shipment basis for periods not exceeding 12 months.

Import permits must be produced to support applications for the relevant foreign exchange.

Chapter 6

Regulatory environment

Investor considerations

- Regulatory provisions generally apply to both local and foreign owned enterprises.
- The Namibian government is committed to promoting the principles of free enterprises.
- Certain restrictions exist with regard to employment practices.

Regulation of business

Responsibility for the basic legal framework for the regulation of industry and commerce mainly rests with the Ministry of Trade & Industry (see Chapter 2). The national and municipal levels of government exercise some control over commerce and industry, ranging from licensing requirements and conditions for employees at national level to restrictions imposed to serve the health of the population on municipal level.

In principle, there is freedom to conduct business in Namibia. Foreign individuals must obtain a residence and work or investor permit. Companies and branches of foreign companies must register with the Registrar of Companies.

Anyone can set up a business, except in occupations and professions requiring special qualifications, which are governed by their regulating bodies. Specific lines of business, e.g., the banking, insurance, pharmaceutical and food industries, are regulated by separate legislation or regulations.

Securities market

The basic listing requirements of the NSX are as follows:

- Share capital amounting to a minimum of N\$ 1 million
- A minimum of 1 million shares must be in issue
- A profitable trading record for three years, with a current audited profit before tax of at least N\$ 500 000 (Companies which do not comply with this requirement may list on the Development Capital Board).
- An acceptable record in its field of business and adequate management to maintain business. Satisfactory evidence must be supplied to prove that the management as a whole has the required expertise.
- Other criteria such as the vulnerability of a company to specific factors or events will be taken into consideration.
- The company may not have qualified auditor's report for the preceding 3 years.
- The Namibian Stock Exchange has established a Development Capital Board for listings of companies that do not comply with some or all of the above criteria. The purpose of this sector is specifically to facilitate listings of new ventures/businesses that do not have an adequate track record such companies should have a fully researched project and at least 10% of the capital raised must be provided by management.

Patents, trademarks, standards

A Standards Information and Quality Office set up under the Directorate of Internal Trade gained recognition in January 1996 as a subscriber member of the International Organisation of Standardisation (ISO). The office provides information concerning quality and standards for the local industry.

The Registration of Companies, Patents, Trademarks and Industrial Designs Division is entrusted with the government's task of registering and controlling business entities. The Division provides the legal and administrative framework for the protection of patents, trademarks and design rights of owners against unscrupulous users and competitors. The Division further initiates and reviews legislation in the area of companies and registration and administration of close corporations, as well as legislation in the area of industrial property.

In its quest to create an enabling environment for business, the Division provides effective protection for the rights of patents, trademarks and design holders by means of an effective industrial property regime, which develops the necessary legislation. It also provides an international link-up framework through international bodies such as the World Intellectual Property Organisation (WIPO), regional bodies such as the African Industrial Property Organisation (AFRO) and bilateral agreements.

A special Division oversees the registration of Patents, Trademarks and Industrial Designs. The Division provides the legal and administrative framework for the protection of patents, trademarks and design rights of owners against unauthorized use thereof. The Division is further responsible for initiating and reviewing legislation pertaining to intellectual property.

In addition to its domestic legislation, Namibia has acceded to or signed the following international instruments in the intellectual property regime, namely Convention Establishing the World Intellectual Property Organisation 1967, amended in 1979 (WIPO Convention), Berne Convention for the Protection of Literary and Artistic Works, 1971, WIPO Copyright Treaty, 1996, WIPO Performance and Phonogram Treaty, 1996, Madrid Agreement concerning the International Registration of Trademarks, 1891, Protocol concerning the Madrid Agreement concerning the International Registration of Trademarks, 1989; Hague Agreement concerning the International Deposits of Industrial Designs of 1925, as governed by the 1960 Act and the Geneva Act, Paris Convention for the Protection of Industrial Property (Stockholm Act 1967); Patent Cooperation Treaty 1970; Harare Protocol on Patents and Industrial Design within the Framework of the African Regional Industrial Property Organisation, 1982 and the Banjul Protocol on Marks within the Framework of the African Regional Industrial Property Organisation, 1993.

Licences and standards

The Ministry tabled the Liquor Licensing Bill in parliament, designed to streamline and strengthen liquor-licensing procedures through the creation of a decentralised licensing system administered by the regions.

The Liquor Act 6 of 1998, which came into force on 22 December 2001, regulates the licensing process for the sale and supply of liquor in Namibia. The Act forbids the sale of liquor that contains more than 3% alcohol to persons under 18, prohibits the supply of liquor to employees as remuneration and forbids the consumption of liquor in public places amongst other provisions.

With regard to standardisation, the South African Bureau of Standards (SABS) has been contacted to administer both International and SABS standards in Namibia, while a comprehensive review is under way to establish a national quality infrastructure, and to investigate the possibility of setting up a National Standards Body (NSB). Once established, the NSB will be responsible for the promotion of quality awareness within the industry as well as among the public, and to encourage Namibian manufacturers to produce quality products that are safe.

A Standards Information and Quality Office set up under the Directorate of Internal Trade gained recognition in January 1996 as a subscriber member

of the International Organisation for Standardisation (ISO). The office provides information concerning quality and standards for the local industry.

Small Scale and Informal Industries Division (SSIID)

This division of the Ministry of Trade & Industry has the function of articulating and implementing a development programme that will contribute to the improvement of productivity at small and informal industrial levels. It is now accepted that small and micro enterprises (SMEs) are one of the most important means of increasing production and reducing unemployment.

The government's role in the sector's development will be one of catalyst and enabler. It will facilitate the creation of an enabling environment in which the sector can flourish. The government has no intention of running business activities. However, to overcome the historical constraints to development, the government will have to intervene strongly in the initial stages.

To achieve this the government will need to take the initiative in areas such as the following.

- Deregulation and incentives.
- Pro-active programmes.
- Institutional support.

Chapter 7

Banking and finance

Investor considerations

- Namibia offers a sophisticated banking system.
- A wide range of financial services is available on domestic and international levels.
- Various financial institutions supply specialist services, including mortgage loans, leasing and insurance.
- Foreign business has full access to all sources of domestic finance.
- Professions are well established.

The central bank

Namibia has a well-established banking system, which is controlled by legislation and by state agencies working through the Bank of Namibia, which is the country's central bank.

Bank of Namibia

P O Box 2882, Windhoek

Tel: +264 61 2835111

Fax: +264 61 2835231

Website: www.bon.com.na

As a member of the Rand Common Monetary Area (CMA), however, Namibia continues to be subjected to CMA foreign exchange regulations, as are South Africa, Lesotho and Swaziland.

Banking Institutions Act of 1998

The Banking Institutions Act passed in 1998 provides the legal framework for banking operations in Namibia, and is designed to ensure international acceptability. The Bank of Namibia will enforce compliance with Basel II in the near future.

Commercial banks

Commercial banks in Namibia operate through a nation-wide network of branches and offer a comprehensive range of banking services, including current account and overdraft facilities, term deposits, discounting of bills, foreign exchange and a variety of loan products.

General banking facilities such as hire purchase and leasing packages are also available and most of the commercial banks are capable of providing specialised merchant banking facilities. Branches of banks can be found in most towns in Namibia, with agencies in the smaller centers. International services are available through interbank arrangements, while electronic banking and teller services are available in all major centres.

Namibia currently has four major commercial banks.

Bank Windhoek Limited

P O Box 15, Windhoek

Tel: +264 61 2991122

Fax: +264 61 2991282

Website : www.bankwindhoek.com.na

First National Bank of Namibia Limited

P O Box 195, Windhoek

Tel: +264 61 2992111

Fax: +264 61 220979

Website: www.fnbnamibia.com.na

Nedbank Namibia Limited

P O Box 1, Windhoek

Tel: +264 61 2959111

Fax: +264 61 2952120

Website: www.nedbank.com.na

Standard Bank of Namibia Limited

P O Box 3327, Windhoek

Tel: +264 61 2949111

Fax: +264 61 2942363

Website www.standardbank.com.na

Barclays Bank is set to commence operations in Namibia towards the end of 2008.

Professional services

Professions are well established in Namibia, and are generally regulated by their own professional institutes or similar bodies.

Chapter 8

Financial Intelligence Act

Purpose of the Act

- Combat money laundering;
- Establish an Anti-Money Laundering Advisory Council;
- Authorise the Bank of Namibia to collect, assess and analyse financial intelligence data, which may lead or relate to money laundering;
- Impose duties on institutions and other persons who may be used for money laundering; and
- Provide for incidental matters.

The Act is applicable to:

- The Bank of Namibia;
- Accountable Institutions; and
- Supervisory Bodies.

The Bank of Namibia

The Bank of Namibia ('the Bank') is responsible for administering the Financial Intelligence Act, Act No.3 of 2007 ('the Act'). The Act thus does not apply to the Bank itself, except insofar as it grants powers to the Bank to perform functions contained in the Act or imposes responsibilities and duties on the Bank for monitoring and ensuring that the accountable institutions comply with the Act.

In order for the Bank to administer the Act and to exercise its powers and perform its duties under the Act, the following funds will be made available to the Bank:

- Money appropriated annually by Parliament;
- Government grants;
- Money made available to the Bank from the Criminal Assets Recovery Fund³;
- Any other money legally acquired by the Bank; and
- Financial or other contributions from official organisations approved by the Minister.

The Accountable Institutions

Institutions qualifying as accountable institutions are listed below:

Accountable Institutions	
1	Bank of Namibia to the extent that it exercises its powers and fulfils its duties under: • The Bank of Namibia Act^a; • The Currency and Exchanges Act^b; • The Prevention of Counterfeiting of Currency Act^c; • The Payment System Management Act^d.
2	Legal Practitioners ^e
3	• Person who carries on the business of a trust or keeps trust property in safe custody; • Board of executors or a trust company (including a trustee of a family trust; and • A settlor of an inter vivos or institutional trust.
4	Estate agents ^f
5	Financial instrument traders
6	Persons who carry on a “banking business” or who are “receiving funds from the public” ^g

^a

The Bank of Namibia Act, Act No. 15 of 1997

^b

The Currency and Exchange Act, Act No. 9 of 1933

^c

The Prevention of Counterfeiting of Currency Act, Act No. 16 of 1965

^d

The Payment System Management Act, Act No. 18 of 2003

^e

As defined in the Legal Practitioners Act, Act No. 6 of 1995

^f

As defined in the Estate Agents Act, Act No. 112 of 1976

^g

As defined in section 1 of the Banking Institutions Act, Act No. 2 of 1998

³ Established by section 74 of the Prevention of Organised Crime Act, Act No. 29 of 2004

Accountable Institutions

7	Persons, other than banking institutions, who carry on the business of – • Collecting money from persons into an account or fund; or • Depositing money in such an account or fund into a bank account on behalf of the persons from whom they collected money.
8	Casino or Gambling institutions
9	Car dealerships
10	Second hand dealers
11	Traders in minerals ^h and/or of high value jewellery, antiques or art
12	Foreign exchange dealers
13	Investment consultants and/or investment brokers
14	Persons who issue, sell or redeem travellers' cheques, money orders or similar payment instruments
15	Post Office Savings Bank ⁱ
16	Members of a stock exchange ^j
17	Totalisator Agency Boards or persons operating as a totalisator betting service
18	Institutions or bodies designated by the Minister ^k
19	Financial Institutions ^l
20	Auctioneers

- ^h As specified in Schedule 1 of the Minerals (Prospecting and Mining) Act, Act No. 33 of 1992
- ⁱ As defined in section 1 of the Posts and Telecommunications Act, Act No 19 of 1992
- ^j Licensed under the Stock Exchange Control Act, Act No. 1 of 1985
- ^k In terms of section 2(2)(p) of the Banking Institutions Act, Act No. 2 of 1998
- ^l As defined in section 1 of the Namibia Financial Institutions Supervisory Authority Act, Act No. 3 of 2001

Supervisory Bodies

Institutions qualifying as supervisory bodies are listed below:

Supervisory Bodies	
1	Bank of Namibia to the extent that it exercises its powers and fulfils its functions under the Banking Institutions Act, Act No. 2 of 1998
2	Registrar of Companies ^m
3	Law Society ⁿ
4	Estate Agents Board ^o
5	Public Accountants' and Auditors' Board ^p
6	Namibia Financial Institutions Supervisory Authority ^q
7	The Namibia Stock Exchange ^r

Anti-Money Laundering Advisory Council

The Act established an Anti-Money Laundering Advisory Council which consists of the following persons:

- The Governor⁴ or his/her delegate (chairperson);
- Permanent Secretary of the Ministry of Finance;
- Inspector General of the Namibian Police Force;
- Permanent Secretary of the Ministry of Trade and Industry;
- Permanent Secretary of the Ministry of Justice;
- Director of the Namibian Central Intelligence Service;
- Chief Executive Officer of the Namibia Financial Institutions Supervisory Authority;
- Director of the Anti-Corruption Commission;
- President of the Bankers Association;
- Representative of the Accountable Institutions as requested by the Minister;

⁴ The Governor as referred to in section 1 of the Bank of Namibia Act, Act No. 15 of 1997

- ^m As defined in the Companies Act, Act No. 61 of 1973
- ⁿ Established in terms of the Legal Practitioners Act, Act No.15 of 1995
- ^o Established in terms of the Estate Agents Act, Act No.112 of 1976
- ^p Established in terms of the Public Accountants' and Auditors' Act, Act No.51 of 1951
- ^q Established in terms of the Namibia Financial Institutions Supervisory Authority Act, Act No. 3 of 2001
- ^r Established in terms of the Stock Exchanges Control Act, Act No. 1 of 1985

- Representative of the Supervisory Bodies as requested by the Minister;
- Representative of an Institution or Body as requested by the Minister.

The functions of the Council are:

- Advise the Minister (on request or own initiative) on –
 - policies and measures to combat money laundering activities; and
 - the exercise by the Minister of the powers entrusted to the Minister in terms of this Act;
- Maintain a forum at least twice a year in which the Bank, associations, representing categories of accountable institutions, office, ministry or government agency, supervisory bodies and any other person, institution, body or association, as the Council may determine, can consult on another.

The Bank should provide administrative support for the Council to function effectively.

Money Laundering

“Money laundering” or **“money laundering activity”** is defined in section 1 of the Financial Intelligence Act, Act No. 3 of 2007 as:

- “(a) the act of a person who –
- (i) engages, directly or indirectly, in a transaction that involves proceeds of any unlawful activity;

(ii) *acquires, possesses or uses or removes from or brings into Namibia proceeds of any unlawful activity; or*

(iii) *conceals, disguises or impedes the establishment of the true nature, origin, location, movement, disposition, title of, rights with respect to, or ownership of, proceeds of any unlawful activity;*

where –

(aa) *as may be inferred from objective factual circumstances, the person knows or has reason to believe, that the property is proceeds from any unlawful activity; or*

(bb) *in respect of the conduct of a person, the person without reasonable excuse fails to take reasonable steps to ascertain whether or not the property is proceeds from any unlawful activity; and*

(b) *any activity which constitutes an offence as defined in section 1 of the Payment System Management Act, Act No. 18 of 2003.”*

The Bank's principal objective is to combat money laundering activities and thus the Bank has the following functions in this regard:

- Collect, process and assess all reports and information received in terms of the Act or any other law;
- Compile statistics and records, disseminate information within Namibia or elsewhere and make recommendations arising out of any information received;
- Coordinate the activities of the various persons, bodies or institutions involved in the combating of money laundering;
- Inform, advise and cooperate with investigating authorities and Namibia Central Intelligence Services and make information collected by the Bank available to these investigating authorities for the purpose of administration, intelligence collection and law enforcement;
- Supervise compliance with this Act by accountable institutions and give guidance to accountable institutions to combat money laundering activities.

The Money Laundering Control Measures set by the Act are listed below:

Control Measures	Penalty upon Offence
Identification when business relationships are established or single transactions are concluded	Maximum fine of N\$500,000; or Maximum imprisonment of 30 years (individual); or Both
Identification when transactions are concluded in the course of business relationship	Maximum fine of N\$500,000; or Maximum imprisonment of 30 years (individual); or Both
Records to be kept of business relationships and transactions	Maximum fine of N\$500,000; or Maximum imprisonment of 30 years (individual); or Both
Period for which record must be kept	Maximum fine of N\$500,000; or Maximum imprisonment of 30 years (individual); or Both
Centralisation of records	Maximum fine of N\$500,000; or Maximum imprisonment of 5 years (individual); or Both
Admissibility of records	Not applicable

Control Measures	Penalty upon Offence
Bank's access to records	Maximum fine of N\$500,000; or Maximum imprisonment of 30 years (individual); or Both
Cash transactions above prescribed limits	Maximum fine of N\$50,000; or Maximum imprisonment of 5 years (individual); or Both
Suspicious transactions	Maximum fine of N\$500,000; or Maximum imprisonment of 30 years (individual); or Both
Electronic transfers of money to or from Namibia	Maximum fine of N\$500,000; or Maximum imprisonment of 30 years (individual); or Both
Obligations of and reporting by Supervisory Bodies	Maximum fine of N\$500,000; or Maximum imprisonment of 30 years (individual); or Both ^s And/or Maximum fine of N\$50,000; or Maximum imprisonment of 3 years; and in case of a continuing offence a further fine not exceeding N\$10,000 for each day during which the offence continues after conviction ^t
Conveyance of cash to or from Namibia	Maximum fine of N\$100,000; or Maximum imprisonment of 5 years (individual); or Both And in case of a continuing offence – Maximum fine of N\$50,000 for each day during which the offence continues after conviction
Obligations by Accountable institutions	Not applicable

^s Contravention/failure to comply with section 23(1) of the Financial Intelligence Act, Act No. 3 of 2007

^t Contravention/failure to comply with section 23(2) and (3) of the Financial Intelligence Act, Act No. 3 of 2007

Control Measures	Penalty upon Offence
Reporting procedures	Maximum fine of N\$500,000; or Maximum imprisonment of 30 years (individual); or Both ^u Or Maximum fine of N\$50,000; or Maximum imprisonment of 5 years (individual); or Both ^v
Continuation of suspicious transactions	Not applicable
Intervention by Bank	Maximum fine of N\$500,000; or Maximum imprisonment of 30 years (individual); or Both
Monitoring orders	Maximum fine of N\$500,000; or Maximum imprisonment of 30 years (individual); or Both
Reporting duty not affected by confidentiality rules	Not applicable
Protection of persons making reports	Not applicable
Control Measures	Offence
Tipping-Off	Maximum fine of N\$100,000; or Maximum imprisonment of 10 years (individual); or Both
Admissibility as evidence of reports made to the Bank	Not Applicable
Access to information held by the Bank	Maximum fine of N\$50,000; or Maximum imprisonment of 5 years (individual); or Both
Protection of confidential information	Maximum fine of N\$50,000; or Maximum imprisonment of 5 years (individual); or Both
Protection of informers and information	Not applicable
^u Accountable institution or supervisory authority fails to comply with section 26(2) of the Financial Intelligence Act, Act No. 3 of 2007 ^v A person who fails to comply with section 26(2) of the Financial Intelligence Act, Act No. 3 of 2007	

Offences in general

Section 44 of the Financial Intelligence Act, Act No. 3 of 2007 states:

“A person who:

- knowing or suspecting information is held by the Bank directly or indirectly brings, otherwise than in the course of discharging an obligation under this Act, that information or the fact that that information is held to the attention of another person;*
- destroys or in any other way tampers with information kept by the Bank for the purposes of this Act;*
- knowing or suspecting that information has been disclosed to the Bank, directly or indirectly brings information which is likely to prejudice an investigation resulting from that disclosure to the attention of another person;*
- obstructs, hinders or threatens an official or representative of the Bank in the performance of their duties or the exercise of their powers in terms of this Act;*
- with intent to defraud, in respect of a document to be produced or submitted under any provision of this Act, makes or causes to be made a false entry or omits to make, or causes to be omitted any entry,*

commits an offence and is liable on conviction to a fine not exceeding N\$100 000 or to imprisonment for a period not exceeding five years or to both such fine and imprisonment.”

Chapter 9

Latest amendments to the Long-Term Insurance and Pension Fund Acts

Amendment of the Long-Term Insurance Regulations made under the Long-Term Insurance Act, 1998

- Amendment by Minister of Finance on 21 December 2007
- Amendment Gazetted on 4 February 2008

Four amendments were made to Regulation 15 of the Regulations made under the Long-Term Insurance Act, Act No. 5 of 1998.

Highlights of the amendments are as follows:

- 1) Registered Insurers or reinsurers (collectively ‘insurers’) are required to invest its assets in unlisted investments in Namibia so much as correspond to a minimum of 5% of the aggregate liabilities of the long-term insurance business of the insurer, provided that:
 - (a) The unlisted investments do not cumulatively exceed 10% of the assets of the insurer as correspond to the aforesaid aggregate liabilities and that the insurer invest at least:

Minimum requirement	Required period
2%	1 January 2008 – 31 December 2008
3.5%	1 January 2009 – 31 December 2009
5%	1 January 2010 onwards

(b) The entity in which the investment is intended:

- Is in possession of a certificate by an auditor⁵ and approved by the Registrar certifying its compliance with the International Financial Reporting Standards⁶;
- Adheres to internationally accepted norms on good corporate governance;
- Has Namibian ownership of at least 25% prior to any investment by an insurer;
- Complies with such other requirements that the Registrar (with concurrence of the Minister) may determine from time to time.

“Unlisted investment” means a “share”⁷ and excludes:

- A share in a company listed on any stock exchange; and
- A debt instrument or any other investment as the Registrar (with the concurrence of the Minister), may determine by notice in the Gazette;

Insurers should on a quarterly basis, from 1 January each year following commencement of this regulation report to the Registrar the placement of investments in unlisted investments and provide such information as the Registrar may require.

- 2) The insurer must, in terms of its long-term insurance business, invest inside Namibia not less than 35% of the market value of its total assets, provided that the assets consisting of listed shares acquired in companies incorporated outside Namibia on the Namibian Stock Exchange, are regarded as assets invested inside Namibia, but may not exceed the value of investments inside Namibia by:

Ceiling	Required period
30%	1 June 2008 – 31 May 2009
25%	1 June 2009 – 31 May 2010
20%	1 June 2010 – 31 May 2011
15%	1 June 2011 – 31 May 2012
10%	1 June 2012 onwards

- 3) Investments made outside the Common Monetary Area (‘CMA’) should comply with the limitations as determined under the Currency and Exchanges Act, Act No. 9 of 1933 from time to time.

⁵ Registered under the Public Accountants’ and Auditors’ Act, Act No. 51 of 1951

⁶ As prescribed by the International Accounting Standards Board

⁷ As defined in the Companies Act, Act No. 61 of 1973

4) Limits of investments:

Nr	Categories or kinds of assets	Maximum of the aggregate market value of the total assets of a fund
1	Bills, bonds or securities issued/ guaranteed by or loans to/ guaranteed by the Government of the Republic of Namibia	50%
2	Deposits with a credit balance in a current/ savings account held with a banking institution (includes negotiable deposits, money market instruments in terms of which such banking institutions is liable, including deposits in the Post Office Savings bank)	
	Per banking institution	20%
	Per Office Savings Bank	20%
3	Bills, bonds or securities issued/ guaranteed by or loans to/ guaranteed by:	
	a) Local authority/ regional council authorised by law to levy rates upon immovable property –	
	Per local authority/ regional council	20%
	b) State owned enterprise –	20%
	Total investment of an insurer in assets above	30%
4	Bills, bonds or securities issued or loans to an institution which bills, bonds or securities have been approved by the Registrar in terms of section 5 of Schedule 1 of the Act; and Bills, bonds or securities issued or loans to an institution of which institution was likewise approved by the Registrar.	
	Per institution	20%
5	Bills, bonds or securities issued by the government of or by a local authority in a country other than Namibia, of which the country was approved by the Registrar in terms of section 6 of Schedule 1 to the Act; and Bills, bonds or securities issued by an institution, which institution was likewise approved by the Registrar.	
	Per institution	10%

Nr	Categories or kinds of assets	Maximum of the aggregate market value of the total assets of a fund
9	Claims secured by mortgage bonds on immovable property, debentures (listed & unlisted excluding convertible debentures) or any other secured claims against natural persons (excluding loans referred to in paragraph c) of nr 8 above) or companies (excluding loans to and debentures of property companies).	25%
	Claim against one individual is limited to –	0.25%
	Claim against any single company is limited to –	5%
10	Computer equipment, furniture and other office machinery, and motor vehicles are limited to:	2.5%
	Computer equipment	5%
	Other equipment and motor vehicles	2.5%

Amendment of the Regulations made under Pension Funds Act, 1956

- Amendment by Minister of Finance on 21 December 2007
- Amendment Gazetted on 4 February 2008

Four amendments were made to Regulation 28 of the Regulations made under the Pension Funds Act, Act No. 24 of 1956.

