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# DOING BUSINESS IN SOUTH AFRICA

# BDO IN SOUTH AFRICA

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The *southern carmine bee-eater* can be found across sub-equatorial Africa – from KwaZulu-Natal and Namibia to Gabon, DR Congo and Kenya.



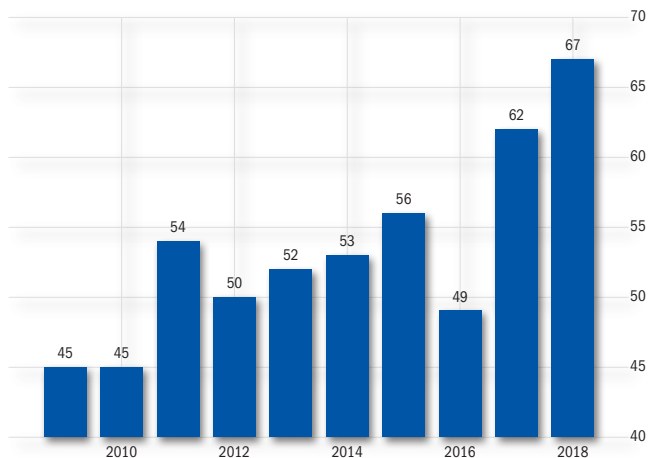
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## OVERVIEW

South Africa is strategically situated at the tip of the African continent, providing investment and marketing opportunities both within its borders, and to the rest of the African continent. South Africa offers investors a well capitalised banking system, developed regulatory systems, an established manufacturing base, and abundant natural resources.

South Africa is the 67 most competitive nation in the world out of 140 countries ranked in the 2018 edition of the Global Competitiveness Report published by the World Economic Forum. Competitiveness Rank in South Africa averaged 51 from 2007 until 2018, reaching an all time high of 67 in 2018 and a record low of 35 in 2007.



Source: Tradingeconomics.com | World Economic Forum

## KEY FACTS ON SOUTH AFRICA

<b>Languages:</b>	11 official languages of equal status: Afrikaans, English (language of commerce, banking, government and official documentation), isiNdebele, isiXhosa, isiZulu, Sesotho sa Leboa, Sesotho, Setswana, siSwati, Tshivenda, Xitsonga.
<b>Capital cities:</b>	Tshwane (Pretoria) – administrative, Cape Town – legislative, and Bloemfontein (to be renamed Mangaung) – judicial.
<b>Form of State:</b>	Federal state comprising a national government and nine provincial governments.
<b>Legal system:</b>	Based on Roman-Dutch Law and the 1996 Constitution.
<b>Internet domain:</b>	.za
<b>Measures:</b>	Metric system.

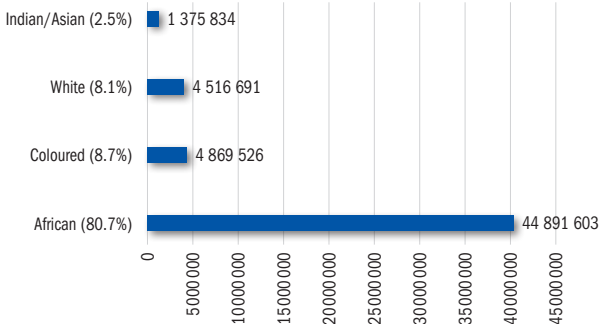
### The South African Economy

<b>Currency:</b>	One Rand (R) = 100 cents. International symbol :ZAR
<b>GDP:</b>	366.3 billion US dollars (2018)
<b>GDP Growth Rate:</b>	-3.2% q/q (Q1-2019)
<b>PPI :</b>	+5.8 % (y/y June 2019)
<b>Consumer Price Index (CPI):</b>	4.5% (y/y June 2019)
<b>Unemployment:</b>	29% q/q (Q1-2019)
<b>Key industries:</b>	Mining (world's largest producer of platinum and chromium), automobile assembly, metal-working, machinery, textiles, iron, steel, chemicals, fertilizers, foodstuffs, commercial ship repair.
<b>Exports :</b>	Gold, minerals, diamonds, platinum, other metals and metal products, foods, automotive components, machinery.
<b>Imports:</b>	Machinery (including computers), transport equipment, manufactured goods, chemicals, mineral fuels including oil, scientific instruments, medical apparatus, pharmaceuticals.
<b>Main trading partners:</b>	Germany, USA, UK, China, Japan, France, Botswana and Namibia.

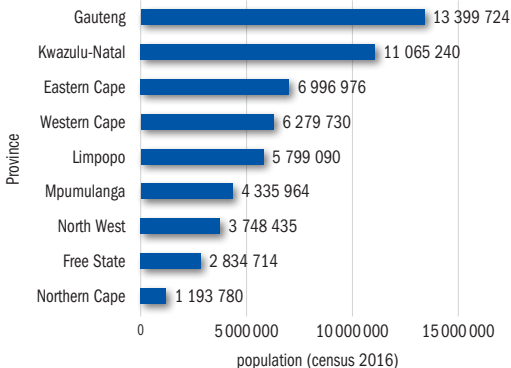
## Interesting Statistics about South Africa

### Population Groups in South Africa

(Total population: 55.6 million, census 2016)

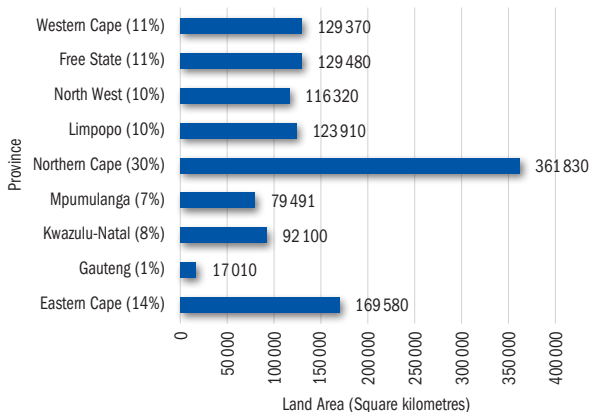


### Population by Provinces

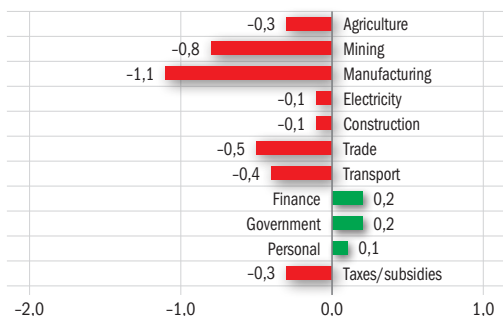


### Size of Provinces in South Africa

(Total land area: 1 219 090 sq km)



### South Africa's GDP Growth Rates by Sector: First Quarter 2019



Source: Statistics South Africa

## **SOUTH AFRICAN DEVELOPMENT COMMUNITY (SADC)**

Foreign direct investment into Southern Africa continues to surge, despite continuing political, developmental and social challenges in these countries. Entrepreneurs and potential investors need to weigh the challenges of investing in these regions against the potential profitability of an investment.

The Southern African Development Community (SADC) was established in 1992. SADC is a regional economic community, comprising the following 15 member states: Angola, Botswana, Democratic Republic of Congo, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe.

SADC is committed to promoting sustainable and equitable economic growth and socio-economic development so that the region emerges as a competitive and effective player in international relations and the world economy. The vision of SADC is one of a Common Future, a future within a regional community that will ensure economic well-being, improvement of the standards of living and quality of life, freedom and social justice and peace and security for the people of Southern Africa. In order to fulfil the SADC mission statement, member states are guided by the following principles, as stated in Article 4 of the SADC Treaty:

- Sovereign equality of all member states.
- Solidarity, peace and security.
- Human rights, democracy and the rule of law.
- Equity, balance and mutual benefit, and
- Peaceful settlement of disputes.

### **African Continental Free Trade Area Agreement (AfCFTA)**

During July 2018, South Africa signed a free trade agreement that will lead to free trade on the African continent.



### The Department of Trade and Industry (DTI)

The DTI provides financial support to qualifying companies in various sectors of the economy. Financial support is offered for various economic activities, including manufacturing, business competitiveness, export development and market access, as well as foreign direct investment. DTI Incentive Schemes include:

**12I Tax Allowance Incentive (12I TAI):** offers support for both capital investment and training for new industrial projects that utilise only new and unused manufacturing assets, as well as expansions or upgrades of existing industrial projects.

**Automotive Investment Scheme (AIS):** designed to grow and develop the automotive sector through investment in new and/ or replacement models and components.

**People-carrier Automotive Investment Scheme (P-AIS):** which provides a non-taxable cash grant of between 20% and 35% of the value of qualifying investment in productive assets.

**Capital Projects Feasibility Programme (CPFP):** a cost-sharing grant that contributes to the cost of feasibility studies likely to lead to projects that will increase local exports and stimulate the market for S.A. capital goods and services.

**Critical Infrastructure Programme (CIP):** aims to leverage investment by supporting infrastructure that is deemed to be critical, thus lowering the cost of doing business and stimulating investment growth.

