

NATIONAL ANTHEM

Nkosi Sikelel' iAfrika

Nkosi Sikelel' iAfrika
Maluphakanyisw' uphondo lwayo.
Yizwa imithandazo yethu,
Nkosi Sikelela, thina lusapho lwayo.

Morena boloka setjhaba sa heso,
O fedise dintwa le matshwenyeho.
O se boloke, O se boloke setjhaba sa heso,
Setjhaba sa South Afrika – South Afrika.

Uit die blou van onse hemel,
Uit die diepte van ons see.
Oor ons ewige gebergtes,
Waar die kranse antwoord gee.

Sounds the call to come together,
And united we shall stand.
Let us live and strive for freedom,
In South Africa our land.

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1 | INTRODUCTION TO SOUTH AFRICA

Following its swift and peaceful transition to democracy in 1994, South Africa has become one of the most attractive investment and tourism destinations in Africa. Blessed with abundant natural resources, diverse fauna and flora, a flourishing agricultural market and excellent infrastructure, the country has developed into an accessible and thriving gateway for foreign investment in Africa.

Constitutional framework

The South African Constitution was adopted in 1996 to replace the Interim Constitution which applied during the transitional phase after South Africa's first democratic elections during April 1994. The Constitution is the supreme law of the land and regulates the functioning of the three branches of government, ie the legislature, the executive and the judiciary. It also introduced one of the most comprehensive Bills of Fundamental Rights in the world today. The Bill of Rights recognises a number of conventional civil liberties, such as rights to property, equality, privacy and freedom of speech, and also protects a number of socio-economic freedoms such as the rights of children and rights to housing and social security.

Political framework

The two largest political parties in South Africa are the African National Congress (ANC) which is the majority party, having obtained 65.9% of the votes in the 2009 election and the Democratic Alliance (DA), which is currently the official opposition.

Since the first democratic election on 27 April 1994, South Africa has successfully held subsequent fair and peaceful national and municipal elections in 1999, 2004 and 2009. At present, the political climate is characterised by a co-operative attitude amongst political parties to problem solving.

The National Assembly sits in the Parliamentary buildings in Cape Town when in session and is the centre of the country's law making and political life.

The South African Constitution makes provision for provincial and local government as well as government at national level. South Africa is divided into nine provinces and each has its own legislature and premier. Local governments consist of metropolitan councils and various types of municipal authority which are specifically empowered to oversee day-to-day aspects of government such as service delivery, healthcare and community development.

Investment prospects

Famous for its mineral wealth, South Africa continues to be a leading producer of platinum, gold, coal and uranium oxide, as well as a wide variety of other minerals. Although the mining sector played an important role in the development of the South African economy, its importance has declined in the last decade and currently accounts for about 5.5% of the GDP. The agricultural sector contributes 3.4% of the GDP and the larger industrial sector approximately 31.3% of the GDP. The contribution of financial services and business increased from about 12% to nearly 18% during the nineties and currently there is a high level of banking and commercial activity. As of 2008 the services sector accounts for approximately 65.3% of GDP. South Africa's GDP (PPP) was approximately US \$505.214 billion in 2009.

South Africa has an excellent physical and economic infrastructure with a vast road and rail network as well as sophisticated telecommunications and cellular telephone infrastructure. Large-scale investment in public transport infrastructure and telecom is continually expanding these networks. Electricity costs in South Africa are amongst the lowest in the world.

Formerly an economy rooted in agriculture and mineral production, South Africa now has a fast growing manufacturing sector and a rapidly expanding services sector.

Further reform of the economy, including tariff reform and the restructuring and privatisation of certain state assets, is likely to stimulate growth in the near future. Excellent secondary and tertiary educational facilities have ensured that South Africa is able to provide for much of its own demand for highly skilled labour. Given South Africa's vast biodiversity and amazing natural scenery, tourism remains a growth area.

Some of the advantages for foreign investors in South Africa are the following:

- sophisticated economy and financial markets;
- easy entry for non-resident investors;
- export incentives and efficient port facilities;
- a growing consumer market;
- substantial protection for intellectual property rights;
- a familiar body of commercial laws providing proper protection for investors and efficient dispute resolution mechanisms;
- abundant supply of skilled and unskilled labour;
- a developing pool of managerial and professional skills;
- good medical facilities; and
- reasonable cost of residential and commercial property.

South Africa belongs to several international organisations including the United Nations, the World Trade Organisation, the Commonwealth, the International Monetary Fund, the African Union (formerly the Organisation of African Unity), the World Bank and the Development Bank. South Africa has also implemented a comprehensive trade agreement with the European Union and has been granted a generalised system of preference status by the United States of America. South Africa is also a party to a number of regional trade agreements.

The JSE Limited ("the JSE") is the only licensed stock exchange in South Africa for listed securities. Following worldwide trends, this exchange was upgraded from an open outcry continuous auction trading floor to an automated trading facility. Full dematerialisation of share certificates and conversion to an equities electronic settlement system have been implemented, in line with global trends.

Domestic economic fundamentals have improved steadily during the nineties. The South African government's strong commitment to maintain a low inflation rate and fiscal deficit, has significantly reduced the vulnerability of the South African economy to external variables. The ongoing liberalisation of the South African financial and trade markets has exposed the domestic market to increased foreign competition and this in turn has stimulated innovation of new products, new

partnerships, joint ventures and increased growth. The government and the Reserve Bank have agreed to set an inflation target of 3 – 6% as part of a new approach to monetary policy and price stabilisation with the aim of reducing the inflation expectations of consumers, producers, employers and workers, thereby contributing to greater economic certainty, reduced risk and lower interest rates.

The South African government together with the major political parties promote foreign investment and a free market economy. As a means to achieve growth in order to foster international trade, the government is reassessing a large number of restrictive regulations. South Africa was a founding member of the General Agreement on Tariffs and Trade (“GATT”). At the conclusion of the Uruguay Round in 1994, South Africa agreed to ease its protectionist trading regime by significantly reducing its tariff barriers so as to be in line with those of industrialised countries.

Continued private sector confidence, company co-operation between labour and management, and reduced levels of political violence and crime are expected to continue to be factors which will facilitate continued sustainable economic growth.

The government’s reconstruction and development programme (RDP) and its successor GEAR (Growth, Employment and Redistribution), were integrated socio-economic policy frameworks which endeavoured to mobilise the public and private sector towards addressing historic inequalities in the distribution of resources and social goods. Government spending is likely to continue to create jobs and boost economic activity.

The Accelerated and Shared Growth Initiative for South Africa (AsgiSA) was formally launched in February 2006, and the Joint Initiative on Priority Skills Acquisition (Jipsa) was established a month later to address scarce and critical skills needed to meet AsgiSA’s objectives. AsgiSA has its origins from the commitment to half unemployment and poverty by 2014. AsgiSA aims to provide specific targets and guidelines for the public and private sectors in terms of infrastructural investment, sector specific strategies, education and skills development, macro economic issues, good governance and institutional interventions.

Social and cultural diversity

South Africa is an amazingly heterogeneous society with great racial, religious and ethnic diversity. The country has eleven official languages, although English is the main language of commerce and is used in the country’s courts.

The South African Constitution specifically protects the rights of cultural, religious and linguistic communities as well as the right to use the language and to participate in the cultural life of their choice. As a result, South Africa has developed a vibrant cosmopolitan culture with a unique fusion of indigenous and western values.

Geography and population

South Africa lies at the southern end of the African continent and is bordered by the Atlantic and Indian Oceans on the east, west and south and by Namibia, Botswana, Zimbabwe and Mozambique to the north. The total area of the country is approximately 1 233 201 square kilometres (472 156 square miles). The nine provinces of South Africa are Gauteng, Western Cape, Eastern Cape, KwaZulu-Natal, the Free State, North West, Limpopo, Mpumalanga and Northern Cape.

South Africa's capital city is Pretoria (falling within the greater metropol of Tshwane), which is the site of the Union Buildings and most government departments. Johannesburg is the main business centre, where most of the country's mining houses, banking, other corporate headquarters and the stock exchange are located. Cape Town, the seat of Parliament, has experienced rapid growth as a tourist destination and commercial base. Bloemfontein is the seat of the country's Supreme Court of Appeal.

