



Republic of Namibia

BUSINESS AND INTELLECTUAL PROPERTY AUTHORITY BILL (DRAFT)

[Act No. – 2013]



*Protecting
Entrepreneurship
and Innovation*

BUSINESS AND INTELLECTUAL PROPERTY AUTHORITY BILL (DRAFT)

STRUCTURE OF THE BILL

1. Part I deals with the objectives of the Bill.
2. Part II of the Bill establishes the Business and Intellectual Property Authority, which will be a juristic person, the functions and powers of the Authority, including the Authority's principles of operation. Part II also establishes the Board of the Authority, which will be the governing body of the Authority. It also deals with the appointment of the Chief Executive Officer of BIPA as well as the appointment of the employees.
3. Part III of the Bill establishes the Registers for Business and Intellectual Property and grants BIPA investigation powers and compliance directives.
4. Part IV of the Bill deals with the financial provisions of the Authority.
5. Part V of the Bill deals with miscellaneous provisions such as indemnity of members and staff of the Authority and powers to make regulations and clauses dealing with transitional arrangements such as, transfer of property from Registrar of Companies, Close Corporation and Industrial Property Division in the Ministry of Trade and Industry, and Copyright Division in the Ministry of Information and Communication Technology to the Authority.

BUSINESS AND INTELLECTUAL PROPERTY AUTHORITY BILL, 2013

BILL (DRAFT)

To establish the Business and Intellectual Property Authority; to provide for its powers and functions; and to provide for incidental matters.

BE IT ENACTED by the Parliament of the Republic of Namibia, as follows:

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PART I PRELIMINARY (ss 1-2)

Definitions and application

1. (1) In this Act, unless the context otherwise indicates-

“applicable legislation” means all laws (as listed in Schedule 1) which assign functions, powers and duties to BIPA as provided for in this Act;

“BIPA” means the Business and Intellectual Property Authority established by section 3;

“Board” means the Board of members appointed in terms of section 5;

“business” means any company as defined in section 1 the Companies Act, any close corporation falling within the definition of “corporation” as defined in section 1 of the Close Corporations Act and any co-operative established under the Co-operatives Act;

“CEO” means the Chief Executive Officer of BIPA appointed under section 13(1);

“Close Corporations Act” means the Close Corporations Act, 1988 (Act No. 26 of 1988);

“committee” means a committee established under section 11;

“Companies Act” means the Companies Act, 2004 (Act No. 28 of 2004);

“Co-operatives Act” means the Co-operatives Act, 1996 (Act No. 23 of 1996);

“file”, when used as a verb, means to deliver a document to BIPA in the manner and form, if any, determined or prescribed under this Act or any applicable legislation for that document;

“financial year” means the financial year of BIPA referred to in section 23;

“Industrial Property Act” means the Industrial Property Act, 2012 (Act No. 1 of 2012);

“inspector” means an inspector appointed under section 19(1);

“intellectual property” means “industrial property” as defined in section 1 of the Industrial Property Act;

“member” means a person appointed as a member of the BIPA Board in terms of section 5;

“Minister” means the Minister responsible for trade and industry;

“personal financial interest”, when used with respect to any person means a direct material interest of that person, of a financial, monetary or economic nature, or to which a monetary value may be attributed but does not include any interest held by a person in a unit trust or collective investment scheme unless that person has direct control over the investment decisions of that fund or investment;

“prescribed” means prescribed by rule or regulation, as the case may be;

“register” means a depository of documents required to be kept by BIPA in terms of section 15;

“regulation” means a regulation made under section 34(1);

“regulatory authority” means an entity -

- (a) established in terms of legislation and responsible for regulating an industry or sector of an industry; or
- (b) authorized in terms of legislation to regulate an industry or sector of an industry;

“related person” means -

- (a) where an individual is related to another individual -
 - (i) through marriage or living together in a relationship similar to marriage;
 - (ii) if they are separated by no more than two degrees of natural or adopted consanguinity or affinity;
- (b) where an individual is related to a juristic person in that the individual directly or indirectly controls the juristic person as contemplated in subsection (3);

“rule” means a rule made under section 33(1);

“staff member” means a staff member as defined in section 1 of the Public Service Act, 1995 (Act No. 13 of 1995);

“this Act” includes the rules and regulations.

(2) Irrespective of any provision to the contrary in this Act, co-operative shall only fall within the ambit of BIPA where the Minister responsible for agriculture, in consultation with the Minister, by notice in the Gazette assigns this function to BIPA and Part II of Schedule 2 shall only commence on a date determined in such notice.

(3) For the purposes of the definition of “related person”, a person controls a juristic person, or its business, if -

- (a) in the case of a juristic person that is a company, that person has, in relation to the company, any of the rights set out in section 1(3)(a)(i) to (iii) of the Companies Act;
- (b) in the case of a juristic person that is a close corporation, that person owns the majority of the members’ interest, or controls directly, or has the right to control, the majority of the members’ votes in the close corporation;
- (c) in the case of a juristic person that is a trust, that person has the ability to control the majority of the votes of the trustees or to appoint the majority of the trustees, or to appoint or change the majority of the beneficiaries of the trust.

Objects of Act

2. The objects of this Act are:
 - (a) To foster economic growth and development in order to raise income and promote investment and employment and the efficient protection and administration of business and intellectual property in Namibia;
 - (b) to consolidate, in the manner herein provided, the various offices and officials involved in the registration and administration of business and intellectual property;
 - (c) to facilitate and promote the efficient and effective registration of business and intellectual property and to keep and administer the registers with regard thereto;
 - (d) to promote the conduct and use of business and intellectual property in Namibia;
 - (e) to facilitate, streamline, simplify, harmonise and expedite business and intellectual property procedures, registrations, filings and searches;
 - (f) to enhance the efficient exchange and distribution of information.

PART II

BUSINESS AND INTELLECTUAL PROPERTY AUTHORITY (ss 3-14)

Establishment of BIPA

3. (1) There is established a juristic person to be known as the Business and Intellectual Property Authority.
 - (2) BIPA -
 - (a) has jurisdiction throughout the Republic of Namibia;
 - (b) is independent and subject only to the laws of the Republic of Namibia and such policy statements, directives or requests as the Minister may issue to it in order to promote the objects of this Act or the functions and powers of BIPA;
 - (c) must act fairly and reasonably and comply with the requirements imposed upon them under Article 18 of the Namibian Constitution;
 - (d) must perform its functions and exercise its powers in a cost-efficient and effective manner.