**Export Marketing and Investment Assistance (EMIA):** aims to develop the export market for South African product and services and encourages new foreign direct investment into the S.A. but partially compensate exporters for costs incurred in respect of activities aimed at developing export market.

**Film Incentives:** a package of incentives to promote the film production and post-production industry. These include:

- Foreign Film and Television Production and Post-Production incentive.
- South African Film and Television Production and Co-Production incentive.
- The South African Emerging Black Filmmakers incentive.
- Manufacturing Investment Programme (MIP): a reimbursable cash grant for local and foreign-owned manufactures who wish to establish a new production facility; expand an existing production facility; or upgrade an existing facility in the clothing and textiles sector.

**Sector Specific Assistance Scheme (SSAS):** a reimbursable cost-sharing incentive scheme whereby financial support is granted to organisations supporting the development of industry sectors and those contributing to the growth of South African exports.

## **The National Youth Development Agency (NYDA)**

South Africa has a large population of youth (42% of the total population is aged between 14-35 years).

The NYDA was established to address youth development issues and plays an important role in ensuring that all major stakeholder's, including government, the private sector and civil society, prioritise youth development and contribute towards identifying and implementing lasting solutions which address youth development challenges.

The NYDA offers grant finance in the form of micro-finance grants (to encourage youth entrepreneurship) and co-operative grants (to stimulate greater participation of youth in the co-operatives sector).

## **The Small Enterprise Development Agency (SEDA)**

SEDA was formed to implement government's small business strategy by focusing on developing, supporting and promoting small enterprises to ensuring their growth and sustainability. SEDA works together with various role players, including global partners, who make international best practices available to local entrepreneurs.

## BUSINESS VEHICLES

The main business vehicles used for doing business in South Africa are:

- Partnership.
- Sole proprietorship.
- Business Trust.
- Profit company.  
[includes public company, private company and personal liability company].
- Non-Profit company.
- External company (branch of a foreign company).

Tax and other considerations affect the choice of business vehicle. The most commonly adopted forms of doing business by foreign investors are private companies and branches of foreign companies.

South African law used to provide for a business entity type called Close Corporations (CC's) until the Companies Act, 71 of 2008 came into force on 1 May 2011. While CC's may no longer be created, existing CC's continue to operate.

All companies must register with the Companies and Intellectual Property Commission in South Africa (CIPC).

## COMPANIES ACT, 71 OF 2008

The Companies Act, 71 of 2008 (hereinafter referred to as “the Companies Act” or “the Act”) came into effect in May 2011 and replaces the Companies Act, 61 of 1973. Companies registered under the 1973 Act continue in existence. The Companies Act regulates the formation and registration, governance, winding up, deregistration and liquidation of all companies, and makes no distinction between locally owned or foreign-owned companies.

## CATEGORIES OF COMPANIES

The Companies Act provides for two categories of companies:

**Profit Company:** a company incorporated for the purpose of financial gain for its shareholders; can be:

- A state-owned company (SOC).
- A private company (Proprietary Limited/(Pty) Ltd) – not state-owned and the Memorandum of Incorporation (MOI) prohibits any offer to the public for the subscription of any shares or debentures of the company. A private company cannot, therefore, be listed on the stock exchange.
- A personal liability company (Incorporated/Inc.) – meets the criteria for a private company and the MOI states that it is a personal liability company. This type of company is registered by professionals such as Doctors, Lawyers and Engineers.
- A public company (Limited/Ltd) in any other case. Public companies are formed to raise funds by offering shares to the public.

### **Incorporation of a Profit Company**

- One or more persons may incorporate, except for a SOC Ltd, which may also be incorporated by an organ of state.
- One or more directors required, three or more for public (Ltd) companies.
- No limit on number of shareholders.
- A private company must have share capital, no minimum or maximum amount. Shares issued in accordance with the Companies Act do not have a nominal or par value.

### **Private Companies**

Private Companies are cheap and relatively easy to establish and there are no minimum or maximum share capital requirements. A foreign entity may be a shareholder.

SOC Ltd's and Public companies are statutorily subjected to enhanced accountability and transparency requirements, such as an audit, whereas private companies are not required to appoint an auditor unless the company passes a

public interest score, or meets any other requirements set out in Regulation 28 of the Companies Act.

A private company is also not required to appoint a company secretary or hold an Annual General Meeting.

## **Non-Profit Company (NPC)**

- Incorporated for a public benefit or an object relating to one or more cultural or social activities, or communal or group interests.
- Primary objective is to be a benefit to the public and not to make profit.
- Incorporated by at least 3 persons and must have a minimum of 3 directors.
- The income and property of a non-profit company must be applied solely to the promotion of the non-profit company's main object and may not be distributed to the incorporators, members, directors or officers.
- NPC without members can be incorporated and can have voting or non-voting members, and membership can be held by juristic persons, including profit companies.
- A special set of fundamental rules for NPC's is set out in Schedule 1 of the Act.
- On dissolution, NPC's are restricted in terms of the distribution of any residual assets.
- NPC can apply to the South African Revenue Service for a tax-exempt status, known as Public Benefit Organisation (PBO) status, provided it meets the criteria required for such registration.

## **A Domesticated Company**

A domesticated company is a foreign company whose registration has been transferred to South Africa from a foreign jurisdiction in which it was registered.

A foreign company may transfer its registration if the law of the jurisdiction in which the company is registered permits such a transfer, and the company has complied with all legal requirements relating to the transfer. Once the foreign registration is transferred, a domesticated company exists as a company in terms of the Companies Act as if it had been originally incorporated and registered in South Africa. Most foreign investors set up a private company, or an external company (branch of a foreign company).

## An External Company

An external company means a foreign company (for profit or not for profit), which has been incorporated outside of South Africa, that intends to, or is conducting business or non-profit activities within South Africa. Section 23 of the Companies Act lists a series of activities which will be regarded as “conducting business” as follows:

The foreign company:

- Is a party to one or more employment contracts within South Africa, or
- Is engaging in a course of conduct or has engaged in a course or pattern of activities within South Africa over a period of at least six months, such as would lead a person to reasonably conclude that the company intended to continually engage in business or non-profit activities within South Africa.

Such a company remains primarily regulated by its country of origin or registration, even though it does business in South Africa as an external company. It must register with the Commission within 20 business days after it first begins to conduct business or non-profit activities, as the case may be, within South Africa.

## DIRECTORS AND OFFICERS

### Directors

In terms of the Companies Act, the business and affairs of a company must be managed by or under the direction of its board, which has the authority to exercise all of the powers and perform any of the functions of the company.

Directors are ultimately responsible for acts committed in the name of the company even though the routine running of the company is often delegated to management.

Directors do not need to be South African residents or nationals. The Act requires that the register of directors reflects each directors' nationality and passport number if they are not South African. There are no restrictions on foreign managers.

The King Report distinguishes between two types of directors:

- Executive director: a full time salaried employee and under a contract of service with the company who is involved in the daily running of the business.
- Non-executive director: a part time director who is not an employee of the company and is not involved in the day to day running of the business. A non-executive director is independent from management and can therefore offer objective judgement.

## Prescribed Officers

A prescribed officer is any person who fulfils the role of a director but who operates under a different designation, including anyone who:

- Exercises general executive control over and management of the whole, or a significant portion, of the business and activities of the company, or
- Regularly participates to a material degree in the exercise of general executive control over and management of the whole, or a significant portion, of the business and activities of the company.

A company secretary, may, for example, fall within the definition of a prescribed officer in terms of the Act, even although he may not be a director appointed to the board of the company.

Prescribed officers are bound by the same codified duties and liabilities of directors which are referred to in numerous sections of the Act.

It is very important that the board is able to identify who the prescribed officers are. Equally important is that the prescribed officers know who they are, and that they understand their responsibilities in terms of the Act. Not doing so puts both the board and the prescribed officer at risk of non-compliance with the Act, which in turn could lead to activities that may result in personal liability.

## Provisions of the Companies Act Relating to all Directors and Prescribed Officers

### Section 76: The Codified Standard of Conduct

The codified standard applies to all directors, prescribed officers or any other person who is a member of a board committee irrespective of whether or no that

the person is also a member of the company's board. In terms of this standard, powers and duties must be exercised:

- In good faith and for a proper purpose.
- In the best interest of the company.
- With the degree of care, skill and diligence that may reasonably be expected of a person carrying out the same functions and having the general knowledge, skill and experience of that director.

Directors have a fiduciary duty to act in the best interest of the company as a whole and the codified standard of conduct applies in addition to the duties of the director of a company under the common law.

### **Section 75: Conflict of Interest**

The Act makes clear provision for dealing with a director's use of company information and conflict of interest. These provisions also apply to prescribed officers and members of board committees (even if those persons are not directors). Non-compliance may render certain transactions and agreements void.

### **Section 30: Disclosure of Remuneration**

The Act requires disclosure of remuneration paid to directors and all prescribed officers on an individual basis in the annual financial statements.

### **Section 77: Liability of Directors and Prescribed Officers**

Section 77 codifies liability for directors and prescribed officers. It sets out civil liability (delict and breach of fiduciary duty), and then in sub-section 3, sets out specific statutory liabilities.