Highlights of the amendments are as follows:

- 1) Pension Funds ('Funds') are required to invest in unlisted investments in Namibia a minimum of 5% of the total assets of the fund, provided that:
 - (a) The unlisted investments do not cumulatively exceed 10% of the assets of the fund and that the fund invest at least:

Minimum requirement	Required period
2%	1 January 2008 – 31 December 2008
3.5%	1 January 2009 – 31 December 2009
5%	1 January 2010 onwards

(b) The entity in which the investment is intended:

- Is in possession of a certificate by an auditor⁸ and approved by the Registrar certifying its compliance with the International Financial Reporting Standards⁹;
- Adheres to internationally accepted norms on good corporate governance;
- Has Namibian ownership of at least 25% prior to any investment by a fund;
- Complies with such other requirements that the Registrar (with concurrence of the Minister) may determine from time to time.

“Unlisted investment” means a “share”¹⁰ and excludes:

- A share in a company listed on any stock exchange; and
- A debt instrument or any other investment as the Registrar (with the concurrence of the Minister), may determine by notice in the Gazette;

Funds should on a quarterly basis, from 1 January 2008 report to the Registrar the placement of investments in unlisted investments and provide such information as the Registrar may require.

- 2) The fund must keep invested inside Namibia not less than 35% of the market value of its total assets, provided that the assets consisting of listed shares acquired in companies incorporated outside Namibia on the Namibian Stock Exchange, are regarded as assets invested inside Namibia, but may not exceed the value of investments inside Namibia by:

Ceiling	Required period
30%	1 June 2008 – 31 May 2009
25%	1 June 2009 – 31 May 2010
20%	1 June 2010 – 31 May 2011
15%	1 June 2011 – 31 May 2012
10%	1 June 2012 onwards

- 3) Investments made outside the Common Monetary Area (‘CMA’) should comply with the limitations as determined under the Currency and Exchanges Act, Act No. 9 of 1933 from time to time.

⁸ Registered under the Public Accountants’ and Auditors’ Act, Act No. 51 of 1951

⁹ As prescribed by the International Accounting Standards Board

¹⁰ As defined in the Companies Act, Act No. 61 of 1973

4) Limits of investments:

Nr	Categories or kinds of assets	Maximum of the aggregate market value of the total assets of a fund
1	Bills, bonds or securities issued/ guaranteed by or loans to/ guaranteed by the Government of the Republic of Namibia	50%
2	Deposits with a credit balance in a current/ savings account held with a banking institution (includes negotiable deposits, money market instruments in terms of which such banking institutions is liable, including deposits in the Post Office Savings bank)	
	Per banking institution	20%
	Per Office Savings Bank	20%
3	Bills, bonds or securities issued/ guaranteed by or loans to/ guaranteed by:	
	a) Local authority/ regional council authorised by law to levy rates upon immovable property –	20%
	b) State owned enterprise –	20%
	Total investment of a fund in the above	30%
4	Bills, bonds or securities issued or loans to an institution which bills, bonds or securities have been approved by the Registrar in terms of section 19(1)(h) of the Act prior to the deletion of that section by section 8(a) of Act 53 of 1989;	
	and	
	Bills, bonds or securities issued or loans to an institution of which the institution was likewise approved by the Registrar before the deletion of section 19(1)(h) of the Act.	
	Per institution	20%

Nr	Categories or kinds of assets	Maximum of the aggregate market value of the total assets of a fund
5	Bills, bonds or securities issued by the government of or by a local authority in a country other than Namibia, of which the country was approved by the Registrar in terms of section 19(1) (i) of the Act prior to its deletion by section 8(a) of Act No. 53 of 1989; and Bills, bonds or securities issued by an institution of which the institution was likewise approved by the Registrar before the deletion of the said section 19(1)(i).	
	Per institution	10%
6	Immovable property, units in unit trust schemes in property shares and shares in/ loans to and debentures (convertible & non-convertible) of property companies. Investment in a single property or property development project is limited to -	20% 5%
7	Preference and ordinary shares in companies (excluding shares in property companies), convertible debentures (voluntary or compulsory excluding debentures of property companies) and units in a unit trust scheme^x (excluding units in unit trust schemes in property shares or a unit trust of which the underlying does not consist of at least 95% securities listed on a stock exchange):	
	a) With effect from 1 January 2008 – 31 January 2009	70%
	b) With effect from 1 February 2009	65%
	Provided that:	
	1. Fund may apply to the Registrar for exemption from the provisions of paragraph a) and b);	
	2. Shares and convertible debentures in a single company listed on any stock exchange within the common monetary area other than in the development sector –	
	– with a market capitalization of N\$5,000 million or less;	5%
	– with a market capitalization greater than N\$5,000 million;	10%
	– shares and convertible debentures in a single company listed on the Namibian Stock Exchange –	5%
	– with a market capitalization of N\$1,000 million or less	5%
	– with a market capitalization greater than N\$1,000 million	10%
^x	As defined by the Unit Trusts Control Act, 1981	

Nr	Categories or kinds of assets	Maximum of the aggregate market value of the total assets of a fund
8	Claims secured by mortgage bonds on immovable property, debentures (listed & unlisted excluding convertible debentures) or any other secured claims against natural persons or companies (excluding loans to and debentures of property companies).	25%
	Claim against one individual is limited to –	0.25%
	Claim against any single company is limited to –	5%
9	Any other asset not referred to above.	
	Per category or kind of asset –	2.5%
	Excluding:	
	• Moneys in hand; • Loans granted to members of the fund in accordance with – – provisions of section 19(5) of the Act; and – exemptions as may have been granted to the fund in terms of section 19(6) of the Act; • Investments in the business of participating employer to the extent that it has been allowed by an exemption in terms of – – the provisio to section 19(4) of the Act; or – section 19(6) of the Act.	

Black Economic Empowerment ('BEE')

Black Economic Empowerment ('BEE')

BEE is about the attainment of economic growth via the integration of deprived individuals, due to the inflexible structural socio-economic inequalities in the society, into the economic mainstream. BEE thus promotes the increase in contributions by deprived individuals to the economic growth of the country by way of skill investment, sustainability and growth.

BEE legislation has not been introduced in Namibia, but should it be, the following can be expected in terms of the Transformation Economic and Social Empowerment Framework ('TESEF') proposed Wealth Creation Scorecard of 24 October 2007:

The Empowerment Pillars

Ownership

Investment

Broaden the deprived ownership base of all enterprises to ensure that at least 25.1% of equity is held by deprived individuals, of which at least 10% is held by women, the youth and broad based individuals within the designated groups over the next 10 years.

Foreign owned companies sell their equity to deprived shareholders or facilitate increased enterprise development.

Ownership by deprived individuals should be accompanied by an equal level of management control and a maximum limit of 30% is set for participation by white woman in the ownership pillar.

Growth

Growth in ownership is measured by the increase in deprived individuals' shareholding in enterprises to a majority shareholding of 51%.

Enterprises can achieve this by either disposing of more than 50% shareholding immediately or phase out the disposal by a 10% per annum up to maximum of 51%, thereby qualifying for growth points for every year.

Enterprises should assist the deprived enterprises and employees with the purchase of equity in their enterprises by facilitating the development of creative financial mechanisms in order for them to do so.

Enterprises will forfeit their growth points if they remain at a 25.1% deprived shareholding.

Sustainability

The realisation of ownership is measured by the value held by the deprived individual in the enterprise, excluding any outstanding debt (including the capitalised or accumulated interest) used to finance the purchase of shares in the business. It should be taken as a percentage of the current value of the enterprise and the target is set at 10% per annum.

The sustainability of ownership is measured by the equity retention period of the deprived shareholder before exiting as a shareholder. The deprived shareholder should hold his/her shares for at least 3 years. The enterprise will have to demonstrate the net value held by the deprived individual after the purchase of his/her shares.

Capacity/skills

The economic value added (productivity) of the deprived individual shareholders should be increased by means of best practice human resource and skill development policies.

The target set for enterprises is to invest at least 3% of the total payroll expenses in respect of executive directors on skills development initiatives for its deprived shareholders. This target includes all costs pertaining to the initiative (e.g. internal and external training). Where the shareholders and/or directors and top management are the same, the target is set at 3% of the total payroll value of the top management and directors.

Enterprises should formalise their skills development programmes and information regarding scholarships, training resources and career planning should be made available.

Research should be conducted to identify scarce productive management and professional skills required by the enterprise over the next 10 years and future demand-supply scenarios should be mapped out in a detailed skills development programme.

Management

Investment

The participation of deprived individuals on boards and decision making structures of enterprises should be increased in order to truly represent the racial, ethnic and gender diversity in the country.

The measurement of management by deprived individuals should be transparent, unscrupulous business practices such as fronting and window dressing should be eliminated and best-practice corporate governance should be adopted.

The target is at least 50% within 10 years for deprived individuals to represent executive boards, top management and similar decision making structures of Namibian registered and owned companies, parastatals and public sector agencies. Half of the target is set aside for deprived woman, youth and disabled individuals.

Growth

Growth in management is measured on four levels:

- Remuneration;
- Responsibility;
- Authority; and
- Access to information.

There should be parity on all four levels for deprived individuals and non-deprived individuals in an enterprise (e.g. remuneration of a deprived individual in top management should be the same as for a non-deprived individual in top management with the same qualifications and demands in his/her position that the deprived individual has).

Sustainability

Sustainability of management is measured by the penetration by deprived individuals of key operational positions such as chief operating officer, production manager and technical head amongst others.

Fifty percent of all operational positions should be filled by deprived individuals of which 40% should be held by deprived woman (i.e. 20% of the total).

Capacity/skills

The economic value added (productivity) of every executive management position in the economy should be increased by means of best practice human resource and skill development policies together with the increase in scale of initiatives for developing deprived individual professionals and technical experts.

Three percent of the payroll value of top management and executives should be invested in skills development initiatives for executive members and top management.

Enterprises should formalise their skills development programmes and information regarding scholarships, training resources and career planning should be made available.

Research should be conducted to identify scarce productive management and professional skills required by the enterprise over the next 10 years and future demand-supply scenarios should be mapped out in a detailed skills development programme.

At least 30% of the number of deprived individuals in top management executive positions should show improvement in skills within one or more of:

- Recognition of prior learning;
- Formalised training; and
- In-house training.

Affirmative Action

Investment

The participation of deprived individuals in middle, junior management, professional and technical full time positions of enterprises should be increased in order to truly represent the racial, ethnic and gender diversity in the country.

A supportive culture within the enterprise has to be created to attract new talent, develop existing employees and expedite their progress into key positions.

Deprived individuals should within the next 10 years represent:

- 50% of middle management;
- 60% of junior management;
- 70% of all other staff.

Representation by deprived individuals in all categories combined should be at least 50% and half of it should be represented by deprived women, youth and disabled individuals (i.e. 25% of the total).

Growth

Growth in affirmative action is measured on four levels:

- Remuneration;
- Responsibility;
- Authority; and
- Access to information.

There should be parity on all four levels for deprived individuals and non-deprived individuals in an enterprise (e.g. remuneration of a deprived individual in middle management should be the same as for a non-deprived individual in middle management with the same qualifications and demands in his/her position that the deprived individual has).

Sustainability

Sustainability of affirmative action is measured by the penetration by deprived individuals of key operational and productive positions such as supervisor, technical manager, senior technician and artisan in control.

Fifty percent of all operational positions should be filled by deprived individuals of which 40% should be held by deprived woman, youth and disabled individuals (i.e. 20% of the total).

Seventy percent of all other staff positions should be filled by deprived individuals of whom 40% should be women, youth of disabled individuals (28% of total).

Capacity/skills

Three percent of the payroll value of junior/middle management and other staff should be invested in skills development initiatives for junior/middle management and other staff.

Enterprises have to identify within and outside their organisation a talent pool of deprived individuals for accelerated development through operational and productive assignments that provide high-quality operational and managerial exposure, mentorship programmes, learner ships, intra-industry exchange and internship programmes, higher education and training.

Enterprises have to design and fund an internal coordinated framework and programme for career awareness and training that leverages off and adds value to existing initiatives and targets.

Enterprises should formalise their skills development programmes and information regarding scholarships, training resources and career planning should be made available.

Research should be conducted to identify scarce productive management and professional skills required by the enterprise over the next 10 years and future demand-supply scenarios should be mapped out in a detailed skills development programme.

At least 30% of the number of deprived individuals in top management executive positions should show improvement in skills within one or more of:

- Recognition of prior learning;
- Formalised training; and
- In-house training.

5% of the workforce should be earmarked for learnerships and apprenticeships.

Procurement

Investment

Procurement from deprived individuals-owned and empowered enterprises should be accelerated thereby creating new enterprise establishment and development of existing enterprise opportunities in order to add value to natural resources and imported components that will grow the economy and create jobs.

At least 30% discretionary procurement from suppliers should be reached by means of implementing and investing in best-practice supplier development policies within the next 10 years as well as:

- 10% of discretionary spending from deprived suppliers;
- 50% from enterprises that add value to local resources or imported commodities; and
- 10% from deprived women owned enterprises.

Preferential procurement policies should be developed and implemented that will support procurement from locally registered and owned enterprises.

Enterprises have to provide reasons for supporting foreign suppliers as opposed to local suppliers. They also have to establish current levels of procurement from Namibian and foreign enterprises and identify areas where “quick wins” can be achieved to expedite purchasing from local owned enterprises.

Growth

Enterprises should measure and encourage improvement of the recognition levels of their traditional suppliers on an annual basis. The growth element is based on an improvement of the levels of at least 40% of the value of supplier master (value of procurement of suppliers) from one level to the next level in any particular year.

Growth is measured on the improvement of the value of discretionary procurement of:

- at least 10% per year from deprived owned suppliers;
- at least 10% per year from value adding owned suppliers; and
- at least 10% per year of the value of discretionary procurement from deprived women owned suppliers.

Sustainability

The number of compliant suppliers should be increased on an annual basis by measuring the active purchasing from suppliers that are qualifying in the recognition table.

Sustainability is measured by the improvement in the number of suppliers with recognition status over and above the previous year at:

- 50% improvement in the traditional suppliers;
- 10% improvement in the deprived owned suppliers;
- 20% improvement in the value adding suppliers; and
- 10% improvement in the women owned suppliers.

Capacity/skills

At least 30% of the enterprise development contributions should be invested towards skill development of their suppliers. This target includes all costs pertaining to the skills development (e.g. internal and external training).

Enterprises have to identify within their supplier master talent pool of deprived enterprises for accelerated development through operational and productive assignments that provide high-quality operational and managerial exposure, mentorship programmes, learner ships, intra-industry exchange and internship programmes, higher education and training aggregated statistics on the profile of the economy according to occupational level and occupational category.

A target is 10% improvement in the number of suppliers to improve the skills levels of staff, management and owners.

Enterprise Development

Investment

Enterprises should:

- Actively become involved in the setting up, nurturing and growing of viable enterprises that are majority-owned by deprived individuals;
- Pro-actively seek opportunities to enter into joint ventures and make direct investments in deprived enterprises;

- Increase investment in deprived owned and empowered enterprises as a proportion of net profit after tax or turnover; and
- Investigate opportunities to enter into joint venture with deprived enterprises in viable and sustainable investments.

The investment target is, within the next 10 years, the higher of:

- 2% of net profit after tax; or
- 0.2% of the turnover.

Growth

Growth in enterprise development recipients is measured on four levels:

- Profitability;
- Staff Levels;
- Tax Payments; and
- Turnover.

The target is 10% growth in the levels of an enterprise recipient on a year to year basis.

Sustainability

Sustainability of enterprise development is measured based on:

- The number of years in existence;
- Retention of staff numbers; and
- Increase in procurement by value adding enterprises and enterprises they created or caused to be created.

Targets are:

- 5 years existence is regarded that the enterprise no longer requires support;
- 100% retention of staff on an annual basis;
- 10% increase in procurement on an annual basis.

Capacity/skills

Enterprises have to identify within and outside their organisation a talent pool of deprived enterprises for accelerated development through operational and productive assignments that provide high-quality operational and managerial exposure, mentorship programmes, learner ships, intra-industry exchange and internship programmes, higher education and training.

Enterprises should formalise their skills development programmes and information regarding scholarships, training resources and career planning should be made available.

Research should be conducted to identify scarce productive management and professional skills required by the enterprise development recipients over the next 10 years and future demand-supply scenarios should be mapped out in a detailed skills development programme.

Targets are:

- 30% of the enterprise contributions of enterprises and governmental agencies must be for skills development of value adding enterprises; and
- 50% improvement in the number of value adding enterprises that have improved their skills levels.

Socio Economic Development

Investment

Enterprises should increase their social contribution within the local communities in which it is located, its customers are operating or where the employees are located.

The investment target towards the development of local communities within the periphery of their own operations or of its customers, within the next 10 years, is the higher of:

- 2% of net profit after tax; or
- 0.2% of the turnover

Enterprises should develop social development projects, which may include HIV/AIDS treatment and prevention, education, community development and housing.

Growth

Growth targets are:

- 10% improvement in the number of deprived individuals who improved their living conditions, welfare or health per year;
- 60% pass rate for individuals having bursaries and scholarships; and
- 10% increase in the value of functionality or number of units per annum where investment was made in infrastructure and/or housing.

Sustainability

Seventy percent of the students, recipients of health and welfare support should have:

- retained their employment;
- secured employment; or
- remained and qualified as students within their relevant subject or field of expertise.

Capacity/skills

Enterprises have to identify outside their organisation a talent pool of deprived individuals for accelerated development through operational and productive assignments that provide high-quality operational and managerial exposure, mentorship programmes, learner ships, intra-industry exchange and internship programmes, higher education and training.

Participation in formalised scholarships, training resources and career planning in organisations should be made available to the children of employees, communities and the unemployed and the youth.

Targets are:

- 30% of the socio economic budget should be towards skills development programmes of deprived individuals from rural areas who are not employees or contractors to the company or government agency; and
- 50% improvement per year for improvement of skills of all recipients.

PROPOSED WEALTH CREATION SCORECARD – OCTOBER 2007																		
Ownership			Management			Affirmative Action			Procurement			Enterprise Development			Socio Economic Development			Selection
Investment	Target	Weight	Investment	Target	Weight	Investment	Target	Weight	Investment	Target	Weight	Investment	Target	Weight	Investment	Target	Weight	5 of 6
Economic Interest: DI	25.1%	3	Board Representation: DI	50%	3	JMM: DI	50%	3	Procurement: RTS	30%	4	EC Programme	Higher of: 2% PAT or 0.2% TO	10	Welfare / Health	Higher: 2% PAT or 0.2% TO	10	
Voting Rights: DI	25.1%	2	Board Representation: DIW	50%	2	JMM: DIW / DID	60%	2	Procurement: DIOS	10%	2	EE Programme			Education			
EI: DIW *, Y & BBI	10%	3	Top Management: DI	50%	3	AOS: DI	70%	3	Procurement: VANS	50%	2	Value Added EC			Infrastructure			
VR: DIW, Y & BBI	10%	2	Top Management: DIW & Y	50%	2	AOS: DIW / DID / Y	50%	2	Procurement: DWOS	10%	2	Procurement: EC			Housing (families)			
Total		10	Total		10	Total		10	Total		10	Total		10	Total		10	50
Growth	Target	Weight	Growth	Target	Weight	Growth	Target	Weight	Growth	Target	Weight	Growth	Target	Weight	Growth	Target	Weight	
Progression: EI (max 51%)	10% p.a.	1	Parity: Remuneration	100%	1	Parity: Remuneration	100%	1	Improvement of RL: TS	40% VPS	1	Increase in profitability: EDR	10% p.a.	1	Improved welfare/health	10% TG	3	
Progression: VR (max 51%)	10% p.a.	1	Parity: Access to Information	100%	1	Parity: Technical Leadership	100%	1	PI: DIOS	10% p.a.	1	Increase in staff levels: EDR	10% p.a.	1	Successful pass rates	60% TG		
Progression: WEI (max 30%)	10% p.a.	0.5	Parity: Responsibility	100%	0.5	Parity: Responsibility	100%	0.5	PI: VANS	10% p.a.	0.5	Increase in turnover: EDR	10% p.a.	0.5	Improved housing value	10% p.v.		
Progression: WVR (max 30%)	10% p.a.	0.5	Parity: Authority	100%	0.5	Parity: Authority	100%	0.5	PI: DWOS	10% p.a.	0.5	Increase in taxation: EDR	10% p.a.	0.5	Improved nr of units	10% p.v.		
Total		3	Total		3	Total		3	Total		3	Total		3	Total		3	15
Sustainability	Target	Weight	Sustainability	Target	Weight	Sustainability	Target	Weight	Sustainability	Target	Weight	Sustainability	Target	Weight	Sustainability	Target	Weight	
Ownership Realisation	10% p.a.	1	Executive DIR in OPS	50%	1	OPS: DI	50%	1	Increase number of RTS	50%	1	EDR Existence	5 Years	1	Work/ Health retention	70% TG	3	
Ownership Fulfilment	100%	0.5	Woman DIR in OPS	40%	0.5	OPS: DIW / Y / DID	40%	0.5	Increase number of DIOS	10%	0.5	Staff Retention: EDR	100%	0.5	Study retention/qualification	70% TG		
Ownership Retention	3 yrs	0.5	Top Management in OPS	50%	0.5	AOS: DI	70%	0.5	Increase number of VANS	20%	0.5	Increase procurement: VAE	10% p.a.	0.5	Maintenance project	Year		
Full Ownership	Year 1	1	Top Women in OPS	40%	1	AOS: DIW / DID / Y	40%	1	Increase number of DWOS	10%	1	Increase procurement: EC	10% p.a.	1	Maintenance scheme	Year		
Total		3	Total		3	Total		3	Total		3	Total		3	Total		3	15
Capacity/Skills	Target	Weight	Capacity/Skills	Target	Weight	Capacity/Skills	Target	Weight	Capacity/Skills	Target	Weight	Capacity/Skills	Target	Weight	Capacity/Skills	Target	Weight	
Skills Audit	Report	0.25	Skills Audit	Report	0.25	Skills Audit	Report	0.25	Skills Audit	Report	0.25	Skills Audit	Report	0.25	SED Requirements	Report	0.25	
Skills Programme	Budget	0.25	Skills Programme	Budget	0.25	Leanership / APP Programme	5% WF	0.25	Skills Programme	Budget	0.25	Skills Programme	Budget	0.25	SED Programme	Budget	0.25	
Skills Investment	3% PED	2	Skills Expenditure	3% PTE	2	Skills Expenditure	3% PJMM	2	Skills Expenditure	30% EDC	2	Skills Expenditure	30%VA/EC	2	SED Skills Expenditure	30% SEB	2	
Skills Improvement	30% TG	1.5	Skills Improvement	30% TG	1.5	Skills Improvement	30% TG	1.5	Skills Improvement	10% EDR	1.5	Skills Improvement	50%VA/EC	1.5	SED Skills Improvement	50% TG	1.5	
Total		4	Total		4	Total		4	Total		4	Total		4	Total		4	20

Abbreviations:		Abbreviations:																	
All Other Staff	AOS	Payroll N\$ of Top Management & Exec.	PTE																
Apprenticeship Programme	APP	Payroll N\$ of Junior Middle Management	PJMM																
Broad Based Individuals	BBI	Procurement Improvement	PI																
Deprived Individual	DI	Profit after tax	PAT																
Deprived Individual Disabled	DID	Recognised Table/Traditional Suppliers	RTS																
Deprived Individual Owned Supplier	DIOS	Recognition Levels	RL																
Deprived Individual Women	DIW	Social Economic Budget	SEB																
Director	DIR	Social Economic Development	SED																
Deprived Woman Owned Supplier	DWOS	Target Group	TG																
Economic Interest	EI	Turnover	TO																
Enterprise Created	EC	Value Added Enterprises	VAE																
Enterprise Development Contributions	EDC	Value Added Namibian Suppliers	VANS																
Enterprise Development Recipient	EDR	Value of Procurement of Suppliers	VPS																
Enterprise Enablement	EE	Voting Rights	VR																
Historically Deprived Namibians	HDN	Woman Economic Rights	WEI																
Junior Middle Management	JMM	Woman Voting Rights	WVR																
Operational Position	OPS	Workforce	WF																
Payroll N\$ of Executive Directors	PED	Youth	Y																

Chapter 11

Competitions Act

Introduction

The Competitions Act was implemented in order to safeguard and promote competition in the Namibian market, to establish the Namibian Competition Commission and make provision for its power, duties and functions.

