3.1 Environmental, social, and governance (ESG) investing refers to a set of standards for a company’s behavior used by socially conscious investors to screen potential investments.

Environmental criteria consider how a company safeguards the environment, including corporate policies addressing climate change, for example. Social criteria examine how it manages relationships with employees, suppliers, customers, and the communities where it operates. This covers a multitude of factors: including human rights, modern slavery, corporate security, diversity, employee relations, supply chain sustainability, consumer relations and personal data protection. Governance deals with a company’s leadership, executive pay, audits, internal controls, and shareholder rights.

**State duty to protect human rights (3.5 to 3.9)**

From a continental and regional position; the AfCFTA’s Protocol on Investment, and the SADC Investment Policy Framework, as well as the Bilateral Investment Treaty (BIT) template, which is a set of guidelines for BIT negotiations include elaborate and detailed sections focusing on ensuring responsible investment.

The section in AfCFTA’s Protocol on Investment; referred to as “investor obligations” ranges over ten articles. Themes that are covered range from: obligations of state parties to protect and enforce laws and policies to protect human rights, labour rights and the environment, anti-corruption and anti-bribery measures, and laws and policies to protect the rights of indigenous peoples. Whereas for investors and their investments, the articles cover compliance with domestic law; Business ethics, human rights and labour standards; environmental protection; respect for rights of indigenous people and local communities; corporate social responsibility; corporate governance; common obligation against corruption; as well as investor liability.

The sections, referred to as “investor obligations”, and “rights and obligations of investor and state parties” in the SADC BIT, ranges over seventeen articles. Themes that are covered range from: common obligation against corruption; compliance with domestic law; environmental management and improvement; minimum standards for human rights, environment and labour; investor liability; corporate social responsibility, as well as obligations of states on environment and labour standards, to name but a few. The section throughout emphasises on governments rights to implement performance requirements on investors and investments. It is worth mentioning that SADC member states, while developing these guidelines continuously benchmark against reform-oriented approaches, which includes amongst others the UNCTAD Investment Policy Framework.

From a national perspective, Namibia took the approach of including investor responsibilities in our proposed legal policy framework for investment. Again, tools of reference for the policy included UNCTADs Investment Policy Framework and the SADC model BIT, and the AfCFTA Investment Protocol. Here is the highlight of some of the provisions that we considered to include:

1. Preamble; it is clearly stated that the objects of the policy are in line with our national development goals, of promoting sustainable economic development and growth through the attraction of both domestic and foreign investment. It balances both Governments role to facilitate investment through clear and transparent procedures, while the investor’s role is to contribute to the enhancement of the economic development objectives of the country.

2. Performance agreements; the introduction of performance agreements for large-scale investments in key sectors. We believe that performance agreements entered into with investors in priority economic sectors supports the contribution of the investment to the development objectives of the country. These agreements are negotiated based on a net benefit criteria, which is also clearly stated within the policy that the investor should meet, as well as certain incentives that Government may offer. Absolute transparency in this regard is ensure thorough consultation with all parties involved, as well as publishing the final agreement. In addition, the use of performance agreements allows both the investor and government to tailor the means to achieve the development goals to each specific new investment, instead of imposing one-size fits all approaches or unilaterally imposed conditions. This should ensure both effectiveness and efficiency.

3. Another provision, deemed necessary in achieving our development objectives, as well as promoting responsible investments, are the designation of economic sectors or business activities for investment. These designations should help ensure foreign investment in sectors where growth is needed and discouraged where we believe that investments are saturated. This includes applying thresholds and certain entry conditions for investors to guarantee strategic economic development and growth.

4. Rights and obligations of investors; the provision stipulates that in general investors must carry out their activities in compliance with the law of Namibia. However, it also covers issues such as the engagement of foreign personnel by the investor and elaborates on the permission to engage expatriate personnel. Government’s priority of achieving the country’s development goals is herewith emphasized and it underlines the investor’s obligation to invest in human capacity development and ensuring skills transfer. This requirement should be done in conjunction with the absorption of available skills in the Namibian labour market.

5. Lastly, resolution of disputes; the provision stipulates dispute resolution mechanism that are available, to investors, of resolving any dispute or conflict between parties, including establishing an Investment Grievance Resolution Committee to provide post-investment and grievance-settlement services for investors and enterprises doing business in Namibia.

\_\_\_\_