Functions and powers of BIPA

4. (1) The functions of BIPA are -
- (a) to be the central focal point for the registration, administration and protection of business and intellectual property as provided for in this Act;
 - (b) to be the registry of information, documents and data required to be lodged with and maintained by BIPA under the applicable legislation and to be responsible for the examination and safe and orderly custody thereof;
 - (c) to implement, promote, and continuously enhance, advance electronic business and intellectual property information and transaction systems;
 - (d) to maintain accurate, current and relevant information concerning business and intellectual property;
 - (e) to promote, expedite and simplify the flow of information between BIPA and the business community, users of business and intellectual property, general public, regulatory authorities and organs of State ;
 - (f) to prescribe by rule fees and rates for business and intellectual property transactions and services offered and to collect such fees and rates in so far as such fees and rates are not covered under the applicable legislation;
 - (g) to determine legal and procedural requirements relating to its functions and its interaction with stakeholders and customers in so far as these are not provided for in this Act and the applicable legislation;
 - (h) to promote education and awareness of laws relating to business and intellectual property and related matters ;
 - (i) to protect and promote traditional knowledge systems and traditional culture and folklore as anticipated in the Swakopmund Protocol on the Protection of Traditional Knowledge and Expressions of Folklore;
 - (j) to provide guidance to the public by issuing explanatory notices outlining its procedures, its non-binding opinion on the interpretation of this Act or other applicable legislation or by applying to a court for a declaratory order on the interpretation or application of any provision of this Act;
 - (k) to advise the Minister, Government and public sector in general and, where relevant, the private sector, on all matters pertaining business and intellectual property falling within the scope of BIPA;
 - (l) to make recommendations to the Minister or any other Minister or organ of State as regards the amendment or promulgation of any law in order to promote the efficient operation of business and intellectual property;
 - (m) to perform any related functions assigned to it by legislation or reasonably necessary to carry out its functions under this Act and the applicable legislation.

- (2) BIPA may -
 - (a) organise outreach and awareness creation programmes to inform, educate and sensitise the public on matters relating to business and intellectual property;
 - (b) have regard to regional and international developments in the field of business and intellectual property and interact in the manner deemed fit by BIPA with regional and international bodies having similar or related objects;
 - (c) consult with any person, organization or institution with regard to any matter and additionally -
 - (i) liaise with any regulatory authority on matters of common interest and exchange information with, and receive information from, any such regulatory authority pertaining to -
 - (aa) matters of common interest; or
 - (bb) a specific complaint or investigation;
 - (ii) participate in the proceedings of any regulatory authority;
 - (iii) advise, or receive advice from, any regulatory authority;
 - (d) conduct research relating to its mandate and activities and publish the results of such research.
- (3) In order to promote the enforcement of, and compliance with, this Act and the applicable legislation, BIPA may -
 - (a) promote and, if requested thereto, undertake voluntary resolution of disputes between any parties concerning any matter relating to this Act or the applicable legislation without intervening in, or adjudicating, such disputes;
 - (b) monitor, in the manner deemed fit by it, compliance with this Act and the applicable legislation;
 - (c) receive or initiate complaints concerning alleged contraventions or non-compliances with this Act or the applicable legislation, evaluate such complaints and investigate such complaints;
 - (d) refer alleged offences to the relevant prosecuting or regulatory authority.
- (4) In so far as they are applicable and relevant to BIPA, the Board must oversee the implementation of principles of good corporate governance for BIPA.

Constitution of Board of BIPA

5. (1) BIPA is governed by a Board which consists of at least five but not more than 7 members appointed by the Minister as follows -

- (a) not more than three persons nominated by the Minister;
- (b) not more than four persons selected by the Minister from the persons nominated in the manner contemplated in subsection (2),

who have appropriate and relevant expertise and experience in one or more of the following, namely, commerce, business, law, finance, economics and intellectual property.

- (2) For the purposes of nomination of persons for appointment in terms of subsection (1) (b) -
 - (a) the Minister must in at least two newspapers circulated throughout Namibia invite such nominations, to be submitted to the Minister in writing within the period specified in the invitation; and
 - (b) if no nomination is submitted as contemplated in paragraph (a) within the period specified in the invitation referred to in that paragraph, the Minister may appoint any person complying with the relevant requirements set out in that subsection as a member.

(3) The members must elect from their number a chairperson and a vice-chairperson of the Board of BIPA at their first meeting.

- (4) The CEO is an ex officio member but does not have voting powers.

Disqualification for appointment as member

6. A person may not be appointed as a member, if such person -
- (a) is an unrehabilitated insolvent;
 - (b) during a period of 10 years preceding the date of the proposed appointment as a member, has been convicted of any offence and was sentenced to a period of not less than six months imprisonment without the option of a fine;
 - (c) as a result of improper conduct, has been removed from an office of trust; or
 - (d) is a member of the National Assembly or a regional council.

Term of office of member

7. A member holds office for a term of five years and is eligible for re-appointment at the expiration of that term except for the CEO who is an ex officio member.

Vacation of office by member

- 8.** (1) A member vacates office, if such member -
- (a) becomes disqualified for appointment as a member in terms of section 6;
 - (b) resigns from office, after giving the Minister 30 days' written notice of his or her intention to resign;
 - (c) is declared to be mentally ill or of unsound mind or is detained as a mentally ill person;
 - (d) has been absent from three consecutive meetings of the Board without the permission of the chairperson of the Board; or
 - (e) is removed from office under subsection (2).

(2) The Minister, by notice in writing, may remove a member from office on a valid reason, after giving such member a reasonable opportunity to be heard.

(3) If a member dies or vacates office before the expiration of his or her term of office, the Minister must appoint a person to fill the vacancy for the remainder of such term in accordance with section 5.

Alternate member

9. (1) The Minister, with due regard to section 5, may appoint for every member a person as alternate member to act in the place of a member in the event of such member's absence or inability to act as a member.

(2) The provisions of this Act relating to a member apply in the same manner to an alternate member when acting in the place of a member.

Meetings of Board of BIPA

10. (1) The first meeting of the Board takes place at a time and place determined by the Minister, and thereafter at least four meetings must be held per year at a time and place determined by the chairperson of the Board.

(2) The chairperson of the Board may at any time call a special meeting of the Board, and must within seven days of receipt of a written request -

- (a) by the Minister; or
- (b) signed by at least three of the members,

call a special meeting of the Board and place on the agenda of such meeting such matter as may be so requested by the Minister or such members.

(3) The Minister may in writing request that any matter pertaining to the functions of BIPA be placed on the agenda of a meeting of the Board and be considered by the members.

(4) A simple majority of members forms a quorum for any meeting of the Board.

(5) If a quorum cannot be formed at any meeting of the Board, the meeting must be adjourned to a time and date determined by the chairperson of the Board.

(6) A decision of a majority of the members present and voting at a meeting of the Board constitutes the decision of the Board, and in the event of an equality of votes, the chairperson of the Board has a casting vote in addition to a deliberative vote.

(7) The chairperson of the Board must cause minutes to be kept of every meeting of the Board which must be approved by the members, and a copy of such minutes must be submitted to the Minister as soon as practicable after every meeting.

(8) The Board may invite any person to attend and participate in the deliberations of a meeting of the Board, but such person has no right to vote.