Purpose of the Act

The purpose of the Act is to enhance the promotion and safeguarding of competition in Namibia in order to promote the efficiency, adaptability and development of the Namibian economy.

Furthermore it aims to:

- provide consumers with competitive prices and product choices;
- promote employment and advance the social and economic welfare of Namibians;
- expand opportunities for Namibian participation in the world markets while recognising the role of foreign competition in Namibia;
- ensure that small undertakings have an equitable opportunity to participate in the Namibian economy; and
- promote a greater spread of ownership, in particular to increase ownership stakes of historically disadvantaged persons.

Application of the Act

The Competition Act applies to all economic activity within Namibia or having an effect in Namibia, except –

- Collective bargaining activities or collective agreements negotiated or concluded in terms of the Labour Act, 1992 (Act 6 of 1992);
- Concerted conduct designed to achieve a non-commercial socio-economic objective;
- In relation to goods or services which the Minister, with the concurrence of the Commission, declares, by notice in the Gazette, to be exempt from the provisions of this Act (refer to section 3.2)

Namibian Competition Commission

The Competition Act makes provision for the establishment of the Namibian Competition Commission, including the functions, powers and duties of the Commission, which include:

- Responsibility for the administration and enforcement of the Competition Act;
- informing the public of the provisions of the Act and the functions of the Commission;

- interacting with similar authorities of other countries to exchange information, knowledge and expertise.
- conducting research on matters as requested by the Minister;
- advising the Minister on matters referred to the Commission by the Minister;
- implementing measures to increase market transparency;
- investigating contraventions of this Act;

In terms of the Act, the Commission, with the approval of the Minister and notice in the Gazette, will make rules :

- relating to the administration, organization and operations of the Commission;
- prescribing the procedures to be followed in respect of applications and notices to, and proceedings of, the Commission;
- prescribing fees to be paid for the purpose of this Act;
- the manner for making a submission in relation to the subject matter of any application to, or investigation by, the Commission;
- prescribing the procedures for investigations under this Act;
- prescribing the requirements for a small undertaking.

Restrictive Business Practice

Restrictive agreements, practices and decisions

According to section 23 of the Competition Act:

“Agreements between undertakings, decisions by associations of undertakings or concerted practices by undertakings which have as their object or effect the prevention or substantial lessening of competition in trade in any goods or services in Namibia, or a part of Namibia, are prohibited, unless they are exempt in accordance with the provisions of the Act.”

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

“**‘concerted practice’** means deliberate conjoint conduct between undertakings achieved through direct or indirect contact that replaces their independent actions.”

Agreements and concerted practices include agreement concluded between:

- Parties in a horizontal relationship – undertakings trading in competition
- Parties in a vertical relationship – an undertaking and its suppliers or customers or both

The rules of this Act specifically apply to any agreement, decision or concerted practice which:

- Fixes purchase prices, selling prices or any other trading conditions
- Divides markets by allocating customers, suppliers, areas or specific types of goods or services
- Involves collusive tendering
- Involves a practice of minimum resale price maintenance (other than recommended)
- Limits or controls production, market outlets or access, technical development or investment
- Applies dissimilar conditions to equivalent transactions with other trading parties
- Makes the conclusion of contracts subject to acceptance by other parties of supplementary conditions which have no connection with the subject of the contracts.

It is presumed that agreements and concerted practices which are prohibited in terms of the Competition Act exist between two or more undertakings if:

- Any one of the undertakings owns a significant interest in the other or they have at least one director or one substantial shareholder in common; and
- Any combination of the undertakings engages in any of the practices mentioned above.

This assumption may be rebutted if a reasonable basis exists to conclude that the actions of the undertakings were a normal commercial response to conditions prevailing in the market.

The prohibition on restrictive business practices does not apply to agreements and practices engaged in by:

- A company and its wholly owned subsidiary or
- A wholly owned subsidiary of a wholly owned subsidiary
- Undertakings other than companies, each of which is owned or controlled by the same person or persons.

Abuse of dominant position

The Commission must prescribe criteria to be applied to determine if an undertaking or a group of undertakings have a dominant position in the market. The Commission must also determine thresholds by notice in the Gazette, below which this part of the Act will not apply to an undertaking.

The Competition Act prohibits any conduct which amounts to the abuse of a dominant position in a market in Namibia or a part of Namibia.

Abuse of a dominant position includes:

- Directly or indirectly imposing unfair purchase or selling prices ;
- Directly or indirectly imposing unfair trading conditions;

- Limiting or restricting production, market outlets or market access;
- Limiting or restricting investment, technical development or technical progress;
- Applying dissimilar conditions to equivalent transactions with other trading partners;
- Making the conclusion of contracts subject to acceptance by other parties of supplementary conditions which have no connection with the subject matter of the contracts.

Exemption of certain restrictive practices

Grant of exemption for certain restrictive practices

Any undertaking may apply to the Commission to be exempted for any agreement, decision or concerted practice or any category thereof from the provisions of the Competition Act.

Following notice in the Government Gazette, a period of 30 days within which interested parties may make representations to the Commission and after investigating the application for exemption the Commission must make a decision to

- grant exemption;
- deny the exemption; or

- issue a certificate of clearance stating that the agreement, decision or concerted practice does not constitute an infringement of the prohibitions of the Competition Act.

Exemptions may be granted if there are exceptional and compelling reasons of public policy why the agreement, decision or concerted practices should be exempted.

Revocation or amendment of exemption

The Commission may revoke or amend the exemption or revoke the certificate of clearance at any time if:

- The exemption was granted / certificate issued based on material incorrect or misleading information;
- There has been a material change of circumstances;
- A condition upon which an exemption was granted has not been complied with.

Written notice must be given if an exemption or certificate is proposed to be revoked. The responsible parties may within 30 days of receipt of notice submit any representation with regard to the exemption to the Commission.

In instances of non-compliance with a condition of an exemption the Commission may apply to the Court for the imposition of a pecuniary penalty in respect of that non-compliance.

Exemption in respect of intellectual property rights and professional rules

Upon receiving an application for exemption the Commission may grant an exemption in relation to any agreement or practice relating to the exercise of any rights or interest acquired or protected in terms of any law relating to copyright, patents, designs, trade marks or any other intellectual property rights.

Some professional associations have rules that contain restrictions which prevent or substantially lesser competition in the market. Those professional associations may apply to the Commission for an exemption.

The Commission may grant exemption to all or part of the rules of a professional association for a specified period if the rules of these professional associations are reasonably required to maintain:

- professional standards; or
- the ordinary function of the profession.

The Commission must publish a notice in the Gazette regarding the exemptions given. Interested parties have 30 days from the date the notice has been made to make a representation. The Commission must consult the Minister responsible for the administration of any law governing the profession concerning the application.

If the Commission considers that any rules should not be exempt anymore then the exemption may be revoked. The Commission has to give notice in the Gazette if any exemption is revoked. Interested parties have 30 days after the date of the notice to make a representation.

The exemption of a rule or the revocation of an exemption has effect from the date specified by the Commission.

“Professional associations” means the controlling body established by or registered under any law in respect of the following professions:

- Accountants and auditors;
- Architects
- Engineers
- Estate agents
- Legal practitioners
- Quantity surveyors
- Surveyors
- Town and regional planners
- Health services professions governed by:
 - The Medical and Dental Professions Act
 - The Nursing Professions Act
 - The Pharmacy Profession Act
 - The Veterinary and Para-veterinary Professions Proclamation

— The Allied Health Services Professions Act

- Any other profession to which the provisions of this section of the Competition Act have been declared applicable by notice in the Gazette.

The Commission must ensure that notice is given in the Gazette of every exemption granted and of any or every exemption revoked.

Investigation into prohibited practices

Investigation by Commission

The Commission may start an investigation on its own initiative or upon receipt of information or a complaint from any person.

An action that will constitute an infringement or a possible infringement of prohibited practices will lead to an investigation by the Commission. If the Commission intends to conduct an investigation written notice must be provided to the undertaking to be investigated.

Entry and search of premises

In order to conduct an investigation an inspector may enter upon and search any premises for information and evidence supporting the infringement.

The inspector must obtain a warrant to search premises from a judge of the Court beforehand except if the owner

or any other person, in control of the premises, consent to the entry and search. A receipt will be issued by the inspector for anything removed from the premises to be used as evidence.

Proposed decision of Commission

If upon conclusion of an investigation the Commission proposes to make a decision it must give written notice.

Content of notice:

- the reason for the decision reached by the Commission
- inform the undertaking that they may submit written representation
- indicate to undertaking whether they have the opportunity to make a oral representation to the commission.

Conference to be convened for oral representation

If an undertaking requires an opportunity to make an oral representation to the Commission, the Commission must convene a conference to be held and give written notice regarding the details of when the conference is going to be held.

An undertaking may be accompanied by any person whose assistance is required at the conference.

Action following investigation

After consideration of any representation made by the undertaking the Commission may institute proceedings in the Court.

The Commission will request an order declaring that the conduct of the undertaking constitutes an infringement of the prohibitions of the Act restraining the undertaking from engaging in such conduct; directing any action to be taken by the undertakings to remedy the infringement or effects thereof; imposing a pecuniary penalty, or other appropriate relief.

The Commission may make an application to the Court for an interim order restraining an undertaking if the Commission believes this will prevent serious irreparable damage to any person or protect the public interest.

Consent agreement

The Commission may at any time during or after an investigation enter into an agreement of settlement with the undertaking concerned. The terms submitted by the Commission will be confirmed as an order of the Court.

The agreement of settlement may include:

- an award of damages
- any amount proposed to be imposed as pecuniary penalty.

Publication of decision of Commission

The Commission must ensure that notice be given in the Gazette of any action or consent agreement including:

- The name of the undertaking involved
- Nature of the conduct that is subject to the action or the consent agreement

Mergers

Merger defined

For purposes of the Competition Act
“A merger occurs when one or more undertakings directly or indirectly acquire or establish direct or indirect control over the whole or part of the business of another undertaking”

A merger may be achieved in any manner, including the purchase or lease of shares, an interest, or assets of the other undertaking or amalgamation or other combination with the other undertaking

A person **controls** an undertaking if that person:

- beneficially owns more than one half of the issued share capital of the undertaking;
- is entitled to a majority vote or has the ability to control the voting of a majority of votes, either directly or through a controlled entity of that undertaking;

- is able to appoint or to veto the appointment or a majority of the directors of the undertaking
- is a holding company and the undertaking is a subsidiary of that company;
- in the case of the undertaking being a trust, has the ability to control the majority if the votes of the trustees or to adopt the majority if the trustees of to appoint or chance the majority if the beneficiaries of the trust;
- in the case if the undertaking being a close corporation, owns the majority of the members' interest of controls directly of has the right to control the majority of the members' votes in the close corporation; or
- has the ability to materially influence the policy of the undertaking in a manner comparable to a person who, in ordinary commercial practice, can exercise an element of control referred to in paragraphs a) to f).

Control of mergers

The requirements set out in the Competition Act, applies to all proposed mergers. Certain classes of mergers may be exempted by the Commission by way of notice in the Gazette.

No proposed mergers may be implemented unless:

- the proposed merger was approved by the Commission; and implemented in accordance with the conditions set out in the approval; or

- the time limits as set out in point 4.4. have elapsed without the Commission having made a determination in relation to a proposed merger.

Notice to be given to Commission of proposed merger

Where undertakings propose to merge each undertaking involved must notify the Commission of the proposal in the prescribed manner. In response, the Commission may request additional information regarding the proposed merger, if considered necessary, within 30 days after receiving the notification.

Period for making determination in relation to a proposed merger

The Commission must make a determination regarding a proposed merger within the following time limits:

- Within 30 days after receiving notice of the proposed merger;
- If the Commission request additional information from the undertakings, within 30 days after the receipt of this additional information;
- If a conference is convened for the undertaking to make oral representation, within 30 days after the date of conclusion of the conference.

The time limits above may be extended if deemed necessary by the Commission by giving notice, for a further period, not exceeding 60 days.

Conference in relation to proposed merger

The Commission has the discretion to call a conference to be held regarding a proposed merger and must give reasonable notice to the undertakings involved.

Determination of proposed merger

In “making determination of a proposed merger” the Commission will make a decision whether it will, give or decline approval for the implementation of the merger.

Criteria which the Commission will consider in its determination will include:

- The extent to which competition will be prevented or lessened, trade will be restricted, services will be provided and / or the services will be supplied on a continued basis;
- The extent to which the proposed merger would be likely to result in any undertaking acquiring or strengthening a dominant position in the market;
- The extent to which the proposed merger would be likely to result in a benefit to the public which would outweigh any detriment resulting from an undertaking acquiring or strengthening a dominant position in the market;
- The extent of the effect on a particular industrial sector or region;

- The extent of the effect on employment;
- The extent of the effect on small undertakings having the ability to gain access to or to be competitive in any market;
- The extent of the effect on the ability of national industries to compete in international markets;
- Any benefits likely to be derived relating to research and development, technical efficiency, increased production, efficient distribution of goods or provision of services and access to markets;

The Commission may refer the investigation to an inspector and if referred the Commission must give notice to the undertaking. Any person may voluntarily submit to the inspector of Commission any relevant information regarding the proposed merger. The Commission may give approval for the implementation of a proposed merger on such conditions as the Commission may consider appropriate.

The Commission must give notice of the determination made to a proposed merger to the relevant parties as well as giving notice in the Gazette.

Written reasons for the Commissions determination must be given if:

- the proposed merger is prohibited or conditionally approve
- requested to do so by any party to the merger

Revocation of approval of proposed merger

The Commission may revoke, at any time, any decision approving the implementation of a proposed merger if the decision was based on materially incorrect or misleading information or any condition attached to the approval of the merger that is material to its implementation is not complied with.

If a decision is revoked, the Commission must give written notice to every party involved; and inform the relevant parties to submit within 30 days of the receipt of such notice, any representation which they may wish to make.

Review of decisions of Commission on mergers by the Minister

Not later than 30 days after the Commission has given notice of its determination any party to the proposed merger may make application to the Minister to review the decision made by the Commission. Section 49 of the Competition Act specifies the procedures and time limits to be followed and applied in such an instance.

It should be noted that approval of a proposed merger in terms of the Competitions Act does not relieve an undertaking from complying with any other law which required that the sanction of the Court be obtained for the merger and that the approval of the Commission is not binding on the Court.

Merger implemented in contravention of the Act

If a merger is implemented in contravention of the requirements set out under point 4 and its subsections the Commission may apply to the court for:

- an interdict restraining the undertakings from implementing the merger;
- an order directing any party to the merger to sell or dispose of any shares, interest or other assets it has acquired pursuant to the merger;
- declaring and agreement or provision of an agreement to which the merger was subject as void.
- The imposition of a pecuniary penalty

Jurisdiction of Court

Jurisdiction of Court

The Court has jurisdiction to hear and determine any matter arising from proceedings instituted in terms of the Competition Act.

Pecuniary penalties

The Court may impose pecuniary penalties in certain instances. The pecuniary penalty may be of any amount which the Court considers appropriate limited to 10 percent of the global turnover of the undertaking during its preceding financial year.

Offences and Penalties

Offences

A person commits an offence if the person:

- hinders administration of the Act
- fails to comply with summons
- fails to comply with order of Court
- commits other offences such as improperly influencing or misleading the Commission

Penalties

A person convicted of an offence is liable for penalties.

Offence	Penalty
Contravention of section 62: Failure to comply with order of Court	Fine not exceeding N\$500 000; or Imprisonment of a period not exceeding 10 years; or Both, a fine and imprisonment
Contravention of section 55: Prohibition on disclosure of information	Fine not exceeding N\$50 000; or Imprisonment of a period not exceeding 3 years; or Both, a fine and imprisonment
Any other case	Fine not exceeding N\$20 000; or Imprisonment of a period not exceeding 1 years; or Both, a fine and imprisonment

Transitional Provisions

The Competition Act was published in the Government Gazette on 24 April 2003, but only came into force on 3 March 2008.

The following provisions are applicable as transitional measures:

Restrictive business practices

For the 12 months after the Act came into force (up to 3 March 2009) AND if application for exemption is made within that period, until a decision is reached by the Commission, the prohibition on restrictive business practices will not apply to any agreement, decision or concerted practice in existence on the date.

Mergers

Any merger effected between 24 April 2003 and 3 March 2008 to which the Act would have applied if it were in force, will be regarded as being in contravention of the Act for a period of 12 months after the Act came into force (up to 3 March 2009) unless the undertakings notify the Commission in terms of the Act, as if it were a proposed merger, within 3 months from the Act coming into force.

No action will be taken with regard to a merger implemented in contravention of the Act within the 3 months period following the date on which the Act came into force (i.e. up to 3 June 2008).

Chapter 12

Exporting to Namibia

Tips for exporters to Namibia

- Exports into Namibia from non-SACU countries are subject to customs and certain goods to excise duties.
- Value-added tax (VAT) is levied generally in addition to customs duties on imports, including imports from SACU member countries.
- Certain goods originating from Southern African Development Community (SADC) countries may be imported at reduced rates of duty in accordance with the existing protocols.
- Imports by Export Processing Zone (EPZ) companies are exempt from duties and VAT.
- Most imports are cleared through customs by local clearing and forwarding agents familiar with the requirements of the Customs and Excise Act.
- Advice on import restrictions and general Customs and Excise requirements can be obtained from trade commissions or professional advisers.

Import restrictions

The importation of certain goods (e.g., specified foodstuffs, second-hand vehicles, animals, plants, chemicals, and pharmaceuticals) is subject to license/permit or import control regulations.

Import duties

Following independence in 1990, Namibia has elected to remain a member of SACU.

The new SACU Agreement signed December 2002 by the Heads of State for Botswana, Lesotho, Namibia, South Africa and Swaziland provides for a new institutional framework consisting of a Council of Ministers, SACU Commission and Technical Committees and sets out the basis for sharing customs and excise revenue among the member states

Rates

All goods imported will all attract VAT at 15% after the value of the goods imported has been uplifted by 10%, unless the importation is exempt.

In addition, goods imported from outside SACU may attract Customs and ad valorem duties. Rates at which duties are levied vary significantly, and depend on the nature of the goods imported, e.g. passenger motor vehicles currently attracts Customs duties at a rate of 29%, while certain other goods may be imported duty-free.

Customs requirements

All imported goods cleared on a customs bill of entry are valued in terms of the GATT valuation code. Particular attention must therefore be paid to transfer pricing, royalties and related party transactions.

Customs entries are electronically processed through the Asycuda system, with links to the border posts, airports, harbours and major railway stations.

All imported goods must be cleared through Customs and Excise by means of a Customs Import Bill of Entry (Form SAD 500) and foreign exchange worksheet (for ex SACU imports). Further permits or certificates issued by other authorities may further be required, e.g. a birthing certificate confirming the authenticity of motor vehicle details is mandatory should the vehicle be imported for registration in Namibia.

After checking and/or inspecting by the Customs officials that entries are correctly declared, an assessment setting out the Import VAT and/or Customs duties payable is issued.

While payment of import VAT may be deferred through an import VAT account facility obtained from the Receiver of Revenue, Customs duties normally must be paid by the importer before the goods can be released for home consumption. Should significant quantities of goods subject to fuel levies, additional duties, Customs and excise duties be imported for immediate home consumption, a credit account facility could be approved by Customs Namibia to provide for deferred payment of such levies and duties.

Duty on goods intended for export, or to be moved in transit to neighboring states, may be rebated.

It is advisable to obtain professional advice and the services of a local clearing and forwarding agent to ensure fast and correct customs clearance.

Chapter 13

Business entities

Investor considerations

- Foreign investors generally conduct business through a Namibian company or as a branch of its home corporation.
- Company formation is simple and inexpensive. Shell companies are available from accounting and legal firms.
- Close corporations are simpler to administer and are not subject to statutory audit obligations.
- Legal, tax and accounting advisers should be retained in the early planning stages of establishing a business entity.

Business registrations

Business may be conducted in Namibia in a variety of forms, as follows.

- Public company or private company.
- Branch of a foreign company.
- Close corporation.
- Partnership, including joint venture.
- Sole proprietor.
- Business trust.

Prior to commencing business, it is necessary to obtain the appropriate registration certificate from the local municipal health department. Certain businesses, such as banks, insurers and pharmaceutical companies may require additional special licences.

It is also necessary to register with the following.

- The Workmen's Compensation Commissioner with regard to the government operated workmen's compensation insurance scheme.
- The appropriate industrial council governing the trade or industry in which the business is proposing to operate.
- The Department of Inland Revenue with regard to value added tax and employment matters.
- The Receiver of Revenue as an employer,
- The Department of Social Security for Social Security purposes.

Companies

Companies are regulated in Namibia under the Companies Act which, with a few exceptions, is identical to the South African Companies Act, and is based on UK company law. The Act covers both domestic companies and those incorporated outside Namibia but trading through a local branch. The liability of shareholders is limited to the issued share capital.

Public companies may offer their shares for sale to the public, although they need not be listed on the stock exchange, nor is it required that the public hold an interest in their shares.

Their characteristics are that the number of shareholders is unlimited, there are no restrictions on the transfer of their shares and they must file a copy of their annual financial statements with the Registrar of Companies.

Private companies are those that perform the following.

- Restrict the right of transfer of their shares.
- Limit the number of members to 50.
- May not offer shares for sale to the public.
- Are not required to file their annual financial statements with the Registrar.
- Must include the word "proprietary" at the end of the registered name immediately before the word "limited".

For both types of companies, an audit by a registered Namibian accountant and auditor is obligatory.

Companies incorporated in Namibia must have a registered office, and must maintain certain statutory and accounting records. The statutory records, which include registers of share allotments and transfers, members and directors and officers, must be maintained in Namibia. If the accounting records are maintained outside Namibia, the company must receive such financial information and returns as will enable the statutory financial statements to be prepared and audited locally.

It is not necessary for directors or shareholders to be resident in Namibia, although many overseas holding companies appoint local directors to their local subsidiaries. Nominee shareholders are also permitted without disclosure of the identity of the beneficial ownership. In certain industries, i.e., fishing and mining, a 51 percent Namibian shareholding is required.

It is necessary to obtain from the Registrar of Companies approval of the name of the company before incorporation. Legal and other costs of incorporation for a company with relatively simple memorandum and articles of association should not exceed N\$ 2,000. Each company must pay an annual duty calculated with reference to its issued share capital.

Local equity participation and directors

There are no local equity requirements laid down in the Companies Act.

Local equity participation may, however, be a sound business strategy, especially in industry sectors that involve the exploitation of natural resources. An example is the fishing industry, where this is taken into account in allocating fishing quotas.

There are no requirements with regard to local directors in the Companies Act. Other Acts governing certain industry sectors (e.g., insurance) may however require local directors.

Companies are required to appoint a Public Officer who is resident in Namibia.

Branch of a foreign company

A foreign company that establishes a place of business in Namibia is known as an “external company” and is required to register with the Registrar of Companies. It must appoint a local agent, and a local auditor who must be a registered accountant and auditor. An external company must maintain certain statutory records at the company’s registered address in Namibia, and such accounting records as are necessary to fairly present its state of affairs and business in Namibia. If the accounting records are kept outside Namibia, returns sufficient for the preparation and audit of the annual financial statements must be sent to Namibia.

Audited annual financial statements in respect of the business in Namibia, and a certified copy, with a certified translation if necessary, of its latest complete annual financial statements as prepared under the requirements of its country of incorporation, must also be lodged with the Registrar.

Upon registration copies of the copies of the company’s memorandum and articles of association duly certified but a notary public should be lodged with the local Registrar of Companies.

Any subsequent changes to an external company’s memorandum should be lodged under cover of the prescribed form, with the Registrar within three months of such alteration.

External companies are also required to open and maintain a register of directors and secretaries. Furthermore, a minute book must be kept with minutes of all meetings of directors pertaining to the local business of the company.

PricewaterhouseCoopers offers company secretarial work as part of its range of services, and could provide assistance in meeting the above requirements.

Considerations for determining whether businesses operated in Namibia should be conducted through a branch or through a subsidiary are as follows.

- A branch may remit its after tax profit without deduction of withholding tax but when the foreign branch declares dividends withholding tax will be payable on those dividends declared when they relate to profits in Namibia ; dividends from a subsidiary are subject to such tax (which may be reduced under a relevant double taxation agreement).
- A private company subsidiary does not have to file its annual financial statements, or those of its parent company, with the Registrar of Companies.
- If there are to be dealings on a large scale with the Namibian government, a local subsidiary may be viewed more favorably.
- It is the policy of the government to encourage domestication of foreign branches through exemption from transfer and stamp duties, of

transfers of fixed property or shares from the external company to a subsidiary.