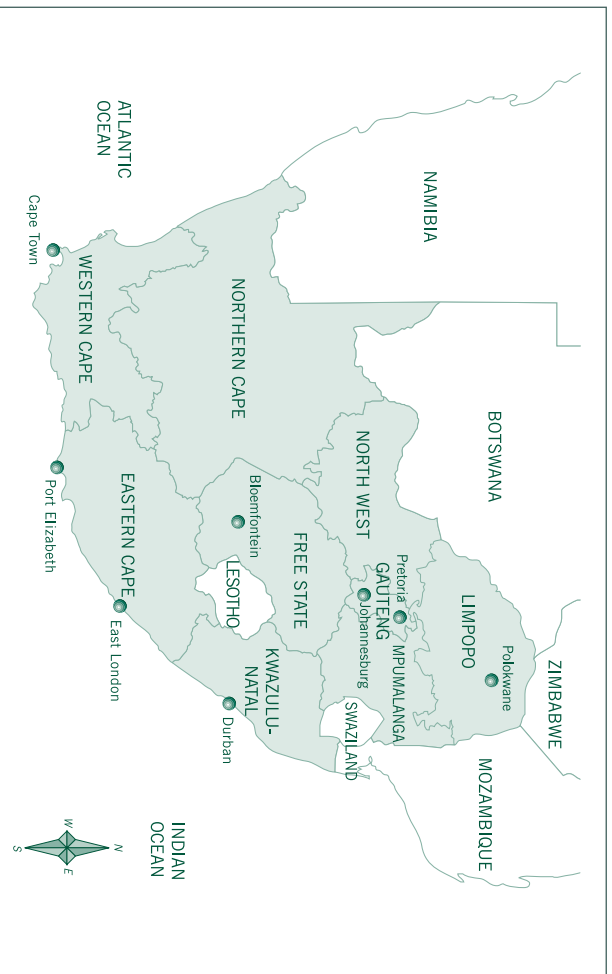
As at June 2009, South Africa's population stands at approximately 49.3 million.

Legal framework

The Constitutional Court is the highest court in all matters relating to the enforcement, application and interpretation of the Constitution. The Supreme Court of Appeal is the highest court of appeal in all other matters of criminal and civil law. The High Courts, located in the major centres in each province, are run by judges appointed by the Judicial Services Commission, an independent constitutional body. The lower courts, the Regional and District Magistrates' courts, are charged with the administration of South African law on a day-to-day basis.

South African regulatory law is largely based on Roman-Dutch law, but has also been greatly influenced by English law. This is particularly evident in the spheres of company law and the law of evidence. The South African legal profession is organised in the same way as in the United Kingdom and other Commonwealth

PROVINCES OF SOUTH AFRICA



countries, with attorneys (solicitors) practising alongside advocates (barristers). Issues such as the transformation of the legal profession to redress racial and gender imbalances, improved access to justice for ordinary South Africans and continued training and education of all legal practitioners and court staff remain high on the political agenda.

South Africa has a comprehensive and well developed body of statutes which regulate diverse aspects of modern life, ranging from commerce, international trade, taxation and company law to environmental protection. South Africa also has several specialist bodies charged with the development and administration of specific areas of law, including the Competition Commission and the Securities Regulation Panel. The South African Law Commission continually investigates specific areas of the law and makes recommendations to Parliament on legislative reform.

South Africa has enacted a number of progressive laws which contribute to a stable and thriving economy. These include statutes regulating labour relations and the basic conditions of employment of all workers, as well as a comprehensive Act regulating the country's competition policy.

In recent years, South Africa has enacted several statutes to combat organised crime and money laundering. These include the Prevention of Organised Crime Act, 1998 and the Financial Intelligence Centre Act, 2001, the latter of which is comparable with anti-money laundering measures elsewhere in the world.

To address historic inequalities in the distribution of land, the South African government passed several enabling statutes to foster the access of previously disadvantaged groups to land, and has also created an orderly and principled mechanism for the processing of land claims.

There are also a number of innovative laws which deal with issues such as security of tenure for previously dispossessed groups, such as farm workers, as well as legislation aimed at fostering racial and gender equality in employment and the prevention of discrimination in the public sphere as well as in private dealings between citizens.

2 | FOREIGN INVESTMENT IN SOUTH AFRICA

General

South Africa offers an attractive climate for foreign investors. They will discover a substantial market with significant growth potential, an economy steadily moving towards market orientation, access to other markets in Africa, well developed financial institutions and capital markets, excellent communication and transportation links, liberal repatriation of profits and other earnings, low labour costs compared to Western Industrialised countries, and the availability of electrical power and raw materials.

South Africa has the largest economy in Africa. South Africa's economy is export orientated and market driven, with highly developed banking, manufacturing, transportation, retail and industrial sectors.

South Africa's Companies Act, 1973 provides clear and transparent rules for the establishment and operation of businesses. Business organisations of more than twenty persons that operate for gain must be registered as a company under the Companies Act. Foreign investments are organised under the same rules and regulations as domestic companies, with the exception that foreign companies that choose not to form a local subsidiary in South Africa, may operate as "external companies". The new Companies Act, 2008 which has been assented to by the President and which is likely to come into force during the last quarter of 2010, will be gradually phased into operation. Its purpose is to simplify current legislation and to nurture an environment which promotes business growth.

The government's Growth, Employment and Redistribution macro-economic policy ("GEAR") is based on sound economic principles.

South Africa is often rated as one of the top investment locations in the world and is frequently ranked as one of the ten best emerging markets worldwide.

Private ownership

Private property rights, whether foreign or domestic, are equally protected by law and the same opportunities exist for both foreign and domestic private entities.

In general, all foreign and domestic private entities are entitled to own business enterprises and engage in profit-making activities. Private entities may freely establish, acquire and dispose of interests in business enterprises. The acquisition of an existing business enterprise is usually achieved through the purchase of shares or assets.

The Securities Regulation Panel (to be superseded by the Takeover Regulation Panel when the Companies Act, 2008 comes into force) regulates public limited liability companies and private companies with ten or more shareholders with capital and reserves in excess of ZAR5 000 000.00. Where a shareholding of 35% or more is acquired in such companies, a mandatory offer must be made to all minority shareholders to acquire all their shares at a price equal to the highest price paid by the investor acquiring the controlling interest.

Soon after the establishment of multi-racial democracy in 1994, the South African government announced its long-term plan for the gradual lifting of foreign exchange controls. This policy is being phased in gradually. Several leading South African companies such as Anglo America plc, Billiton plc, South African Breweries plc and Old Mutual plc have moved their primary listings offshore.

Private South Africans are allowed to invest up to ZAR4 million abroad in terms of an once-off investment allowance.

European Union trade and economic co-operation

Trade and economic co-operation between the European Union and South Africa continues to grow. The European Union is still South Africa's largest trading partner and contributes approximately 40% of South Africa's total imports and exports. The bilateral agreement on trade, development and co-operation ("TDCA") established a free trade area between the two parties since 1999. A formal development strategy was established which became known as the European Programme for Reconstruction and Development in South Africa, which achieved at 3% disbursement of the ZAR126 million committed in development in South Africa for the January – December 2003 period.

South Africa's qualified membership in the Lomé Convention, agreed in terms of the Cotonou Agreement, opens up a range of new opportunities for the private sector.

The Lomé Convention is the central vehicle for co-operation between the European Union and sub-Saharan Africa. South Africa's membership adds an important new dimension to that co-operation, particularly within the Southern African region.

South Africa's Lomé membership creates important opportunities for cooperation and integration with the ACP (African Caribbean Pacific) States. This will assist South Africa in redressing its historically isolated position, both at an international level and vis-à-vis its neighbours in the Southern African Development Community ("SADC") region.

South Africa's membership also makes the country eligible to tender for projects in all ACP countries finance from the European Development Fund ("EDF") and full participation in the institutions of the Convention.

3 | INVESTMENT INCENTIVES

Incentive schemes

The Industrial Development Corporation of South Africa Limited ("IDC") which is a state owned financial institution, offers a wide range of financial facilities to entrepreneurs engaged in the manufacturing industry in South Africa.

The Department of Trade and Industry's ("DTI") primary role is to facilitate access to sustainable economic activity and employment for all South Africans. Its key objectives are to:

- attract higher levels of domestic and foreign investment;
- increase market access to foreign investment; and
- achieve a fair, efficient and competitive marketplace for domestic and foreign businesses and consumers.

The DTI also administers various concessions, schemes and programmes to facilitate foreign investment. These include:

Foreign investment grants

These are given to overseas companies investing in new machinery and equipment to establish projects in South Africa provided foreign investors hold at least a 50% interest in the development vehicle.

Industrial Development Zones Programme (“IDZP”)

This programme is aimed at encouraging the international competitiveness of the South African based manufacturing sector. The DTI inter alia offers quality infrastructure, zero-rated VAT under specific conditions in respect of supplies procured from South African sources, expedited customs procedures and duty-free operating environments in designated industrial zones. These benefits are available to all industries.

Motor Industry Development Programme (“MIDP”)

The MIDP enables local vehicle and component manufacturers to increase production runs and encourages the rationalisation of the number of models manufactured by way of export and complementing imports of vehicles and components. It is administered by the DTI and is available to motor vehicle assembler and component manufacturers and exporters.