(9) The chairperson of the Board presides at a meeting of the Board and in his or her absence the vice-chairperson and, in the absence of both the chairperson and the vice-chairperson, the members present must elect for that meeting a chairperson from among their number.

(10) Despite anything to the contrary in this section, the Board need not hold a meeting if the members agree thereto in writing, and in such event -

- (a) a decision in writing dealing with a matter to be dealt at such a meeting and signed by the requisite majority of members is deemed to be a decision taken by the Board and held in terms of this section on the date on which the last signature to such decision is affixed;
- (b) a decision contemplated in paragraph (a) must be recorded in the minutes of the first meeting of the board held subsequent to such a decision being taken.

(11) The Board regulates its own procedures for meetings in so far as such are not contained in this Act.

Committees of BIPA

11. (1) BIPA may establish any committee to perform such functions as BIPA may assign or delegate to such committee, and -

- (a) unless there is a good reason not to do so, must appoint a member to be the chairperson of a committee; and
 - (b) may appoint persons who are not members to be members of a committee.
- (2) BIPA may at any time dissolve or reconstitute a committee.

(3) Subject to the rules and directives of BIPA, either in particular or general, a committee determines its own procedures relating to its meetings.

Remuneration and allowances

12. (1) Members of the Board and members of the committees must be paid such remunerations and allowances determined in terms of subsection (2).

(2) The Minister -

- (a) determines the remunerations and allowances payable to members of the Board and members of the committees; and
- (b) may determine different rates of remunerations or allowances with regard to different positions occupied by such members of the Board or members of the committees.

Chief Executive Officer

13. (1) Subject to the approval of the Minister, BIPA must appoint suitably qualified and experienced person as CEO.

(2) The CEO -

- (a) is appointed for five year terms of office and on such terms and conditions of service, as the Board, in concurrence with the Minister, may determine;
 - (b) is eligible for reappointment at the expiration of a five year terms of office; and
 - (c) may be removed from office before the expiry of the five year terms in accordance with the terms of the CEO's contract of employment.
- (3) The CEO is responsible for the day-to-day management and administration of BIPA and all other matters as may be assigned or delegated to the CEO.
- (4) An Acting CEO, designated by the Board, may perform any function of the CEO when the office of the CEO is vacant or when the CEO is absent or is for any reason unable to perform the functions of that office.
- (5) Whenever the office of the CEO becomes vacant or the CEO is for any reason unable to perform his or her functions, the Board may -
- (a) designate any suitable employee of BIPA; or
 - (b) if circumstances so require, appoint any suitable person, after consultation with the Minister, to act as CEO, until the vacancy is filled or the CEO is able to perform his or her functions.
- (6) A person designated or appointed in terms of subsection (5) has all the powers and performs all the functions of the CEO.

- (7) Subject to this Act and the directives and policies of BIPA, the CEO -
 - (a) is responsible for the day-to-day performance of the executive and administrative functions of BIPA;
 - (b) supervises the employees of BIPA and exercises disciplinary powers over such employees; and
 - (c) is the accountable officer of BIPA and, as such, is responsible for -
 - (i) the proper control and management of BIPA;
 - (ii) the effectiveness and efficiency of BIPA;
 - (iii) all income and expenditure of BIPA including accounting therefor in accordance with prevailing international financial reporting standards so as to give a true reflection of the transactions and financial situation of the BIPA and to represent accurately the state of affairs and business of BIPA;
 - (iv) all revenue collected by BIPA;
 - (v) all assets and the discharges of all liabilities of BIPA;
 - (vi) the proper and diligent implementation of and compliance with the State-owned Enterprises Governance Act, 2006 (Act No. 2 of 2006).

(8) Unless BIPA directs otherwise in relation to any matter, the CEO must attend every meeting of the Board and may participate in discussions on any matter under consideration at such meeting, but has no right to vote at such meeting.

Employees of BIPA

- 14.** (1) BIPA -
 - (a) may employ such persons as it may consider necessary to perform the functions of BIPA;
 - (b) determines, subject to the general directions of the Minister, the remuneration and other terms and conditions of service of its employees, which may include medical aid, housing, gratuities or pension benefits.

(2) BIPA may enter into agreement with any person to perform any act or provide any service for or on behalf of BIPA in respect of any matter related to the functions of BIPA.

PART III

REGISTERS, INVESTIGATIONS AND COMPLIANCE (ss 15-20)

Registers

- 15.** (1) BIPA must establish and maintain -
- (a) the registers for business and intellectual property as required in terms of the applicable legislation;
 - (b) any other register contemplated in this Act or in any other legislation which assigns a registry function to BIPA,

and therein register and deregister business and intellectual property and such other information pertaining thereto as is required under this Act or the applicable or other legislation.

(2) BIPA must receive and deposit in the register such documents as are required to be filed or deposited in terms of this Act or the applicable or other legislation.

(3) Where any person, organ of State, regulatory authority or the public in general is entitled to information on a register kept by BIPA, BIPA must make such information available efficiently and effectively and in accordance with this Act or the applicable or other legislation.

Inspection of register

16. (1) Subject to subsections (2) and (3), any person, on payment of the relevant fee or rate, may, in so far as a document is open for inspection, and whether in person or through any electronic medium approved by BIPA -

- (a) inspect a document filed in a register;
- (b) obtain a certificate from BIPA as to the contents or part of the contents of any document which has been filed in respect of any business or intellectual property;
- (c) obtain a copy of or extract from any document contemplated in this subsection.

(2) Subsection (1) does not apply to any part of a filed document if such part has been determined to be confidential, or contain confidential information, in accordance with section 17.

(3) Notwithstanding any law to the contrary, BIPA -

- (a) must waive a fee or rate contemplated in this section if it is satisfied that -
 - (i) an inspection, certificate, copy or extract is required on behalf of a foreign government accredited to the Republic of Namibia; and
 - (ii) that no fees or rates are payable in the foreign country concerned in respect of such inspection, certificate, copy or extract required on behalf of the Republic of Namibia; or
 - (iii) an inspection, certificate, copy or extract is required by a regulatory authority in the performance of its functions or exercise of its duties; and

- (b) may waive any such fee or rate if it is satisfied that an inspection, certificate, copy or extract is required for the purposes of research by or under the control of any institution for higher education.

Confidential information

17. (1) When submitting information to BIPA or an inspector appointed in terms of this Act, a person may, in so far as it is provided for in applicable legislation or any other law, claim that all or part of that information is confidential.

(2) A claim contemplated in subsection (1) must be supported by a written statement explaining why the information is confidential.

(3) BIPA must -

- (a) consider a claim made in terms of subsection (1); and
- (b) as soon as practicable, make a decision on the confidentiality of the information and access to that information, and provide written reasons for that decision.

(4) Subsections (1), (2) and (3) are subject to any provision dealing with confidentiality, disclosure or secrecy as contained in the applicable legislation.