- Annual duty of a subsidiary is calculated with reference to the share capital of the subsidiary. In the case of a local branch of a foreign company, annual duty is determined by the amount of the share capital of the foreign company, which is often very high.
- Administrative and similar charges by the foreign company to a subsidiary are all liable to challenge by the Namibian revenue authorities.
- The liability of a subsidiary is theoretically limited to its share capital and reserves and these should be less than those of the foreign company. In practice, this advantage may be negated by the need for the overseas parent to support its subsidiary through sub-ordinations of loans and through guarantees.

Close corporations

A close corporation is a simplified and less expensive form of a limited liability business entity created by the Close Corporations Act. Like a company, the members are sheltered from any liabilities of the corporation, provided that the conditions of the Act are complied with. It is a suitable medium for any enterprise owned and run by up to ten people actively involved in the business. There is no statutory audit requirement, but an accounting officer must be appointed, who has

certain duties to fulfil under the Act. A close corporation cannot become the subsidiary of a company or another close corporation. In addition, there are certain tax and foreign exchange disadvantages, which make it an unsuitable vehicle for foreign investment in Namibia.

Partnerships and sole traders

There are no specific registration requirements. However, joint venture arrangements are frequently made between companies in partnership. In this case each company would be governed by the legal requirements affecting companies operating in Namibia.

Business trusts

A trust is a sui generis legal institution in which a trustee(s) hold or administer property, separately from his own property, for the benefit of another, namely the beneficiary, or beneficiaries.

Trusts can be divided into two categories, namely discretionary trusts and vested interest trusts. In terms of a discretionary trust, the trustee(s) is afforded a discretion as to the allocation and distribution of the trust property to the beneficiaries, whereas in terms of a vested interest trust the beneficiaries are afforded vested interests in the trust property and the trustee(s)' discretion as to allocation and distribution of the trust to the beneficiaries are limited in accordance with the vested interest held by the beneficiaries.

A business trust is a legal arrangement for the conduct of business or the holding of assets for the benefits of its beneficiaries.

Business trusts are subject to even fewer formalities and administration restraints than close corporations. Liability is limited to the extent of its assets.

Reporting requirements

Companies

Each company or external company in Namibia must produce audited annual financial statements in conformity with the disclosure requirements of the Companies Act. The financial statements must present fairly the financial position of a company and the results of its operations in accordance with the requirements of the Act and with generally accepted accounting practice in Namibia.

The annual financial statements normally comprise the directors' report, the income statement and balance sheet (and, in the case of groups of companies, the consolidated income statement and consolidated balance sheet), a cash flow statement and the auditors' report covering all these documents.

PricewaterhouseCoopers has prepared specimen financial statements complying with the Companies Act and the statements of generally accepted accounting practice, with complete cross-reference to the Act

and to the accounting standards. Copies of such specimens can be obtained at any Namibian office of PricewaterhouseCoopers. A detailed booklet entitled “Corporate Reporting” (Everingham and Kana) is also available on application.

Close corporations

The Close Corporations Act requires that the financial statements of a corporation must fairly present its state of affairs and results of operations in accordance with generally accepted accounting practice. Unlike the Companies Act, the Close Corporations Act does not lay down detailed reporting requirements.

Partnerships and sole proprietors

There are no statutory reporting requirements for partnerships and sole traders, except that for tax purposes each must produce financial statements in sufficient detail to accompany the annual return of income to the Receiver of Revenue to enable tax assessments of the individual(s) to be made.

Chapter 14

Labour relations and social security

Investor considerations

- There is an abundant supply of unskilled labour.
- Namibia currently has a shortage of skilled labour.
- There is an active and highly politicised trade union movement.
- Compulsory social security costs include workers' compensation, maternity leave, sick leave and death benefits.
- Currently most retirement benefits are provided through self-administered retirement funds or through insurance companies.
- Employment equity legislation is in force.

The Labour Act

The Labour Act No 11 of 2007 (the Act) has not been promulgated yet but makes provision for, amongst other items, the regulation of conditions of employment, and the termination of contracts of employment. It also provides for the registration of trade unions and employers' organizations, and defines the rights and obligations of these organizations. A Labour Advisory Council, a Labour Court, District Labour Courts and a Wage Commission were also established by the Act.

Chapter 3 of the Act deals with basic conditions of employment. Some of the pertinent aspects addressed therein are as follows.

Minimum wages

After careful consideration, the government is in the process of implementing the recommendations of the Salary & Wages Commission.

The commission (WASCOM) proposed minimum wages for particular sectors of the economy.

Working time

The Act introduced a 45-hour workweek for all employees, excluding security guards. The latter are allowed to work a maximum of 60 hours per week. Overtime is limited to 10 hours per week, and the rate of ordinary overtime payment is one and a half times the ordinary remuneration rate. Working on a Sunday in certain sectors without permission from the Ministry of Labour is prohibited. Sunday work is to be compensated by twice the hourly wage.

Work performed on public holidays is compensated at twice the normal hourly rate, and work performed between 8:00 p.m. and 7:00 a.m. must be compensated by normal rate per hour plus 6 percent (night work allowance).

Annual leave

Number of days in ordinary work week	Annual leave entitlement in working days
6	24
5	20
4	16
3	12
2	8
1	4

Sick leave

During the first 12 months of employment, employees who work five days per week accrue one day sick leave for every five weeks of employment. Five-day week employees are entitled to 30 working days of sick leave over a period of 36 consecutive months, and six-day per week employees are entitled to 36 working days of sick leave over a period of 36 consecutive months. A medical certificate must be provided to the employer.

Maternity leave

After 6 months of continuous service, a female employee is entitled to at least four weeks of maternity leave before the expected date of confinement and at least eight weeks of leave after the date of confinement.

The rights of any female employee, including seniority, promotion and other benefits shall continue uninterrupted during the period of maternity leave.

Compassionate Leave

Compassionate leave of 5 working days is available in a 12 month period at full pay remuneration in cases of death or serious illness in the family. Family includes a child or adopted child, spouse, parents, grand parents, brothers, sisters, mother-in-law and father-in-law.

Compassionate leave may not be carried forward to the next year.

Termination of employment

The notice period ranges from one day to one month, depending on the length of employment. In the event of retrenchment, a severance allowance based on one week's remuneration for every year of completed service must be paid to the employee.

Industrial relations

The Labour Act regulates industrial relations between employers, employees and trade unions. It also regulates the prevention and settlement of labour disputes.

Some of the major provisions of the Act are as follows.

- The prevention and remedy of any unfair dismissals and unfair disciplinary actions against employees.
- The regulation of termination of contracts of employment.

- The provision for registration of trade unions and employers organizations.
- Definition of the rights and obligations of trade unions and employers' organizations.
- Provision for the settlement of disputes between employees or registered trade unions and employers or registered employers' organizations.
- Definition of the powers, duties and functions of the Labour Commission and labour inspectors.
- The establishment of a Labour Court, District Labour Courts and Wages Commission for the purpose of the Labour Advisory Council.
- Provision for the health, safety, welfare and incidental matters of employees.

Trade unions/employers' organizations

These are also regulated by the Labour Act. Some of the most important provisions are as follows.

- All trade unions and employers' organizations are registered with the Labour Commissioner's office.
- Constitutions of trade unions and employers' organizations are scrutinised by the Labour Commissioner's office during the process of application for registration, to ensure compliance with the provisions of the Labour Act and any other law in force in Namibia.

- Trade unions and employers' organizations should define the industry in which they wish to operate as an industry, occupation or trade.
- Notice in case of a strike or lock-out action should be issued to the other party in the dispute within 48 hours before such action is taken.

Employment equity

The Affirmative Action (Employment) Act was promulgated at the end of 1998. The Act provides for the establishment of the framework of an obligatory Employment Equity Programme (EEP) by employers, to be administered by an independent government agency, the Employment Equity Commission, which will have two main tasks, as follows:

- To investigate complaints of discriminatory practices in employment.
- To assist employers to develop and implement EEPs and to ensure compliance therewith.

An EEP is a set of measures designed to ensure that persons in designated groups enjoy equal employment opportunities and are equitably represented in the various positions of employment. In the private sector, employers who employ 25 or more employees will be required to develop and implement EEPs and it is proposed that EEPs will benefit previously disadvantaged groups including people of colour, women and handicapped persons.

Progress reports on the EEPs are to be submitted to the commissioner annually.

The primary focus of an EEP should therefore be to achieve equitable demographics in the workplace. A further focus should be the upskilling and empowerment of the employer's workforce.

Social security contributions

The Social Security Act provides for an income support system designed for the broadest possible number of Namibians. The system provides for maternity leave, sick leave and death benefits for its members. Social security is based on a principle of 50-50 contributions from employers and employees. This entitles the employee to certain benefits after a set period of time.

Every employer must register with the Social Security Commission, and the employer must register all employees younger than 65 years of age, only if these employees work for more than two days for the employer.

Registered employers will be issued with a social security registration number and registered employees will receive a social security number.

Contributions should be paid over within 30 days after the end of the month. The contributions are calculated as follows.

- Employer’s contribution – 0.9 percent of earnings.
- Employee’s contribution – 0.9 percent of earnings.

Employer and employee contribution may not be less than N\$ 54.00 and not more than N\$ 108.00 per month per employee.

Maternity leave, sick leave and death benefit fund benefits only start six months after membership and are calculated as a percentage of an employee’s monthly remuneration as follows.

	Maximum N\$	Minimum N\$
Maternity leave benefits for female employees at 80% of remuneration:	6 000	240
Sick leave benefit at 60% of remuneration (after six months the benefit is reduced by 50% for a maximum period of 24 months):	4,500	180
Death, disability and retirement benefits (single payment):	3,500	

Maternity leave benefits cover a 12-week period, i.e. four weeks before expected date of delivery and eight weeks thereafter.

The sick leave benefit is payable after an employee has exhausted the leave period provided for under the Labour Act or contract of employment.

Workmen’s compensation

Employers are required, under the Employee Compensation Act, to contribute to a fund that provides cash benefits for industrial injury, disability and death. Contribution rates vary according to inherent occupational risk, from less than 1 percent in most low-risk commercial/administrative occupations, to 8 percent (drilling, tunnelling and rock blasting).

For the purposes of the Employee Compensation Act the term “employee” means any person whether employed permanently, temporarily or casually, with the exception of the following.

- Persons earning more than N\$72,000 per annum, N\$6,000 per month.
- Persons employed casually and not for the purpose of the employer’s business.
- Seamen or airmen under a contract of service whose remuneration is fixed solely by a share in the takings.

Assessments are payable by employers to the Accident Fund in terms of section 69 of the Act. Assessments are not calculated on that part of an employee’s earnings that exceeds N\$72,000 per annum.

Work visa

Only when visiting Namibia on secondment or a short period in Namibia (3 or 6 months). It takes approximately 7 – 14 days to obtain approval from Home Affairs, subject to the availability of the approval committee.

Work permit

When intend to take up permanent employment in Namibia. Valid for 1 year. It takes approximately 3 – 6 months to obtain approval from Home Affairs, subject to the availability of the approval committee.

Renewal of work permit

It takes approximately 3 – 6 months to obtain approval from Home Affairs, subject to the availability of the approval committee.

Change of conditions

When changing employment in Namibia. It takes approximately 3 – 6 months to obtain approval from Home Affairs, subject to the availability of the approval committee.

Permanent residence

The criteria to qualify for Permanent Residency are:

The person must be on a valid permit in Namibia for a continuous period of 5 years. The permit must be renewed for the 6th year and the person should own property in Namibia. If the person is retired, then he/she may qualify after 5 years on valid temporary residence permit. All of the above requirements must be met.

The person has invested at least NAD 2 million in a business, employed at least 10 Namibians permanently, registered them with the Social Security Commission, has been on a valid work permit for a year which was renewed for the second year and he/she owns property in Namibia. All of the above requirements must be met.

The approval process takes approximately 6 months or more, subject to the availability of the approval committee.

Citizenship

Applicable when the individual concerned is married to a Namibian citizen and present in Namibia for 2 year whilst under a work permit, permanent residence or domicile. Application takes about six months or more, subject to the availability of the approval committee.

Audit requirements and practices

Statutory requirements

The Companies Act requires that every company must keep, in one of the official languages of Namibia, such accounting records as are necessary to fairly present the state of affairs and business of the company, and to explain its transactions and financial position.

The Companies Act further states that it is the duty of the directors of the company to prepare annual financial statements, and to present them at an annual general meeting. The Companies Act further requires that a full statutory audit is necessary for each financial period.

Statutory audits are not required for partnerships, sole proprietorships and close corporations, and these types of entities are not required to publicly disclose their affairs. While these three forms of business are not required to have their financial statements audited, professional assistance is often advantageous.

The Companies Act requires that a registered accountant and auditor be appointed to audit the financial statements of a company. However, the Act places restrictions on who may be appointed as an auditor. Due to the fact that employees of the company are not allowed to be auditors of the company, an internal auditor may not act as auditor of the company. An external registered accountant and auditor must therefore be appointed.

Accounting and auditing profession

The Institute of Chartered Accountants of Namibia (ICAN) is a member of the International Federation of Accountants (IFAC) and has a reciprocity agreement with the South African Institute of Chartered Accountants (SAICA).

Audits in Namibia are performed in terms of International Standards on Auditing and financial statements for companies are prepared in terms of Namibian Statements of Generally Accepted Accounting Practice (GAAP), which are fully harmonized with International Financial Reporting Standards (IFRS). Listed companies must comply with IFRS.

International Standards on Auditing are also to be applied to the audit of other information and to related services.

Foreign branches and subsidiaries of Namibian registered entities will have to be audited in accordance with the laws and regulations prevailing in Namibia.

Objective and elements of an assurance engagement

The objective of an assurance engagement is for a professional accountant to evaluate or measure subject matter that is the responsibility of another party against identified suitable criteria, and to express a conclusion that

provides the intended user with a level of assurance about that subject matter. Assurance engagements performed by professional accountants are intended to enhance the credibility of information about a subject by evaluating whether the subject matter conforms in all material respects with suitable criteria, thereby improving the likelihood that the information will meet the needs of an intended user. In this regard, the level of assurance provided by the professional accountant's conclusion conveys the degree of confidence that the intended user may place in the credibility of the subject matter.

There is a broad range of assurance engagements, which includes any combination of the following.

- Engagements to report on a broad range of subject matters conveying financial and non-financial information.
- Engagements intended to provide high or moderate levels of assurance.
- Attest and direct reporting engagements.
- Engagements to report internally and externally.
- Engagements in the private and public sector.

Not all engagements performed by professional accountants are assurance engagements. This does not mean that professional accountants do not undertake such engagements, only that

these engagements are not covered by this statement. Other engagements frequently performed by professional accountants that are not assurance engagements include the following:

- Agreed-upon procedures.
- Compilation of financial or other information.
- Preparation of tax returns where no conclusion is expressed, and tax consulting.
- Management consulting.
- Other advisory services.

Professional accountants

Professional accountants are defined as those persons who are members of ICAN, or registered with the Public Accountants' and Auditors' Board (PAAB), whether they be in public practice (as a sole practitioner or partnership), industry, commerce, the public sector or education. The term "professional accountant" includes the term "auditor" but also recognizes that the assurance engagement deals with a broader range of subject matter and reporting arrangements than the issue of an audit opinion on financial statements by external auditors.

The fundamental principles that the professional accountant has to observe are as follows.

- Integrity.
- Objectivity.

- Professional competence and due care.
- Confidentiality.
- Professional behavior.
- Application of technical standards.

Professional accountants in public practice also have to observe the independence requirements of the Code of Professional Conduct of the PAAB, which includes a requirement to be independent when conducting an assurance engagement.

Levels of assurance

Assurance in the context of this framework refers to the auditor's satisfaction as to the reliability of an assertion being made by one party for use by another party. The level of assurance taken from a report should be the same as that expressed by the auditor. To provide such assurance, the auditor assesses the evidence collected as a result of procedures conducted and expresses a conclusion. The degree of satisfaction achieved and, therefore, the level of assurance that may be provided are determined by the procedures performed and their results.

In an audit engagement, the auditor expresses a high, but not absolute, level of assurance that the information subject to audit is free of material misstatement. This is expressed positively in the audit report as reasonable assurance.

In a review engagement, the auditor expresses a moderate level of assurance that the information subject to review is free of material misstatement. This is expressed in the form of negative assurance.

For agree-upon procedures, as the auditor simply provides a report of the factual findings, no opinion is expressed. Instead, users of the report assess for themselves the procedures and findings reported by the auditor and draw their own conclusions from the auditor's work.

To distinguish compilation engagements from audits and other related services the term "accountant", rather than "auditor", is used. In a compilation engagement, although the users of the compiled information derive some benefit from the accountant's involvement, no opinion is expressed in the report.

Audit

The objective of an audit of financial statements is to enable the auditor to express an opinion as to whether or not the financial statements fairly present, in all material respects, the financial position of the entity at a specific date, and the results of its operations and cash flow information for the period ended on that date, in accordance with an identified financial reporting framework and/or statutory requirements. A similar objective applies to the audit of financial or other information prepared in accordance with appropriate criteria.

In forming the audit opinion, the auditor obtains sufficient appropriate audit evidence to be able to draw conclusions on which to base that opinion.

The auditor's opinion enhances the credibility of financial statements by providing a high, but not absolute, level of assurance. Absolute assurance in auditing is not attainable as a result of such factors as the need for judgement, the use of testing, the inherent limitations of any accounting and internal control system, and the fact that most of the evidence available to the auditor is persuasive, rather than conclusive, in nature.

A typical auditors' report on the annual financial statements of a company is set out hereafter.

Example of audit report

INDEPENDENT AUDITOR'S REPORT TO THE MEMBERS OF [Name of company]

Report on the Financial Statements

We have audited the annual financial statements of [name of company], which comprise the directors' report, the balance sheet as at [balance sheet date], and the income statement, statement of changes in equity and cash flow statement for the year then ended, and a summary of significant accounting policies and other explanatory notes, as set out on pages ... to

Directors' Responsibility for the Financial Statements

The company's directors are responsible for the preparation and fair presentation of these financial statements in accordance with [Namibian Statements of Generally Accepted Accounting Practice or/ International Financial Reporting Standards] and in the manner required by the Companies Act of Namibia. This responsibility includes: designing, implementing and maintaining internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error; selecting and applying appropriate accounting policies; and making accounting estimates that are reasonable in the circumstances.

Auditor's Responsibility

Our responsibility is to express an opinion on these financial statements based on our audit. We conducted our audit in accordance with International Standards on Auditing. Those standards require that we comply with ethical requirements and plan and perform the audit to obtain reasonable assurance whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgement,

including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control.

An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion, the financial statements present fairly, in all material respects, the financial position of [name of company] as of [balance sheet date], and its financial performance and its cash flows for the year then ended in accordance with [Namibian Statements of Generally Accepted Accounting Practice or/ International Financial Reporting Standards] and in the manner required by the Companies Act of Namibia.

Report on Other Legal and Regulatory Requirements

With the written consent of all members, we have performed certain accounting and secretarial duties.

Other matter

The supplementary information set out on pages X to X does not form part of the annual financial statements and is presented as additional information. We have not audited these schedules and accordingly we do not express an opinion on them.

PricewaterhouseCoopers

Registered Accountants and Auditors
Chartered Accountants (Namibia)
Windhoek

Accounting principles and practices

Approval of Namibian Statements of Generally Accepted Accounting Practice (GAAP) and IFRS

The Institute of Chartered Accountants of Namibia (ICAN) adopts all International Financial Reporting Standards (IFRS) as Namibian Statements of Generally Accepted Accounting Practice (GAAP). Listed companies must comply with IFRS.

Requirement for generally accepted accounting practice

Section 286(3) of the Companies Act requires that “The annual financial statements of a company should, in conformity with generally accepted accounting practice, fairly present the state of affairs... and the profit or loss...”.

Fair presentation

The overriding requirement of the Companies Act is fair presentation. The existence of a standard is an aid both to comparability and to fair presentation. However, compliance with a standard is no guarantee that fair presentation will be achieved in the financial statements. Nevertheless, even though accounting standards are not conclusive as to fair presentation, they are highly influential and persuasive in that respect. Accordingly, it is necessary for departures to be disclosed in an explanatory note to the financial statements.

Compliance with legal requirements

The requirements of the Companies Act and Schedule 4 of the Act are taken into account in the preparation of Namibian Statements of GAAP. Some entities may be required to prepare financial statements that comply with other statutes. However, Namibian Statements of GAAP are of concern in the preparation of all financial statements that purport to be prepared in accordance with generally accepted accounting practice, including those of business entities incorporated under other legislation and unincorporated enterprises.

Because Namibian Statements of GAAP may be applicable to unincorporated enterprises, generic terms such as “enterprise” and “management” are used rather than “company” and “directors” respectively.

Components of financial statements

A complete set of financial statements includes the following components.

- Balance sheet.
- Income statements.
- A statement showing either:
 - All changes in equity, or
 - Changes in equity other than those arising from capital transactions with owners and distributions to owners.

- Cash flow statements.
- Accounting policies and explanatory notes.

Overall considerations

Financial statements should present fairly the financial position, financial performance and cash flows of an enterprise. The appropriate application of Namibian Statements of Generally Accepted Accounting Practice, with additional disclosure when necessary, results, in virtually all circumstances, in financial statements that achieve fair presentation.

An enterprise whose financial statements comply with Namibian Statements of Generally Accepted Accounting Practice should disclose that fact. Financial statements should not be described as complying with Namibian Statements of Generally Accepted Accounting Practice unless they comply with all the requirements of each applicable statement and each applicable approved interpretation.

In the extremely rare circumstances when management concludes that compliance with a requirement in a statement would be misleading, and therefore that departure from a requirement is necessary to achieve fair presentation, an enterprise should disclose the following.

- The enterprises’ financial position, financial performance and cash flows.

- That it has complied in all material respects with applicable Statements of Generally Accepted Accounting Practice except that it has departed from a statement in order to achieve a fair presentation.
- The statement from which the enterprise has departed, the nature of the departure, including the treatment that the statement would require, the reason why that treatment would be misleading in the circumstances and the treatment adopted.
- The enterprise's non-profit or loss, assets, liabilities, equity and cash flows for each period presented.

- Are complete in all material respect.

Going concern

When preparing financial statements, management should make an assessment of an enterprise's ability to continue as a going concern. Financial statements should be prepared on a going concern basis unless management either intends to liquidate the enterprise or to cease trading, or has no realistic alternative but to do so. When management is aware, in making its assessment, of material uncertainties related to events or conditions that could cast significant doubt upon the enterprise's ability to continue as a going concern, those uncertainties should be disclosed. When the financial statements are not prepared on a going concern basis, that fact should be disclosed, together with the basis on which the financial statements are prepared and the reason why the enterprise is not considered to be a going concern.

Accounting policies

An enterprise's accounting policies ensure that statutory financial statements comply with all the requirements of each applicable Namibian Statement of Generally Accepted Accounting Practice. Financial statements should thereby be the following.

- Relevant to the decision-making needs of users.
- Reliable in that they reflect the following.
 - Fairly present the results and financial position of the enterprise.
 - Reflect the economic substance of events and transactions and not merely the legal form.
 - Are neutral, i.e., free from bias.
 - Are prudent.

Consistency of presentation

The presentation and classification of items in the financial statements should be retained from one period to the next unless the following applies.

- A significant change in the nature of the operations of the enterprise or a review of its financial statements presentation demonstrates that the change will result in a more appropriate presentation of events or transactions.

- A change in presentation is required by a Namibian Statement of Generally Accepted Accounting Practice or an approved interpretation.

Materiality and aggregation

Each material item should be presented separately in the financial statements. Immaterial amounts should be aggregated with amounts of a similar nature or function and need not be presented separately.

Offsetting

Assets and liabilities should not be offset except when offsetting is required or permitted by another Namibian Statement of Generally Accepted Accounting Practice.

Items of income and expense should be offset only under the following circumstances.

- A Namibian Statement of Generally Accepted Accounting Practice requires or permits it.
- Gains, losses and related expenses arising from the same or similar transactions and events are not material. Such amounts should be aggregated in accordance with materiality and aggregation.

Comparative information

When the presentation or classification of items in the financial statements is amended, comparative amounts should be reclassified, (unless it is impracticable to do so), to ensure comparability with the current period, and the nature, amount of, and reason for, any reclassification should be disclosed. When it is impracticable to reclassify comparative amounts, an enterprise should disclose the reason for not reclassifying, and the nature of the changes that would have been made if amounts were reclassified.

