**UNCTAD HIGH LEVEL IIA CONFERENCE 2019: ENSURING RESPONSIBLE INVESTMENT**

Thank you for according me this opportunity to address this session on ensuring responsible investment.

Though the IIA reform is well under way and involves countries at all levels of development and from all geographical region, we remain with a number of challenges under the existing old generation treaty regime. As UNCTAD reports, the stock of old-generation treaties is still 10 times larger than the number of new, reform-oriented treaties. This said, ISDS cases remain high, and in 2018, most of substantive decisions rendered by ISDS tribunals in investor–State disputes, which are in the public domain were decided in favour of the investor, either on jurisdictional grounds or on the merits.

Not only are legal and arbitration costs significant but the resulting awards can pose serious budgetary threat and challenges specifically to developing countries. Though we understand that investors are seeking those investment destinations that provide the most protective, hospitable and profitable climate for their investments, it is important to create a legal framework for investment that achieves a sensible balance between investor rights and obligations on the one hand and the Governments responsibility to operate and regulate in the public interest on the other.

However, it remains a challenge for governments to maintain the balancing act between creating attractive conditions for foreign investors, with investment policies that include features of investment liberalization, protection, promotion and facilitation, against national priorities that need to ensure that any negative social or environmental effects are minimized. Investment policy framework therefore are required to combine elements of investment promotion and regulation and that provides clear and transparent rules for the entry and operation of foreign investors, as well as provide adequate regulation to minimize any risks associated with investment.

From a regional position I would like to mention, that within the Southern Africa Development Community (SADC) group, the development of new policy guidelines for investment is ongoing. This includes the SADC Investment Policy Framework, as well as the Bilateral Investment Treaty (BIT) template, which is a set of guidelines for BIT negotiations. The BIT guidelines also include an elaborate and detailed section focussing on ensuring responsible investment. The section, referred to as “rights and obligations of investor and state parties” 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. For the purpose of this meeting I would like to highlight some of the provisions that we considered to include:

1. In our 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. The second provision in the policy, I would like to highlight is 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. I want to point out that the policy ensures absolute transparency in the matter. This includes 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, we deemed necessary in this policy aimed at 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. Lastly, we did include a specific provision referring to 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.

In conclusion, I would like to say that I think it is important from a development country’s perspective that investment policymaking should include provisions that capture responsible investment. Responsible investment should be aimed at achieving sustainable development objectives when attracting investment and include measures that ensure FDI’s contribution towards a country’s development concerns. The host country in return should endeavour to ensure a welcoming investment climate, with transparent and predictable entry conditions and procedures. However, in their efforts to improve the investment climate, countries should not compromise on accomplishing their sustainable development goals.

**I thank you**