(5) This section does not derogate from a statutory right which a regulatory authority has in terms of its legislation to obtain information from BIPA.

Investigations

18. (1) The investigation powers granted to BIPA under this Act is in addition to any powers, functions and duties relating to investigations and the appointment of inspectors or investigators under the applicable legislation and for this purpose -

- (a) the Minister may in writing delegate to BIPA any powers, functions and duties relating to investigations and the appointment of inspectors and any other powers, functions and duties which the Minister has in terms of the Companies Act, the Close Corporations Act and the Industrial Property Act (excluding the power to make regulations); and
 - (b) in such instance an inspector contemplated in the Companies Act or Close Corporations Act is deemed to be an inspector under this Act; and
 - (c) such inspector has the powers, duties and functions granted under this Act, the Companies Act and the Close Corporations Act, as the case may be.
- (2) BIPA may, out of own accord, or upon receipt of a complaint investigate -
- (a) an allegation that a person has acted in a manner inconsistent with this Act or the applicable legislation;

- (b) an allegation that the complainant's rights under this Act or the applicable legislation has been infringed;
- (c) any other complaint relating to a business or intellectual property it deems of sufficient substance to investigate.
- (3) As regards the undertaking of investigations by BIPA, BIPA may make rules prescribing -
 - (a) the manner in which complaints may be initiated;
 - (b) the manner in which BIPA must deal with complaints received and the procedures with regard thereto;
 - (c) the manner in which complaints must be investigated;
 - (d) the persons to whom complaints may be referred if not investigated by BIPA;
 - (e) the powers of inspectors and the manner in which they must investigate and inspect complaints and report thereon;
 - (f) the cost and expenses relating to an investigation and the person responsible therefor;
 - (g) the manner in which BIPA may deal with the outcomes of an investigation.
- (4) The Minister may at any time direct BIPA to investigate -
 - (a) an alleged contravention of this Act or the applicable legislation;
 - (b) any matter or circumstances with respect to business or intellectual property whether or not the matter or circumstances appear at the time of the direction to amount to a possible contravention of this Act or the applicable legislation.

Inspectors

- 19.** (1) For the purposes of conducting investigations, BIPA may appoint as an inspector -
 - (a) any suitable employee of BIPA;
 - (b) any other person whether in the employment of the public or private sector.
- (2) An inspector must be issued with an identification card and must show such card upon request thereto or when exercising functions under this Act.
- (3) In performing his or her functions, an inspector -
 - (a) must be in possession of a certificate of appointment issued to that inspector in terms of this section;
 - (b) must show that certificate to any person affected by the inspector's actions in terms of this Act or who requests to see the certificate;
 - (c) may investigate any person named in the complaint or related to a person named in the complaint;

- (d) may investigate any person whom the inspector reasonably considers may have information relevant to the investigation of the complaint;
- (e) has such additional powers as are assigned to him or her under this Act, the applicable legislation or as prescribed by the rules.

Compliance directives

20. (1) BIPA must supervise compliance with this Act and the applicable legislation and may give such written compliance directives to any person to whom this Act or the applicable legislation applies which BIPA on reasonable grounds believes has contravened this Act or the applicable legislation in order to ensure compliance with this Act or the applicable legislation.

(2) A compliance directive given by BIPA under subsection (1) -

- (a) must identify the person to whom it is addressed
- (b) must set out the provisions of the relevant Act which is alleged to have been contravened and the details of the nature and extent of the non-compliance;
- (c) must clearly set out the directive as well as any other issue involved and the reasons for the compliance directive and may require the person to whom it is addressed to -
 - (i) cease, correct or reverse any action in contravention with this Act or the applicable legislation;
 - (ii) take any action required under this Act or the applicable legislation;
 - (iii) take any other steps reasonably related to the contravention and designed to rectify its effect;
- (d) must request the person to whom it is addressed to make written presentations to BIPA regarding the compliance directive within the time frame specified therein;
- (e) may contain such other information as BIPA may deem appropriate.

(3) After consideration of the written representations or, in the event where notwithstanding the request, no representation was received within the time frame specified, BIPA may -

- (a) withdraw the compliance directive;
- (b) issue a final compliance directive with or without amendments and specify a reasonable time frame or time frames within which the person to whom it is addressed must comply with the compliance directive.

(4) Any person who fails to comply with a compliance directive of BIPA given under this section is -

- (a) liable to a penalty imposed by BIPA subject thereto that such penalty may not exceed N\$50 000; and
- (b) is guilty of an offence and liable to a fine not exceeding N\$50 000 or imprisonment for a period not exceeding two years.

(5) An additional penalty of not exceeding N\$5 000 for each day which the failure contemplated in subsection (4) continues, may be imposed by BIPA.

(6) When imposing a penalty under this section, BIPA must consider the extent and the gravity of the issue with regard to which the compliance directive was given and the non-compliance involved.

(7) A person with regard to whom a compliance directive is given or on whom a penalty is imposed by BIPA under this section, may appeal against such compliance directive or penalty to the High Court within the period and in the manner prescribed by the rules and as if the penalty were a sentence in a Magistrate's Court and as if the person who presided at the hearing at which the penalty was imposed, were a magistrate presiding at a criminal trial in the Magistrate's Court.

(8) BIPA may postpone compliance with a compliance directive given or payment of a penalty imposed, pending the outcome of an appeal under subsection (7).

(9) A penalty imposed by BIPA is payable to BIPA, is deemed to be a debt due to BIPA and may be recovered by BIPA by way of judicial process in a competent court.

(10) Steps taken under this section -

- (a) do not exempt a person from civil or criminal liability in respect of an act or omission on account of which those steps were taken;
- (b) do not preclude BIPA from taking any other appropriate action as provided for in the applicable legislation.

(11) The Minister may, whenever deemed necessary by him or her, by notice in the Gazette amend the amounts specified in subsection (4)(a) and (5) in order to counter the effect inflation.

PART IV FINANCIAL PROVISIONS (ss 21-25)

Moneys of BIPA

- 21.** (1) The funds of BIPA consist of -
- (a) money appropriated by Parliament for the purpose of BIPA;
 - (b) fees, tariffs, charges, administrative fines and penalties received under this Act and the applicable legislation for the benefit of BIPA including any interest on unpaid amounts;
 - (c) tariffs and charges in respect of services rendered by BIPA in the performance of its functions under this Act or any other law;
 - (d) interest or dividends earned on any investment made in terms of subsection (5);
 - (e) all money derived from the sale of any assets of BIPA;
 - (f) money borrowed with the approval of the Minister in consultation with the Minister responsible for finance;
 - (g) money received by way of donations or grants from any source in Namibia, and, subject to the approval of the Minister in agreement with the Minister responsible for finance, from any source outside Namibia;
 - (h) money obtained through the sale of-
 - (i) publications prepared by or for BIPA;
 - (ii) reference material, data and information; and
 - (iii) all other money which may accrue to BIPA from any other source.
- (2) BIPA must manage its funds in accordance with sound principles of financial management, and, in particular, by observing the measures implemented to protect the liquidity of BIPA.
- (3) Subject to section 23(2), the funds available to BIPA must be used -
- (a) to pay the administrative expenses of BIPA;
 - (b) to fund the costs of any project or other activity of BIPA undertaken by BIPA;
 - (c) to pay remunerations and allowances payable by BIPA and such other expenses incurred by BIPA in the performance of its functions;
 - (d) for any other expenditure provided for in BIPA's budget.
- (4) Money received by way of a donation for the benefit of BIPA may be administered on such conditions as may be agreed upon between the donor and BIPA.