Section 77 is applicable to an extended definition of director. The liability that is incurred in terms of section 77 is joint and several with any other person who may be held liable for the same act. Any person with a claim can bring it against all the directors or any one particular director. A single director can therefore be held liable for the totality of damages suffered by a third party as a result of a breach of fiduciary duties. An action to recover loss, damages or costs may not commence more than three years after the act or omission.



## Specific Statutory Liability

A director is liable for loss, damages or costs sustained by the company as a direct or indirect consequence of the director having:

Section 77(3)(a) – acted in the name of the company despite knowing he did not have the authority to do so.

Section 77(3)(b) – acquiescing to carrying on of company’s business despite knowing that it was being conducted recklessly.

Section 77(3)(c) – being party to an act or omission by the company despite knowing that it was calculated to defraud a creditor, employee or shareholder, or had another fraudulent purpose.

Section 77(3)(d) – for signing or consenting to the publication of any financial statements that were false or misleading in a material respect or a prospectus which contained an untrue statement, despite knowing that the statement was false, misleading or untrue (conditions apply).

Section 77(3)(e) being present at a meeting of the board, or participating in the making of a decision in terms of section 74, and failing to vote against:

- the issuing of unauthorised shares, despite knowing that those shares had not been authorised in accordance with section 36.
- the issuing of authorised securities despite knowing that such issue was inconsistent with section 41.
- for granting unauthorised options the provision of financial assistance to any person contemplated in section 44 for the acquisition of securities of the company despite knowing that this financial assistance was inconsistent with section 44 or the company’s MOI.
- the provision of financial assistance to a director despite knowing that this financial assistance was inconsistent with the Act or the company’s MOI.
- a resolution approving a distribution despite knowing that the distribution was contrary to section 46, subject to sub-section (4).
- the acquisition by the company of any of its shares or the shares of its holding company despite knowing that the acquisition was contrary to sections 46 or 48.
- an allotment by the company despite knowing that the allotment was contrary to any provision of Chapter 4 of the Act.

## **Section 20 (4) and (5): Restraining Orders**

One or more shareholders, directors or prescribed officers or the trade union representing employees of the company may apply to the High Court for an appropriate order to restrain a company from doing anything inconsistent with the Act, or from doing anything that is inconsistent with any of the limits, restrictions or qualifications of the MOI.

Each shareholder may have a personal claim for damages against any person, including a director, who intentionally, fraudulently or due to gross negligence causes the company to do anything inconsistent with the Act, or to do anything that is inconsistent with any of the limits, restrictions or qualifications of the MOI (unless the action does not contravene the Act and has been ratified by shareholders).

## **Section 218: Civil Actions**

A shareholder (and any other stakeholder) can also have a claim against the directors or any person who contravenes the Act for damages for any loss or damaged suffered as a result of that contravention. The action does not need to be fraudulent or carried out with gross negligence for a valid claim in terms of this Section.

The Act does however provide some form of relief to directors – by way of Indemnity and Insurance for Directors.

In terms of the Act, a possible defence is open to a director who asserts that he/she had no financial conflict, was reasonably informed and made a rational business decision in the circumstances. This is known as “the business judgement rule”.

Sections 20 and 218 of the Act enable shareholders to sue directors/officers for civil damages, or any losses suffered by them.

If a company is a personal liability company, the directors (including past directors) are jointly and severally liable together with the company for any debts and liabilities of the company that contracted during their respective periods of office.

### Some Key Provisions of the Companies Act

#### Section 28: Accounting Records

All companies are legally required to keep, at their registered office, accurate and complete accounting records in one of the official languages of South Africa.

#### Section 29: Financial Statements

All financial statements must comply with the requirements of the Companies Act. (e.g. must not be false or misleading in any material respect or incomplete in any material, summaries must be in prescribed format).

#### Section 30: Annual Financial Statements

All companies are required to produce annual financial statements:

- Within 6 months after the end of their financial year.
- Must include an auditor's report if the statements are audited.
- Must include a report of directors in the prescribed format.
- Be approved by the board and signed by an authorised director.
- Be presented to the first shareholders meeting after the statements have been approved by the board.

The High Court has recently issued court orders in favour of CIPC empowering them to penalise companies that fail to prepare annual financial statements within 6 months of year end. The penalty is 10% of turnover during the period which each company was non-compliant.

#### Annual General Meeting Requirement

The Companies Act only requires a public company and SOC Ltd to call an AGM within 18 months of its date of incorporation and thereafter once in every calendar year, but no more than 15 months of the date of the previous AGM to present the audited annual financial statements to the shareholders. The Act does not require a private company to have an AGM. However, the Board is required to approve the annual financial statements, and these are required to

be presented to the first shareholders meeting after they have been so approved (there is no time frame stipulated), unless exempted.

### **Regulation 28: Categories of Companies Required to be Audited in Terms of the Companies Act**

Unless exempted in terms of Section 30(2A), the following categories of companies are required to have an audit, conducted by a registered auditor:

- A public company (listed and unlisted).
- State owned companies (SOC Ltd).
- Any profit or non-profit company, if, in the ordinary course of its primary activities holds assets in a fiduciary capacity for persons who are not related to the company and the aggregate value of such assets held at any time during the financial year exceeds R5 million.
- Any non-profit company, if it meets the requirements test as per the Regulations of the Act (incorporated by or for the State).
- Any other company whose public interest score, for the particular financial year as calculated in accordance with Regulation 26(2) is:
  - ◆ 350 or more, or
  - ◆ at least 100, if its annual financial statements for that year were internally compiled.

Annual financial statements of private companies and personal liability companies may also be audited if so is required by that company's MOI, or by a shareholder's or director's resolution, or in terms of an agreement.

### **S30(2A) of the Amendment Act: Exemption of Owner-Managed Companies**

If, with respect to a particular company, every person who is a holder of, or has a beneficial interest in, any securities issued by that company is also a director of the company, that company is exempt from the requirements in this section to have its annual financial statements audited or independently reviewed.

This exemption does not apply to the company if it falls into a class of company that is required to have its annual financial statements audited (Regulation 28), nor does it relieve the company of any requirement to have its financial statements audited or reviewed in terms of another law or in terms of any agreement to which the company is a party.

## ASSURANCE LEVELS AND THE PUBLIC INTEREST SCORE (PIS)

The PIS is intended to reflect how much responsibility the company (including a CC and NPC), has towards the public and determines whether the company will need a financial audit, independent review or nothing at all. Every company must calculate its public interest score for each financial year, and is required to disclose the same each year on its CIPC annual return.

A company's PIS is calculated using a standard formula based on the average number of employees during the financial year, the total third party liability at the financial year end, total turnover during the financial year, and the total number of individuals with a direct or indirect beneficial interest in the company e.g. shareholders.

### **If the company has a Public interest Score:**

#### **Over 350**

The company will need an audit. This applies even where the company is owner managed, non-owner managed, or is a CC or NPC.

#### **Between 100 and 349**

The company will need an independent review where the financial statements are independently compiled (externally), and it is not owner-managed – to be conducted by a registered auditor or a chartered accountant. The company will need an audit where the financial statements are internally compiled (applies even where the company is owner managed, non-owner managed, or is a CC or NPC). The company will not need an audit, or independent review where the financial statements are independently compiled (externally), and it is an owner-managed company, or CC or NPC.

#### **Lower than 100**

Independent review required where it is not an owner-managed company. In all other cases, there is no requirement for an independent review or an audit for owner managed companies, CC's or NPC's, unless required by the company's MOI.

Since 1994, there have been several versions of the King Report. Each version has been built on the underlying principles of the previous report. The latest version, King IV™ is effective in respect of financial years commencing on or after 1 April 2017, and completely replaces King III™.

King IV™ recognises that good corporate governance and ethical leadership are essential in society today, irrespective of the size or nature of the entity. King IV™ has been designed to encourage broader participation by all industry sectors, including municipalities and state-owned entities.

King IV™ has been simplified and made more user-friendly, and is an essential tool for successful, responsible and effective corporate governance. King IV™ takes the form of a report which includes the Code, and separate sector supplements for SME's, NPO's, State-Owned Entities, Municipalities and Retirement Funds. All organisations and governing bodies should follow the principles and practices laid down in this document.

King IV™ is voluntary (unless prescribed by law or by a Stock Exchange listings requirement). Some of the principles have been legislated. If a conflict occurs, the law prevails. The King IV Code provides 17 principles, as well as a large number recommended practices, to help governing bodies and organisations achieve 'good corporate citizen' status and governance outcomes.

Unlike the previous reports which were rules-based and followed a 'tick-box' approach, King IV™ is principles- and outcomes-based. King IV™ encourages organisations to have a more 'hands-on' approach to principles, so that practices can be clearly linked to outcomes in an "apply and explain" approach. This gives governing bodies more flexibility when implementing the recommended practices, but requires them to be transparent when disclosing how they achieved their goals.

The 2008 Companies Act has many features which result in an alignment with international best practices and the governance principles of the King Code and Reports.

**Source:**

The King IV Report on Corporate Governance for South Africa 2016, Institute of Directors S.A.  
For more information, see <http://www.iodsa.co.za/?page=AboutKingIV>

## Key Concepts of King IV™

Organisations do not function in isolation, but operate within the wider context of the economy, society and the environment. As an integral part of society, organisations should not just be concerned with their economic bottom line, but they also need to be aware of the wider impact of their operations on the environment and on broader society.