Tax incentives

The Income Tax Act, 1962 provides tax relief to investors in various forms. These benefits include:

- capital allowance write-offs at 20% per annum over five years on a straight-line basis in respect of machinery and equipment used for the first time in a manufacturing or similar process;
- depreciation allowances in respect of the cost of plant and machinery, implements, utensils and other articles used for the purpose of trade, calculated according to the declining balance method;
- wear and tear allowances for machinery and equipment which do not qualify for the 20% capital allowance at rates agreed to with the tax authorities;
- building allowances in the form of 5% depreciation allowances annually on the cost of buildings (and other improvements) where the building is used in the manufacturing or similar process, commencing after 1 January 1989;

- lease premiums used for the payment of land or buildings, plant and machinery, etc may be written off over periods linked to the right of use of the land, buildings or equipment concerned; and
- housing benefits granted to employees may qualify for special deductions and allowances based on the cost of erecting the dwellings.

Exchange control

The Exchange Control Regulations, initially introduced in 1961 in terms of the Currency and Exchanges Act, 1933, are intended to prevent or neutralise any adverse fluctuations in South Africa's foreign exchange rate and in its foreign reserves.

The 1961 regulations are not exhaustive and a considerable body of practice and policy has been developed over the years. The South African Reserve Bank will consider applications with a fair degree of flexibility and with due regard to factors such as strategic importance, the effect on industry, whether investment will result in import substitution or export promotion, the acquisition of know-how and technology and the strength of the country's gold and foreign reserves at the time of the application.

The two-tier currency system of the financial Rand and the commercial Rand was abolished from 13 March 1995 and the country currently operates with a free floating unitary currency system. The South African Rand (ZAR) is the local currency.

Inward investment

There has been a significant relaxation of exchange control restrictions on non-residents. The basic position is that non-residents may freely invest in or disinvest from the country and may remit all income from their South African investments, subject to certain restrictions. Prior exchange control approval is required for a resident to raise foreign loans, although such permission will generally be granted.

Verification of value of transferred assets

Where unlisted shares, fixed property, a business or other major assets are transferred between a resident and a non-resident, the value of the assets transferred must be valued by a commercial bank.

Local borrowing restrictions

Exchange control permission is required for the granting of local financial assistance to non-residents or to entities in respect of which 75% or more of the shares or voting rights are held by non-residents.

Non-resident wholly-owned subsidiaries may borrow locally up to 100% of total shareholders' investments, in respect of financial transactions and/or acquisitions of residential property which is taken to include paid-up equity capital, preference shares, undistributed profits and shareholders' loans from abroad. This is commonly known as the company's "borrowing base" or "effective capital".

Where there is local participation in such non-resident controlled entities, the greater the local participation, the greater the amount which may be borrowed locally. The formula for calculating the "local financial assistance ratio" is:

$$100\% + \frac{\% \text{ South African interest}}{\% \text{ Non-resident interest}} \times \frac{100\%}{1}$$

Repatriation of capital and earnings

Dividends

A dividend declared out of income to a non-resident shareholder is remittable. Authorised dealers may transfer dividends declared by entities in respect of which 75% or more of the shares or voting rights are held by non-residents and who have local financial assistance at their disposal without prior reference to exchange control, provided that the relevant distribution will not cause the entity to be placed in an over-borrowed position in terms of the formula requirements set out above.

Royalties arising from copyrights, designs, patents, trademarks, etc

Authorised dealers may approve applications by residents to make such royalty payments provided that agreements in terms of which provision is made for down-payments, minimum payments or once-off payments must be referred to the exchange control for specific approval. Once this is done, and provided the authorised dealer is satisfied that the payments fall within the terms of the relevant agreement, and that the application is accompanied by an auditor's statement showing that the amount due has been correctly calculated, the authorised dealer may approve the payment without further recourse to exchange control.

4 | CHOOSING A BUSINESS VEHICLE

There are six main business vehicles available to foreign investors, namely:

- limited liability companies;
- registration as external companies (branch offices);
- close corporations;
- partnerships;
- business trusts; and
- sole proprietorships.

Limited liability companies

Generally speaking, a limited liability company offers the most suitable investment vehicle. The Companies Act, 1973 deals with the formation, conduct and winding up of companies, whether private or public. The main differences between private and public companies include:

- the right to transfer shares in a private company must be restricted by its Articles of Association;
- the number of shareholders of a private company is restricted to a minimum of one and a maximum of fifty, as opposed to a minimum of seven shareholders in the case of a public company (with the exception that a public company may be the wholly-owned subsidiary of another company). The Companies Act does not provide for a maximum number of shareholders in a public company; and
- public companies may raise funds from the general public, be listed on any recognised stock exchange and are subject to more rigorous reporting requirements than private companies (eg the filing of audited annual financial statements and half-yearly interim reports with the Registrar of Companies).
- the Companies Act, 2008, will provide for “profit companies” (public and private companies, personal liability companies and state-owned companies) and “non-profit companies”.

Other considerations include:

- Transactions resulting in the change of control in a listed or other sizeable company (control is currently defined as the holding of such number of shares as entitles the holder thereof to exercise 35% of the voting rights attaching to the shares in the issued share capital of a company), are subject to the Securities Regulation Code on Takeovers and Mergers and the Rules of the Securities Regulation Panel (to be replaced by the Takeover Regulation Panel when the Companies Act, 2008 comes into force).
- The Listings Requirements of the JSE prescribe a minimum capitalisation for public companies intending to list its shares on that Exchange. The main disadvantage of a limited liability company is its tax position as opposed to a branch office. On the other hand, it indicates a stronger commitment to the country, which adds to the investor's trading status and enables it to participate in joint ventures.

Branch offices

Foreign companies which do not wish to incorporate a subsidiary in South Africa may register as external companies (to be known as "foreign companies" once the Companies Act, 2008 comes into force) in South Africa. The commercial result of such registration is that a foreign company acquires a branch office in South Africa, and no additional separate legal entity is created thereby. Branch profits may be remitted free of withholding taxes but the parent company's assets are at risk if debts are not paid.

To establish a branch office in South Africa, the foreign company must register as an external company within twenty one days of establishing a place of business in South Africa. External companies are required to comply with sections 322 to 336 of the Companies Act, inter alia, requiring submission of statutory returns and filing of financial statements. The foreign company must appoint an auditor and a local resident person to accept service of processes and notices on behalf of an external company.

Close corporations

The Close Corporations Act, 1984, introduced a simple and inexpensive form of corporate entity, aimed essentially at the informal sector. The close corporation, like the company, allows for separate legal personality, limited liability and

perpetual succession, but limits participation to not more than ten natural persons. It is unlikely to be of interest to foreign investors. The Companies Act, 2008, creates a procedure which will allow close corporations to convert to private companies.

Business trusts

Business trusts are sometimes used as business vehicles. Since tax benefits for trusts have been eliminated, business trusts are unlikely to be used by foreign investors except in very limited circumstances (such as property syndicates).

Partnerships

Partnerships are frequently used as a vehicle for joint ventures between two corporate entities. The main disadvantage of a partnership is the joint and several liability which the partners incur for the partnership's debts.

Under South African law a partnership is not a legal person distinct from the persons comprising the partnership. The partnership may not consist of more than twenty persons unless it is of a professional nature.

Sole proprietorships

These are one person enterprises which, like a partnership, do not possess legal personality distinct from the sole proprietor, and his/her personal estate is not protected against sequestration in insolvent circumstances. No auditing or public disclosure requirements are laid down.

Miscellaneous

- A business enterprise may also be conducted through the granting of licences to South African corporate entities, appointment of distributors, agents and the appointment of franchisees.
- Where foreign investment takes the form of an acquisition of a controlling interest in the shares, assets or business of a South African company, it will, if certain thresholds are met, be necessary to obtain the approval of the Competition Commission in terms of the Competition Act (see below).
- The specific circumstances of each acquisition will determine which regulatory approvals are required in respect of the transaction.

5 | EMPOWERMENT

The Broad-Based Black Economic Empowerment Act

The Broad-Based Black Economic Empowerment Act, 2003, came into operation on 21 April 2004 (“BBBEE Act”).

The BBBEE Act aims to establish a legislative framework for the promotion of black economic empowerment; to empower the Minister of Trade and Industry (“the Minister”) to issue codes of good practice and to publish transformation charters.

The BBBEE Act defines “*broad-based black economic empowerment*” as the economic empowerment of all black people (defined as Africans, Coloured and Indians) including women, workers, youth, people with disabilities and people living in rural areas, through diverse but integrated socio-economic strategies that include, but are not limited to:

- increasing the number of black people that manage, own and control enterprise and productive assets;
- a skills development process;
- achieving equitable representation in all occupation categories and levels in the workforce; and
- preferential procurement.

The Minister is also charged with issuing codes of good practice on black economic empowerment, empowerment that may include formulating guidelines for stakeholders in the relevant sectors of the economy to draw up transformation charters for their sector.

The National Empowerment Fund

The National Empowerment Fund is aimed at redressing economic inequality suffered by “historically disadvantaged persons” by providing such persons, *inter alia*, with the opportunity of directly or indirectly acquiring shares in state-owned commercial enterprises that are being restructured or in private business enterprises.