(5) Any money standing to the credit of BIPA and not required for immediate use or as a reasonable operating balance may be invested by BIPA, subject to the consideration of the determination of the budget for the ensuing financial year.

(6) Any unexpended balance at the end of a financial year of BIPA must be carried forward as a credit to the ensuing financial year.

Bank accounts

22. (1) BIPA must open and maintain such bank accounts at one or more banking institutions in Namibia, registered in terms of the Banking Institutions Act, 1998 (Act No. 2 of 1998) as are necessary for the performance of the functions of BIPA.

(2) BIPA must ensure that -

- (a) all money received by or on behalf of BIPA is deposited into its bank account as soon as practicable after being received;
- (b) any payment by or on behalf of the BIPA is made from its bank account; and
- (c) no money is withdrawn, paid or transferred from its bank account without the BIPA's authority.

(3) In furtherance of section 21(2), BIPA must, whether by means of internal procedures or by its rules, determine prudent financial procedures, including internal control measures and mechanisms, to guard against fraud and the improper administration of its funds.

Financial year and budget

23. (1) The financial year of BIPA ends on 31 March in each year.

(2) BIPA may not incur any expense except in accordance with a budget drawn up in terms of this section.

(3) BIPA, once during every financial year, must draw up a budget for the ensuing financial year and submit it to the Minister for approval.

(4) The budget drawn up in terms of this section must contain particulars regarding the expense of BIPA as referred to in section 21(3).

(5) BIPA, during the course of a financial year, may submit to the Minister for approval supplementary estimates of expense of BIPA if BIPA considers it necessary.

Auditing

24. (1) BIPA, in agreement with the Auditor-General, must appoint a person registered as an auditor in terms of the Public Accountants' and Auditors' Act, 1951 (Act 51 of 1951), to annually audit its accounting records and financial statements and submit a report to BIPA.

(2) The auditor referred to in subsection (1) audits the accounting records and financial statements of BIPA subject to such directives as the Auditor-General may issue to such auditor.

(3) Not later than six months after the end of each financial year BIPA must submit audited accounting records and financial statements together with a report referred to in subsection (1) to the Auditor-General who reviews and reports thereon.

Annual report

25. (1) Not later than six months after the end of each financial year BIPA must prepare and submit to the Minister an annual report relating to such financial year.

(2) The annual report referred to in subsection (1) must contain -

- (a) particulars of all activities of BIPA during the financial year under review;
- (b) audited financial statements of BIPA contemplated in section 24(3), including a statement of income and expenditure, a balance sheet and the report contemplated in section 24(1); and
- (c) such other matters as the Minister may require or as may be required under any other law.

(3) The Minister must table the annual report in the National Assembly within 60 days, if the National Assembly is in session, or, if it is not in session, within 30 days after the commencement of its next session.

PART V

GENERAL PROVISIONS (ss 26-38)

Relationship with other authorities

26. (1) If a regulatory authority, in terms of any public regulation, has jurisdiction in respect of any conduct or matter regulated in terms of this Act within a particular sector, BIPA and that authority -

- (a) must negotiate an agreement to co-ordinate and harmonise the exercise of jurisdiction over such matters within the relevant industry or sector and to secure the consistent application of the principles of this Act; and
- (b) in respect of a particular matter within their jurisdictions, may exercise jurisdiction by way of such an agreement.

(2) In addition to the matters contemplated in paragraph (a) of subsection (1), an agreement in terms of that subsection must -

- (a) identify and establish procedures for the management of areas of concurrent jurisdiction;
 - (b) promote co-operation between the regulatory authority and BIPA; and
 - (c) provide for the exchange of information and the protection of confidential information.
- (3) An agreement referred to in subsection (1) must be published in the Gazette.

Conflict of interests

27. (1) A member of the Board or a committee must promptly inform the Board in writing after that person or a related person to that person acquires a personal financial interest that is, or is likely to become, an interest that may conflict or interfere with the proper performance of the duties of such member.

(2) A member of the Board or a committee must not -

- (a) engage in any activity that may undermine the integrity of the BIPA;
- (b) attend, participate in or influence the proceedings during a meeting of the Board or a committee if, in relation to the matter being considered, that member has a personal financial interest -
 - (i) contemplated in subsection (1); and
 - (ii) that precludes that person from performing the functions of a member in a fair, unbiased and proper manner;
- (c) vote at any meeting of the Board or committee, as the case may be, in connection with a matter contemplated in paragraph (b);
- (d) make private use of, or profit from, any confidential information obtained as a result of performing that person's functions as such member.

(3) If, at any time, it appears to a member of the Board or a committee that a matter being considered at a meeting concerns a personal financial interest of that member or a related person to that member, other than as contemplated in subsection (2)(b)(i) and (ii), that member must -

- (a) immediately and fully disclose the nature of that interest to the meeting; and
- (b) withdraw from the meeting to allow the remaining members to discuss the matter and determine whether the member should be prohibited from participating in any further proceedings concerning that matter.

(4) The disclosure by a member in terms of subsection (3)(a), and the decision by the Board or committee must be expressly recorded in the minutes of the meeting in question.

(5) Proceedings of the Board or a committee and any decisions taken by a majority of the members present and entitled to participate in those decisions, are valid despite the fact that -

- (a) a member failed to disclose an interest as required by subsection (3); or
- (b) a member who had such an interest attended those proceedings, participated in them in any way, or directly or indirectly influenced those proceedings.

Conflict of interests of employees

28. The CEO and each employee of the BIPA must not -

- (a) engage in any activity that may undermine the integrity of BIPA;
- (b) participate in any investigation, proceedings or decision concerning a matter in respect of which that person has a personal financial interest;
- (c) make private use of, or profit from, any confidential information obtained as a result of performing that person's official functions in BIPA.

Confidentiality

29. A member of the Board or member of a committee, the CEO, an employee of BIPA or any other person who is or was involved in the administration of this Act, may not disclose to any other person any confidential information acquired in the performance of any function whether before, during or after his or her involvement in the affairs of BIPA, except for the purposes of the performance of his or her functions in terms of this Act, or when required to do so by any other law or a court of law.