Chapter 17

Tax system

Introduction

Income tax is levied under the Income Tax Act, Act No. 24 of 1981 ('the Income Tax Act'), as amended, except for income derived from petroleum, which is taxed in accordance with the Petroleum (Taxation) Act, Act No. 3 of 1991.

The Income Tax Act provides that all companies, close corporations, individuals and other taxable entities (e.g. trusts) are liable for normal tax on taxable income derived from a source within or deemed to be within Namibia. "Source" is not defined in the Act, and it is therefore necessary to refer to case law to determine whether income is or is not from a source within Namibia.

The Income Tax Act provides for withholding taxes on dividends and royalties payable to non-residents. A withholding tax on interest was recently introduced, effective from 1 March 2009 (refer to Appendix V – VII).

The Income Tax Act further provides that Pay-As-You-Earn ('PAYE') be withheld by an employer and be paid over to the Directorate of Inland Revenue ('DIR') on behalf of the employees (refer to Chapter 23).

There is no estate duty, donations tax, capital gains or wealth taxes in Namibia.

Value-Added Tax ('VAT') is levied under the Value-Added Tax Act, Act No. 10 of 2000 (refer to Chapter 25).

Stamp duties are payable on numerous documents, including transfers of listed and unlisted marketable securities in terms of the Stamp Duty Act, Act No.15 of 1993. Transfers of immovable property are also subject

to transfer duty in terms of the Transfer Duty Act 14 of 1993 (refer to Chapter 26).

The Directorate Customs and Excise levies customs and excise duties on goods imported from outside SACU and certain locally manufactured goods, including alcoholic and non-alcoholic beverages (refer to Chapter 26).

Municipalities and similar bodies, exact rates & taxes based on immovable property values such as the site value (A), improvement value (B) and open space value (A + B). There are no other property imposts.

General

Income tax (i.e. normal tax) is levied upon the taxable income of companies and individuals from sources within or deemed to be within Namibia. Non-residents earning taxable income in Namibia through ownership of property, employment, carrying on a business or from other activities giving rise to taxable income, are taxed on their Namibian sourced or deemed source taxable income, subject to the stipulations of the tax treaty between Namibia and the respective non-resident's country.

Taxable income is calculated by first determining gross income. This is the total amount, whether in cash or otherwise, received by or accrued to the taxpayer during the year of assessment, excluding receipts and accruals:

- Of a capital nature, subject to some exceptions; and

- From any source outside Namibia, other than amounts deemed to be from a source within Namibia.

From gross income, the following may be deducted:

- All amounts exempt from normal tax; and
- The deductions, allowances and set-offs allowed by the Income Tax Act.

The Income Tax Act deals in considerable detail with what may be deducted to arrive at taxable income. The following is a summary, which is by no means exhaustive. The first two are general deductions and the remaining deductions are specified in the Act:

- All expenditure and losses, not of a capital nature, actually incurred in Namibia in the production of income;
- Expenditure and losses, not of a capital nature, incurred outside Namibia in the production of income as allowed by the Minister of Finance;
- A capital allowance in respect of the cost of vehicles, aircraft, sea-going craft, machinery, implements, utensils and articles acquired by a taxpayer for the purpose of his trade, deductible in equal installments over three years. This allowance is not applicable to buildings; and
- An initial allowance of 20% on the erection and improvement costs of buildings in the year in which the buildings are used by the taxpayer for the purposes of his trade, and an annual allowance of 4% for the next 20 years on the said erection and/or improvement costs of the buildings.

Tax year

The tax year for individuals and trusts runs from 1 March to 28 February, while the year of assessment of companies and close corporations is the same as their chosen financial years.

Tax Compliance

Filing of returns

The due dates of returns prescribed by the Income Tax Act are summarised below:

Returns	Due Date
Income Tax Return:	
Individuals ^y	Within 4 months after the tax year end (i.e. 30 June each year)
Companies ^z	Within 7 months after the financial year end
Taxpayers (other than companies or “salaried individuals”) carrying on wholly/partially a business, profession or farming	Within 7 months after the tax year end (i.e. 30 September each yea)
Provisional Tax Returns*	
Individuals:	
1st provisional	Within 6 months from commencement of the respective tax year i.e. on/before 30 September each year
2nd provisional	On or before the last day of the respective tax year i.e. 28 February each year
Companies:	
1st provisional	Within 6 months from the commencement of the company’s financial year.
2nd provisional	On or before the last day of the company’s financial year end.
Taxpayers deriving wholly or mainly income from farming other than companies:	On or before the last day of the tax year i.e. 28 February each year (only one provisional tax return).

^y Individuals include trusts and estates. These individuals are referred to as “salaried individuals” when they do not carry on a business wholly/ partially.

^z When they do not companies include close corporations for income tax purposes.

Returns	Due Date
PAYE Returns	The employer should submit a PAYE Return within 20 days following the month during which the PAYE is required to be withheld.
PAYE Reconciliation Return	An annual PAYE reconciliation should be submitted by the employer on the prescribed form within 30 days from the tax year end i.e. 30 March each year
Withholding Tax Returns:	
Dividends	Within 30 days from the date of accrual or receipt of dividends by non-residents.
Royalties	Within 14 days following the month during which the royalty payments accrued or were received.
Interest	Within 20 days following the month during which the interest accrued or was received ^{aa} , effective 1 March 2009.

*Persons required to submit provisional tax returns in terms of the definition of a “provisional taxpayer” in Schedule 2 to the Income Tax Act, are:

- Persons deriving income other than remuneration from an employer;
- A director of a private company managed or controlled or having a registered office in Namibia, or when the director is ordinarily resident in Namibia;
- A person notified by the Minister that he/she is a provisional taxpayer; and
- Any company.

Taxpayers may apply in writing for the extension of the submission of their Income Tax Returns for a period no later than 12 months after the tax year end

(individual taxpayers) or the financial year end (companies), whichever is applicable. However, it should be noted that the DIR does not grant extension when there are any outstanding returns for the respective taxpayer.

Payment of taxes

From the table above it is clear that a system of provisional tax payments as well as self-assessment applies in Namibia.

The due dates contained in the table above not only apply to the submission of the required returns, but also to the payment of the respective taxes. The payment of taxes is explained in further detail below, distinction being made between salaried persons and provisional taxpayers.

^{aa} Section 34D of the IncomeTax Act, Act No. 24 of 1981, as amended by the Income Tax Amendment Act, Act No. 5 of 2007

Salaried persons

The monthly tax called Pay-As-You-Earn ('PAYE') should be subtracted from the salaries of employees and should be paid over to the Directorate of Inland Revenue by the employers within 20 days following the month during which the PAYE was subtracted or withheld by the employers.

Any outstanding taxes on the final taxable income of salaried persons are required to be paid by the employees within four months after the tax year end i.e. on or before 30 June each year. This also applies to directors of companies other than private companies.

Provisional taxpayers

PAYE is also required to be withheld from the salary or remuneration of provisional taxpayers deriving income in addition to their salaries/ remuneration. Provisional taxpayers may apply for a tax directive regarding the exemption to withhold PAYE on their salaries, but the DIR rarely grants such directives. Employers are thus required to withhold PAYE from the remuneration of provisional taxpayers unless provided with a tax directive granting exemption to withhold PAYE in respect of a specific employee/ provisional taxpayer.

In general, two provisional payments are made, the first being half of the estimated tax liability for the year, payable within six months from the commencement of the year of assessment, and the second at year end.

A top-up payment is payable when the first and second provisional payments together with the PAYE withheld (if applicable) did not cover the final taxes payable upon submission of the income tax return within the prescribed period as stated in the table above.

The Income Tax Act requires that provisional payments be based on the estimated taxable income of the current tax year. The estimated taxable income may not be lower than the taxable income of the last year assessed, assessed not less than 60 days before the estimate is to be submitted by the provisional taxpayer (i.e. at the end of the tax year), unless the Minister agrees to accept a lower taxable income¹¹.

The DIR has however issued an Income Tax Practice Note 1 of 2002 that states that the provisional payments may not be based on the taxable income of the last year assessed.

In the event that the first and second provisional payments are less than 90 percent of the final taxes payable for the respective year of assessment, penalties and interest may be levied on the under-estimation of the taxable income on which the provisional payments were based.

¹¹ Paragraph 19 of Schedule 2 to the Income Tax Act, Act No. 24 of 1981

The penalty can be calculated as 20% of the difference between the tax payable as calculated on the estimated taxable income and the lower of:

- 90% of the final tax payable for the year of assessment under review; and
- The tax paid on the taxable income of the last year assessed, assessed not less than 60 days before submission of the second provisional tax return (i.e. at the end of the tax year).

Penalties and interest on non-compliance

In terms of the Income Tax Act, penalties and interest may be levied in the following instances –

PAYE Returns and PAYE Reconciliations:

Non-compliance	Penalty	Interest *
Late filing of return (employer)	None	None
Late payment of tax (employer)	10% of the PAYE outstanding calculated from the 1 st day of the month during which the PAYE became due until the date of payment, limited to the amount of PAYE outstanding.	20% ^{bb} and 20% on the outstanding tax
Failure to withhold PAYE (employer)	10% of the PAYE outstanding calculated from the 1 st day of the month during which the PAYE became due until the date of payment, limited to the amount of PAYE outstanding.	20% ^{bb} and 20% on the outstanding tax

^{bb} Currently interest is chargeable on the penalty and/or additional tax, but it will fall away once the commencement date of the amendment to section 80 of the Income Tax Act has been determined.

1st Provisional Tax Return:

Non-compliance	Penalty	Interest *
Late filing of return	None	None
Late payment of tax	10% of the outstanding amount	20% ^{bb} and 20% on the outstanding tax

2nd Provisional Tax Return:

Non-compliance	Penalty	Interest *
Late filing of return	An additional tax of 20% of the amount by which the normal tax exceeds the provisional tax & PAYE payments made during the respective period or tax year i.e. 20% of the outstanding taxes	20% ^{bb}
Late payment of tax	10% of the outstanding amount	20% ^{bb} and 20% on the outstanding tax
Under-estimation of provisional tax	20% penalty (refer to provisional taxpayers above for the calculation of the said penalty).	20% ^{bb}

^{bb} Currently interest is chargeable on the penalty and/or additional tax, but it will fall away once the commencement date of the amendment to section 80 of the Income Tax Act has been determined.

Income Tax Returns:

Non-compliance	Penalty	Interest *
Late filing of return	10% of the outstanding taxes ^{cc} . However, it should be noted that in terms of section 66(1) of the Income Tax Act, an additional tax of 200% of the income tax outstanding may be levied upon issue of an assessment by the DIR; or A fine of N\$300 or 3 months imprisonment, or both such fine or imprisonment upon conviction.	20% ^{dd}
Late payment of tax:	There is no penalty on late payment, except for the one referred to above.	No penalty, no interest, except for 20% on the outstanding tax
Omission of amounts or the incorrect statement in the return	An additional tax of 200% of the difference in the tax payable as furnished in the return to the DIR and the tax payable when the omitted amount is included or the incorrect statement is corrected in the return.	20% ^{dd} and 20% on the outstanding tax

^{cc} The penalty is calculated on outstanding taxes, thus any payment of outstanding taxes before submission of the Income Tax Return will not trigger a penalty.

^{dd} Currently interest is chargeable on the penalty and/or additional tax, but it will fall away once the commencement date of the amendment to section 79 of the Income Tax Act has been determined.

Withholding Tax Returns:

Non-compliance	Penalty	Interest *
Late filing of return	None	None
Late payment of tax	There are no specific penalties relating to withholding taxes on dividends, royalties and interest, however these taxes are 'income taxes' and a penalty of 10% may become applicable to the late payment of withholding taxes.	20% ^{bb} and 20% on the outstanding tax

* Currently, interest is calculated daily compounded monthly and is not limited in any way. The Income Tax Act was amended to make provision for a simple interest method and it limits the interest chargeable to the original amount of tax. However the commencement date of this amendment had been determined at the time of printing this publication.

Foreign tax relief

As income tax is levied only on taxable income derived or deemed to be derived from sources within Namibia, and on certain foreign dividends, the question of foreign tax relief does not normally arise. Relief will generally only be granted if provided for in a tax treaty (i.e. a double taxation agreement) with the foreign state.

Loss carryovers

An “assessed loss” results where permissible deductions exceed the income in a year of assessment. An assessed loss is carried forward indefinitely, and set off against the taxable income of subsequent years until the loss is recouped, with the proviso that if the taxpayer is a company, it must continue to carry on business.

^{bb} Currently interest is chargeable on the penalty and/or additional tax, but it will fall away once the commencement date of the amendment to section 80 of the Income Tax Act has been determined.

Special provisions are included in the Act to protect the fiscus against trafficking in assessed loss companies.

Consolidation of income

In Namibia each company and each individual is a separate legal entity for tax purposes. Subvention of losses or the consolidation or combining of income or expenditure between group companies is not permitted.

Transactions between related parties

The Directorate of Inland Revenue (DIR) is entitled to disregard transactions that are not conducted at arm's length, and which result in avoidance, diminution or deferment of tax. In practice DIR seldom interferes with trading relationships between taxpayers in Namibia, unless special circumstances (such as an assessed loss) suggest that tax avoidance may be the motive for the transaction. DIR has discretion to allow a deduction to a Namibian taxpayer claiming expenditure incurred outside Namibia in the production of income from carrying on any trade within Namibia. Various tax treaties contain provisions under which revenue transactions are adjusted to terms that would have prevailed on an arm's length basis.

Transfer pricing

Transfer pricing was introduced in Namibia in May 2005¹². The requirements of the Act are further explained in the Income Tax Practice Note 2-2006. Transfer pricing is applicable to all cross-border transactions entered into between related parties. The basic requirement is that all transactions between cross-border related parties need to take place at arm's length prices. In this respect, companies are required to maintain a transfer pricing policy.

The DIR may adjust the consideration in respect of transactions entered into between cross-border related parties, for tax purposes, in order for the transactions to reflect an arm's length price for the goods or services.

It is accordingly imperative that all transactions, including loan accounts between local branches or companies and their foreign head office or related companies take place on an arm's length basis.

¹² Transfer pricing is governed by section 95A of the Income Tax Act

Document retention

It is understood that a person is required to keep records for a period of 5 years for the following purposes:

Purpose	Commencement of period
Income tax	From the date of the last entry in the accounting records (i.e. the financial year end)
PAYE	From the date of the last entry in the accounting records (i.e. the month end for submission of the PAYE return)
VAT	After the end of the period to which they relate (i.e. the period-end for submission of the VAT return).

However, the Directorate of Inland Revenue is of the opinion that every taxpayer should request a ruling in order for them to determine the retention period of that particular taxpayer. The period granted by the DIR may be longer than 5 years or shorter, depending on the surrounding circumstances.

Chapter 18

Tax administration

General

The Ministry of Finance has two directorates dealing with the administration, enforcement and collection of taxes, namely Inland Revenue and Customs and Excise. The Commissioner of Inland Revenue presides over the Inland Revenue directorate and the Customs and Excise directorate.

The Directorate of Inland Revenue is divided into divisions according to various regions in Namibia, and accordingly the Divisions are:

- Central Northern Region of which the office is in Otjiwarongo;
- North Eastern Region of which the office is in Rundu;
- Western Region with an office in Walvis Bay;
- Northern Region of which the office is situated in Oshakati;
- Central Region in Windhoek which runs the Windhoek Regional Office;
- Tax Administration, Support Services and Special Investigations;
- Legislation and Tax Policy

The Director of Inland Revenue Directorate (previously the Deputy Commissioner) is in control of the above divisions which are respectively headed by Deputy Directors.

The Customs and Excise Directorate is divided into the following divisions:

- Legal and Technical Services
- Operations; and
- Administration

The Director of Customs and Excise Directorate is in control of the above divisions which are also respectively headed by Deputy Directors.

The annexe below outlines the Customs and Excise official points of entry, for the declaration and clearing of goods, their normal office hours, days, telephone numbers and fax numbers as per the various Customs and Excise regions:

Namibia customs and excise official points of entry – February 2008

Regions	Normal O/Hours	Days	Telephone No.	Fax No.
Central Region				
Hosea Kutako International Airport	08h30 – 17h30	Mon-Fri	062-540369/269	062-540025
Windhoek Regional Office	08h00 – 17h00	Mon-Fri	061-2092422/3/4	061-220013
Eros Airport	08h00 – 17h00	Mon-Fri	061-254224	061-254224
Pro Parcel	08h00 – 17h00	Mon-Fri	061-2945214	061-263242
Otjiwarongo	08h00 – 17h00	Mon-Fri	067-303971	067-303974
Southern Region				
Keetmanshoop	08h00 – 17h00	Mon-Fri	063-222749 063-222333	063-223043 063-224863
Lüderitz	08h00 – 17h00	Mon-Fri	063-202259	063-202924
Oranjemund	08h00 – 22h00	Mon-Sun	063-233552	063-233483
Noordoewer	24 HOURS	Mon-Sun	063-297148	063-297138
Ariamsvlei	24 HOURS	Mon-Sun	063-280023/4	063-280020
Eastern Region				
Transkalahari Borderpost	06h00 – 24h00	Mon-Sun	062-560401	062-560418
Klein Menassa *	07h30 – 16h30	Mon-Sun	063-280680	063-280680
Hohlweg *	07h30 – 16h30	Mon-Sun	063-280682	063-280682
Gobabis	08h00 – 17h00	Mon-Fri	062-563605	062-563607

Regions	Normal O/Hours	Days	Telephone No.	Fax No.
Northern Region				
Oshakati	08h00 – 17h00	Mon-Fri	065-229600 065-229601	065-222277
Ruacana	08h00 – 18h00	Mon-Sun	065-270039	065-259525
Omahenene	08h00 – 18h00	Mon-Sun	065-259512	065-259525
Oshikango	08h00 – 18h00	Mon-Sun	065-264613	065-264614
Grootfontein	08h00 – 17h00	Mon-Fri	067-242829	067-242906
Tsumeb	08h00 – 17h00	Mon-Fri	067-220041	067-220061
North Eastern Region				
Wenela	06h00 – 18h00	Mon-Sun	066-253153	066-252401
Ngoma	07h00 – 18h00	Mon-Sun	066-250601	066-250609
M'Pacha Airport	08h00 – 16h00	Mon-Fri	066-253222	066-253268
Muhembo	06h00 – 18h00	Mon-Sun	066-259908	066-259917
Katima Mulilo	08h00 – 17h00	Mon-Fri	066-253222/ 066-252404 066-252026	066-253268
Rundu	08h00 – 17h00	Mon-Fri	066-256500	066-256546
Rundu Airport	08h00 – 16h00	Mon-Fri	066-255031	066-255881
Impalila	07h00 – 18h00	Mon-Fri	066-253222	066-253268
Harbours				
Lüderitz	08h00 – 17h00	Mon-Fri	063- 202259	063-202924
Walvis Bay	08h00 – 17h00	Mon-Fri	064-2086027/9	064-2086036
Swakopmund	08h00 – 17h00	Mon-Fri	064-463181	064-463189

*These facilities are not staffed or equipped for the processing of commercial cargo.

Chapter 19

Taxation of corporations

Rates

Corporations may be either companies or close corporations, both of which are taxed on the same basis. What is stated below about companies therefore also applies to close corporations.

The tax rate applicable to companies on their taxable income (other than from mining and long-term insurance business) derived from a source within or deemed to be within Namibia is 35%. An example of a corporate tax calculation is given in Appendix III.

Classification of companies

For tax purposes, close corporations are classified as companies. Otherwise, companies are classified as follows:

- Namibian companies (basically, companies incorporated in Namibia, or companies incorporated outside Namibia with a Namibian source of income or a place of business).
- Domestic companies (Namibian companies or companies managed and controlled in Namibia).
- External companies (companies that are not domestic companies e.g. branches).

Income determination

Income received by a company is not subject to tax in Namibia unless the source of the income is within or deemed to be within Namibia. Double taxation is generally avoided by double taxation treaties and

unilateral relief. Capital gains, dividend receipts and amounts specifically exempt under the Income Tax Act are not subject to income tax.

Transfer pricing

Transfer pricing regulations may result in a tax adjustment to income or expenses where goods or services are supplied across borders between related parties at prices that are not arm's length.

Transfer pricing in Namibia is based on OECD Guidelines and has been set out in a Practice Note to the Income Tax Act. Taxpayers are required to maintain adequate documentation in order to demonstrate that a sound transfer pricing policy has been developed in terms of which transfer prices are determined in accordance with the arm's length standard. However, there is currently no requirement for a policy document to be filed with the Income Tax return.

Deductions

There is a general deduction for current, non-capital trading expenditure and losses incurred in the production of income.

In addition, specific deductions are allowed, mainly for capital expenditure. For example, a spread depreciation (wear and tear) allowance may be deducted for the cost of vehicles, aircraft, sea-going craft, machinery, implements, utensils and articles used

for the purpose of trade. The deduction is spread over 3 years (i.e. 1/3 per tax year). Please note that certain assets, for example dams, pipelines and power lines do not fall within this allowance and a 1/3 capital allowance may thus not be deducted from taxable income in respect of such assets.

A capital allowance in respect of the erection and improvement costs of buildings used for purposes of trade is also allowed. This allowance has two parts; an initial allowance of 20% on the erection and improvement costs of buildings in the year in which the buildings are brought into use by the taxpayer for purposes of his trade, and for the next 20 years an annual allowance of 4% on the original erection and/or improvement costs of the buildings.

Assessed losses may be carried forward. There is no group relief, and the assessed loss of one company in a group may not be set off against the income of another group company.

Export Processing Zone (EPZ)

The enactment of the EPZ Act in 1996 launched the Export Processing Zone (EPZ) that offers attractive fiscal incentives to investors, tax and non-tax incentives, in exchange for technology transfers, capital inflow, skills development and job creation.

Enterprises eligible for EPZ status are enterprises that engage mainly in manufacturing (including assembly,

re-packing and break-bulk operations) for export outside the South African Customs Union (SACU), i.e. South Africa, Botswana, Namibia, Lesotho and Swaziland. EPZ enterprises may sell up to 30% of their production to the local market (SACU) upon approval of a written application to the Minister of Trade & Industry. Other factors such as the earning of foreign exchange and the employment of Namibians are also very important criteria for EPZ status.

Enterprises should apply to the EPZ Committee chaired by the Minister of Trade & Industry and operations may only start upon the issue of an EPZ certificate. Local incorporation is not a requirement for EPZ status.

The port of Walvis Bay is Namibia's first, full-scale export processing zone.

The following incentives apply to EPZ enterprises:

Tax incentives

- No payment of:
- Corporate Tax;
- Value Added Tax (VAT);
- Stamp Duty and Transfer Duty on goods and services required for EPZ activities; and
- Import duties on imported intermediate and capital goods.

Other incentives

- Government grants for the direct costs of on-the-job and institutional training of the Namibian workforce upon provision of pre-approved training plans, once training is complete;
- No foreign exchange control and the authority to hold foreign currency accounts in local banks;
- Strikes or lockouts are not allowed in the EPZ regime, ensuring industrial calm for EPZ enterprises;
- No geographical limitations on the location of their operations in Namibia;
- The Ministry of Trade & Industry and the Offshore Development Company (ODC) provide factory facilities at economical rates to EPZ enterprises; and
- The ODC and Investment Centre provide fast and free services and facilitation to EPZ investors.

Employees of EPZ enterprises are however, subject to PAYE and Corporate Tax (i.e. Income Tax).

Manufacturing enterprises

Namibian based enterprises that invest in manufacturing and re-export trade are given a competitive edge by way of manufacturing incentives applicable to them.

Tax incentives

- An additional 25% allowance on manufacturing wages (section 17A);
- An additional 25% allowance on marketing expenses incurred in export countries in relations to goods exported for sale (section 17B);
- An 80% allowance on the manufacturing gross profit of a manufacturer (other than one exporting manufactured fish or meat products) whose income is mainly derived from the export of manufactured goods (section 17C);
- An additional 25% allowance, for a period of ten years from registration as manufacturer under section 5A of the Income Tax Act, on land based transport costs (road or rail) incurred in relation to materials used in the manufacturing activity or to the importation of manufacturing equipment (section 17D);
- An initial building allowance of 20% on the erection costs of buildings used solely for manufacturing purposes in the year in which the building is brought into use for purposes of trade;
- An annual building allowance of 8% on such erection costs as referred to above, for the next 10 years; and
- Registered manufacturers are taxed at 18% for the first 10 years from registration, and at 35% for all following years.
- Value Added Tax (VAT) exemption on the purchase and import of machinery and equipment used in the manufacturing process.