Codes of Good Practice

During December 2004, the Government issued draft codes of good practice in an attempt to co-ordinate the various charter initiatives and to ensure

the harmonisation of the targets in the various charters. It also recommends the constitution of charter councils as well as their powers and function and sets out the principal elements that should be covered in sector scorecards. In addition it recommends that companies should, amongst other things, aim to achieve the following targets:

- BEE equity ownership levels of 25.1%;
- black management – 40%;
- procurement from BEE compliant entities – 50%; and
- employment equity – 50%.

The Codes of Good Practice revolve around scorecards, which measure BEE compliance by reference to specific “elements”. The BEE compliance level is used primarily to rank enterprises for the purpose of allocating contracts by the state, governmental and local governmental institutions. The elements against which compliance is measured are:

- *ownership*, which measures participation in profits, voting rights of shareholders at an AGM and the value of shares which a black shareholder holds, against debt attributable to the purchase of those shares;
- *management control*, measuring participation in the control of the enterprise at broad and top management level;
- *employment equity*, measuring employment equity in the workplace;
- *skills development*, covering initiatives to develop the competencies of black people;
- *preferential procurement*, addressing the extent to which an enterprise favours other enterprises with respectable BEE compliance levels when procuring goods or services;
- *enterprise development*, which is devoted to initiatives to facilitate the commercial development of BEE enterprises; and
- *social-economic development and sector specific contributions*, which appraise the extent to which an enterprise contributes to initiatives which promote access to the economy by black people.

6 | AGENCY, LICENSING AND FRANCHISING

There are a number of alternative options available to foreign investors who do not wish to establish a local subsidiary or branch office in South Africa. These may range from selling direct to South African importers, using a representative or agent, selling through a distributor or wholesaler, a licensing agreement or the formation of a joint venture with a South African partner. Each of these options represents an increasing level of commitment to the South African market.

Agencies

The use of agents or representatives is not governed by any specific laws but by South African common law and the contractual rights and obligations agreed to. Although foreigners are free to conclude representation, agency, distribution and franchising agreements with local residents, it is necessary to obtain South African legal advice in regard to the conclusion of such agreements. The necessity of obtaining legal advice is particularly evident in the light of the international repercussions of income tax and value-added tax legislation. The Competition Act may affect the popularity of agency agreements, although no specific regulations exist at the moment.

Distributors and wholesalers

Distributors import goods for their own account and normally acquire exclusive rights to a particular territory. They typically offer warehousing and distributor services. The legal relationship between a foreign exporter and South African importer is normally contained in a detailed written agreement.

Licensing and franchising

The manufacture of goods under licence in South Africa with overseas know-how or technology involves the selection of a South African licensee.

Information technology and related fields within the sphere of intellectual property will continue to exert exponential influence over licensing transactions as long as technology and particularly the internet continue to progress.

International treaties governing concurrent international applications for patents will also make its influence felt here.

Royalties payable to foreign licensors are subject to South African exchange control regulations and are subject to a withholding tax of 12% in the absence of specific provisions to the contrary in the relevant Double Tax Agreement. A detailed application to the Department of Trade and Industry for approval of the proposed level of licence fees or royalties is necessary.

Local manufacture is suitable where costs can be reduced as a result of the use of local facilities.

Franchising agreements may be affected by the Competition Act, 1998.

Joint ventures

A joint venture is not a legal entity in its own right. The phrase is used as a generic term to describe any arrangement under which two or more participants, whether companies or individuals, agree to co-operate in carrying out a particular enterprise. Typically, a joint venture is a partnership relationship (see "Choosing a business vehicle" for the advantages and disadvantages of a partnership).

The Competition Act, 1998, does not deal with joint ventures expressly and clarification as to its applicability is expected in the near future.

7 | BANKING AND FINANCE

Banking system

South Africa has a well developed financial system which is controlled by legislation and by state agencies working through the South African Reserve Bank, our central bank.

Commercial banks in South Africa operate through a widely spread network of branches all over the country. Most South African banks have strong direct links with banks overseas and some of them are controlled by overseas banking companies. The Banks Act requires ministerial approval for certain levels of ownership. Commercial bank overdrafts are the most common type of short-term loan used in South Africa. Security against the facility is normally required and

overseas parent companies may be requested to provide guarantees or suretyships for loans negotiated by local subsidiaries.

South African investment banks offer a host of facilities including the acceptance of call and short-term deposits, corporate finance advice, treasury departments which engage in the purchase and sale of bills and bonds, foreign exchange dealing, structured finance, international services and public sector finance.

Capital markets

The main institutions involved in the primary capital market as issuers of securities are the Treasury, public corporations (eg Eskom and the Rand Water Board), public utilities (eg Transnet), local authorities and large companies.

The JSE Limited

The JSE is the most important and popular secondary capital market for shares, negotiable documents and debt instruments. It operates within the legal framework of the Security Services Act, 2004. The current requirements for a listing on the Main Board of the JSE are:

- a subscribed capital (excluding revaluation of assets) of at least ZAR25 million in the form of not less than 25 million equity shares in issue;
- a satisfactory audited profit history for the preceding three financial years with a current audited profit level of at least ZAR8 million before taxation;
- 20% of each class of equity shares must be held by the public; and
- the number of public shareholders must be at least:
 - 300 for equity shares;
 - 50 for preference shares; and
 - 25 for debentures.

It is also possible for new entrants in the equities market to obtain a listing on AltX, the JSE's alternative exchange. The table below compares the listings criteria for a JSE Main Board and an AltX listing:

Listing Requirements	Main Board	AltX
Share capital	ZAR25 million	ZAR2 million
Profit history	3 Years	None
Pre-tax profit	ZAR8 million	N/A
Shareholder spread	20%	10%
Number of shareholders	300	100
Sponsor/DA	Sponsor	Designated Adviser
Publication in the press	Compulsory	Voluntary
Number of transaction categories	2	2
Special requirements	N/A	Appoint Financial Directors
Annual listing fee	0.04% of average market capitalisation with a minimum of R28 800 and a maximum of R146 200 (including VAT)	ZAR22 000 (including VAT)
Education requirements	N/A	All directors to attend Directors Induction Programme

Financial markets

The development of exchange traded derivatives started in the 1980's. SAFEX (the South African Futures Exchange, as it was known at the time) was established in September 1988 and today forms part of the SAFEX Equity Derivatives Division of the JSE Limited. It offers trading in a wide variety of products ranging from equity index futures to international derivatives and single stock futures.

In May 2001, SAFEX and the JSE Limited agreed to a buyout of SAFEX by the JSE. The JSE retained the SAFEX branding and moved the agricultural products division into a separate division known as SAFEX Agricultural Products of the JSE Limited. It provides the South African agricultural industry with a cost effective trading system where price risk can be managed optimally.

The Bond Exchange of South Africa Limited (BESA) merged with the JSE Limited on 22 June 2009 when it became a wholly-owned subsidiary of the JSE Limited. Yield-X, the JSE's interest rate market and the former BESA are currently being integrated into the JSE's Interest Rate Division in order to grow both spot and derivative interest rate markets.

Insider trading

Insider trading is regulated in terms of the Securities Services Act, 2004, which is administered by the Financial Services Board. Any person convicted of directly or indirectly dealing in securities or financial instruments for his/her own account whilst he knows he has inside information, or encouraging another person to do so or disclosing such information to another person, is liable to a fine not exceeding ZAR50 million or ten years' imprisonment, or both. Civil liability may also attach to a person guilty of insider trading to the extent that such person profited from the dealings or avoided a loss, and a further penalty for compensatory and punitive purposes not exceeding three times the amount of the profit gained or loss avoided as a result of the dealings may be imposed.

8 | TAX CONSIDERATIONS

South Africa is not a low tax jurisdiction by international standards. The principal taxes payable in South Africa are normal (i.e. income) tax, value-added tax, skills development levies, securities transfer tax, donations tax, estate duty, customs and excise duties and capital gains tax (since 1 October 2001).

Tax rates – companies

Normal tax

As from any year of assessment ending during the twelve-month period ending 31 March 2008

28%

STC (secondary tax on companies)

On dividends declared on or after 1 October 2007	10%
Distributions after 14 March 1996 to 30 September 2007	12.5%

[Note: STC does not apply to branches. However, branches (companies which have their place of effective management outside South Africa and carry on trade through a branch or agency within the Republic) are subject to normal tax at a higher rate than companies for the years of assessment ending on or after 31 March 2008 33%]

Tax rates – Individuals for the year ended 28 February 2010

Taxable income	Rates of tax
ZAR0 – ZAR132 000	ZAR + 18% of each ZAR1
ZAR132 001 – ZAR210 000	ZAR23 760 + 25% of the amount over ZAR132 000
ZAR210 001 – ZAR290 000	ZAR43 260 + 30% of the amount over ZAR210 000
ZAR290 001 – ZAR410 000	ZAR67 260 + 35% of the amount over ZAR290 000
ZAR410 001 – ZAR525 000	ZAR109 260 + 38% of the amount over ZAR410 000
ZAR525 001 – and above	ZAR152 960 + 40% of the amount over ZAR525 000

Thresholds and rebates	Under 65	Over 65
Tax thresholds	ZAR54 200	ZAR84 200
Tax rebates	ZAR9 756	ZAR5 400
Interest and exemption rebate	ZAR21 000	ZAR30 000

Provisional tax

Companies, close corporations and individual provisional taxpayers are required to remit two provisional tax payments a year. A third voluntary (top-up) payment may be required.