Personal liability

30. A member of the Board or member of a committee, the CEO, any employee of BIPA or any person or body to whom or to which any power or function has been delegated or assigned under this Act, is not personally liable for any damage or loss arising out of any act or omission committed in good faith by such person or body except such damage or loss was caused as a result of the gross negligence or dishonesty or unlawful conduct of such person or body.

Delegation of powers and assignment of function

31. (1) The Board, in writing and on such terms and conditions as it may determine, may delegate any power or assign any function conferred or imposed upon it by or under this Act other than those contained in sections 13(1) and 33(1), to any member of the Board, the CEO, any employee of BIPA, or to a committee.

(2) The CEO, subject to such conditions as the CEO thinks fit, may assign in writing any employee of BIPA to perform in general or in a particular case any function assigned to the CEO by or under this Act.

(3) The Board, the CEO, as the case may be, is not divested of any power or function delegated or assigned under this section, and, without prejudice of rights, may at any time -

- (a) amend or withdraw any decision made by virtue of such delegation; or
- (b) withdraw any function so assigned.

(4) A delegation or assignment under this section does not absolve the Board or the CEO from the ultimate responsibility to govern or manage, as the case may be, the affairs of BIPA as set out in this Act.

Validity of decisions

32. A decision taken by the Board or an act performed under the authority of the Board is not invalid by reason only of -

- (a) a vacancy in the Board; or
- (b) the fact that a person who is not entitled to sit as a member of the Board sat as a member at the time when the decision was taken or the act was authorised,

if the decision was taken or the act was authorised by the requisite majority of the members who were present at the time and entitled to sit as members.

Offences

33. (1) It is an offence to hinder, obstruct or improperly attempt to influence the Board, a member of the Board or a committee, the CEO, an employee of BIPA or an inspector when any of them is exercising a power or performing a duty delegated, conferred or imposed by this Act.

- (2) A person commits an offence, if such person -
 - (a) after requested by BIPA under this Act, fails to give information, or gives false or misleading information to BIPA;
 - (b) does anything calculated to improperly influence the Board, the CEO, an employee of BIPA or an inspector concerning any matter connected with an investigation;
 - (c) contrary to section 29, discloses any confidential information concerning the affairs of a person obtained -

- (i) in the carrying out of any function in terms of this Act; or
- (ii) as a result of initiating a complaint, or participating in any proceedings in terms of this Act;
- (d) contravenes or fails to comply with particular section of this Act in terms of which non-compliance is an offence.

(2) A person who is convicted of an offence under subsection (1) is liable to a fine not exceeding N\$50 000 or to imprisonment for a period not exceeding five years, or to both such fine and such imprisonment.

Rules by BIPA

- 34.** (1) BIPA, after consultation with the Minister, may make rules relating to -
- (a) the procedures in respect of meetings of and committees of the Board;
 - (b) the functions of committees and the manner how remuneration and allowances are paid;
 - (c) the good management and administration of the affairs of BIPA and the effective execution of its functions;
 - (d) any fee, rate or other charge which BIPA may impose under this Act including fees and rates for and the manner in which and conditions under which a person may consult, inspect or make a copy of, or obtain an extract from, a document lodged and kept with BIPA in so far as not covered under applicable legislation or prescribed under this Act;
 - (e) in so far as the applicable legislation does not determine or prescribe a procedure, form or other relevant matter, to determine such procedure, form or other matter by means of rules;
 - (f) any matter with regard to which BIPA is authorized to make rules elsewhere in this Act;
 - (g) any other matter which the Board considers necessary or expedient for the effective carrying out of its functions, or for the achievement of the objects of this Act.

(2) A copy of the rules made under this section must be available at BIPA's offices for inspection by any interested person during business hours.

Regulations by Minister

- 35.** (1) The Minister may make regulations relating to -
- (a) the manner and form in which BIPA must keep any or all registers under this Act provided that such regulation does not conflict with the applicable legislation;
 - (b) the matters, manner and form in which BIPA must keep statistics and must report thereon;
 - (c) any matter which in terms of this Act is required or permitted to be prescribed; and
 - (d) generally any other matter which the Minister considers necessary or expedient to give effect to the objects of this Act.

(2) A regulation made under subsection (1) may prescribe a penalty for any contravention of or failure to comply with such regulation not exceeding a fine of N\$ 16 000 or imprisonment for a period not exceeding two years, or not exceeding both such fine and such imprisonment.

Transitional and savings provisions

36. (1) Subject to this section, the Minister, after consultation with the Minister responsible for finance, and on such conditions as the Minister may determine, must transfer to BIPA, with effect from a date determined by the Minister by notice in the Gazette, such agreements, assets, liabilities, rights or obligations of the State which relate to or are connected with the functions of BIPA, as may, in the opinion of the Minister, be required by BIPA for the efficient and effective performance of those functions.

(2) Despite any law to the contrary, BIPA is vested with the ownership of the assets and rights, and is charged with the liabilities and obligations, transferred or assigned to it under subsection (1), with effect from the date of such transfer or assignment.

(3) A certificate issued by the Minister in which it is stated that any State land or a servitude or other real right or lease or any other asset or right described in such certificate has been transferred to BIPA in terms of subsection (1), is sufficient proof that the asset or right so described is vested in BIPA.

(4) Upon submission of the certificate referred to in subsection (3) to the Registrar of Deeds or to any other person in charge of any other office where a register or record of ownership of or entitlement to an asset or right described in such certificate is being kept, the Registrar or such person must make such entries in or on any relevant register, title deed or other document in his or her office or submitted to him or her as may be necessary to effect the transfer in the name of BIPA.

(5) BIPA is substituted for the State as a contracting party in respect of any agreement transferred to BIPA in terms of subsection (1).

(6) The value of assets and liabilities transferred to BIPA in terms of subsection (1) must be determined by the Minister after consultation with the Minister responsible for finance.

(7) Despite any law to the contrary, no duty, fee, tax or levy payable in terms of any law for the acquisition or transfer of assets or rights is payable in respect of the transfer of assets or rights by the State to BIPA in terms of subsection (1).

(8) Despite other provisions of this Act, and for the purposes of implementing certain provisions of this Act, the Minister, where applicable, in agreement with the Minister responsible for finance, may exercise any power or perform any function conferred or imposed upon BIPA by or under this Act until such time BIPA is constituted under section 3.

(9) A body established by or under a provision of a law repealed by section 37 and which exists at the commencement of this Act continues to exist until the Minister dissolves it.

(10) Anything done under a provision of a law repealed by section 37 and which could have been done under a corresponding provision of this Act is deemed to have been done under such corresponding provision.

Amendment of laws

37. The laws specified in the second column of the table contained in Schedule 2 are amended to the extent indicated in the third column of that Schedule.

Short title and commencement

38. (1) This Act -

- (a) is called the Business and Intellectual Property Authority Act, 2013; and
- (b) commences on a date to be determined by the Minister by notice in the Gazette;

(2) Part II of Schedule 2 commences on a date to be determined by the Minister responsible for agriculture by notice in the Gazette.