Because of the interdependence of organisations and wider society, board decisions should not be made in isolation. Integrated thinking, where the board of directors considers all issues affecting the organisation when making decisions, is fundamental to the long-term sustainability of the organisation through the sustained creation of value for stakeholders. Integrated thinking reinforces the way the company operates as an integral part of society, underpins sustainable development, integrated reporting and the stakeholder inclusive approach.

**Sustainable Development** – an approach to development which balances the different, and often competing needs of the company against an awareness of the environmental, social and economic limitations of society. The board should develop a strategy which includes accounting for sustainability issues and reporting these to stakeholders.

**Corporate Citizenship** – the company should be a responsible “citizen”, involved with social, environmental and economic issues, respect for human rights, effective management of stakeholder relationships, resource management with an eye on future needs, and ensuring a positive impact on the community within which it operates.

**Stakeholder-Inclusive Approach** – the board should consider and balance the legitimate needs, interests and expectations of all stakeholders in making decisions in the best interests of the company. Active stakeholders play a crucial role in the governance process because they are entitled to hold the board and the company accountable for their actions and disclosures.

**Source:**

The King IV Report on Corporate Governance for South Africa 2016, Institute of Directors S.A.  
For more information, see <http://www.iodsa.co.za/?page=AboutKingIV>

## King IV™ in a Nutshell

# Governance



Strategy

Policy

Oversight

Accountability



# Benefits



Ethical  
Culture

Good  
Performance

Effective  
Control

Legitimacy

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## King IV™ Principles of Good Governance

The board of directors should:

- Lead ethically and effectively.
- Govern ethics and establish an ethical culture.
- Ensure responsible corporate citizenship.
- Appreciate that the company's core purpose, its risks and opportunities, strategy, business model, performance and sustainable development are all inseparable components of the value creation process.
- Ensure that reports allow stakeholders to make informed assessments about the organisation's performance and its short, medium and long-term prospects.
- Serve as the focal point and custodian of corporate governance.
- Have the appropriate balance of knowledge, skills, experience, diversity and independence.
- Delegate within the board to promote independent judgement, and assist with the balance of power and effective discharge of duties.
- Evaluate board's performance and support continued improvement and effectiveness.
- Appoint and delegate to management in a way that contributes to role clarity and the effective exercise of authority and responsibilities.
- Govern risk in line with strategic objectives.
- Govern information and technology in line with strategic objectives.
- Comply with applicable laws and adopted, non-binding rules, codes and standards.
- Remunerate fairly, responsibly and transparently.
- Use assurance services and functions to enable an effective control environment which supports the integrity of information.
- Adopt a stakeholder-inclusive approach.
- Practise responsible investment which promotes good governance and the creation of value (applies to institutional investor organisations).

### **Definition**

A copyright is an exclusive right granted by law for a limited period to an author, designer, etc. for original work that is reduced to material form.

### **Registration**

Generally a person who has written, printed, published, performed, sculpted, painted, filmed or recorded a work, is automatically the owner of the copyright to that work. Copyright is created by putting the words “copyright” or “copyright reserved” or “copyright ABC 2013” (i.e. copyright, followed by name and the year), or the copyright symbol, name and year e.g. © ABC 2013. You can obtain copyright protection in South Africa, if you are a South African or if your work was produced in South Africa. If you are not South African, you can obtain copyright protection provided the country you are a national of is part of the Berne Convention. Copyright for films /videos made for commercial use needs to be applied for formally, by way of the following documentation, obtainable free of charge, from the Copyright Office.

### **Length of Protection**

The lifespan of copyright depends on the type of work protected.

The copyright of literary works lasts for fifty years after death of the author. The copyright of computer programs lasts for fifty years after the first copies were made available to the public. For sound recordings, the copyright lasts for fifty years from the day the work was first broadcast and for films, it lasts for fifty years from the date the film was shown.

### **Rights of Holder**

Copyright affords the author the exclusive right to stop others from copying or using his work without his permission.

The author can also conclude license agreements with the users for his copyright works and enjoy royalties payment from the licensees.

### **Enforcement and Remedies**

#### **Copyright Act, 98 of 1978**

It is the responsibility of the author to prove ownership and also to sue in case of infringement.

### Definition

A registered design is generally used to protect the physical appearance of an article. The design may be aesthetic or functional.

### Registration

Registered with the South African Registrar of Patents.

### Length of Protection

Registered aesthetic designs are protected for fifteen years. Registered functional designs are protected for ten years. Registered designs must be renewed annually before the expiration of the third year, as from the date of lodgement. To maintain a design in force a payment of an annual renewal fee is due starting from the expiring of the third year from the date of filing until the design expires.

### Rights of Holder

Registration of a design grants to the right holder the right to exclude other people from making, importing, using or disposing of any article included in the class in which the design is registered, so that the right holder enjoys all the benefits relating to the design.

### Enforcement and Remedies

#### Designs Act, 195 of 1993

Remedies include: interdict, delivery up of the infringing product, damages, a reasonable royalty.

## Tax Implications of Intellectual Property Ownership

Should income be generated or derived from patents and similar property, the owner may, over a period, deduct from taxable income, expenditure on:

- Devising and developing an invention.
- Generating or making a design, trademark, copyright or similar asset.
- Registering or obtaining a patent, design registration or trademark, and
- Acquiring a copyright, design, patent, trademark or similar property.

Since South African tax law is based on the residence principle, income in a South African resident's hands, from foreign sources is taxable.

## INTELLECTUAL PROPERTY: PATENTS

### Definition

An invention is patentable when it is a product or process that is new, involves an inventive step, or a new way of doing something, or offers a new technical solution to a problem.

It must be capable of being used or applied in trade and industry or agriculture, and must not be specifically excluded from protection as a patent.

### Registration

Registered with the South African Registrar of Patents.

South Africa is one of **142** countries that is a member of the Patent Co-operation Treaty (PCT). This Treaty allows an individual to file an international application as well as a national application.

The international application will designate countries in which the applicant seeks protection. Extra fees are payable for this type of registration.

### Length of Protection

A patent can last up to twenty years, provided that it is renewed annually before the expiration of the third year from the date of filing in South Africa.

To keep a patent in force, the annual renewal fee must be paid. The patent expires after twenty years from the date of application.

### Rights of Holder

A holder of a patent has the right to exclude others from making, using, exercising, disposing or importing the invention.

### Enforcement and Remedies

#### Patents Act, 57 of 1978

Remedies include: interdict, damages, delivery up of the infringing product. The Commissioner of Patents or the High Court deal with disputes.

### **Definition**

Trade marks must be capable of distinguishing the goods or services of one undertaking from those of other undertakings (a brand name, a slogan or a logo).

### **Registration**

A trade mark can only be protected as such and defended under the Trade Marks Act, 194 of 1993 if it is registered with the South African Registrar of Trade Marks. Unregistered marks can be defended in terms of the common law.

### **Length of Protection**

Trade marks are registered for ten years but can be renewed for an unlimited number of additional ten-year periods.

### **Rights of Holder**

The right holder is entitled to prevent unauthorised use of an identical or substantially similar mark used in the same type of industry as that in which the trademark has been registered.

### **Enforcement and Remedies**

#### **Trade Marks Act, 194 of 1993**

Where there has been an infringement, the High Court can grant interdicts, order the removal of the infringing mark or the delivery up of the products containing the mark, award damages.

The Commission administers the Register of Trade Marks, which is the record of all the trade marks that have been formally applied for and registered in South Africa.

The registration procedure results in a registration certificate which has legal status, allowing the owner of the registered trade mark the exclusive right to use that mark.

The Companies Act is administered and enforced by the Companies and Intellectual Property Commission (CIPC), which has jurisdiction throughout South Africa. Some of its main functions are the registration and deregistration of companies, director appointments, registration of business names, registration of intellectual property rights, disclosure of information on its business registers, promotion and compliance with relevant legislation, the monitoring and compliance with and contraventions of financial reporting standards and making recommendations to the Financial Reporting Standard Council.

A recent court case [CIPC vs Citiconnect 9503/18] confirmed CIPC's authority to issue administrative penalties for general non-compliance to the Companies Act, 2008.

### CIPC Registration

All companies must register with CIPC. The registration process is relatively simple but comes with certain responsibilities (such as filing and annual return and paying an annual fee), irrespective of whether the business is trading or not.

### Annual Returns

All categories of companies (including external companies) must file annual returns with CIPC within 30 business days after the anniversary date of incorporation. The purpose is to confirm whether the entity is still trading.

If annual returns are not filed within the prescribed time period, it is assumed that the company or CC is inactive, and CIPC will start the deregistration process to remove the entity from its active records. The legal effect of the deregistration process is that the juristic personality is withdrawn and the company or CC ceases to exist.

Each year, in its annual return, every entity must designate a director, employee or other person who is responsible for its compliance with the transparency and accountability provisions set out in the Companies Act.

Where a company or CC is required to prepare audited financial statements, it must then also file the latest approved audited financial statements with CIPC – at the same time as the filing of its annual return.