First payment

- One half of the total tax in respect of the estimated taxable income for the year is payable six months before the financial year-end.

Second payment

- The balance of tax is due and payable on or before the last day of the financial year-end in respect of the estimated taxable income for the year.
- For purposes of the second payment, the estimate may not be less than 80% of the taxable income as finally determined or the taxable income reflected on the latest assessment.
- If the above requirement is not met, a penalty of 20% of the provisional tax underpaid, may be imposed.
- Late payment of these provisional payments invokes a 10% penalty on the amount paid late and interest at the prescribed rate.

Third payment

- A third provisional tax payment is required to avoid interest being charged on the balance of the tax due for the year.
- The date for the third provisional payment for taxpayers with February year-ends is 30 September, otherwise it is six months after year-end.
- Third provisional payments are only applicable to individuals and trusts with taxable income in excess of ZAR50 000 and companies and close corporations with taxable income in excess of ZAR20 000.

Threshold

- At present, individual taxpayers below the age of 65 that earn taxable income of more than ZAR10 000 a year, which is not remuneration as defined, must register as provisional taxpayers. Natural persons over the age of 65, whose taxable income is less than ZAR120 000, who do not carry on business are exempt from provisional tax.

Tax rates – Trusts for year ended 28 February 2003 – 2010

Special trusts	same rate as individuals
Trust other than special trusts	40%
No primary rebate or interest exemption	

Losses

Losses of a trust are no longer allowed to be distributed to beneficiaries. The beneficiaries of trusts are entitled to set off deductions and allowances only against income received or accrued from the trust during the relevant tax year. If the deduction exceeds the income, the deficit may be retained in the trust and be carried forward to the next year as an assessed loss. This applies to new trusts created from 11 March 1998 and to existing trusts from years of assessment commencing on or after 1 January 1999.

Taxation of non-residents

Interest

Interest received on or after 3 June 1992 by a person who is ordinarily resident outside South Africa, or a company which is managed and controlled outside South Africa, is exempt from normal tax.

This exemption does not apply to a company if, on or after 1 April 1996, it carries on business in the Republic, and the interest is effectively connected with that business. This exemption is also not applicable to a natural person who was at any time ordinarily resident in South Africa, if such person has been carrying on a business in South Africa during the year of assessment.

In respect of interest received or accrued on or after 1 April 1995, the individual must in addition be physically absent from South Africa for at least 183 days in aggregate during the year of assessment.

Dividends

All South African dividends are exempt from tax. This includes interim dividends, the payment of which has been approved in terms of the appropriate authority.

Royalties

Royalties paid to a non-resident are subject to a withholding tax at a rate of 12%. This may be overridden by a Double Tax Agreement.

Agreements for the payment of royalties in respect of patents, trade marks, copyright, designs, know-how and the like require the approval of the Department of Trade and Industry and the South African Reserve Bank (Exchange Control).

Estate Duty

Assets located in South Africa will be subject to estate duty, save for Double Tax Agreements.

Sale of immovable property

Non-residents are subject to capital gains tax on the disposal of immovable property or the asset of a permanent establishment, branch or agency through which a trade is carried on situated in South Africa. The purchaser of the property is required to withhold the following amounts from the price paid on the sale of immovable property unless a directive is provided by the seller:

5%	where the seller is a natural person
7.5%	where the seller is a company
10%	where the seller is a trust

Residence-Based Taxation

From 1 January 2001, South Africa replaced its source-based income tax system with a residence-based income tax. South African residents are taxed on their worldwide income. Appropriate measures are in place to avoid potential double taxation on income received or accrued outside South Africa. These are complemented by South Africa's extensive network of agreements for the avoidance of double taxation.

Tax on Capital Gains

Normal tax on capital gains was introduced with effect from 1 October 2001.

- Residents are subject to the tax on the disposal of their assets held worldwide, while non-residents are taxed on the disposal of certain assets in South Africa.
- "Assets" include property of whatever nature, whether movable or immovable, corporeal or incorporeal.

- Gains accruing after 1 October 2001 are subject to tax, which is levied on a realisation basis, upon disposal of the asset and death. Emigration and donation of an asset are deemed to be disposals.
- An annual exclusion of ZAR17 500 applies to both gains and losses during a person's lifetime, whilst ZAR120 000 applies in the year that a person dies.

Excluded assets

Assets which are not taken into account in computing capital gains tax include:

- primary residence held by a natural person where the gross proceeds do not exceed ZAR2 million
- most personal use assets excluding gold or platinum coins, immovable property, aircraft exceeding 450 kg, boat exceeding 10 metres in length, financial instrument, usufructuary or fiduciary interest which decreases over time
- lump sum benefits from pension, provident or retirement annuity funds
- long term assurance paid to original beneficiary, spouse, dependent or deceased estate
- disposal of small business (where assets do not exceed ZAR5 million) up to ZAR750 000 due to ill health or reaching the age of 55, subject to some conditions
- compensation for personal injury, illness or defamation
- gains from gambling, competitions or games by natural persons
- gains or losses made by public benefit organisations (PBO's)
- gains or losses made by unit trust funds
- donations or bequests to PBO's

Rollover relief is provided for assets in certain circumstances, e.g. certain transfers between spouse or involuntary disposals.

Capital gains are taxed with other income, with a portion of the net capital gain being included in taxable income, depending on the nature of the taxpayer, as set out below.

Effective capital gains tax rates

Taxpayer	Inclusion rate (%)	Tax rate (%)	Effective rate (%)
Natural person	25	0 – 40	0 – 10
Special Trust	25	0 – 40	0 – 10
Other Trusts	50	40	20
Companies	50	28	14
Branch of Foreign Company	50	33	16.5
Small business corporation	50	0 – 28	0 – 14
Personal service provider companies	50	33	16.5

Value-Added Tax

VAT is levied at 14% on taxable supplies of goods and services.

The VAT system comprises three types of supply:

- *Standard-rated supplies* – supplies of goods and services subject to the VAT rate in force at the time of supply.
- *Exempt supplies* – supplies of certain services not subject to VAT. Vendors making exempt supplies are not entitled to input tax credits.
- *Zero-rated supplies* – supplies of certain goods or services subject to VAT at zero percent such as certain specific foodstuffs.

Registration requirements

A vendor is required to register for VAT when its turnover in a twelve-month period is likely to exceed ZAR1 000 000. Where turnover is less than this, but exceeds ZAR50 000 in a twelve-month period, a vendor can register voluntarily (with effect from 1 March 2010).

Normally a vendor accounts for VAT on an invoice basis. However, a vendor who is a natural person, whose turnover in a twelve-month period is likely to be less than ZAR2.5 million, can apply to be placed on a payment basis if the vendor is a natural person or an unincorporated body of person whose members are natural persons. Any vendor who accounts for VAT on the payment basis and makes a supply for a consideration of ZAR100 000 or more, must account for VAT on the invoice basis in respect of that supply.

Skills Development Levy

The Skills Development Levies Act, 1999 seeks to restructure the existing training system and to upgrade the level of skills and access to skills by workers. Employers with a payroll in excess of ZAR500 000 are required to register and pay the 1% levy on the total remuneration used to compute employees' tax.

Patent/Trade Mark Deduction

Section 11(gA) of the Income Tax Act allows the deduction of expenditure on patents, copyright, trade marks, designs and other property of a similar nature, or any knowledge connected with these assets.

Expenditure not exceeding ZAR5 000 is deductible in full in the year in which it is incurred.

Securities Transfer Tax and Transfer Duty

Transfer duty on immovable property

(Purchased after 1 March 2006)

Transfer duty: if immovable property is purchased by natural persons

- on the first ZAR500 000 of purchase consideration (see notes) 0%
- from ZAR500 001 to ZAR1 000 000 5%
- over ZAR1 000 000 8%

Transfer duty: if immovable property is purchased by companies, close corporations or trust

- flat rate on full purchase consideration 8%

The transfer of shares in a residential property company is subject to transfer duty as above. The residential property company owns a dwelling house, holiday home, land zoned for residential use, other than apartment complexes and where the fair value of the property is more than 50% of the total fair value of all other assets (other than financial instruments).

Stamp duty on securities

The Stamp Duties Act, 1968, was repealed with effect from 1 April 2009. Securities transfer tax at 0.25% of the consideration is payable in connection with the transfer of listed securities.

Notes:

- No transfer duty will be chargeable if the transaction is subject to VAT (at the standard or zero rates).
- Where a registered vendor purchases immovable property from a non-vendor, the VAT notional input tax credit is limited to the quantum of transfer duty payable. A notional input tax credit is only claimable to the extent to which the purchase price has been paid.
- Certain exemptions apply as a result of the unbundling of corporate structures.