In order for the above tax incentives to apply to a manufacturing enterprise, such an enterprise must be registered as a manufacturer under section 5A of the Income Tax Act.

Assets of a registered manufacturer removed from trade for non-trade purposes or removed from Namibia will be taxed at a rate of 18% effective from 1 January 2008.

Mining companies

All mining companies other than diamond mines are taxed at a rate of 37.5% on services rendered in connection with the actual mining as well as on services in connection with any mining activity.

A diamond mine is taxed at a rate of 55% on services rendered in connection with both the actual mining of diamonds as well as any mining activity.

Development end exploration costs incurred by mining companies are deductible for tax purposes. Exploration costs are deductible in the year that mining commences with production and not in the prior years when it was incurred. and Development costs incurred prior to the commencement of mining are also deductible in the year in which mining commences with production. Development costs incurred after the commencement of mining are deductible over three years.

Namibia will be taxed at the corporate tax rate applicable to such company (37.5% or 55%). This amendment will be implemented retrospectively effective from 1 January 1981.

In addition, mines will in future be required to use market value to calculate the recoupment in respect of assets removed from exploration, development or mining operations. This amendment will become effective as follows:

- Companies 1 January 2007
- Taxpayers other than companies 1 March 2007

Branches

The taxable income of Namibian branches of foreign companies is taxed at the corporate tax rate applicable to the Namibian companies with a similar trade (i.e. 37.5% mining, 55% diamond mining and 35% all other companies).

The taxable income of a Namibian branch is determined in accordance with the Namibian Income Tax legislation which is source based and not resident based. The gross income definition includes income received or accrued to (in this case a branch), from sources or deemed sources within Namibia, provided the income is not of a capital nature.

The Income Tax Act makes provision for the deduction of expenses incurred in production of income as well as special allowances in the determination of taxable income. However, charges

between a Namibian branch and a foreign holding company are not deductible due to them being considered as one legal entity which cannot transact with itself.

Dividends declared by the Namibian branch to a foreign shareholder will be subject to Non-Resident Shareholders Tax ('NRST')¹³, a withholding tax, at a rate of 10%¹⁴ unless a double tax agreement ('DTA') specifies a lower rate.

'Dividends' is defined as "any amount distributed by a company... to its shareholders..."¹⁵. The Companies Act indicates that an external company, in other words a branch, is a company, thus, any amount transferred by a branch to its head office or the shareholders of its head office will constitute a 'dividend' in terms of the Income Tax Act.

If the branch is not registered as a local company (i.e. the branch is registered as an external company) in Namibia and does not have any shareholders, NRST would apply if profits are distributed to the head office and the head office declares dividends from Namibian profits to a non-Namibian-shareholder, even if the head office company is not a Namibian resident. If the branch is registered in Namibia as a local company (subsidiary) and has non-resident shareholders, NRST will apply.

¹³ Section 42 of the Income Tax Act

¹⁴ Section 45 of the Income Tax Act

¹⁵ The definition of a 'dividend' in section 1 of the Income Tax Act

Namibian subsidiaries of foreign parent companies are not subject to any special rules and are treated in the same manner as domestic Namibian companies for tax purposes.

Long-term insurance companies

These companies are taxed only on 40 percent of the gross investment income derived from investments within or outside Namibia in respect of any long-term insurance business carried on by such business inside or outside Namibia.

Practice Note 1 of 2006 was issued on 5 September 2006 in order to clarify the misconceptions in the market regarding the determination of taxable income of long-term insurance companies, which, in short, can be illustrated as follows:

Gross amounts (section 32(1))	XXX
Less: dividend deduction (section 20(4))	(YYY)
Total gross amounts after section 20(4)	<u>ZZZ^{dd}</u>
Taxable Income (TI)	ZZZ x 40%
Tax Payable	TI x 35%

^{dd} According to a ruling issued by the Directorate of Inland Revenue, realised capital gains do not form part of the gross amounts.

Short-term insurance companies

The taxable income of short-term insurance companies is determined by claiming against all premiums received or accrued, including reinsurance premiums, the following:

- Premiums incurred on reinsurance;
- Claims incurred in respect of the business of insurance, less the value of any claims recovered or recoverable under any contract of insurance, guarantee, security or indemnity;
- Expenditure, other than those listed above, incurred in respect of the business of insurance;
- Allowance made by the Minister in respect of unexpired risks, provided such allowance is included in the taxable income of the short-term insurer in the following year of assessment;

- Allowance made by the Minister in respect of claims which have been intimated but not paid, provided such allowance is included in the taxable income of the short-term insurer in the following year of assessment; and
- Allowance made by the Minister in respect of claims which have not been intimated or paid, provided such allowance is included in the taxable income of the short-term insurer in the following year of assessment.

The taxable income of a short-term insurance business is taxed at a rate of 35%.

Dividends

Dividend receipts are generally exempt from income tax. Expenses incurred in the generation of such dividend income, e.g. interest paid on money borrowed to purchase shares, is therefore not allowed as a deduction.

If a company in Namibia distributes dividends to a non-resident person, other than a company, any dividend from sources outside Namibia, Non-Resident Shareholder's tax (NRST) must be deducted from such dividend at the rate of 10 percent, which is subject to treaty relief.

If a company in Namibia distributes dividends to a Namibian company, either, managed and controlled outside Namibia or of which 50% of its issued share capital is held by companies managed and controlled outside Namibia, then

Non-Resident Shareholder's Tax (NRST) must be deducted from such dividend at the rate of 10%, which is subject to treaty relief. The deducted NRST shall be paid, within 30 days of payment of the dividend, to Inland Revenue.

Practice Note 4 of 2003 was issued on 28 August 2003, and the Commissioner of Inland Revenue has until the issue of this practice note levied NRST on dividends paid by a Namibian company to another Namibian company where more than 50% of the issued share capital or equity share capital is held by non-residents.

A decision was made in terms of the non-discrimination clause contained in the existing double tax treaties between Namibia and other countries¹⁶.

It was decided that no NRST will be levied on dividends paid by a Namibian company to another Namibian company where more than 50% of the issued share capital or equity share capital is held by non-residents, who are resident in countries that concluded treaties for the avoidance of double taxation with Namibia.

The issue of this practice note resulted in an uncertainty with regards to the application of this practice note; If more than 50% of the capital is held by a non-resident who resides in a country, with whom Namibia has concluded an agreement for the avoidance of double

¹⁶ Practice Note 4-2003, issued by the Commissioner of Inland Revenue on 28 August 2003. The effective date of this practice note is 27 July 2003.

taxation, and the minority interest is held by a non-resident who is resident in a country with whom no agreement for the avoidance of double taxation is concluded, is the full dividend not subject to NRST or only the portion that was declared to the shareholder who resides in the country with whom Namibia has not concluded an agreement for the avoidance of double taxation? An uncertainty of the NRST rate to be used was also created.

Clarification was however received from the Ministry of Finance that it should first be determined whether more than 50% of the issued share capital is held by non-residents in the Namibian company to whom dividends are paid by another Namibian company. At this stage it does not matter whether Namibia has concluded a double tax agreement with the country of the non-resident. Only when the answer is affirmative, should NRST be withheld on the dividend that is paid to a non-resident with whom Namibia has not concluded a double tax agreement.

Payment of taxes

The system of provisional tax payments by companies and branches provides for two provisional payments to be made and a third final payment when applicable. The first payment (half the estimated tax liability for the year) is payable within six months of the commencement of the tax year, while the second (the balance of the estimated tax liability for the tax year) is payable before the end of the tax year.

In the event that the first and second provisional payments are less than 90% of the final taxes payable for the respective year of assessment, penalties (20%) and interest (20%) may be levied on the under-estimation of provisional payments provided that these payments are also less than the last assessed year's tax payable. Interest is calculated daily and compounded monthly. Although the Income Tax Act was amended to make provision for a simple interest method, but the commencement date of this amendment is still unknown.

A third payment must be made within seven months after the end of the tax year to avoid a non-deductible interest charge of 20 percent, which is based on the actual tax payable for that tax year less any provisional taxes paid previously.

A company's fiscal year is the same as its financial year. It may be changed upon application showing reasonable cause.

Annual returns must be submitted within seven months of the end of the company's fiscal year unless an extension has been granted.

Taxation of foreign operations

General

The entities most frequently used by foreign corporations wishing to carry on business or invest in Namibia are private companies or branches.

Subject to treaty relief, non-residents, including foreign corporations, are subject to Namibian income tax on income derived from a source or deemed Namibian source.

Therefore, the general rule is that all companies, trusts and individuals, whether or not resident in Namibia, that receive income from a source within or deemed to be within Namibia, are subject to income tax on such income (see chapters 19, 23 and 24), and if concluded, tax treaties also arrange the source of income for tax purposes.

Generally, income tax rates for non-resident corporations, trusts and individuals are the same as for resident corporations, trusts and individuals, respectively. However, dividends received by corporations and individuals are exempt from income tax to the extent that the dividends are not declared to non-resident shareholders (refer to Chapter 19).

There are no withholding taxes on interest payments to companies.

Royalty and know-how payments to a non-resident for the use of intellectual property or know-how in Namibia are subject to a withholding tax (royalty tax), at the rate of 10.5% of the gross payment, subject to treaty relief. Withholding tax on royalties shall be paid, within 14 days after the end of the month during which the payment of the royalties was made, to Inland Revenue.

Transfer Pricing

The Income Tax Practice Note 2 of 2006 deals with Transfer Pricing in Namibia and expressly states that it is based on and acknowledges the OECD Guidelines and that the provisions of the OECD Guidelines will prevail in resolving any dispute in cases where there is a conflict between the Practice Note and the Guidelines.

There are two main issues according to the OECD Guidelines that need to be considered when analysing the arm's length nature of intra-group services:

- Whether an intra-group service has in fact been provided; and
- Whether the charge for the service is in accordance with the arm's length principle.

The question of whether a service has been rendered refers to whether the activity provides the recipient with economic or commercial value to enhance its commercial position. The question that therefore needs to be asked is whether an independent party would have been willing to pay for the service, or whether it would have performed the service for itself in the absence of the services being supplied by the group company.

The above considerations should be taken into account when transacting with related parties cross border. It is thus recommended to have a transfer pricing policy in place, thereby having the means to justify whether cross border transactions are at arm's length.

It should therefore be noted that transfer pricing regulations may result in a tax adjustment to income or expenses where goods or services are supplied across borders between related parties at prices that are not arm's length (refer to Chapter 17 and 19).

Chapter 21

Taxation of shareholders

Shares held by a person may be of a capital or a revenue nature. Profits from share transactions are of a revenue nature and are subject to income tax when the intention of the taxpayer, and the frequency and volume of the transactions are such as to indicate the carrying on of a profit-making business, using the shares as trading stock. Conversely, the profits from the disposal of shares held as fixed, capital assets, held to earn dividends and for some time, will be of a capital nature and, accordingly, not taxable.

The receipt of dividends paid on shares is exempt from income tax.

Dividends paid by a company to a non-resident are subject to NRST, payable by the company (refer to chapter 19, 20 and Appendix V).

The transfer of shares on the Namibian Stock Exchange (NSX) is subject to marketable securities tax. The transfer of shares not on the NSX is subject to stamp duty of 0.2%.

Chapter 22

Partnerships and joint ventures

A joint venture is, practically speaking, a partnership for a specific venture or period. What is said below about partnerships also applies to joint ventures and, for that matter, to syndicates and consortiums.

Partnerships are not taxed as separate entities. Once determined, the partners' shares of the partnership's taxable income or loss, together with any salaries or other income amounts paid to them by the partnership, are added to, or deducted from (as the case may be) their respective taxable incomes from other sources, and the partners are taxed accordingly.

Joint ventures and partnerships must, however, register for VAT and PAYE purpose.

Taxation of individuals

General

Both resident and non-resident individuals are subject to tax on income arising from sources within or deemed to be within Namibia. The same rates of tax are applicable to each. An example of a tax calculation for an individual is given in Appendix VII.

As part of the relaxation of exchange controls, from 1 July 1999, individuals are now able to make investments offshore. Certain passive offshore investment income (interest, royalties, annuities and similar income) is deemed to be Namibian source income for individuals who are ordinarily resident in Namibia.

Married persons are taxed separately on their income. Dividends received by an individual are exempt from income tax.

The first N\$ 500 of interest received by or accrued to a natural person during a tax year is also exempt. Most non-resident interest income is exempt. This exemption will be removed 1 March 2009. (Refer to Appendix VII for further detail on the taxability of interest).

Rates

Income tax is calculated on the taxable income of individuals (or, strictly speaking, persons other than companies) according to a graduated table with five bands. No tax is payable on taxable income up to N\$36,000. Thereafter, the rate is 17.5%, and the top marginal rate is 35% on taxable income in excess of N\$ 200,000 (refer to Appendix VI).

Rebates

No rebates deductible from the calculated tax according to the table are applicable in Namibia.

Payment of taxes

A pay-as-you-earn (PAYE) deduction-system of collecting taxes operates for employees, with balance payments being required four months after year-end for individuals who are not provisional taxpayers. Directors of private companies are also required to make provisional payments every six months and a final payment four months after year-end, being June the 30th. All other taxpayers who are provisional taxpayers must make their final tax payment seven months after year-end.

Individuals who are subject to PAYE, as well as directors of private companies, must render their tax returns by June the 30th each year, while other individuals who are not subject to PAYE must render their tax returns by September the 30th each year or request an extension.

Taxation of trusts and estates

Trusts

The income of a trust may be taxed in the trust, in the hands of its beneficiaries, or in the hands of a donor to the trust. Trusts are taxed on the same tax scales as individuals (refer to chapter 24 and Appendix VI and VII).

Trust income distributed to beneficiaries is taxed in their hands, where it retains its character and nature. Income that has been taxed in the trust and is subsequently distributed to its beneficiaries is not taxed in their hands, being of a capital nature.

However, to counter income splitting, there are sections in the Income Tax Act that may deem trust income attributable to a “donation, settlement or other disposition” to the trust, to be that of the donor, settlor or disposer.

Deceased estates

The income of a deceased estate may be taxed in the estate (which is taxed as an individual), the deceased, or the heirs.

Income received by the estate but that accrued or is deemed to have accrued to the deceased is taxable in the deceased’s hands in the tax period ending on his death.

Other income accrued to the estate that can be attributed to the immediate benefit of ascertained heirs is taxed in their hands. In other cases the estate income is taxed in the estate or, strictly speaking, in the hands

of the estate executors in their capacity as such.

Insolvent estates

An insolvent estate, or rather its trustee, administrator or liquidator, is subject to income tax. The insolvent is assessed up to the date of insolvency and the insolvent estate is assessed for the period of insolvency.

As the insolvent and the insolvent estate are deemed to be the same person, an assessed loss of an insolvent is to be carried forward for set-off against income derived during insolvency, provided that, in the case of a company, the insolvent estate continues to trade. If the insolvency or sequestration order is subsequently set aside, the assessed loss of the insolvent estate may be carried forward for utilisation by the person whose estate was previously in insolvency.

Value-added tax (VAT)

In terms of the Value-Added Tax Act (the VAT Act), VAT is levied on the value of the following.

- The supply of goods or services by a registered person in the course of furtherance of a taxable activity carried on by that person in, or partly in, Namibia.
- The importation of goods into Namibia.
- The supply of imported services, other than exempt imports.
- The current VAT rates are 0 percent and 15 percent.

Registered persons

A registered person is a person who is registered or is required to be registered for VAT. There are two criteria for registration, as follows.

A person who is, by virtue of the value of their supplies that exceeds N\$ 200,000 for any period of 12 months, liable to register, known as compulsory registration.

- A person who makes or intends to make taxable supplies but who is not liable to register, may apply to the Commissioner of Inland Revenue for registration under the Act, known as voluntary registration
- A person who does not carry on any taxable activity cannot register for VAT. A taxable activity is any activity carried on continuously or regularly within or partly within Namibia in the course of which goods or services are supplied for a consideration, whether or not for a pecuniary profit. Included are

certain activities of local authorities, welfare organizations and share block companies. Specifically excluded are the activities of a permanent, independent branch located outside Namibia, activities of the state, services rendered by an employee to their employer, and activities involving the making of exempt supplies.

If a person (company, individual, trust and partnership) carries on a taxable activity and has a turnover for a past or future 12-month period in excess of N\$ 200,000, it must register for VAT. Taxable supplies include supplies at the rate of 0 percent and 15 percent, but exclude (for registration purposes) exempt supplies and certain abnormal turnover, for example that attributable to the cessation of an enterprise.

Once registered, registered persons pay VAT on taxable supplies made to them for the purpose of their enterprise and charge VAT on the taxable supplies made by them in the course of furtherance of their taxable activities. If the VAT the registered person pays exceeds the VAT the registered person charges in a tax period, the registered person obtains a refund of the excess from the Receiver of Revenue. If the VAT charged exceeds the VAT paid by a registered person in a tax period, the registered person pays the excess to the Receiver.

A registered person will have a two (calendar) month tax period. Farmers may (subject to their preferences) elect to have a two, four, six or twelve calendar month tax period. For each tax period a person must submit a VAT

return together with the payment of any VAT owing. The return also activates a refund of VAT in appropriate cases.

Certain concessions have been made for exporters of goods with regard to claiming a refund.

Registration for VAT

To register for VAT as required under the Act, the taxpayer must have the following:

- A Namibian bank account in the name of the taxpayer;
- A bank stamp on the VAT application form verifying the bank account details of the taxpayer;
- A health and fitness certificate from the municipality in the region in which the taxpayer's offices are situated; and
- A signed and completed VAT application form.

Goods and services

For a VAT liability to exist, there must be a supply or importation of goods or services. Goods are corporeal movable things, fixed property, and real rights in such things and property. The meaning of "services" is very broad, and covers anything done or to be done, including the granting, assignment, cession or surrender of any right or the making available of any facility or advantage.

Imported goods

To make Namibian suppliers competitive with foreign suppliers, the importation of goods and services is also subject to VAT. However, services imported by a registered person and utilized or consumed by that person for the making of taxable supplies are not subject to VAT. In addition, the VAT Act has a schedule that lists goods that are exempt from VAT on importation, whether by a vendor or an unregistered person.

Imported services

VAT is only payable upon 'imported services' as defined in the Act.

These are services:

- received by a person who is a resident of Namibia; and
- who is not intending to utilise the services in order to make taxable supplies,
- supplied by a non-resident person; or
- by a supplier who is resident and carries on business outside Namibia.

Where the imported service is to be utilised in order to make taxable supplies it will not constitute an imported service and no VAT will be payable. VAT will however be payable on services imported by non-registered persons and if utilised in order to make exempt supplies.

No VAT is payable if the service would be exempt or zero-rated if it was rendered in Namibia (e.g.: transport of passengers by road.)

Where tax is payable on an import of services, the recipient of the imported service is required to furnish the Commissioner with an import declaration and the tax payable within 30 days after the time

of the import. The value of the import of services shall be the amount of the consideration for that import and the tax payable would be fifteen percent of the value of the import.

Zero-rated supplies

The VAT Act contains a list of the supplies of goods or services that are taxed at the zero rate. Most of the items refer to exports and international transport, but certain other goods, for example mahangu and maize meal, the sale of an enterprise as a going concern, fuel subject to the fuel levy and deemed supplies by welfare organisations are also zero-rated.

A zero-rated supply made by a registered person is subject to VAT but at a rate of 0 percent. Under a zero-rated supply, a registered person does not charge VAT on the consideration for the supply and he obtains a refund or credit for the VAT paid on taxable supplies utilised in the making of the zero-rated supplies.

Exempt supplies

Similarly, the VAT Act contains a list of the supplies of goods or services that are exempt from VAT. The main exempt supply is that of financial services. All fee-based financial services are subject to VAT.

The charging of interest remains exempt. Other exempt supplies include residential rentals, non-international passenger transport by road or rail, educational services and supply of medical services, etc.

Under exempt supplies by registered persons, the registered persons do not charge VAT on the supply and they are not entitled to a deduction or credit for the VAT paid by them on goods and services supplied to them for the making of the exempt supply. Accordingly, registered persons will treat the VAT paid by them and for which they do not obtain a deduction or credit, as another cost and will recover it in the consideration they charge for the making of the exempt supply.

Fixed property

The sale of immovable property for residential purposes is a zero-rate supply. The sale of immovable property for commercial purposes constitutes a standard rated supply, which includes farming property or farm land. Any VAT incurred in erecting or extending a building to be sold as either a residential or commercial building can be deducted by a registered person.

The provision of residential accommodation by way of letting in a 'dwelling' is exempt from VAT. Accordingly rentals received from the letting of flats and houses, for instance, are generally not subject

to VAT. However, the provision of accommodation in a 'commercial rental establishment' is wholly subject to VAT provided that the person supplying the accommodation is a registered person.

Agents and Principals

A number of amendments to the Value-Added Tax Act have been promulgated in the Government Gazette, by the Value-Added Tax Amendment Act, 2007 (Act No. 2 of 2007, dated 9 July 2007). The Amendment Act came into effect on 1 August 2007.

A new section on Agents and Auctioneers has been inserted to authorise registered agents providing taxable supplies on behalf of their Principals to issue tax invoices, credit and debit notes on behalf of Principals. Principals may not issue tax invoices on the same supply.

If goods and services are supplied to the agent on behalf of his or her Principal a tax invoice may be supplied to the agent on request.

The import and export of goods may be made in the name of the Agent acting for a non-registered foreign Principal. Agents acting on behalf of foreign Principals may deduct import VAT paid by the Agent, provided certain contractual and documentary conditions are met.

The Act contains specific provisions on contemporaneous documentation to be kept by Agents and Auctioneers, as well as requirements for notifications to be given to Principals.

Chapter 26

Other taxes

Value-added tax

The most significant indirect tax imposed in Namibia is value-added tax (VAT), which is levied on the supply of goods and services (refer to Chapter 25).

Fuel levy

The fuel levies have been partially converted into road user charges.

Current fuel levy rates are as follows:

- Petrol 12c/l,
- Diesel 10c/l,
- On paraffin (mixtures of heating and illuminating kerosene) 47c/l,

In addition the following levies are currently included in the pump prices of fuel in Namibia:

- Road Fund Administration levy 90c/l
- MVA Fund and Road Safety Levy 19.7c/l
- Namibia Energy Fund levy 27c/l

Vehicles with a GVM exceeding 3500 kg should be registered with the Road Fund Administration in Namibia and are subject to Mass Distance Charges.

Stamp duties

Stamp duties are payable on a variety of instruments. The most important is the duty on the registration of the transfer in Namibia of securities, including shares or stock, at 0.2 percent of the consideration given for, or the value of the security, whichever is greater. An equivalent duty may be levied under Marketable Securities Tax Act (a security sale negotiated by a stockbroker).

Other instruments that attract stamp duty are deed of transfers of immovable property, bills of exchange, promissory notes, debit entries made by banks and others, mortgage bonds, certain customs and excise documents, fixed deposit receipts, installment credit agreements, leases of fixed property, life insurance policies and security documents.

Customs and excise duties

Custom duties are levied on certain goods imported into Namibia. The rates are usually calculated on an ad valorem basis. Namibia applies the Harmonised System and is party to the World Trade Organisation (WTO). Namibia is also a member of the Southern Africa Custom Union (SACU), thus the application of common external tariffs on imports outside the SACU. Specific excise duties and the corresponding specific customs duties are levied on the traditional excisable products such as fuel, jewellery, tobacco and liquor.

Transfer duty

Transfer duty is imposed on the value of property acquired by any person by way of a transaction, or in any other manner, or on the amount by which the value of the property is enhanced by renunciation of an interest upon the use or disposal of the property.

The rates of transfer duty for the acquisition of fixed property by natural persons are as follows:

Value of property N\$	Rates of transfer duty
0 – 100,000	Nil
100,001– 200,000	1% for each N\$ above N\$100,000
200,001– 400,000	N\$1,000 + 5% for each N\$ above N\$200,000
Over 400,000	N\$11,000 + 8% for each N\$ above N\$400,000

The rates of transfer duty for the acquisition of agricultural land by natural persons are as follows:

Value of land N\$	Rates of transfer duty
0 – 100,000	Nil
100,001– 200,000	1% for each N\$ above N\$100,000
Over 200,000	N\$1,000 + 3% for each N\$ above N\$200,000

Transfer duty on property acquired by a person other than a natural person is 8% of the property value.

Chapter 27

Tax treaties

Namibia has entered into agreements for the avoidance of double taxation with various countries, and a number of other treaties are in the process of negotiation, conclusion and approval.