In an effort to enhance the filing efficiency of these audited annual financial statements, and improve the quality and consistency of information submitted, CIPC has implemented a digital reporting system as from 1 July 2018 – whereby annual financial statements will be filed in XBRL format, rather than in PDF format. This more structured format of reporting is in line with global standards, and will make it easier for entities to report their financial information in electronic format.

## STATUTORY BUSINESS REGISTRATIONS IN SOUTH AFRICA

### **Business Registration**

All companies must register with the Companies and Intellectual Property Commission (CIPC).

### **Income Tax Registration with the South African Revenue Services (SARS)**

- All businesses must register within 60 days of starting a business in order to obtain an income tax reference number. Companies which are registered with CIPC are automatically registered as tax payers with SARS.
- Provisional tax payer registration must be done where applicable (e.g. sole proprietors, partners, directors).

### **Other Important Business Registrations**

- VAT (Value Added Tax).
- PAYE (Employee Tax).
- Skills Development Levy (SDL).
- Unemployment Insurance Fund (UIF).
- Registration with Department of Labour in terms of Compensation for Occupational Injuries and Diseases Act (COIDA).
- An importer/exporter has to register with SARS to obtain a customs code number.

The South African Tax regime is set by the National Treasury and managed by the South African Revenue Service (SARS). The National Budget Speech is delivered in parliament on the last Wednesday in February each year, where announcements and proposals are made affecting taxation in South Africa, and how funds are planned to be spent by the Government.

### Double Taxation Agreements

The tax liability of a foreign company depends on the nature of the income derived by it, as well as the existence of a double taxation agreement.

South Africa has agreements with most of its trading partners to prevent double taxation of income accruing to South Africa taxpayers from foreign sources, or of income accruing to foreign taxpayers from South African sources.

In terms of these arrangements a foreign resident will be taxed in South Africa only if it conducts business through a permanent establishment in South Africa (there are a few exceptions such as withholding taxes).

Any person who is deemed to be a resident of another state through the application of a double tax agreement will not be treated as a South African resident.

### Other Key Facts on Taxation in South Africa

Partnerships are not recognized as separate entities for income tax purposes. Each individual partner is taxed separately on his share of the partnership profits.

There is no group taxation in South Africa – each company is taxed as a separate taxpayer. The financial year end for individuals is end of February every year. Companies may select their own financial year end. Companies who derive their income from mining, gold mining, oil and gas, and farming may receive special dispensations.



## Residence Based Tax

South Africans are taxed on their worldwide income, subject to certain exclusions. Foreign taxes on that income are allowed as a credit against South African tax payable. This is applicable to individuals, companies, CC's, trusts and estates.

### Definition of Resident

#### Natural Person:

- Any natural person who is ordinarily resident in South Africa, or
- Any natural person who is not ordinarily resident in South Africa but who:
  - ◆ is physically present in South Africa for a period exceeding 91 days in aggregate during the current year of assessment and for a period exceeding 91 days in aggregate during each of the prior 5 years of assessment; and was physically present in South Africa for a period exceeding 915 days in aggregate during the previous 5 years of assessments.
  - ◆ where a person has been outside of South Africa for a continuous period of at least 330 full days after he ceases to be physically present in South Africa, he will be deemed to not have been resident from then.
  - ◆ South African resident employees who render services for any employer outside South Africa for a period which in aggregate exceeds 183 full days commencing on or ending during a period of assessment, and for a continuous period exceeding 60 full days during such 183 day period, will not be liable for income tax on their remuneration for that period. From 1 March 2020 this exemption will be limited to R1m per year.

#### Companies and Trusts

A company and Trust will be considered to be resident for tax purposes if it is incorporated, established, formed or has its place of effective management in South Africa.

## Controlled Foreign Companies (CFC)

A Controlled Foreign Company (CFC) means any foreign company where more than 50% of the total participation rights or voting rights are directly or indirectly exercisable by one or more residents. South African residents must impute all income of a CFC in the same ratio as the participation rights of the resident in such a CFC, subject to a number of exclusions. Net income of the CFC is defined as the CFC's taxable income determined as if the CFC is a South African taxpayer.

## Foreign dividends (including deemed dividends)

Foreign Dividends received from a non-resident company are taxable.

Foreign dividends are, however, exempt as follows:

- If received by a resident who holds at least 10% of the equity shares in the foreign company.
- The shareholder is a company which is in the same country as the foreign company paying the dividend.
- If declared by a company listed on the SA stock exchange.
- If paid out of the profits of a foreign company if the profits of the foreign company have been included in the South African shareholder's income in terms of the CFC provisions.

Where a foreign dividend is not exempt in terms of the provisions above the following part of a foreign dividend will be exempt from tax:

- Individuals and trusts: 25/45 or 56% of the foreign dividend received.
- Companies: 8/28 or 29% of the foreign dividend received.

No deduction will be granted for any expenditure incurred in the production of income in the form of foreign dividends.

## Foreign tax credits

Residents are allowed to deduct all foreign taxes paid in respect of foreign source income from the tax payable in South Africa on such foreign income. Any excess credits may be carried forward.

Where foreign tax is withheld on South African source income, the taxpayer can claim a deduction against income.

## **Non-Residents**

Non-residents are taxed on all income from a South African source. In other words, tax on the income of non-South African resident's is source-based, meaning that any income from a source within (or deemed to be within) South Africa is taxed, irrespective of the residence of the recipient of the income.

Non-residents may invest in the Republic, provided that suitable documentary evidence is received in order to ensure that such transactions are concluded at arms-length, at fair market-related prices, and are financed in an approved manner subject to exchange control approval.

## **Capital Transactions**

Proceeds from the sale of assets in South Africa, may be remitted abroad. Proceeds on the sale of assets by emigrants will be subject to the blocked account provisions.

## **Dividend payments to non-residents**

Dividends declared by companies are remittable to non-resident shareholders in proportion to percentage shareholdings, subject to certain restrictions if the dividend is declared by an affected person who has local financial assistance. An emigrant shareholder will be entitled to dividends declared out of income earned from normal trading activities after the date of emigration. Non-listed companies have additional requirements to be met in order to transfer such dividends.

Dividends declared out of capital gains, or out of income earned from normal trading activities prior to the date of emigration, remain subject to the blocked account provisions.

## **Director fee payments to non-residents**

Authorised dealers may transfer director's fees to non-resident directors permanently domiciled outside South Africa, provided the application is accompanied by a copy of the resolution of the board of the remitting company, confirming the amount to be paid to the beneficiary.

## Comparative Tax Rates

CATEGORY	2018	2019	2020
<b>NATURAL PERSONS</b>			
■ Maximum marginal rate	45%	45%	45%
■ Reached at a taxable income	1 500 000	1 500 000	1 500 000
■ Minimum rate	18%	18%	18%
■ Up to taxable income of	189 880	195 850	195 850
■ CGT inclusion rate	40%	40%	40%
<b>COMPANIES &amp; CC's</b>			
■ Normal tax rate	28%	28%	28%
■ Dividends Tax	20%	20%	20%
■ CGT inclusion rate	80%	80%	80%
<b>TRUSTS (other than special trusts)</b>			
■ Flat rate	45%	45%	45%
■ CGT inclusion rate	80%	80%	80%
<b>SUNDRY</b>			
■ Donations Tax	20%	20%-25%*	20%-25%*
■ Estate Duty	20%	20%-25%*	20%-25%*
■ VAT	14%	15%	15%
<b>SMALL BUSINESS CORPORATIONS</b>			
■ Maximum marginal rate	28%	28%	28%
■ Reached at a taxable income	550 000	550 000	550 000
■ Minimum rate	0%	0%	0%
■ Up to a taxable income of	75 750	78 150	79 000
<b>MICRO BUSINESS</b>			
■ Maximum rate of tax	3%	3%	3%
■ On turnover of	750 000	750 000	750 000
■ Minimum rate	0%	0%	0%
■ Up to a turnover of	335 000	335 000	335 000

\* Estates and cumulative donations in excess of R30m will be taxed at 25%

## Natural Person Tax Rates: 29 February 2020

TAXABLE INCOME	RATES OF TAX
R0 - R195 850	+ 18% of each R1
R195 851 - R305 850	R35 253 + 26% of the amount above R195 850
R305 851 - R423 300	R63 853 + 31% of the amount above R305 850
R423 301 - R555 600	R100 263 + 36% of the amount above R423 300
R555 601 - R708 310	R147 891 + 39% of the amount above R555 600
R708 311 - R1 500 000	R207 448 + 41% of the amount above R708 310
R1 500 001 and above	R532 041 + 45% of the amount above R1 500 000

Rebates: Natural persons	2018	2019	2020
Primary	R13 635	R14 067	R14 220
Secondary (Persons 65 and older)	R7 479	R7 713	R7 794
Tertiary (Persons 75 and older)	R2 493	R2 574	R2 601

Thresholds: Natural persons	2018	2019	2020
Below age 65	R75 750	R78 150	R79 000
Age 65 to below 75	R117 300	R121 000	R122 300
Age 75 and over	R131 150	R135 300	R136 750

Interest Exemption: Natural persons	2018	2019	2020
Below age 65	R23 800	R23 800	R23 800
Age 65 and above	R34 500	R34 500	R34 500

## Transfer Duty

- Is calculated on the value of the immovable property (purchase price or market value whichever is the highest), and is payable within six months after the transaction is entered into.
- Will be exempted when the seller is a registered VAT vendor.