Donations Tax and Estate Duty

The transfer of an asset by way of a donation or to a deceased estate will constitute a realisation event and capital gains tax will be payable on any accrued capital gain.

Donations tax

Donations tax is currently levied at a rate of 20% on the value of any property disposed of gratuitously on or after 14 March 1996 by a South African resident or domestic company, excluding donations exempt from the tax. The tax is payable within three months of the donation taking effect.

Exemptions

- Donations by natural persons up to ZAR100 000 per annum.
- Donations between husband and wife, i.e. spouse not separated from the donor.
- Casual gifts by donors, other than natural persons, up to ZAR10 000 per annum.
- Bona fide maintenance payments.
- Donations to charitable, approved scientific, education or ecclesiastical institutions.
- Donation of the right to use property (other than fiduciary, usufructuary or other like interest) used for farming purposes, for no consideration (or inadequate consideration), if the donee is the child or the donor.
- Donations made by or for benefit of traditional councils, traditional community or tribe.
- Donations or ownership relating to immovable property which entitles the donee to any grant or service in terms of the Land Reform Programme, as contemplated in the White Paper on South African Land Policy, 1997.

- Donations where the donee will not benefit until the death of the donor.
- Donations made by companies which are recognised as public companies for tax purposes.
- Donations cancelled within six months of their effective date.
- Property disposed of under and in pursuance of any trust.
- Donations of property or a right in property situated outside the RSA if acquired by the donor:
 - before becoming ordinarily resident in the RSA for the first time; or
 - by inheritance or donation from a non-resident.

Estate Duty

Estate duty is levied at 20% on the dutiable amount of the estate after taking into account the abatement of R3.5 million.

9 | INTELLECTUAL PROPERTY

South Africa has a highly developed system of intellectual property law, which covers copyright, trade marks, designs and patents. South Africa is also a signatory to most of the international conventions, including the Paris Convention for the Protection of Intellectual Property and the Berne Convention.

Copyright

South African copyright is governed by the Copyright Act, 1978, as amended, and has its origins in UK copyright legislation. Copyright is protected in literary, musical and artistic works, cinematograph films, sound recordings, computer software, broadcasts, programme carrying signals and published editions.

Copyright arises automatically upon the creation of the work and endures for a period of fifty years from the date of publication or broadcast or in the event that the work was not published or broadcast before the death of the author thereof, for a period of 50 years from the end of the year in which the author dies. No system of registration is required, although copyright can be registered in respect of cinematograph films.

Copyright generally vests in the author of the work, with certain exceptions. Copyright in a work created by an employee during the course and scope of his employment will vest in his employer and a person who commissions the taking of a photograph, the making of a sound recording, the producing of a film or painting or drawing of a portrait, will generally own copyright in the commissioned work.

Trade marks

Trade marks are protected by the Trade Marks Act, 1993 ("the Trade Marks Act"). In terms of the Trade Marks Act, the definition of trade mark in South Africa was widened considerably from previous definitions, and now includes everything which can be represented graphically and which distinguishes one product from another. Business names and trading styles can also be registered as trade marks in terms of the Trade Marks Act. A central registry for trade marks in South Africa is located in Pretoria.

Trade marks can be registered for an initial period of ten years and may thereafter be renewed for additional ten-year periods, subject to the payment of the prescribed fee. A trade mark need not be in actual use at the date of the application, provided the applicant has a bona fide intention to use the trade mark in relation to those goods or services in respect of which an application for registration is filed.

In terms of the Trade Marks Act, if a registered trade mark is licensed to another party, the licence agreement in terms of which such trade mark is licensed, will be considered sufficient proof that the licensee is entitled to use such trade mark, and the licensee does not have to be registered as a registered user of such trade mark.

Designs

Designs enjoy protection under the Designs Act, 1993 ("the Designs Act"). The purpose of the Designs Act is to protect the outward appearance or form of an article. The Designs Act protects both aesthetic designs (the appearance or visual appeal of an article) and functional designs (the actual function of an article). A register of designs is kept, consisting of Part A with regard to aesthetic designs and Part F with regard to functional designs. A design which is both aesthetic and functional can be registered in both parts.

To be registered, a design must be new or novel in relation to the article in question, and in the case of functional designs, it must not be commonplace.

An application for registration of a design (other than integrated circuit typography, a mask work or series of mask works) must be made within six months of the release date of a design to the general public. A registered aesthetic design is protected for fifteen years, and a registered functional design is protected for ten years. Registration may be extended, subject to the payment of the prescribed fee.

Patents

Patents and inventions are regulated by the Patents Act, 1978 ("the Patents Act"). They are administered by the Registrar of Patents, who is based in Pretoria.

A patent can be granted in respect of any new invention involving an inventive step. The invention must be new throughout the world and must not have been made available to the public.

The Patents Act provides for both provisional and complete applications. A provisional patent application can be filed if the invention in question is still under development, although a complete application must be filed within one year thereafter. The registration procedure takes approximately eighteen months and the Registrar does not examine or satisfy himself as to the novelty of the patent. Any person may therefore apply to have a patent revoked, if he can prove that the patent is invalid.

Patents endure for a period of twenty years from date of application.

South Africa is a signatory to the International Patent Convention. Patent rights granted in South Africa are, however, only effective in South Africa.

10 | EMPLOYMENT LAW

Labour Relations Act

The area of labour and employment law has undergone substantive legislative changes in the last number of years. The most important of these is the Labour Relations Act, 1995 ("the LRA"). The LRA established the Commission for Conciliation, Mediation and Arbitration ("the CCMA"), as well as the Labour Court. Provision was also made for the establishment of a new Labour Appeal Court.

The LRA recognises the importance of bargaining between employers and trade unions, and consequently grants priority to the principle of collective bargaining.

Collective bargaining is the preferred means of resolving disputes of interest (most notably wages and conditions of service). In the absence of agreement, strike action may be resorted to.

In the event of a trade union resorting to strike action, previous procedures relating to ballots are no longer required. What is required is that the true dispute, accurately identified, be referred to the CCMA for conciliation. In the event that the conciliation is unsuccessful, alternatively after the expiry of thirty days from date of referral, a trade union may give notice of its intention to strike. Such notice must specify the time and date that the strike will commence, which must be at least forty eight hours after the expiry of the above period.

The LRA also provides guidelines as to the manner in which disputes of rights are regulated. Procedures regulating the termination of employment on the basis of operational requirements, namely retrenchment, have been codified. Disputes that may arise therefrom, as well as disputes that may arise from strike dismissals, are referred to the Labour Court for adjudication.

Disputes regarding terminations on the basis of conduct or capacity are referred to the CCMA. A two-stage process is adopted, the first consisting of conciliation in order to afford the parties an opportunity of resolving the dispute, failing which adjudication via arbitration is enforced. An arbitration award is subject to the power of review by the Labour Court.

If the Labour Court, or the CCMA, finds that a dismissal was unfair, the adjudicator may award retrospective reinstatement, re-employment, or compensation.

Basic Conditions of Employment Act

The Basic Conditions of Employment Act, 1997 ("the BCEA") regulates the maximum hours of work, leave entitlements and minimum protection afforded to employees. The BCEA provides for exemption from the minimum standards imposed by the basic conditions, upon a substantive application being made to the Department of Labour.

Employment Equity Act

The Employment Equity Act, 1998 ("the EEA") promotes equal opportunity and fair treatment in employment through the elimination of unfair discrimination

and promotes affirmative action measures to reduce the disadvantages in employment experienced by designated groups.

Promotion of Access to Information Act

The Promotion of Access to Information Act, 2000 places an obligation upon public and private bodies to make disclosure of information, as reasonably required for the protection of rights.

11 | COMPETITION LAW

The Competition Act, 1998 ("the Act"), which came into effect on 1 September 1999, has as its purpose the promotion and maintenance of competition in South Africa. The Act establishes a number of administrative structures to regulate and adjudicate on matters set out in the Act, namely:

- the Competition Commission ("the Commission");
- the Competition Tribunal ("the Tribunal"); and
- the Competition Appeal Court ("the Appeal Court").

In addition to the Act, the Commission Rules and the Tribunal Rules regulate the functions of the Commission and the Tribunal. The most recent version of these rules was published and came into effect on 1 February 2001.

Prohibited practices

The Act prohibits certain restrictive practices, including:

(i) agreements between parties in a *horizontal relationship* which:

- have the effect of substantially preventing or lessening competition, (unless a firm can prove that the practice has technological, efficiency or other pro-competitive gains which outweigh its anti-competitive effects); or
- involve:
 - price fixing;
 - division of markets by the allocation of customers, supplies, territories or specific goods or services; or
 - collusive tendering; and

- (ii) agreements between parties in a *vertical relationship* if it involves minimum resale price maintenance or if it has the effect of substantially preventing or lessening competition in a market, unless the parties to the agreement can prove that technological, efficiency or other pro-competitive gains resulting from such agreement outweigh the anti-competitive effects.