Tax treaties concluded:

Country	Ratified	Government Gazette
Botswana	16 June 2004	14 October 2005
France	29 May 1996	25 January 1999
Germany	2 December 1993	25 January 1999
India	15 February 1997	25 January 1999
Malaysia	28 July 1998	24 September 2004
Mauritius	4 March 1995	25 January 1999
Romania	25 February 1998	25 January 1999
Russia	30 March 1998	25 January 1999
South Africa	18 May 1998	25 January 1999
Sweden	16 July 1993	25 January 1999
United Kingdom	14 June 1967 ^{ee}	

^{ee} The convention was signed on 28 May 1962 by the UK and the Republic of South Africa and extended to Namibia on 14 June 1967.

Tax treaties negotiated, but not signed:

- Singapore
- Zimbabwe

Tax treaties in negotiation:

- Belgium
- Seychelles
- Zambia

Chapter 28

Education

- NIED has been established to uphold and develop the educational system in Namibia.
- Pre-primary education is no longer subsidized by government.
- There are government and private schools in Namibia and several tertiary educational institutions.
- The University of South African (UNISA) offers various correspondence courses and seminars in Namibia.

The Ministry of Education, with the assistance of the World Bank has developed a 15 year strategic plan (2005/6 – 2020), namely the Education and Training Sector Improvement Programme (ETSIP) for the reformation of the education and training sector.

After close scrutiny of the current education system, the Ministry of Education came to realise that the education system is contributing inadequately to the creation of a knowledge-based economy, as foreseen in Vision 2030 (the country's long-term plan for industrialisation) due to the following factors, amongst others:

- Low educational standards have been achieved;
- A small number of Namibians have achieved senior secondary education, and few have completed vocational or tertiary education qualifications;
- Lack of information and knowledge management systems as well as technological innovation, despite a rich endowment of mineral and natural resources;
- HIV/AIDS; and
- Insufficient redressing of inequality.

The Ministry of Education established a directorate within the ministry in order to properly address the said factors.

Directorate of the Ministry of Education

The National Institute for Educational Development ('NIED') was established in 1990 as a Directorate within the Ministry of Education with the continuous task of ensuring that education in Namibia is developed and improved in accordance with the latest developments in education and the needs of the people of Namibia.

NIED is responsible for evaluating, designing and developing curricula for the education system; introducing effective approaches to teaching and learning; coordinating the development of instructional materials and educational research; preparing and coordinating an effective system of pre-service and in-service teacher education; and providing training in educational management.

Pre-primary education

A number of Namibian schools did offer pre-primary grades, but early childhood development was considered to be a function that would best be handled at the local and community level. It was, therefore, decided to shift the responsibility for early childhood education to the Ministry of Regional and Local Government and Housing.

In 1995, pre-primary grades in public schools were closed with the exception of pre-primary grades in special schools. Private schools could continue with pre-primary education, but were no longer subsidized by government.

Primary and secondary education

There are primary and secondary schools in all the towns across Namibia. Some are managed by the Ministry of Basic Education and Culture ('MEC') and others are privately owned schools.

The government schools follow a curriculum program offered by the University of Cambridge called the International General Certificate of Secondary Education ('IGCSE') and the Higher International General Certificate of Secondary Education ('HIGCSE'), which is externally moderated through the University of Cambridge in the UK.

The private schools offer various curriculums (including IGCSE and HIGSCE), for example the International Baccalaureate Diploma Programme ('IBDip'). Each private school offers something different.

Tertiary/ Higher education

There are a number of tertiary educational institutions in Namibia, some are listed below:

- The Polytechnic of Namibia;
- The University of Namibia;
- Caprivi College of Education;
- Rundu College of Education;
- Ongwediva College of Education;
- Windhoek College of Education;
- Caprivi Vocational Training Centre;
- Rundu Vocational Training Centre;
- Windhoek Vocational Training Centre;
- Namibian College of Open Learning (NAMCOL); and
- Monitronic Success College
- National Graduate School of Accounting (NGSA)
- National Graduate School of Accounting (NGSA)

The University of South African (UNISA) offers various correspondence courses and seminars in Namibia. UNISA has achieved international recognition and students in Namibia can enroll for the courses and diplomas offered. Examinations are written in Namibia.

Chapter 29

PricewaterhouseCoopers in Namibia

PricewaterhouseCoopers (www.pwc.com) is the world's largest professional services organization. Drawing on the knowledge and skills of 144,000 people in 150 countries worldwide, we help our clients solve complex business problems and measurably enhance their ability to build value, manage risk and improve performance in an Internet-enabled world. This enables us to service you wherever you operate and grants you access to an unrivalled depth of skills and resources. Through our client service approach and our industry focus, you can be assured of a service that not only meets, but exceeds your requirements.

PricewaterhouseCoopers is the leading provider of professional services in Namibia, and our diverse client base covers the full spectrum of economic activities. With a total staff of about 200 people, we bring appropriate local knowledge and experience to bear and use the depth of our resources to bring clients a professional service, specifically tailored to meet their requirements. In providing these services we are constantly aware of the importance of our social responsibility to the communities in which we operate, and are committed to the successful implementation thereof throughout the firm and in our dealings with clients.

PricewaterhouseCoopers in Namibia provides a range of professional services, including Assurance, Tax and Advisory Services, operating from offices in Windhoek and Walvis Bay.

We have a significant presence in every major market, both established and emerging, which makes the firm a global powerhouse with an unmatched ability to serve global, national and local clients. Our structure links local firms that possess an in-depth knowledge of local business, accounting and regulatory requirements, with a worldwide network that can exploit the advantages of expertise on an international scale. The table below is indicative of our professional services and industry expertise. Our strategic goal is to be the pre-eminent professional services provider across our chosen markets and services, evidenced through clear market leadership, sustained premium earnings and recognition as the best place to work. We will achieve our goal through client relationships based on quality and integrity.

PricewaterhouseCoopers provides in-depth industry experience to 18 market sectors.

In Southern Africa, we cover the following sectors:

1) Public Sector

- Outsourcing
- Internationally Funded Institutions / International Development
- Assistance
- Government

2) TICE – Technology, Information, Entertainment and Media

- Technology
- Information Communication
- Entertainment and Media
- Hospitality and Leisure

3) CIPS – Consumer and Industrial Products and Services

- Pharmaceutical
- Automotive
- Chemicals
- Metals and Mining
- Engineering & Construction
- Agribusiness
- Healthcare

4) Financial Services

- Capital Markets and Treasury
- Banking
- Insurance
- Investment Management

Advisory	Assurance	Tax
Risk Advisory Services	Attest / Auditing Services	Mergers and Acquisitions
Performance Improvement	Accounting Services	Corporate Consulting
Forensic Services	Secretarial Services	Compliance Services
Transaction Services	Private Company Services	Financial Structuring
Estate Planning	IFRS Readiness and Conversions	Value Added Tax Services
		Customs & Excise Services
		Transfer Pricing

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Appendix I

Corporate tax rates

The corporate tax rates of the following types of companies¹⁷ on their taxable income for the years of assessment commencing on or after 1 January 2007 and 1 January 2006:

ff	Tax rate of 50% plus a surcharge of 10%, effective rate of 55%
gg	Tax rate of 35% is applied to 40% of the gross amounts earned from the investment of funds.
hh	Companies registered at the Directorate of Inland Revenue ('DIR') as registered manufacturers in terms of section 5A of the Income Tax Act, Act 24 of 1981 are taxed at a rate of 18% for the first 10 years from registration, and from then onwards at a tax rate of 35%.

	2007	2006
	%	%
Non-mining companies	35	35
Mines other than diamond mines	37.5	37.5
Diamond mines	55 ^{ff}	55
Life insurance companies ^{gg}	35	35
Registered Manufacturers ^{hh}	18/35	18/35

¹⁷ Companies include close corporations

Appendix II

Tax allowances and incentives

Machinery and movable assets

Expenditure is deductible in equal installments over three consecutive tax years for the acquisition of vehicles, aircraft, seagoing craft, machinery, implements, utensils and articles used for purposes of trade.

Buildings

An initial allowance of 20 percent may be claimed on the erection costs of buildings brought into use for the purposes of trade in the year in which the buildings are brought into use as well as an annual building allowance of 4 percent for each of the ensuing 20 years. An annual building allowance of 8 percent may be claimed for each of the ensuing 10 years by a registered manufacturer¹⁸ for buildings used solely for manufacturing purposes.

Manufacturing incentives

Remuneration and training allowance

Deductions in respect of expenditure for remuneration and training of employees who are registered manufacturers.

A registered manufacturer is entitled to deduct additional expenditure incurred in providing training to employees who are directly engaged in the

¹⁸ A manufacturing company registered in terms of section 5A of the Income Tax Act, Act No. 24 of 1981.

manufacturing process of 25 percent of remuneration or contributions to a pension or provident fund.

From 1 January 2003 this allowance may no longer create an assessed loss.

Marketing allowance

Enterprises manufacturing for export are entitled to an additional deduction against taxable income derived from export sales of 25 percent of export promotion and foreign marketing expenditure.

From 1 January 2003 this allowance may no longer create an assessed loss.

Special export allowance

When a taxpayer's income is derived from the export of manufactured goods other than manufactured fish or meat products, a special export allowance of 80 percent is allowed on the taxable income from the income so derived.

From 1 January 2003 this allowance may no longer create an assessed loss.

Special transport allowance

From 1 January 2003 registered manufacturers could claim an allowance of 25 percent for a period of ten years of the land based transport costs incurred in relation to materials used in the manufacturing activity or to the importation of manufacturing equipment.

Registration and implementation

All manufacturing concerns claiming incentives must first register with the Ministry of Trade & Industry, and, in respect of taxation incentives, must also be registered with the Ministry of Finance in accordance to section 5A. of the Income Tax Act. The Minister of Finance is empowered to prescribe accounting procedures and regulations for manufacturing enterprises qualifying for taxation incentives.

To promote control and prevent the misuse of taxation incentives, enterprises qualifying for such incentives will not be relieved of the duty to submit fully substantiated annual tax returns.

Since 1 January 2003 only companies¹⁹ qualify for this allowance.

¹⁹ The word "companies" includes close corporations

Appendix III

Corporate tax calculations

Financial year ending

29 February 2008

Calculation of corporate tax

	N\$
Profit before tax as per annual financial statements	1,000,000
Less: Non-taxable amounts –	
Foreign sourced branch profits (Note 1)	(100,000)
Sale of former head office (Note 2)	(250,000)
Dividends received (Note 3)	(45,000)
Unrealised foreign exchange gain.....	(20,000)
Fair value gains	(15,000)
Profit on sale of assets (see recoupment below)	(10,000)
Add: Non-deductible amounts –	
Depreciation	42,000
Donations	1,100
Legal expenses	12,500
Traffic fines	300
Penalties and interest on taxes	50,000
Annual and Stamp duties.....	10,000
Loss on loan written off.....	20,000
Expenses incurred in respect of exempt income....	5,000
Bad Debt Provision	55,000
Other Provisions (Note 4)	40,000
Straight-line portion of operating leases.....	8,000
Capital expenses charged to maintenance (Note 5(c))	1,600
Expenditure on leasehold improvements.....	1,800
Moving expenses	4,500

Add:	Taxable amounts not in the Income Statement –	
	Income received in advance	50,000
	Deposits received (Note 6).....	10,000
Less:	Deductible amounts not in the Income Statement –	
	Prepayments of operating expenses	(30,000)
	Deposits paid (excluding rental deposits)	(5,000)
Less:	Deductible allowances –	
	25% Bad debt allowance.....	(13,750)
	Capital and wear and tear allowances (Note 6).....	(33,543)
	Amortisation of leasehold improvements (Note 7)..	(360)
	Building allowance.....	(10,000)
	Scrapping allowance.....	(5,000)
Add:	Recoupments²⁰	
	Recoupment on sale of assets	20,000
	Recoupment on credit loan written off.....	20,000
	Prior year reversals –	
Add:	25% Bad debt allowance.....	6,250
	Unrealised foreign exchange gain.....	10,000
	Prepayments	12,000
	Deposits paid	10,000
Less:	Bad debt provision.....	(25,000)
	Other provisions added back.....	(20,000)
	Income received in advance	(13,000)
	Deposits received	15,000
Less:	Assessed loss brought forward from prior year.....	<u>0</u>
	Taxable income	<u>779,397</u>

²⁰ In terms of section 14(4) of the Income Tax Act Act No. 24 of 1981

Tax at 35%	272,789
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Provisional taxes paid –

1 st provisional	(140,000)
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2 nd provisional.....	<u>(140,000)</u>
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Taxes due / (receivable)	<u><u>(7,211)</u></u>
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Non resident shareholders' tax ("NRST") calculation

Gross dividend declared	600,000
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NRST at 10% (Note 8).....	60,000
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Notes:

1. Namibia imposes income tax on receipts or accruals received from a source within Namibia or deemed to be within Namibia. Receipts or accruals received outside Namibia will accordingly not form part of the taxpayer's gross income for the year.
2. Namibia does not currently impose any tax on capital gains.
3. Dividends received are exempt from tax in terms of section 16(1)(n) of the Income Tax Act 24 of 1981, as amended.
4. Provisions are normally deductible if the company has an unconditional liability to pay the related expense at year end. Each provision should be considered on an individual basis.
5. Capital and wear and tear allowances

N\$

(a) Machinery purchased in 2006

Original cost.....	30,000
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Less – Allowance for 2006	<u>(10,000)</u>
---------------------------------	-----------------

	<u>20,000</u>
--	---------------

Less – Allowance for 2007	<u>(10,000)</u>
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Allowance 2008.....	10,000
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Allowance for 2009	<u>0</u>
--------------------------	----------

	<u>Nil</u>
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(b) Machinery purchased and brought into use:

Original cost 2007	50,000
Less – Allowance (33.3%, 2007).....	<u>(16,667)</u>
Tax value – 2008	<u>33,333</u>
Less – Allowance (33.3%, 2008).....	<u>16,667</u>
Tax value at 2009	<u>16,667</u>

(c) Furniture and equipment:

Tax written down value	<u>14,130</u>
Additions during year	1,900
Additions charged to maintenance	1,600
Moving to new head office.....	<u>3,000</u>
	20,630
Less – Annual wear and tear allowance (33.3%)	<u>(6,877)</u>
Tax value 2008	<u>13,753</u>

Total capital and wear and tear allowance for 2008:

Capital allowances [5(a) and (b)]	26,667
Wear and tear allowance [5(c)]	<u>6,877</u>
	<u>33,543</u>

6. Income is taxable in the year of receipt or accrual and therefore deposits received in advance is taxable in the year of receipt except when the income was deposited in a separate trust account.
7. Claimed over a five-year period.
8. NRST rate is 10% unless a tax treaty lowers the rate to 5% or less.

Appendix IV

Export Processing Zone incentives

Enterprises which undertake manufacturing, assembly, re-packaging and break-bulk operation and gear all or almost all of their production for export, earn foreign exchange and employ Namibians, will be eligible for EPZ status, which confers an attractive range of both tax and non-tax benefits.

Tax incentives for EPZ enterprises

Enterprises with EPZ status do not pay the following.

- Corporate tax;
- Value Added Tax (VAT);
- Stamp Duty and Transfer Duty on goods and services required for EPZ activities; and
- Import duties on imported intermediate and capital goods.

These benefits are of unlimited duration.

Other incentives for EPZ enterprises

- Government grants for the direct costs of the on-the-job and institutional training of the Namibian workforce upon provision of pre-approved training plans, once training is complete.
- No foreign exchange control and the authority to hold foreign currency accounts in local banks.
- Strikes or lockouts are not allowed in the EPZ regime, ensuring industrial calm for EPZ enterprises.

- No geographical limitations on the location of their operations in Namibia.
- The Ministry of Trade & Industry and the Offshore Development Company (ODC) provide factory facilities at economical rates to EPZ enterprises; and
- The ODC and Investment Centre provide fast and free services and facilitation to EPZ investors.

Appendix V

Withholding taxes

Resident corporations and individuals

There are no withholding taxes applicable to payments received by resident corporations from sources within Namibia. Resident corporations are however, responsible to withhold PAYE and social security contributions from the salaries of employees, and to withhold taxes on certain payments (referred to below) made to non-resident corporations (shareholders).

Withholding tax at a rate of 10% is applicable on interest received by individuals from financial institutions and unit trusts in Namibia, effective 1 March 2009 (refer to appendix VI).

Non-resident corporations and individuals

Dividends, royalties and similar payments made to non-residents are subject to withholding taxes at the following rates:

Country	Dividends	Royalties	Interest ¹
Botswana	10%	10%	10%
France	5% or 15% ²	10%	10%
Germany	10% or 15% ³	10%	0% ⁴
India	10%	10%	10%
Malaysia	5% or 10% ⁵	5%	10%
Mauritius	5% or 10% ⁶	5%	10%
Romania	15%	5%	10% ⁷
Russia	5% or 10% ⁸	5%	10%
South Africa	5% or 15% ⁹	10%	10%
Sweden	5% or 15% ¹⁰	5 or 15% ¹¹	10% ¹²
United Kingdom	5% or 15% ¹³	0% ¹⁴ or 5%	10% ¹⁵
Non-treaty countries	10%	10.5%	10%

Notes:

1. Withholding taxes on interest is applicable to interest received by individuals (including estates and trusts) and foreign companies (non-resident companies) effective only from 1 March 2009.
2. In terms of Article 10 of the DTA, 5% of the gross amount of the dividend if the beneficial owner is a company which owns directly/indirectly at least ten percent of the capital of the company paying the dividend. In all other cases, 15% of the gross amount of the dividends.
3. In terms of Article 10 of the DTA, 10% of the gross amount of the dividend if the recipient is a company (excluding a partnership) which owns at least ten percent of the capital of the company paying the dividend. In all other cases, 15% of the gross amount of the dividends if the beneficial owner is the recipient of the dividends.
4. In terms of Article 11 of the DTA, interest arising in Namibia and paid to a resident of the Republic of Germany may only be taxed in Germany according to their respective laws. No withholding tax on interest may therefore be withheld by Namibian financial institutions or unit trusts according to the DTA.

5. In terms of Article 10 of the DTA, 5% of the gross amount of dividends if the beneficial owner is a company (excluding a partnership) which holds directly at least twenty-five percent of the share capital of the company paying the dividends. In all other cases, 10% of the gross amount of dividends.
6. In terms of Article 10 of the DTA, 5% of the gross amount of the dividend if the beneficial owner is a company which holds at least twenty five percent of the capital of the company paying the dividends. In all other cases, 10% of the gross amount of the dividends.
7. In terms of Article 11 of the DTA, the 10% withholding tax will fall away on interest arising in a Contracting State in respect of a loan made and guaranteed, directly or indirectly by a Government of a Contracting State, its political subdivisions, local authorities, its administrative-territorial units or by the National or Central Banks of the Contracting States.
8. In terms of Article 10 of the DTA, 5% of the gross amount of the dividend if the beneficial owner is a company (excluding a partnership) which holds at least twenty five percent of the share capital of the company paying the dividend and have directly invested in the equity share capital of the company not less than the equivalent of USD 100,000. In all other cases, 10% of the gross amount of the dividends.
9. In terms of Article 10 of the DTA, 5% of the gross amount of the dividend if the beneficial owner is a company which holds at least twenty five percent of the capital of the company paying the dividends. In all other cases, 15% of the gross amount of the dividends.
10. In terms of Article 10 of the DTA, 5% of the gross amount of the dividend if the beneficial owner is a company (excluding a partnership) which holds at least ten percent of the share capital of the company paying the dividends. In all other cases, 15% of the gross amount of the dividends.
11. In terms of Article 12 of the DTA, 5% of the gross amount of royalties if the royalties are paid in respect of any patent, secret formula or process, or for information concerning industrial or scientific experience. In all other cases, 15% of the gross amount of royalties.
12. In terms of Article 11 of the DTA, a withholding tax of 10% will fall away under certain circumstances.

13. In terms of Article 6 of the DTA, 5% of the gross amount of the dividend if recipient is a company which controls directly or indirectly, more than fifty percent of the entire voting power in the company paying the dividend. In all other cases, 15% of the gross amount of the dividends.
14. In terms of Article 9 of the DTA, any royalty (but not including a rent or royalty in respect of cinematography or television films) derived from sources within one of the territories by a resident of the other territory and the royalty income is taxable in the last-mentioned territory, then the royalty income will be exempt in the first-mentioned territory. Any other royalty, including a rent or royalty in respect of cinematography or television films, may be taxed at the lesser of one half of the tax imposed by the taxing territory ($10.5\% \times \frac{1}{2}$) or 5% of the royalty.
15. In terms of Article 8 of the DTA, the tax on interest may not exceed 20%, although withholding taxes applicable in Namibia from 1 March 2009 only amount to 10% of the interest accrued or received.

Appendix VI

Individual tax rates

The rates set out below are applicable to all individuals, including estates and trusts, excluding companies for the following tax years:

Rates of Taxes: Tax year ending on 28 February 2007

Taxable Income			Tax Payable		
N\$			N\$		
0	–	24,000	Not taxable		
24,001	–	40,000	0	+	17.5% for each N\$ above 24,000
40,001	–	80,000	2,800	+	29.5% for each N\$ above 40,000
80,001	–	200,000	14,600	+	34.5% for each N\$ above 80,000
Over	–	200,000	56,000	+	35% for each N\$ above 200,000

Rates of Taxes: Tax year ending on 29 February 2008

Taxable Income			Tax Payable		
N\$			N\$		
0	–	36,000	Not taxable		
36,001	–	40,000	0	+	17.5% for each N\$ above 36,000
40,001	–	80,000	700	+	29.5% for each N\$ above 40,000
80,001	–	200,000	12,500	+	34.5% for each N\$ above 80,000
Over	–	200,000	53,900	+	35% for each N\$ above 200,000

Deductions and allowances

The aggregate deduction allowed for current pension, provident, retirement annuity and educational policy contributions by an individual is N\$30,000 per annum per taxpayer for the tax year ending 28 February 2007 and N\$40,000 per annum for the tax year ending 29 February 2008.

Exempt investment income

The first N\$500 of interest from a financial institution derived by a natural person during a tax year is exempt from income tax. The exemption is per taxpayer, so therefore both husband and wife are entitled to claim the amount.

Dividends are exempt from income tax, subject to some exceptions. However, it should be noted that the definition of dividends has been amended to exclude distributions by a Unit Trust in so far as it relate to interest, effective from 1 March 2008. Therefore interest received by a Unit Trust and distributed to a unit trust holder is taxable from 1 March 2008.

A withholding tax on interest received by individuals from financial institutions and unit trusts has also been introduced effective from 1 March 2009. A withholding tax of 10% should be withheld by the financial institutions and/or unit trusts and be paid to the Directorate of Inland Revenue within 20 days after the end of the month in during which the interest accrued or was received by the individual.

In summary, the following is applicable to interest received by individuals:

Tax Year	Interest from financial institutions	Interest from unit trusts
28 Feb 2007	N\$500 exemption	Fully Exempt ⁱⁱ
29 Feb 2008	N\$500 exemption	Fully Exempt
28 Feb 2009	N\$500 exemption	Fully Taxable ⁱⁱ
28 Feb 2010	Withholding tax of 10%, no exemption applicable	Withholding tax of 10%

Interest received by an individual from a deposit in the Nampost Savings Bank is exempt from tax.

ⁱⁱ Interest received from unit trusts before 1 March 2008 is exempt from tax.

ⁱⁱ Interest is taxable at the marginal tax rate of individuals being between 17.5% and 35%.

Appendix VII

Individual tax calculation

Individual tax is calculated according to the following formula:

Trade income.....	600,000
Employment income.....	400,000
Director's fees (Namibian sources).....	75,000
Interest (Foreign investments).....	5,000
Interest (Namibian financial institutions and unit trusts).....	7,000
Dividends (Namibian and foreign investments).....	10,000
Gross income	1,097,000

Less: Exempt income

Dividends (Namibian and foreign investments).....	(10,000)
Interest from foreign investments	(5,000)
Interest from financial institutions	(500) ²¹
Interest from unit trusts.....	(1,000) ²²
Income	1,080,500

Less: Deductions

Deductible trade expenses	(450,000) ²³
Capital allowances on assets used for purposes of trade	(50,000) ²⁴
Contributions to pension, provident and retirement annuity funds.....	(35,000) ²⁵

21 The interest exemption is limited to N\$500 and this exemption will fall away from 1 March 2009. A withholding tax of 10% will then become applicable on interest received from financial institutions and unit trusts.

22 Interest from unit trusts is exempt up to 29 February 2008.

23 Expenses actually incurred in production of income for purposes of trade and not of a capital nature are deductible from taxable income.