SCHEDULE 1

APPLICABLE LEGISLATION

- Companies Act, 28 of 2004
- Co-operatives Act, 23 of 1996
- Close Corporations Act, 26 of 1988
- Industrial Property Act, 1 of 2012

SCHEDULE 2

AMENDMENT OF LAWS

PART I

Act No. and Year	Short title	Extent of Amendment
28 of 2004	Companies Act	
28 of 1988	Close Corporations Act	
6 of 1994	Copyright and Neighbouring Rights Protection Act	
9 of 1916	Patents, Designs, Trade Marks and Copyright Act	
17 of 1923	Patents, Designs and Trade Marks Proclamation	
57 of 1967	Designs Act	
37 of 1952	Patents Act	
17 of 1941	Merchandise Marks Act	
2012	Industrial Property Act	
Pre-1923	Ordinances and Proclamations relating to intellectual property	
1978	Patents Act	
1973	Trade Metrology Act	

LIST OF CHANGES

- Provide for all fees to be paid to BIPA and not to Receiver of Revenue
- Delete IP Office under IP Act
- Change IP Registrar and Deputy Registrars to BIPA
- Change Companies Registrar and Deputies to BIPA
- Change CC Registrar to BIPA
- Retain Standing Advisory Committee on Company Law?
- Retain IP Tribunal?

PART II

23 of 1996	Co-operatives Act	
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GENERAL NOTES AND COMMENTS

Note on the Copyright and Neighbouring Rights Protection Act, 1994

A comment was received to investigate whether BIPA should have specific functions regarding copyright. Note that the IP Act does not cover copyright. Copyright is covered in the Copyright and Neighbouring Rights Protection Act, 1994. The portfolio Minister under this Act is the Minister of Information and Broadcasting although he has few functions thereunder. The Act provides for the establishment of a Copyright Tribunal. The main function of the Tribunal is to determine disputes.

SUMMARY OF IMPORTANT COMMENTS ON BIPA BILL

Section & Topic Matter	Workshop Comments	NAMFISA Comments	Comments from BIPA Board Members @ 12/3/13 Meeting	BoN/Financial Intelligence Centre (FIC) Comments
Section 1 – Definitions		Definition of staff member – revisit to ensure Bill aligns with definition whenever expression is used.		
Section 2 – Objects of Act	PS comment – include “to foster economic growth in order to” Objects must reflect that BIPA is a registering authority.	Compare with section 186 of SA Companies Act and with concern expressed by BIPA chairperson on objects clause.	Broaden focus on development – for example economic growth. Include to the effect “has as its object a registering ...”.	
Section 2(1)(a) – to consolidate various functionaries & officers involved in registration, regulation & administration of businesses and IP		Comment that intent is to harmonise and not consolidate as there are other business registration and regulation bodies (e.g. BoN and NAMFISA)		
Section 2(1)(c)		Proposed deletion of (c)		
Section 2(1)(f) – (g) – proposed additions		NAMFISA proposes additions to objects clause similar to section 186 of SA Companies Act – i.e.: · Promote education & awareness of businesses and IP · Promote compliance with laws · Efficient, effective & widest possible enforcement of applicable laws		
Section 3(2)(c) – BIPA must act in manner which is fair, impartial, without reservations, favouritism or prejudice	Move to section 4 Consider taking out completely Refer to Article 18 of Constitution	See concern of BIPA chairperson – think s 188(1) & (2) of SA Companies Act covers research aspect in way suggested. The traditional functions of a regulator which BIPA will be do not come out clearly (the compliance monitoring, supervision and enforcement of applicable legislation). See section 187 of SA Companies Act.		

Section & Topic Matter	Workshop Comments	NAMFISA Comments	Comments from BIPA Board Members @ 12/3/13 Meeting	BoN/Financial Intelligence Centre (FIC) Comments
Section 4 – Functions and powers of BIPA	FIA – accommodate beneficial information Incorporate interaction/functions of BIPA w.r.t. FIA Investigate whether BIPA should have any specific functions mentioned w.r.t. Copyright Act.		Include consumer education and information to public on optimum form of business to operate under.	Since FIA does not fall under “applicable legislation” include in 4(1)(a) &(b): “to be the central registry of information, documents and data required to be lodged with BIPA under the applicable legislation and the FIA Act, 2012, and to be responsible for the examination and safe and orderly custody thereof”. Alternatively, FIA should be considered for inclusion under Schedule 1 under applicable legislation.
Section 4(3) – Co-operatives	Consider making clause more generic so that Minister can assign any functions to BIPA under any other law as and when identified/required/appropriate.			
Section 5 – Constitution of BIPA Board			The requirement that a member must be an auditor may be too strict and limiting. Proposed to generalize requirements for board members and just align with SOE Act.	
Section 9 – Alternate Commissioners	Consider changing Minister “may” appoint alternates to Minister “must” appoint.			
Section 10 – Meetings of BIPA	Make specific provision for round robin decisions. But then everybody must vote in favour and not just majority vote.	Make specific provision for round robin decisions.		

Section & Topic Matter	Workshop Comments	NAMFISA Comments	Comments from BIPA Board Members @ 12/3/13 Meeting	BoN/Financial Intelligence Centre (FIC) Comments
Section 4(3) - Co-operatives	Consider making clause more generic so that Minister can assign any functions to BIPA under any other law as and when identified/required/appropriate.			
Section 2(1)(c)		Regarding section 14(a) (b) which provides that BIPA in agreement with Minister determines the pay and employment conditions of staff - comment that below lever of snr management Minister's approval not required. It may also be restrictive as it may mean that Minister's approval is required for every staff salary increment, change of pension funds, etc.		
Section 15 - Registry to be established and maintained by BIPA				Since FIA requires the keeping of beneficial ownership information it is proposed that it be included that BIPA keeps: "any other register contemplated in this Act, the FIA Act or any applicable legislation which assigns a registry function to BIPA and therein register and deregister businesses." And "BIPA must receive and deposit in the registry such documents and information as are required to be filed or deposited in terms of this Act, the FIA Act or any applicable legislation".