The restricted horizontal practices do not apply to agreements or practices between a company and its subsidiaries.

The Act prohibits the abuse by a firm of a dominant position in the market. This applies to firms of which the annual turnover or assets in South Africa are valued at or above ZAR5 million.

A firm is regarded as *dominant* in the market if it has:

- at least 45% of that market; or
- at least 35%, unless it can show that it does not have market power; or
- less than 35%, but has market power.

Market power is defined as the power of a firm to control prices, to exclude competition or to behave independently of its competitors, customers or suppliers.

A dominant firm is prohibited from:

- charging excessive prices;
- refusing access by a competitor to an essential facility;
- engaging in an exclusionary act, including inducing a party not to deal with the dominant firm's competitors and selling goods below their marginal cost (i.e. predatory pricing); and
- price discrimination.

A firm may apply to the Commission to exempt an agreement or practice if it contributes to:

- the maintenance or promotion of exports;
- the promotion of the ability of small businesses controlled by historically disadvantaged persons to become competitive;
- change in productive capacity necessary to stop a decline in an industry; or

- economic stability of any industry designated by the Minister of Trade and Industry.

Merger control

A *merger* occurs when one or more firms directly or indirectly acquire or establish direct or indirect control over the whole or a part of the business of another firm through:

- the purchase or lease of the shares and interest or assets of the other firm in question; or
- an amalgamation or other combination with the other firm in question.

Control is broadly defined so as to give the Act a wide scope.

The Act and regulations promulgated thereunder define the parties to a merger as:

- the “*acquiring firm*”, namely (i) a firm that directly or indirectly acquires or establishes direct or indirect control over the whole or part of the business of another firm; (ii) any firm that has direct or indirect control over the firm in (i); or (iii) any firm whose business is wholly or in part controlled by a firm in (i) or (ii); and
- the “*transferred firm*”, namely (i) a firm or the business or assets of a firm, that would as a result of a merger become directly or indirectly controlled by an acquiring firm; or (ii) any other firm, or the business or assets of a firm, the whole or part of whose business is directly or indirectly controlled by a firm contemplated in (i).

Categories:

- A party to a *small merger* (ie a merger which does not meet the thresholds for an intermediate merger) need not notify the Commission of the merger and may implement the merger without the Commission’s approval. The Commission may, however, within six months after a small merger is implemented, require the parties to such merger to notify the Commission of the merger if the Commission is of the opinion that the merger:
 - may substantially prevent or lessen competition; or
 - cannot be justified on public interest grounds.

- If such notice is received, the parties may not implement the small merger until such merger is approved.
- A merger qualifies as an *intermediate merger* if:
 - the combined annual turnover in South Africa of the acquiring firms and the transferred firms is valued at more than ZAR560 million (previously ZAR200 million); or
 - the combined assets in South Africa of the acquiring firms and the transferred firms are valued at more than ZAR560 million; or
 - the annual turnover in South Africa of the acquiring firms plus the assets in South Africa of the transferred firms are valued at more than ZAR560 million; or
 - the annual turnover in South Africa of the transferred firms plus the assets in South Africa of the acquiring firms are valued at more than ZAR560 million;

and

- either the annual turnover or the asset value in South Africa of the transferred firms exceeds ZAR80 million (previously ZAR30 million).
- A *large merger* has thresholds of ZAR190 million (instead of ZAR80 million) and ZAR6.6 billion (instead of ZAR560 million).
- A party to a merger (including a party to a small merger which has been requested to be notified) may not take any further steps to implement such merger until approval or conditional approval has been obtained from the Commission, the Tribunal (in the case of large mergers) or the Appeal Court.

The filing fees payable to the Commission are as follows:

- Exemptions:
 - Single exemption: ZAR5 000.00 and an annual fee of ZAR500.00 x the number of years for which the exemption is granted.
 - Category exemption: ZAR100 000.00 and an annual fee of ZAR1 000.00 x the number of years for which the exemption is granted.
 - Professional association exemption: ZAR100 000.00 (once-off).

- Advisory opinion: ZAR2 500.00.
- Mergers:
 - Small merger: No fee payable.
 - Intermediate merger: ZAR100 000.00.
 - Large merger: ZAR350 000.00.

Merger filing fees are payable on or before the date of filing, and the merger filing should be accompanied by proof of payment. All fees are exclusive of value-added tax.

Considerations

The Commission will evaluate a proposed merger on competition and public interest grounds. The *initial* test is whether the merger is likely to substantially *prevent or lessen competition*, with reference to the strength of competition in the relevant market, and the probability that firms will behave competitively or co-operatively after the merger, taking into account:

- the level of import competition in the market;
- the ease of entry into the market;
- the levels and trends of concentration and history of collusion in the market;
- the degree of countervailing power in the market;
- the dynamic characteristics in the market including growth innovation and product differentiation;
- the nature and extent of vertical integration;
- whether the business of a party to the proposed merger has failed or is likely to fail; and
- whether the merger will result in the removal of an effective competitor.

If it appears that a merger is likely to prevent or lessen competition, the Commission may nevertheless approve the merger if:

- its technological, efficiency or other pro-competitive gains outweigh its anti-competitive effects; or

- it can be justified on public interest grounds, having regard to the effect that the merger will have on:
 - a particular industry sector or region;
 - employment;
 - the ability of small businesses or firms controlled or owned by historically disadvantaged persons to become competitive; and
 - the ability of national industries to compete in international markets.

The Commission must consider a small or intermediate merger within twenty business days, which period may be extended by a further forty business days. If no decision has been made by the expiry of the original or the extended period, the merger will be regarded as having been approved.

Enforcement and penalties

The Commission and its inspectors have far-reaching investigative powers (including the power to enter upon and search certain premises and seize articles or documents found thereon).

The Act provides for both civil and criminal sanctions for various contraventions of the Act. The civil remedies include:

- interim relief (such as an interdict);
- an administrative penalty (up to 10% of a firm's annual turnover in and exports from South Africa in its preceding financial year);
- divestiture (either the reversal of a merger, or the compulsory sale of shares and assets by a party who has abused its dominant position); and
- a declaration that an agreement is void.

The criminal penalties range between fines of ZAR2 000.00 and ZAR500 000.00 and periods of imprisonment of six months and ten years.

The Competition Amendment Act, 2009 will come into force on a date still to be proclaimed. In terms of a new provision, a director or manager of a firm commits an offence if he/she causes the firm to engage in cartel conduct (price fixing, market allocation or collusive tendering), or knowingly acquiesces in the firm's engagement in cartel conduct whilst having actual knowledge of such conduct. A director or manager found guilty of contravening this provision is liable to a fine not exceeding ZAR500 000.00 or imprisonment for a period not exceeding 10 years and a firm may not directly or indirectly pay such fine.

12 | CONTACT ADDRESSES AND USEFUL INFORMATION

South African Chamber of Commerce and Industry (SACCI). Visit regional chamber websites at:

Johannesburg Chamber of Commerce and Industry
www.jcci.co.za

Cape Town Regional Chamber
www.capetownchamber.com

Durban Chamber of Commerce
www.durbanchamber.co.za

Minister of Trade and Industry
www.dti.gov.za

Private Bag X274, Pretoria 0001
Tel: (+27 12) 394 1568, Fax: (+27 12) 394 0337

President's Office
Private Bag X1000, Pretoria 0001
Tel: (+27 12) 319 1500, Fax: (+27 12) 323 2573, 323 8246

South African Revenue Services (SARS)
Private Bag X923, Pretoria 0001
Tel: (+27 12) 422 4000, Fax: (+27 12) 422 5181

The South African cabinet

President	Mr Jacob Zuma
Deputy President	Mr Kgalema Motlanthe
Minister in the Presidency: National Planning Commission	Mr Trevor Manuel
Minister in the Presidency: Performance Monitoring Agriculture, Forestry & Fisheries	Mr Collins Chabane Ms Tina Joemat-Pettersson
Arts & Culture	Ms Lulu Xingwana
Basic Education	Ms Angie Motshekga
Communications	Mr Sipiwe Nyanda
Co-operative Governance and Traditional Affairs	Mr Sicelo Shiceka
Correctional Services	Ms Nosiviwe Mapisa-Nqakula
Defence and Military Veterans	Dr Lindiwe Sisulu
Economic Development	Mr Ebrahim Patel
Energy	Mr Dipuo Peters
Finance	Mr Pravin Gordhan
Health	Dr Aaron Motsoaledi
Higher Education and Training	Mr Blade Nzimande
Home Affairs	Dr Nkosazana Dlamini-Zuma
Human Settlements	Mr Tokyo Sexwale
International Relations and Co-operation	Ms Maite Nkoana-Mashabane
Justice and Constitutional Development	Mr Jeff Radebe
Labour	Mr Membathisi Mdladlana
Mining	Ms Susan Shabangu
Police	Mr Nathi Mthethwa
Public Enterprises	Ms Barbara Hogan
Public Service and Administration	Mr Richard Baloyi
Public Works	Mr Geoff Doidge
Rural Development and Land Reform	Mr Gugile Nkwinti
Science and Technology	Ms Naledi Pandor
Social Development	Ms Edna Molewa

Sport and Recreation
State Security
Tourism
Trade and Industry
Transport
Water and Environmental Affairs
Women, Youth, Children
and People with Disabilities

Mr Makhenkesi Stofile
Dr Siyabonga Cwele
Mr Marthinus van Schalkwyk
Mr Rob Davies
Mr Sbusiso Joel Ndebele
Ms Buyelwa Sojica

Ms Noluthando Mayende-Sibiya

Public holidays

New Year's Day	1 January
Human Rights Day	21 March
Good Friday	2 April*
Family Day	5 April*
Freedom Day	27 April
Workers' Day	1 May
Youth Day	16 June
National Womens' Day	9 August
Heritage Day	24 September
Reconciliation Day	16 December
Christmas Day	25 December
Day of Goodwill	26 December

* These dates change annually.