24 Allowances deductible in terms of section 17(1)(e), section 17(1)(f) and any other applicable section of the Income Tax Act, Act No. 24 of 1981.

25 Contributions are limited to N\$30,000 for the tax year 28 February 2007 and N\$40,000 for the tax year 29 February 2008 onwards.

Taxable income	545,500
Less: Assessed loss carried forward from prior years.....	<u>(10,000)</u>
Total Taxable Income/(Loss).....	<u>535,500</u>
 Tax due / (receivable).....	 171,325
Less: PAYE deducted	(111,650)
1st Provisional Tax Payment	(25,000)
2nd Provisional Tax Payment.....	<u>(25,000)</u>
Tax Due / (Receivable).....	<u>9,675</u>

Setting up in Namibia—A Checklist

Investor's considerations

Strategic

- ☐ Equity Investors' perceptions and requirements towards investment in Namibia.
- ☐ Perception surrounding political stability, safety and security
- ☐ Namibian Government's commitment to reform and transformation
- ☐ National Development Agenda,
- ☐ Industry and sector specific development policies and incentives
- ☐ International and regional Trade Environment

Market

- ☐ Market size, location and accessibility.
- ☐ Marketing and distribution networks and infrastructure
- ☐ General Terms of trade.
- ☐ Competitive Environment
- ☐ Premises and Location
- ☐ Customs duties and other protective trade related barriers

Form of entity

- ☐ Company:
- ☐ Public.
- ☐ Private.
- ☐ Branch.
- ☐ Close Corporation.
- ☐ Partnership.
- ☐ Joint Venture.
- ☐ Sole proprietorship

Consider:

- ☐ Limitations on foreign ownership
- ☐ Transfer pricing and other tax implications
- ☐ Formation and administration procedures and costs.
- ☐ Personal Liability.
- ☐ Governance

Legal advisers' considerations.

- ☐ General considerations.
- ☐ Formation procedures.
- ☐ Registration procedures.
- ☐ Corporate secretarial services.

Other considerations.

- ☐ Access and availability of Financial resources.
- ☐ Availability of labour/management.
- ☐ Labour relations.

-  Environmental requirements
-  Exchange control regulations.
-  Income and Value Added tax obligations

Appendix IX

Acquiring a business enterprise—A Checklist

The checklist below suggests points that an investor should consider when contemplating the acquisition of a business enterprise in Namibia.

History and current status

- ☐ History of company and its future prospects.
- ☐ Why the business is for sale.
- ☐ Trade reputation of business and its owners/shareholders
- ☐ Capital and group structure.
- ☐ Business strengths and weaknesses.

Capital

- ☐ Acquisition cost.
- ☐ Ownership, state and value of underlying assets
- ☐ Additional funding requirements.

Market and competitors

- ☐ Principal competitors.
- ☐ Level of market saturation
- ☐ Proposed new products, research and development plans.
- ☐ Existing and potential markets.
- ☐ Existing and potential sales and marketing aids.

- ☐ Market entry barriers
- ☐ Price sensitivity levels of consumers
- ☐ Competitions Act
- ☐ Financial Intelligence Act

Production evaluation

- ☐ Sourcing of raw materials and continuity of supply.
- ☐ Production capacity.
- ☐ Patents and trademarks.
- ☐ Quality of plant and equipment and the production method used.
- ☐ State of current and access to new technology
- ☐ Labour productivity levels

Legal advisers' considerations

- ☐ Corporate statutory and regulatory documents.
- ☐ Contractual obligations and future commitments.
- ☐ Property, titles and liens.
- ☐ Competition Commission.
- ☐ Pending litigation .

Financial and accounting considerations

In considering any acquisition, the following matters merit attention:

Post trading results

- ☐ Accounting policies, compliance with accounting standards and the law, and consistency of application.
- ☐ Seasonal and operational trends.
- ☐ Critical analysis of results.
- ☐ Analysis of management accounts
- ☐ Comparison of budgets and production estimates with actual results and the identification and explanation of variances.

Financing

- ☐ Availability of grant aid and equity investments
- ☐ Capital commitments.
- ☐ Adequacy of working capital and relationship with bankers.
- ☐ Availability of low cost external financing.
- ☐ Existing debt and gearing position.

Future prospects

- ☐ Profit and cash flow forecast and assumptions.
- ☐ Long-term growth prospects and corresponding funding requirements
- ☐ Asset replacement and maintenance strategy
- ☐ Sensitivity to external factors (e.g. interest rates, exchange rates,)

Accounting records

- ☐ Adequacy of management information system and control procedures.
- ☐ Nature and degree of computerisation.

Taxation

- ☐ Tax status.
- ☐ Tax provisions and potential additional liabilities, including interest and penalties.
- ☐ Matters in dispute.
- ☐ Availability of allowances, losses and relieves.
- ☐ Public or private company.

Tax planning

- ☐ Purchase of shares or assets.
- ☐ Group restructuring and reorganisation relieves.

- ☐ Foreign tax considerations.
- ☐ Potential allowances and relieves.
- ☐ Long-term planning.
- ☐ Executive remuneration.
- ☐ Impact of future legislation.
- ☐ Tax position of parties involved.

Other considerations

- ☐ Availability and quality of management.
- ☐ Number and availability of workforce.
- ☐ Labour relations with management and unions.
- ☐ Value and realisability of investments.
- ☐ Intangibles, including patents and goodwill.
- ☐ Warranties and indemnities to be given by vendors.
- ☐ Company law and other regulatory agency requirements.
- ☐ Treasury management.
- ☐ Valuation of fixed and current assets.
- ☐ Contingent liabilities and guarantees.
- ☐ Impact of proposed legislation and transformation charters

Appendix X

Namibian Acts

Agriculture, Animals, Fisheries, Forests and Water

Agriculture

- Abattoir Industry Act 54 of 1976
- Agricultural Bank Act 13 of 1944
- Agricultural Bank of Namibia Act 5 of 2003
- Agricultural Pests Act 3 of 1973
- Agronomic Industry Act 20 of 1992
- Canned Fruit Export Marketing Act 100 of 1967
- Development Brigade Corporation Act 32 of 1992
- Fertilizers, Farm Deeds, Agricultural Remedied and Stock Remedies Act 36 of 1947
- Karakul Pelts and Wool Act 14 of 1982
- Land Tenure Act 32 of 1966
- Livestock Improvement Act 25 of 1977
- Meat Corporation of Namibia Act 1 of 2001
- Meat Industry Act 12 of 1981
- Soil Conservation Act 76 of 1969
- Sugar Act 28 of 1936

Animals

- Animal Diseases and Parasites Act 13 of 1956
- Animal Diseases and Parasites Amendment Act 10 of 2005
- Animals Protection Act 71 of 1962
- Performing Animals Protection Act 24 of 1935
- Prevention of Undesirable Residue in Meat Act 21 of 1991
- Stock Brands Act 24 of 1995

Fisheries

- Aquaculture Act 18 of 2002
- Inland Fisheries Resources Act 1 of 2003
- National Fishing Corporation of Namibia Act 28 of 1991

Forests and Forestry

- Forest Act 12 of 2001
- Forest Amendment Act 13 of 2005

Water

- Namibia Water Corporation Act 12 of 1997
- Water Act 54 of 1956
- Water Research Act 34 of 1971
- Water Resources Management Act 24 of 2004

Commercial Law

Companies

- Close Corporations Act 26 of 1988
- Companies Act 28 of 2004 (To be Proclaimed)
- Companies Act 61 of 1973
- Namibia Wildlife Resorts Company Act 3 of 1998
- State-owned Enterprises Governance Act 2 of 2006

Contracts

- Conventional Penalties Act 15 of 1962

Co-Operative Societies

- Co-Operatives Act 23 of 1996

Debtor and Creditor

- Participation Bonds Act 55 of 1981
- Prescribed Rate of Interest Act 55 of 1975
- Usury Act 73 of 1968

Financial Institutions and Currency

- Bank of Namibia Act 15 of 1997
- Banking Institutions Act 2 of 1998
- Building Societies Act 82 of 1986

Financial Institutions and Currency

- Currency and Exchanges Act 9 of 1933
- Development Bank of Namibia Act 8 of 2002
- Financial Institutions (Investment of funds) Act 39 of 1984
- Foreign Investments Act 27 of 1990
- Inspection of Financial Institutions Act 38 of 1984
- Namibia Financial Institutions Supervisory Authority Act 3 of 2001
- Payment System Management Act 18 of 2003
- Prevention of Counterfeiting of Currency Act 16 of 1965

Insolvency

- Insolvency Act 24 of 1936
- Insolvency Amendment Act 12 of 2005

Insurance

- Amortization Fund Repeal Act 7 of 1992
- Demutualisation Levy Act 9 of 2002
- Long-Term Insurance Act 5 of 1998
- Namibia National Reinsurance Corporation Act 22 of 1998
- Short-Term Insurance Act 4 of 1998

Negotiable Instruments

- Bills of Exchange Act 22 of 2003

Purchase and Sale

- Credit Agreements Act 75 of 1980
- Formalities in Respect of Contracts of Sale of Land Act 71 of 1969
- Sale of Land on Instalments Act 72 of 1971
- Second Hand Goods Act 23 of 1998

Stocks and Securities

- Stock Exchanges Control Act 1 of 1985
- Unit Trusts Control Act 54 of 1981

Communications

Posts and Telecommunications

- Posts and Telecommunications Act 19 of 1992
- Posts and Telecommunications Companies Establishment Act 17 of 1992

Constitutional Law

Censorship

- Indecent or obscene photographic matter Act 37 of 1967

Commissions

- Commissions Act 8 of 1947

Constitutional Law

- Constitution of the Republic of Namibia
- National Coat of arms of the Republic of Namibia Act 1 of 1990
- Assignment of powers Act 4 of 1990
- Ombudsman Act 7 of 1990
- Presidential Emoluments Act 17 of 1990
- Medical Scheme for Members of the National Assembly, Judges and other office-bearers Act 23 of 1990
- National Anthem of the Republic of Namibia Act 20 of 1991
- Racial discrimination Prohibition Act 26 of 1991
- Law Reform and development Commission Act 29 of 1991
- State Repudiation (Cultural 2000) Act 32 of 1991
- Judicial Service Commission Act 18 of 1995
- Tender Board of Namibia Act 16 of 1996
- Powers, Privileges and immunities of Parliament Act 17 of 1996
- Application of laws to the Eastern Caprivi Zipfel Act 10 of 1999
- Former Presidents' Pensions and other benefits Act 18 of 2004

Constitutional Law

- Public Office-bearers (Remuneration and benefits) Commission Act 3 of 2005
- National Youth Service Act 6 of 2005
- Conferment of Status of founding Father of the Namibian Nation Act 16 of 2005

Elections

- Electoral Act 24 of 1992
- Electoral Amendment Act 4 of 2006

International Law

- Diplomatic Privileges Act 71 of 1951
- Prize Jurisdiction Act 3 of 1968
- Namibia Refugees (Recognition and Control) Act 2 of 1999
- Geneva Conventions Act 15 of 2003

Public Holidays

- Public Holidays Act 26 of 1990

Regional and Local Government

- Special Advisers and Regional Representatives Apportionment Act 6 of 1990
- Regional Councils Act 22 of 1992
- Local Authorities Act 23 of 1992
- Council of Traditional Leaders Act 13 of 1997

Regional and Local Government

- Trust Fund for Regional Development and equity Provisions Act 22 of 2000
- Traditional Authorities Act 28 of 2000
- Decentralisation enabling Act 33 of 2000
- Community Courts Act 10 of 2003
- Local Authorities Fire brigade Services Act 5 of 2006

Statistics and Identification

- Statistics Act 66 of 1976
- Identification Act 21 of 1996

Criminal and Procedural Law

Arbitration

- Arbitration Act 42 of 1965

Courts

- Enforcement of Foreign Civil Judgments Act 28 of 1994
- High Court Act 16 of 1990
- Judges' Pensions Act 28 of 1990
- Judges' Remuneration Act 18 of 1990
- Legal Aid Act 29 of 1990
- Magistrate's Courts Act 32 of 1994
- Reciprocal Service of Civil Process Act 27 of 1994
- Supreme Court Act 15 of 1990

Criminal Law and Procedure

- Boxing and wrestling Control Act 11 of 1980
- Combating of Domestic Violence Act 4 of 2003
- Combating of Immoral Practices Act 21 of 1980
- Combating of Rape Act 8 of 2000
- Criminal Procedure Act 25 of 2004 (To be Proclaimed)
- Criminal Procedure Act 51 of 1977
- Demonstrations in or near Courts Buildings Prohibition Act 71 of 1982
- Extradition Act 11 of 1996
- International Co-operation in Criminal Matters Act 9 of 2000

Criminal Law and Procedure

- Prevention of Organised Crime Act 29 of 2004
- Stock Theft Act 12 of 1990
- Stock Theft Amendment Act 19 of 2004

Damages

- Apportionment of Damages Act 34 of 1956

Evidence

- Civil Proceedings and Evidence Act 25 of 1965
- Computer Evidence Act 32 of 1985
- Foreign Courts Evidence Act 2 of 1995

General Law Amendments

- General Law Amendment act 14 of 2005

Inquests

- Inquests Act 6 of 1993

Justice of the Peace

- Justices of the Peace and Commissioners of Oath Act 16 of 1963

Prescription

- Limitation of Legal Proceedings (Provincial and Local Authorities) Act 94 of 1970
- Prescription Act 18 of 1943
- Prescription Act 68 of 1969

Education

Archives

- Archives Act 12 of 1992

Cultural Institutions

- Cultural Institutions Act 29 of 1969
- Namibia Library and Information Services Act 4 of 2000
- National Art Gallery of Namibia Act 14 of 2000
- National Arts Fund of Namibia Act 1 of 2005
- National Heritage Act 27 of 2004
- National Youth Service Act 6 of 2005

Education

- Education Act 61 of 2001
- Higher Education Act 26 of 2003
- Namibia Qualifications Authority Act 29 of 1996
- Namibia Students Financial Assistance Fund Act 26 of 2000
- Namibian College of open Learning Act 1 of 1997
- National Vocational Training Act 18 of 1994
- Polytechnic of Namibia Act 33 of 1994
- Teachers' Education Colleges Act 25 of 2003
- University of Namibia Act 18 of 1992

Scientific Research

- Biosafety Act 7 of 2006
- Research, Science and Technology Act 23 of 2004

Sport and Recreation

- Namibia Sports Act 12 of 2003

Electricity, Energy and Mining

Electricity

- Atomic Energy and Radiation Protection Act 5 of 2005
- Electricity Act 2 of 2000

Energy

- Petroleum (Exploration and Production) Act 2 of 1991
- Petroleum Products and Energy Amendment Act 16 of 2003
- Petroleum Products and Energy Act 13 of 1990

Mining and Minerals

- Diamond Act 13 of 1999
- Diamond Taxation Proclamation Repeal Act 21 of 1995
- Minerals (Prospecting and Mining) Act 33 of 1992
- Minerals Development Fund of Namibia Act 19 of 1996

Mining and Minerals

- Powers of the S.W.A Water and Electricity Corporation Act 14 of 1980

Estates and Succession

Estates

- Administration of Estates Act 66 of 1965
- Estates and Succession Amendment Act 15 of 2005

Succession

- Wills Act 7 of 1953

Trusts

- Trust Moneys Protection Act 34 of 1934

Health

Medical Aid

- Medical Aid Funds Act 23 of 1995
- Medical Aid Scheme for the Government Service Extension Act 13 of 1982

Medicine and Medical Professions

- Abortion and Sterilization Act 2 of 1975
- Abuse of Dependence-Producing Substances and Rehabilitation Centres Act 41 of 1971
- Allied Health Professions Act 7 of 2004
- Council for Health and Social Services Professions Repeal Act 3 of 2004
- Hospitals and Health Facilities Act 36 of 1994
- Medical and Dental Act 10 of 2004
- Medicines and Related Substances Control Act 13 of 2003
- Medicines and Related Substance Control Act 101 of 1965
- Namibian Nursing Association Act 28 of 1993
- Nursing Act 8 of 2004

Mental Health and Mental Disorders

- Mental Health Act 18 of 1973

Public Health

- Health Act 21 of 1988
- International Health Regulations Act 28 of 1974
- Namibia Institute of Pathology Act 15 of 1999
- Public Health Act 36 of 1919

Labour law

Employment and Labour

- Affirmative Action (Employment) Act 29 of 1998
- Employees Compensation Act 30 of 1941
- Labour Act 6 of 1992
- Labour Act 15 of 2004

Public Service

- Anti-Corruption Act 8 of 2003
- Public Service Act 13 of 1995
- Public Service Commission Act 2 of 1990

Pensions and Welfare

Pensions

- Aged Persons Act 81 of 1967
- Blind Persons Act 26 of 1968
- Military Pensions Act 84 of 1976
- National Pensions Act 10 of 1992
- Pension Funds Act 24 of 1956
- War Veterans' Pensions Act 25 of 1968
- War Veterans' Subvention Act 16 of 1999

Welfare and Welfare Organisations

- Friendly Societies Act 25 of 1956
- Namibia Red Cross Act 16 of 1991
- National Disability Council Act 26 of 2004
- National Welfare Act 79 of 1965
- Social and Social Auxiliary Workers Professions Act 22 of 1993
- Social Security Act 34 of 1994
- Social work and Psychology Act 6 of 2004

Persons and Family

Husband and Wife

- Dissolution of Marriages on Presumption of Death Act 31 of 1993
- Maintenance Act 9 of 2003
- Maintenance Act 23 of 1963
- Marriages Act 25 of 1961
- Married Persons Equality Act 1 of 1996
- Matrimonial Causes Jurisdiction Act 22 of 1939
- Matrimonial Causes Jurisdiction Act 35 of 1945
- Reciprocal Enforcement of Maintenance Orders Act 3 of 1995
- Recognition of certain Marriages Act 18 of 1991

Children

- Age of Majority Act 57 of 1972
- Children's Act 33 of 1960
- Children's Status Act 6 of 2006

Births, Marriages and Deaths

- Births, Marriages and Death Registration Act 81 of 1963

Aliens and Citizens

- Departure from Namibia Regulation Act 34 of 1955
- Immigration Control Act 7 of 1993
- Namibian Citizenship Act 14 of 1990
- Namibian Citizenship Special Conferment Act 14 of 1991
- Security Commission Act 18 of 2001

Professions

Accountants and Auditors

- Public Accountants' and Auditors' Act 51 of 1951

Architects and Quantity Surveyors

- Architects and Quantity Surveyors' Act 13 of 1979

Engineers

- Engineering Profession Act 18 of 1986

Estate Agents

- Estate Agents Act 112 of 1976

Legal Practitioners

- Legal Practitioners Act 15 of 1995
- Legal Practitioners Second Amendment Act 22 of 2002

Surveyors

- Professional Land Surveyors', Technical Surveyors' and Survey Technicians' Act 32 of 1993

Town and Regional Planners

- Town and Regional Planners Act 9 of 1996
- Architects and Quantity Surveyors' Act 13 of 1979

Property

Deeds

- Deeds Registries Act 47 of 1937

Housing and Development

- National Housing Enterprise Act 5 of 1993
- Rehoboth Investment and Development Corporation Repeal Act 15 of 1996
- Sectional Titles Act 66 of 1971
- National Housing Development Act 28 of 2000

Land

- Agricultural (Commercial) Land Reform Act 6 of 1995
- Communal Land Reform Act 5 of 2002
- Communal Land Reform Amendment Act 11 of 2005
- Immovable Property (Removal of Modification of Restrictions) Act 94 of 1965
- Land Survey Act 33 of 1993
- Mountain Catchment Areas Act 63 of 1970
- Subdivision of Agricultural Land Act 70 of 1970

Landlord and Tenant

- Formalities in respect of Lease of Land Act 18 of 1969

Sea and Seashore

- Dumping at sea Control Act 73 of 1980
- Marine Resources Act 27 of 2000
- Prevention and Combating of Pollution of the Sea by oil Act 6 of 1981
- Territorial Sea and Exclusive economic zone of Namibia Act 3 of 1990
- Walvis Bay and off-shore Islands Act 1 of 1994

Revenue

Customs and Excise

- Customs and Excise Act 20 of 1998

Finance

- Assistance Fund of South West Africa Repeal Act 13 of 1992
- Environmental Investment Fund of Namibia Act 13 of 2001
- Game Products Trust Fund Act 7 of 1997
- State Finance Act 31 of 1991

Income Tax

- Income Tax Act 24 of 1981
- Income Tax Amendment Act 14 of 2005

Revenue

- Moratorium on the Payment of Stamp Duty or Transfer Duty in respect of Rationalization Schemes Act 1 of 1993
- Petroleum (Taxation) Act 3 of 1991
- Stamp Duties Act 15 of 1993
- Transfer Duty Act 14 of 1993
- Value-Added Tax Act 10 of 2000

Security

Arms and Ammunition

- Arms and Ammunition Act 7 of 1996
- Tear-Gas Act 16 of 1964

Defence

- Defence Act 1 of 2002
- Moratorium Act 25 of 1963
- Namibia Central Intelligence Service act 10 of 1997
- Protection of Information Act 84 of 1982

Explosives

- Explosives Act 26 of 1956

Police

- Police Act 19 of 1990

Prisons

- Prisons Act 17 of 1998
- Transfer of Convicted Offenders Act 9 of 2005

Security Officers

- Security Enterprises and Security Officers Act 19 of 1998

Trade and Industry

Trade Metrology and Standards

- Measuring Units and National Measuring Standards Act 76 of 1973
- Metrology Amendment Act 17 of 2005
- Namibian Time Act 3 of 1994
- Standard Act 18 of 2005 (To be determined by the Minister)
- Standards Act 33 of 1962
- Trade Metrology Act 77 of 1973

Trade and Industry

- Accreditation Board of Namibia Act 8 of 2005
- Casinos and Gambling Houses Act 32 of 1994

Trade and Industry

- Competition Act 2 of 2003 (To be Proclaimed)
- Export Processing Zones Act 9 of 1994
- National Planning Commission Act 15 of 1994
- National Supplies Procurement Act 89 of 1970
- Price Control Act 25 of 1964
- Regulation of Monopolistic Conditions Act 24 of 1955
- Trade Practices Act 76 of 1976
- Trades and Occupational Licenses Repeal Act 10 of 1995

Tourism

- Lotteries Act 15 of 2002
- Namibia Tourism Board Act 21 of 2000

Press and Printing

- Namibia Press Agency Act 3 of 1992
- New Era Publication Corporation Act 1 of 1992
- Newspaper and Imprint Registration Act 63 of 1971

Patents, Trademarks and Copyright

- Copyright and Neighbouring Rights Protections Act 6 of 1994
- Heraldry Act 18 of 1962
- Merchandise Marks Act 17 of 1941
- Trade Marks in South West Africa Act 48 of 1973

Intoxicating Liquor

- Liquor Act 6 of 1998

Import and Export

- Control of the Importation and Exportation of Dairy Products substitutes Act 5 of 1986
- Export Credit and Foreign Investments Re-insurance Act 78 of 1957

Broadcasting

- Namibia Film Commission Act 6 of 2000
- Namibian Broadcasting Act 9 of 1991
- Namibian Communications Commissions Act 4 of 1992
- Radio Act 3 of 1952

Transport

Aviation

- Air Services Act 51 of 1949
- Airports Company Act 25 of 1998
- Aviation Act 74 of 1962
- Carriages by Air Act 17 of 1946
- Civil Aviation Offences Act 10 of 1972

Motor Vehicles

- Motor Vehicle Accidents Fund Act 4 of 2001
- Motor Vehicles Theft Act 12 of 1999
- Namibian Transport Advisory Board Act 23 of 1991

Roads and Roads Transportation

- Application of Laws Relating to Roads in Eastern Caprivi, Owambo, Kavango and Damaraland Act 5 of 1982
- National Road Safety Act 9 of 1972
- National Transport Services Holding Company Act 28 of 1998
- Road Traffic and Transport Act 22 of 1999
- Roads Authority Act 17 of 1999
- Roads Contractor Company Act 14 of 1999
- Road Fund Administration Act 18 of 1999

Shipping

- International Convention for the Prevention of Pollution from ships Act 2 of 1986
- International Convention Relating to Intervention on the High Seas in cases of oil Pollution Casualties Act 64 of 1987
- Marine Traffic Act 2 of 1981
- Merchant Shipping Act 57 of 1951
- Namibian Ports Authority Act 2 of 1994
- Wreck and Salvage Act 5 of 2004

Extras

- Financial Intelligence Act, 3 of 2007
- Namibia Central Intelligence Service Act, 10 of 1997 – Auditor General

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Notes

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