Section & Topic Matter	Workshop Comments	NAMFISA Comments	Comments from BIPA Board Members @ 12/3/13 Meeting	BoN/Financial Intelligence Centre (FIC) Comments
Section 16(3)(b) – Inspection of registry				
Section 17 – Confidential information	Revisit Companies and IP Acts to ensure that confidentiality provisions align in all relevant acts			In terms of s 44 of FIA, no duty of secrecy or confidentiality, whether imposed by legislation or arising from common law or agreement affects the compliance with the provisions of FIA. Thus, FIA overrides all confidentiality rules in instances where the FIC or a competent authority should request information from BIPA under FIA. S 6 of FIA is also a superseding clause in as far as it stipulates that the FIA will prevail should conflicts arise between FIA and any other Act. It is proposed that this exception be specifically noted under section 17 of the BIPA Bill.
Section 18 – Investigations/ compliance monitoring	Section 18 provides for the appointment of inspectors by BIPA who can undertake investigations. Questions were posed on whether this does not conflict with Companies Act (chapter 9) as well as s 207 of IP Act where Registrar can order discovery, etc during hearing. Look into giving BIPA general powers to request information.	Asking why BIPA needs investigations may clarify the need for this section. Seems section wants to deal with investigations & complaints but concepts not sufficiently defined. Makes it difficult to appreciate section. Why would functions set out in this Act require investigation?	Questions whether investigations are really necessary. Check what is in IP Act.	
Section 19 – Inspectors & investigators	Look into combining sections 18 and 19	If section is retained, make provision for external investigators. There may be capacity issues necessitating outsourcing.		

Section & Topic Matter	Workshop Comments	NAMFISA Comments	Comments from BIPA Board Members @ 12/3/13 Meeting	BoN/Financial Intelligence Centre (FIC) Comments
Sections 22 & 23 – BIPA funds and money	BIPA Fund – change to “Moneys of BIPA” rather than establishing a statutory fund. Statutory obligation on BIPA to open necessary bank accounts. BIPA must ensure that no money is withdrawn/taken out of account without BIPA authority – comment received to follow up with Competition Commission on how this works in practice.		Check whether can benefit from similar provisions in NAMFISA’s Act.	
Section 26 – BIPA’s Annual Report		Align with section 26 of SOE Act since, for example, section 26(2) (c) is less than the requirements in the SOE Act.		
Inserted section X between ss 26 and 27 – Relationship with other authorities	Section inserted as per comment received regulating BIPA’s relationship with other authorities and the entering into an agreement with such other authorities.			
Section 27 – Disclosure of interest by BIPA board members		Comment that section is too narrow on certain issues while being too broad on other which allows for undisclosed interests to continue. Proposal to compare with SA Companies Act’s ss 205, 206 & etc	Proposal that clause be generalized to avoid conflict of interest. Specifics can go into rules.	
Section 30 – Delegation and assignment of powers & functions	Include that Board remains ultimately responsible irrespective of a delegation or assignment.			

Section & Topic Matter	Workshop Comments	NAMFISA Comments	Comments from BIPA Board Members @ 12/3/13 Meeting	BoN/Financial Intelligence Centre (FIC) Comments
Section 32 – Offences	Consider inclusion of % fines of damages caused – see examples in Marine Resources Act. Also look into possibility of administrative fines and penalties / undertaking to get companies and CCs etc to comply with legislation especially where there is constant and flagrant disregard of laws.		Penalties should consist of criminal and administrative. Give BIPA general powers to have enforcement powers.	Note that penalties in FIA for non-compliance are much higher than penalties prescribed in this subsection of the BIPA Bill. Section 4 of FIA prescribes a penalty of N\$ 10 million or 10 years (in case of an individual). It is suggested that the drafters revisit the fine and perhaps find a middle ground on this point. It is also suggested that the creation of administrative fines and penalties be considered in order to address non-compliance with the law especially for instances where the non-compliance is not that serious. The criminal offences/ penalties should however be retained for cases of serious non-compliance and cases of constant, persistent and flagrant disregards for the law
Section 33 – Rules by BIPA	Request was submitted to revisit rules which BIPA can make to differentiate between what should be rules and what can be internal procedures.	Requiring Minister's approval for rules in section 33(1)(h) – (l) defeats object of BIPA making rules and then can be regulations, namely: Fees, tariffs, levies which BIPA may impose under this Act · Fees for copies and extracts from documents · Determination of forms, procedures, etc · Any other matter on which BIPA may make rules · Any matter Board deems expedient to make rules on		

Section & Topic Matter	Workshop Comments	NAMFISA Comments	Comments from BIPA Board Members @ 12/3/13 Meeting	BoN/Financial Intelligence Centre (FIC) Comments
Section 35 – Transitional provisions	Request was submitted to revisit rules which BIPA can make to differentiate between what should be rules and what can be internal procedures.	Requiring Minister's approval for rules in section 33(1)(h) – (l) defeats object of BIPA making rules and then can be regulations, namely: · Fees, tariffs, levies which BIPA may impose under this Act · Fees for copies and extracts from documents · Determination of forms, procedures, etc · Any other matter on which BIPA may make rules · Any matter Board deems expedient to make rules on		
Section 35 – Transitional provisions	Comment received on transfer of MTI staff from MTI to BIPA. To take up with MTI as to how it anticipates this should happen			
Section 36 – Amendment of laws				It is suggested that a consequential amendment be made to section 4 of the FIA, since section 4 refers to the Registrar of Companies and the Registrar of Close Corporations. It is common cause that the mandates of these Registrars will be given to BIPA; while BIPA will have a CEO and Acting CEO who will be responsible for all matters pertaining to the functions of BIPA and all other matters assigned to the CEO in terms of applicable legislation.
Schedule 1			Check up on the Protection of Business Names Act to see if needs to be covered under BIPA Bill.	

Section & Topic Matter	Workshop Comments	NAMFISA Comments	Comments from BIPA Board Members @ 12/3/13 Meeting	BoN/Financial Intelligence Centre (FIC) Comments
GENERAL COMMENTS				
BIPA Fees	Fees charged by BIPA not to be subject to VAT			
Beneficial ownership and application of FIA to Registrars of Companies and CCs				FIC makes reference to section 4 of the FIA Act and the concept of "beneficial ownership". I assume their major comment/ concern on this matter to be that the BIPA Act must align with the FIA Act on these matters. It is my personal opinion that a general reference to (which will now become) BIPA's responsibilities under the FIA Act in a section such as the general functions of BIPA will suffice. Section 4 of the FIA Act is an independent section on its own which places obligations on companies, CCs, the Registrars, etc. It is not necessary to repeat the section in the BIPA Act and a cross reference will suffice. Neither do I foresee any provision in the BIPA Act which will limit the application of the FIA Act. However, in future BIPA will have to coordinate with FIC on how to ensure compliance with section 4 of the FIA Act.
References to Registrars				Companies Act and CC Act refer to Registrars as well as the FIA Act. These will have to be changed to the CEO.

Section & Topic Matter	Workshop Comments	NAMFISA Comments	Comments from BIPA Board Members @ 12/3/13 Meeting	BoN/Financial Intelligence Centre (FIC) Comments
Accountability of BIPA			BIPA needs to be accountable to customers especially as regards performance & decisions. Twofold issue: (a) Customers amongst themselves; (b) Customers towards BIPA.	
General gist of BIPA Bill			ocus predominantly on businesses and should be balanced to include IP as equally important. For example, electronic trading for IP and electronic payment etc.	

NOTES

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*Protecting
Entrepreneurship
and Innovation*

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