<b>Transfer duty is calculated as follows:</b>	
R0 – R900 000	0%
R900 001 – R1 250 000	3% of the value over R900 000
R1 250 001 – R1 750 000	R10 500 + 6% of the value over R 1 250 000
R1 750 001 – R2 250 000	R40 500 + 8% of the value over R 1 750 000
R2 250 001 – R10 000 000	R80 500 + 11% of the value over R2 250 000
R10 000 001 +	R933 000 + 13% of the value over R10 000 000

## Headquarter Company Regime

The headquarter company regime (HQC) aims to reduce the tax cost of operating a headquarter company in South Africa. For example, it exempts companies from withholding dividends tax and tax on interest and royalties on income flowing through them from foreign subsidiaries.

## Value Added Tax (VAT)

The VAT system comprises of three types of supplies:

- Standard-rated supplies – supplies of goods and services subject to the VAT rate in force at the time of supply. With effect 1 April 2018 the VAT rate was increased from 14% to 15%\*.
- Exempt supplies – supplies of certain services not subject to VAT. Vendors making exempt supplies are not entitled to input VAT credits.
- Zero-rated supplies – supplies of certain goods or services subject to VAT at zero percent. Vendors making zero-rated supplies are entitled to input VAT credits.

\*Transitional rules dealing with VAT rate increases are contained in s 67A of the VAT Act.

## Key Features

- Enterprises with a turnover of less than R1 000 000 in any period of 12 months are not obliged to register for VAT.
- Enterprises with a turnover of less than R50 000 in any period of 12 months are not permitted to register for VAT.
- VAT returns are generally submitted on a two monthly basis unless turnover in any period of 12 months exceeds R30 million, in which case returns are submitted monthly.
- Farmers may submit VAT returns on a six monthly basis as long as their turnover does not exceed R1.5 million and property letting companies and trusts may, subject to certain requirements, submit annual VAT returns.
- Vendors may reclaim the VAT element on expenditure incurred for the purpose of making taxable VAT supplies except on, entertainment, excluding qualifying subsistence, passenger vehicles (including hiring) and club subscriptions.
- Input tax credits may not be claimed on expenditure relating to exempt supplies.
- Input tax credits may only be claimed upon receipt of a valid tax invoice.
- In order to be a valid tax invoice the name, address and VAT registration number of the recipient and supplier must appear on tax invoices where the VAT inclusive total exceeds R5 000.

## Capital Gains Tax (CGT)

### Persons subject to CGT

CGT is payable on capital gains that arise by the following persons:

- Residents are subject to CGT on all assets including overseas assets.
- Non-residents are subject to CGT on immovable property or any right or interest in a property situated in South Africa and any asset of a permanent establishment through which a trade is carried on in South Africa (SA).

**Note:** Any right or interest in a property includes a direct or indirect interest of at least 20% held alone or together with any connected person in the equity share capital of a company, where at least 80% of the value of the net assets of the company is, at the time of the disposal, attributable to immovable property in SA.

## Exclusions

The following are the main exclusions from CGT:

- Primary residences with capital gains up to R2 million.
- Personal use assets.
- Retirement benefits.
- Long-term assurance.
- Small business assets with capital gains up to R1.8 million (applicable when a person is over the age of 55 where the maximum market value of the small business assets does not exceed R10 million).
- Annual exclusion for natural persons: R40 000.
- Annual exclusion on death for natural persons: R300 000.

## Calculation and inclusion rates

A capital gain or loss is calculated separately in respect of each asset disposed. Once determined, gains or losses are combined for that year of assessment and if it is:

- an assessed capital loss, it is carried forward to the following year, or
- a net capital gain, it is multiplied by the inclusion rate and included in taxable income.

The inclusion rates are as follows:

PERSON	2018	2019	2020
Natural person and special trust	40%	40%	40%
Company	80%	80%	80%
Trust	80%	80%	80%

## Donations Tax

Donations Tax is payable by any individual living in the Republic of South Africa, or any South African company or one managed or controlled in the Republic, on the value of any gratuitous disposal of property including the disposal of property for inadequate consideration and the renunciation of rights. Donations tax is



payable at the end of the month following the month in which the donation was made, at a flat rate of 20% on the first R30 million donation. Donations tax on donations in excess of R30 million for the preceeding 12 months will be 25%. Certain donations are exempt, and non-residents are not liable for donations tax.

## **Dividends Tax**

Dividends tax is a tax levied on the shareholder at a rate of 20% on dividends paid. However, where a dividend in specie is paid, dividends tax is levied on the company declaring the dividend. Dividends tax is normally withheld by the company paying the dividend, and is payable at the end of the month following the month in which the dividend was paid.

A dividend is exempt from dividends tax if the beneficial owner is:

- A SA company.
- The Government and various quasi government institutions.
- Public Benefit Organisations.
- Environmental rehabilitation trusts.
- Pension, provident and similar funds.
- Medical Schemes.
- A shareholder in a registered micro business (only the first R200 000 of dividends paid during a particular year of assessment).
- A non-resident and the dividend is paid by a South African Listed non-resident company.

## **Secondary Tax on Companies ('STC') Credits**

If a company has STC credits at the effective date of the Dividends Tax regime these STC credits must be used before or on 31 March 2015 (i.e. within 3 years from the effective date).

## **Securities Transfer Tax**

The tax is imposed at a rate of 0.25% on the transfer of listed or unlisted securities. Securities consist of shares in companies or member's interests in close corporations.

## **Capital Incentive Allowances**

The Capital Incentive Allowance is a reduction in the amount of tax payable, offered as an incentive for investment in large-scale projects. A certain percentage of the capital asset's cost is allowed as capital allowance during the accounting period in which it was purchased. This amount is greater than the depreciation charge on the asset during that period. Examples of capital incentive allowances include urban development zone allowances, learnership allowances and wear and tear allowances.

## **Employee Tax**

Where a subsidiary or branch of foreign-owned company hires employees in South Africa, it must register as an employer with SARS.

## **Green Taxes**

Examples of Green Taxes in South Africa include: the carbon dioxide vehicle emissions tax, plastic bag levy, tyre levy and incandescent light bulb levy. Environmental deductions/allowances as well as tax allowances for energy efficiency savings also apply. Carbon Tax was implemented wef 1 June 2019.

## **Customs Duties**

An importer/exporter has to register with SARS to obtain a customs code number. Goods imported into, or exported from, South Africa are liable for VAT and customs duty, subject to the availability of rebates and refunds. Direct exports (where the South African seller supplies the goods) are subject to VAT at 0% and indirect exports (where for example the client of a South African seller arranges for the delivery of goods to the client's customer in the country to which the goods are exported) are subject to VAT at 15% – from 1 April 2018 (14% to 31 March 2018).

If goods are imported from one of the countries falling within the Common Customs Area (Namibia, Botswana, Lesotho and Swaziland) they are exempt from custom duty but not VAT.

## EXCHANGE CONTROL

Branches of foreign companies and South African subsidiaries are treated as resident and subject to exchange control. Investment may be in the form of share capital only or share and loan capital. Where the investment is in the form of loan capital, exchange control approval is required.

### Interest

Interest on a loan from the holding company is remittable, provided that the rate of interest is reasonable in relation to the currency of the loan, and the loan was previously authorised. The rate will be reduced where the foreign shareholder lends the funds. A withholding tax of 15% is payable when interest from a South African source is paid to non-residents, subject to certain exemptions. The foreign person is responsible for the tax, but it must be withheld by the person making the interest payment to or for the benefit of the foreign person.

### Royalties

Licence agreements must be approved by the Department of Trade and Industry.

Acceptable rates vary from 2% to 4% for manufacture of consumer goods and up to 6% for capital goods. Minimum and/or up-front payments (even if recoupable) are not allowed, unless there is immediate benefit, for example, training. The payment is subject to a withholding tax of 15% when royalties from a South African source are paid to non-residents (unless the rate is reduced or eliminated in terms of a double tax agreement).

### Foreign Entertainers and sportpersons

A withholding tax of 15% on payments to foreign entertainers and sportpersons for activities in South Africa.

## Withholding tax on acquisition of property from non-resident

The purchaser must withhold CGT on the purchase price where assets are purchased from a non-resident except where the amount payable by the purchaser is less than R2 million.

The amount withheld is an advance tax in respect of the sellers' liability for CGT.

If the purchaser is a resident withholding tax must be paid within 14 days from the date on which the seller was paid and if the purchaser is a non-resident, within 28 days. The seller may apply to SARS for a directive in order to reduce the amount to be withheld.