Ruling exchange rates*

One Rand equals		One foreign currency (other than JPY) equals X South African Rand		
X Foreign currency		Country		
1.00	Dollar (USD)	United States of America	8.17	Rand
1.00	Pound Sterling (GBP)	United Kingdom	13.40	Rand
100.00	Yen (JPY)	Japan	8.57	Rand
1.00	Euro (EUR)	European Monetary Union	11.54	Rand
1.00	Dollar (AUD)	Australia	6.77	Rand
1.00	Real (BRL)	Brazil	4.41	Rand
1.00	Dollar (CAD)	Canada	7.38	Rand
1.00	Yuan (Renminbi) (CNY)	China	1.20	Rand
1.00	Krone (DKK)	Denmark	1.55	Rand
1.00	Dollar (HKD)	Hong Kong	1.05	Rand
1.00	Forint (HUF)	Hungary	0.42	Rand
1.00	Rupee (INR)	India	0.17	Rand
1.00	Shilling (KBS)	Kenya	0.107	Rand
1.00	Ringgit (MYR)	Malaysia	2.30	Rand
1.00	Peso (MXP)	Mexico	0.63	Rand
1.00	Dollar (NZD)	New Zealand	5.51	Rand
1.00	Kroner (NOK)	Norway	1.33	Rand
1.00	Ruble (RUB)	Russia	0.252	Rand
1.00	Dollar (SGD)	Singapore	5.60	Rand
1.00	Won (KRW)	South Korea	0.0065	Rand
1.00	Kronor (SWK)	Sweden	1.124	Rand
1.00	Franc (CHF)	Switzerland	7.59	Rand
1.00	Dollar (TWD)	Taiwan	0.25	Rand
1.00	Baht (THB)	Thailand	0.239	Rand

* As at 17 August 2009. These rates are indicative only and fluctuate on a daily basis. For an update, please visit: www.xe.com

General information

Measures

Metric system

Electricity current

220/230 volts AC50HZ

Time

GMT + 2 Hours (UK winter time) GMT + 1 Hour (UK summer time)

Business hours

Monday to Friday 08:30 to 17:00

Saturday 08:30 to 15:00

In metropolitan areas shops open on Sundays from 09:00 to 13:00.

Banking hours

Monday to Friday 09:00 to 15:30 Saturday 08:30 to 11:00

Currency

The monetary unit is the South African Rand (Rand), equivalent to 100 cents (international symbol ZAR).

Official languages

English, Afrikaans, Ndebele, Sepedi, Sesotho, Seswati, Setswana, Tsonga, Venda, Xhosa and Zulu.

Double taxation agreements

Existing comprehensive agreements in force:

Country	Published in Government Gazette	Date of entry into force
Africa		
Algeria	No 21303 dd 2000-06-21	12 June 2000
Botswana	No 26342 dd 2004-05-12	20 April 2004
Egypt	No 19706 dd 1999-01-22	16 December 1998
Ethiopia	No 28494 dd 2006-02-10	4 January 2006
Ghana	No 29856 dd 2007-05-18	23 April 2007

Country	Published in Government Gazette	Date of entry into force
Lesotho	No 17948 dd 1997-04-22	9 January 1997
Malawi	No 1479 dd 1971-08-13	11 October 1971
Mauritius	No 18111 dd 1997-07-02	20 June 1997
Mozambique	No 31983 dd 2009-03-13	19 February 2009
Namibia	No 19780 dd 1999-02-19	11 April 1999
Nigeria	No 31241 dd 2008-07-22	5 July 2008
Saudi Arabia	No 31796 dd 2009-01-23	1 May 2008
Seychelles	No 25646 dd 2003-10-30	29 July 2002
Swaziland	No 3814 dd 1973-03-23	23 August 1973
Tanzania	No 30039 dd 2007-07-04	15 June 2007
Tunisia	No 20728 dd 1999-12-15	10 December 1999
Uganda	No 22313 dd 2001-05-24	9 April 2001
Zambia	Proclamations No 174 of 1956 and 60 of 1960	31 August 1956
Zimbabwe	No 1234 dd 1965-09-24	3 September 1965
Rest of world		
Australia	No 20761 dd 1999-12-24	12 December 1999
Austria	No 17965 dd 1997-04-30	6 February 1997
Belarus	No 25914 dd 2004-01-15	29 December 2003
Belgium	No 19437 dd 1998-11-02	9 October 1998
Brazil	No 29073 dd 2006-07-28	24 July 2006
Bulgaria	No 27517 dd 2005-04-22	27 October 2004
Canada	No 17985 dd 1997-05-07	30 April 1997
China (People's Republic)	No 22041 dd 2001-02-02	7 January 2001
Croatia	No 18460 dd 1997-11-21	7 November 1997
Cyprus	No 19638 dd 1998-12-22	8 December 1998
Czech Republic	No 18603 dd 1998-01-07	3 December 1997
Denmark	No 16891 dd 1995-12-22	21 December 1995
Finland	No 16862 dd 1995-12-01	12 December 1995
France	No 16681 dd 1995-09-27	1 November 1995
Germany	No 3898 dd 1973-05-25	28 February 1975
Greece	No 24996 dd 2003-03-03	14 February 2003
Hungary	No 17438 dd 1996-09-13	5 May 1996
India	No 18545 dd 1997-12-12	28 November 1997
Indonesia	No 9766 dd 1999-02-16	23 November 1998

Country	Published in Government Gazette	Date of entry into force
Iran	No 19637 dd 1998-12-22	23 November 1998
Ireland	No 18552 dd 1997-12-15	5 December 1997
Israel	No 6577 dd 1979-07-13	27 May 1980
Italy	No 19823 dd 1999-03-08	2 March 1999
Japan	No 18391 dd 1997-10-27	5 November 1997
Korea	No 16918 dd 1996-01-26	7 January 1996
Kuwait	No 29815 dd 2007-04-20	25 April 2006
Luxembourg	No 21852 dd 2000-12-06	8 September 2000
Malaysia	No 29021 dd 2006-07-13	17 March 2006
Malta	No 18461 dd 1997-11-21	12 November 1997
Netherlands	No 31797 dd 2009-01-23	28 December 2008
New Zealand	No 26798 dd 2004-09-17	23 July 2004
Norway	No 17504 dd 1996-10-15	12 September 1996
Oman	No 25913 dd 2004-01-15	29 December 2003
Pakistan	No 19849 dd 1999-03-17	9 March 1999
Poland	No 17201 dd 1996-05-16	5 December 1995
Portugal	No 31720 dd 2008-12-23	22 October 2008
Romania	No 16680 dd 1995-09-27	21 October 1995
Russian Federation	No 21395 dd 2000-07-20	26 June 2000
Sierra Leone (Grenada)	1946 Double taxation agreement with the United Kingdom extended to cover this jurisdiction	
Singapore	No 18599 dd 1998-01-02	5 December 1997
Slovak Republic	No 20409 dd 1999-08-25	30 June 1999
Spain	No 30837 dd 2008-03-12	28 December 2007
Sweden	No 16890 dd 1995-12-27	25 December 1995
Switzerland	No 2157 dd 1968-09-06	11 July 1968
Taiwan	No 17408 dd 1996-09-03	12 September 1996
Thailand	No 17409 dd 1996-09-03	27 August 1996
Turkey	No 29464 dd 2006-12-11	6 December 2006
Ukraine	No 27150 dd 2005-01-10	29 December 2004
United Kingdom	No 24335 dd 2003-01-31	17 December 2002
United States of America (USA)	No 18553 dd 1997-12-15	28 December 1997

Our services and contact partners

Administrative Law

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Joseph Mabuza
Kirsty Simpson

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Sport and Entertainment Law

Kim Wyness

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Taxation

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Leroux Odendaal

All information is believed to be correct at the time of publication. This is not intended to be a comprehensive legal guide to doing business in South Africa and should not be relied upon as such. Specific legal advice should be sought in any particular matter.

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6 MAY 2010



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