The following withholding tax rates are applicable and are based on the proceeds on disposal:

NON-RESIDENT SELLER	2018	2019	2020
Natural person	7.5%	7.5%	7.5%
Company	10%	10%	10%
Trust	15%	15%	15%

## Forex Exchange Rates

Average exchange rates for a year of assessment\*

Year of assessment for the 12 months ending:	Euro	Japanese Yen	UK Pound	US Dollar
February 2018	15,1246	0,1174	17,1664	13,0852
February 2019	15,7717	0,1225	17,8338	13,5365

\*The term "average exchange rate" is defined in section 1(1) of the Income Tax Act and means in relation to a year of assessment, the average exchange rate determined by using the closing spot rates at the end of applied consistently within that year of assessment.

## STANDARD FOR AUTOMATIC EXCHANGE OF FINANCIAL ACCOUNT INFORMATION IN TAX MATTERS

In recent years, governments and financial institutions have become much more aware of the large amounts of undisclosed wealth held in offshore accounts.

The Standard for Automatic Exchange of Financial Account Information in Tax Matters (also referred to as the Common Reporting Standard or CRS) creates a globally co-ordinated and consistent approach to the disclosure of financial accounts held by account holders. The agreement requires sharing of information between the tax authorities regarding accounts and investments.

South Africa is one of the early adopters of the CRS and is committed to commence exchange of information automatically on a wider front from 2017, together with over one hundred other jurisdictions.

## PRIME BANK OVERDRAFT RATES

Effective Date	Rate
20.07.2012	8.50%
31.01.2014	9.00%
18.07.2014	9.25%
24.07.2015	9.50%
20.11.2015	9.75%
29.01.2016	10.25%
18.03.2016	10.50%
21.07.2017	10.25%
29.03.2018	10.00%
23.11.2018	10.25%
18.07.2019	10.00%

## IMPORTANT LAWS AFFECTING BUSINESSES IN SOUTH AFRICA

Knowledge of and compliance with legislation is essential for the good governance of a company. When doing business in South Africa, it is important to have a working knowledge of the guidance provided in The King Report and King Code.

While this list is not exhaustive, important legislation (and legislative amendments where applicable) to be aware of includes:

- The Companies Act.
- The Close Corporation's Act.
- The South African Income Tax Act.
- The Labour Relations Act.
- The Occupational Health and Safety Act.
- The Employment Equity Act.
- Promotion of Access to Information Act.
- Financial Intelligence Centre Act.
- Trade Marks Act.
- Business Names Act.
- Consumer Protection Act.
- The Competition Act.
- Electronic Communications and Transactions Act.
- The Protection of Personal Information Act.
- National Credit Act.
- Basic Conditions of Employment Act.
- Broad-Based Black Economic Empowerment Act.
- Industry or sector specific legislation.
- Listed companies must adhere to JSE regulations.

The National Credit Act (the NCA) became fully operative on 1 June 2007 and is designed to protect the consumer against unlawful credit provision. The National Credit Regulator is responsible for the registration of industry participants, research, public education, investigation of complaints and enforcing NCA compliance.

The NCA creates a responsibility on credit providers to refuse to give the consumer (borrower) credit if he cannot afford it. The NCA generally applies to every written credit agreement between parties dealing at arm's length and made in, or having effect in, South Africa. A credit agreement is defined as a credit facility, credit transaction, credit guarantee, or any combination of the three. The Regulations of the NCA specify the maximum interest rates and transaction fees that can be charged on credit agreements or loans.

### **Registration of Industry Participants**

All industry participants (credit providers, credit bureaux and debt counsellors) must be registered with the Regulator. If they have not registered as such, they cannot extend credit or trade as a credit provider.

### **Further Consumer Rights**

The right to apply for credit, to be protected against discrimination in the granting of credit, to be informed of the reason why the application for credit was refused (if requested), to receive a credit agreement in plain, understandable and an official language, and to receive a copy of the credit agreement and a replacement copy when requested.

During November 2017, the Portfolio Committee on Trade and Industry published a Draft National Credit Amendment Bill, 2018, which seeks to amend the NCA to provide, inter alia, for debt interventions for low income consumers with the aim of addressing over-indebtedness, as well as the suspension of agreements considered to be reckless. The Bill has not yet been passed by the National Assembly at the date of publication hereof.

## CONSUMER PROTECTION ACT, 68 OF 2008

The Consumer Protection Act and Regulations (the CPA) is intended to promote fair business practices by governing transactions and services that occur in South Africa between suppliers and consumers. It regulates the activities of suppliers and creates rights for consumers (in the event that they fall within the ambit and scope of the Act).

Where applicable, the CPA regulates the marketing of goods and services to consumers as well as the relationships, transactions, advertisements and agreements between the consumers, suppliers, producers, distributors, importers, retailers, service providers and intermediaries of those goods and services. A supplier may reside in or outside SA, or have its principal office in or outside of SA.

The CPA applies to:

- Every transaction occurring within SA, and covers both goods or services delivered or rendered “in the ordinary course of business” and it applies to transactions which suppliers enter into with consumers (a transaction refers to the supply of goods or services in return for payment). It therefore covers:
  - ◆ The promotion and advertising of goods or services that could lead to the transaction being entered into (unless exempted), the performance of the service and the supply of goods, the goods and services themselves after the transaction is completed, and the goods which form the subject of an exempted transaction. The Act does not apply to certain consumers, certain transactions, or in specific instances where exempted by the Minister, more specifically:

The CPA does not apply to the following consumers:

- Juristic Persons whose asset value or annual turnover equals or exceeds R2 million. Juristic persons, for purposes of the CPA include: a company, a close corporation, and also a body corporate, partnership or association, or a trust as defined in the Trust Property Control Act, 57 of 1988.
- The State.
- Credit Agreement Transactions (exclusions apply).
- Employment contracts.



- Collective bargaining and bargaining agreements.
- Specific exemption granted by the Minister.

Despite the exemptions above, certain provisions of the CPA apply to Franchise Agreements and in relation to Product Liability.

## **Eight Fundamental Consumer Rights**

The CPA introduces a formal set of consumer rights into law, based on internationally accepted and United Nations adopted consumer rights.

- Right to equality in the consumer market.
- Right to privacy.
- Right to choose.
- Right to fair and honest dealing.
- Right to disclosure and information.
- Right to fair value, good quality and safety.
- Right to fair and responsible marketing.
- Right to fair, just and reasonable terms and conditions.

## **Safety of Consumers and Informed Consent**

The CPA is designed to ensure the safety of consumers and to provide specifically for informed consent. A supplier is required to draw the consumer's attention in a conspicuous, clear and understandable way, to any risk that could result in serious injury or death.

## **Product Liability**

Product liability and safety law are both areas of law focused on unacceptable risks of death, injury or damage, prevention of the realisation of those risks and assuring compensation when or if the risks do realise.

The CPA, under the fundamental right to fair value, good quality and safety, establishes a form of modified strict liability of producers, importers, distributors or retailers (or all of them jointly and severally) for harm caused by or as a result of, the supply of goods which are unsafe, or failed products, or defects or hazards in any goods, and for inadequate instructions or warnings provided to the consumer.

B-BBEE, initiated by the South African government is aimed at empowering “black” people. It redresses the inequalities of the past. The Department of Trade and Industry (DTI) is the custodian of B-BBEE in terms of the B-BBEE Act, 53 of 2003 (as amended).

“Black” people in South Africa include Africans, Asians and persons of mixed race. Women of all races are also seen to be previously disadvantaged and B-BBEE encourages the empowerment of all women.

Through its B-BBEE policy, the government aims to achieve some of the following objectives:

- Empower more black people to own and manage enterprises. Enterprises are regarded as black-owned if at least 51% of the enterprise is owned by black people, and black people have substantial management control of the business.
- Achieve a substantial change in the racial composition of ownership and management structures and in the skilled occupations of existing and new enterprises.
- Promote access to finance for black economic empowerment.
- Increase the extent to which black women own and manage existing and new enterprises, and facilitate their access to economic activities, infrastructure and skills training.
- Ensure that black-owned enterprises benefit from the government’s preferential procurement policies.

The Codes set out guidelines for facilitating B-BBEE and scoring.

### **How Compliance is Achieved**

In terms of the amended Codes, B-BBEE compliance is achieved by a business by reference to its overall score achieved in respect of five specific B-BBEE elements and measured in accordance with a B-BBEE scorecard.

Every entity subject to B-BBEE is required to maintain a scorecard prepared and verified by an accredited verification agency.

## Trumping Provision

Section 3(b) of the B-BBEE Amendment Act, 2013, by operation of law, automatically commenced on 24 October 2015.

In the event of any conflict between the B-BBEE Act and any other law in force immediately prior to the date of commencement of the B-BBEE Amendment Act, the B-BBEE Act prevails if the conflict specifically relates to a matter dealt with in the B-BBEE Act. This trumping provision was inserted to safeguard the objectives and spirit of transformation.

## Turnover Thresholds

	Amended Code	Previously
Large Enterprises (Generic)	Turnover greater than R50 million per year	Turnover greater than R35 million per year
Qualifying Small Enterprises (QSE)	Turnover between R10 million and R50 million per year	Turnover between R5 million and R35 million per year
Exempt Micro Enterprises (EME)	Turnover less than R10 million per year	Turnover less than R5 million per year

## Elements of the Scorecard

The elements of the scorecard have been reduced from seven to five, scored on five targeted elements totaling 109 points, plus 9 bonus points (previously 100 plus 7 bonus points).

Amended Code	Points	Previously	Points
Ownership (Priority element)	25	Ownership	20
Management Control	19	Management Control	10
		Employment Equity	15
Skills Development (Priority element)	20	Skills Development	15
Enterprise and Supplier Development (Priority element)	40	Procurement	20
		Enterprise Development	15
Socio-Economic Development	5	Socio-Economic Development	5

## Under the Amended Codes

- All companies are required to comply with all the elements of the amended Codes, except EME's (Exempt Micro Enterprises) and > 50% black owned QSE's.
- The Generic scorecard is adjusted in accordance with government key priorities.
- Ownership, Skills Development and Enterprise and Supplier Development are Priority Elements.

## Priority Elements

- Large Enterprises are required to comply with all three priority elements.
- QSE's are required to comply with Priority element one, namely Ownership, and either one of Priority element two (Skills Development), or Priority element three (Enterprise and Supplier Development).

## Sector Codes

Specific codes exist for certain sectors in South Africa, and apply if a business is involved in these sectors. Sector codes are: financial services, chartered accountancy, construction, forestry, property, agriculture, marketing, advertising and communication, information and communications technology, tourism and the transport sector. Each Sector Industry Council is required to compile their own B-BBEE scorecard. The general rule is that an entity falling under a specific sector code must be measured under that code, and may not choose the generic codes.

## Reportable B-BBEE Transactions

A reportable B-BBEE transaction is any transaction that has resulted or will result in a measured entity claiming ownership points in terms of the ownership scorecard of the applicable BEE codes of good practice, and where the B-BBEE transaction value is equal or more than R25m.

The Financial Intelligence Centre Act, as amended (FICA), is a comprehensive piece of legislation dealing with money laundering controls, with the aim of fighting organised crime and terrorism, both locally and internationally.

FICA identifies certain sectors within business as particularly vulnerable to money laundering and terror financing. These sectors are legally required to register with the Financial Intelligence Centre (FIC) as either an “Accountable Institution” (AI) or a “Reporting Institution” (RI). They are required to take steps regarding client identification, record-keeping, reporting of information and internal compliance structures. An AI includes, inter alia a person who carries on the business of a bank (as defined in the Banks Act, 1994 of 1990), an estate agent, attorney, a board of executors or a trust company, a person who carries on the business of dealing in foreign exchange, and long-term insurance service providers. A RI includes dealers in motor vehicles or in Krugerrands.

### **FICA and Financial institutions**

In order to comply with FICA, South African banks have implemented customer identification measures to enable them to know who their customers are and to prevent criminals from using false or stolen identities to gain access to services. The information and documents required when new customers open a banking account depends on whether the customer is a natural person, part of an entity, or whether he or she is a South African citizen or a foreign national permanently resident in South Africa, a private company, trust or other legal entity.

### **Cash transactions and FICA:**

AI's are required to file a “cash threshold report” with FIC in regard to any cash transactions involving domestic and foreign notes and coins, and travellers cheques above R25 000 or an aggregate thereof.

South Africa is a member of the Financial Action Task Force, the international body which sets standards and policy on anti-money laundering and for combating the financing of terrorism.

## THE PROTECTION OF PERSONAL INFORMATION ACT, 4 OF 2013

The Protection of Personal Information Act (POPI), is aimed at bringing South Africa in line with international standards of protection of personal data. It applies to any person or organisation who keeps any type of records relating to the personal information of anyone, (unless those records are subject to other legislation which protects such information more stringently). It regulates the “processing” of personal information. “Processing” includes collecting, receiving, recording, organizing, retrieving, or using such information; or disseminating, distributing or making such personal information available.

The commencement date of POPI has not yet been proclaimed. It is anticipated to commence towards the end of 2018 or early 2019. There will be a one-year grace period from the date of commencement, following which, POPI will be enforced.

POPI requires that businesses in South Africa ensure that they implement and maintain appropriate, reasonable, technical and organisational security measures to safeguard personal information and prevent unlawful access to and unauthorised destruction of personal information. This applies to their information capturing, storage and usage systems.

The Information Regulator (IR) is responsible for the enforcement of POPI’s provisions, as well as handling of complaints, performing research and facilitating cross-border co-operation. The IR and its members were appointed in December 2016. Should a business be in violation of any of POPI’s provisions, the IR may issue an enforcement notice. If the enforcement notice is not complied with, the penalty that may be imposed is a fine or imprisonment, or both. Up to twelve months imprisonment may be imposed for lesser offences, and up to ten years for more serious offences. The maximum fine that may be imposed is R10-million.

A company may transfer personal information to recipients in locations outside South Africa if the recipient country has data protection laws similar to POPI.

## EMPLOYMENT LAW

Employment in South Africa is regulated by statute, common law and contract.

South African employment law applies to employees working in South Africa. In most instances, where an employee performs work in South Africa and is paid there, South African law will apply.

### Sources of Labour Law In South Africa

#### **Basic Conditions of Employment Act, 75 of 1997 (BCEA)**

Imposes minimum conditions of employment for employees, mainly in relation to working hours, leave, the prohibition of child and forced labour, the payment of remuneration and notice and payments on termination of employment.

#### **Labour Relations Act, 66 of 1995 (LRA)**

Governs all employers and employees in South Africa except for those excluded. Grants employees protection against unfair dismissal and unfair labour practices. Encourages collective bargaining and settlement of disputes, codifies guidelines re Trade Unions, bargaining councils and the Commission for Conciliation Mediation and Arbitration (CCMA).

#### **The Occupational Health and Safety Act, 85 of 1993 (OHSA)**

Imposes a general duty on employers to ensure that a reasonably safe and healthy environment is provided to workers and to provide protective equipment.

#### **Skills Development Act, 97 of 1998 (SDA)**

SETA's (Sector Education and Training Authorities) are established for sectors to establish "learnerships", approve workplace skills plans, allocate grants, monitor education and training, to collect and disburse SDL levies, (training is financed by a levy equivalent of 1% of each employer's payroll).

**The Compensation for Occupational Injuries and Diseases Act, 130 of 1993 (COIDA)**

Ensures that employees and their dependants who have suffered injury, illness or death occurring in the workplace and during the course of the employee's duties are compensated (excluding policemen, soldiers, domestic and contract workers).

**Skills Development Levies Act, 9 of 1999 (SDLA)**

This imposes a compulsory levy on most employers of an amount equal to 1 % of the employer's total payroll amount, the proceeds of which are used to fund the various SETA's. In certain circumstances, employers are allowed to claim rebates for the levies paid to a SETA.

**The Unemployment Insurance Act, 63 of 2001 (UIA)**

Provides for payment of benefits to employees who have lost their employment due to pregnancy, or other circumstances beyond their control (i.e. not by resignation). Applies to domestic workers.

**The Employment Equity Act, 55 of 1998 (EEA)**

To eliminate discrimination in the workplace, on grounds such as race, gender, sex, age and religion and promotes affirmative action.

**International Labour Organisation (ILO)**

International labour standards, conventions and recommendations.

**Codes of Good Practice**

Various labour statutes empower the Minister of Labour to issue "codes of good practice" which are intended as guidelines for employers when formulating policies and procedures.

*All references to the abbreviations used above under this section of this guide refers to the applicable Act as per this table.*



## Recent developments in South African Employment Law

At the date of publication hereof, the following Bills have not been enacted into law, however are expected to be in the next year or two. They have important implications for employers and employees in South Africa. They are:

i) **The National Minimum Wage Bill**

ii) **The Basic Conditions of Employment Amendment Bill**

- makes provisions for exemptions of up to 12 months from the national minimum wage for start-ups, small and medium-sized enterprises who would battle to pay the higher wage.

iii) **The Labour Laws Amendment Bill**

- provides for unpaid paternity leave (10 days), adoption leave and surrogacy leave for all employees who do not qualify for maternity leave, leave will also be applicable in the event of a miscarriage or a still born during the third trimester, and fathers will be entitled to more family responsibility leave.

iv) **Unemployment Insurance Amendment Bill**

- new maternity benefits will see payment made at a rate of 66% of the earnings of the beneficiary at the time of the application.

The Bills listed in i) to iii) above all include amendments that govern the National Minimum Wage. Once implemented, the national minimum wage in South Africa will be R20 per hour.

## Control of Tobacco Products and Electronic Delivery Systems Bill (COTPED)

- proposes to ban smoking (includes vapes and e-cigarettes) in all enclosed public spaces and workplaces. A 3 month prison sentence is proposed – for smoking in public.
- Employers may be jailed for up to a year if employees are unwillingly exposed to smoking.

## The Employment Contract

There is no legal requirement that a contract of employment needs to be in writing. An oral employment is as binding and valid as a written one.

However, the BCEA requires that “written particulars of employment” be given to the employee, which imposes a duty on the employer to provide the employee with certain information in writing, and does not force the parties to enter into a written contract. In practice these written particulars are *converted* into a contract, when the employee signs it. An exception is learnership agreements which must be in writing.

The BCEA requires that the written particulars provided to the employee should be retained for 3 years after termination of the employment. Terms and conditions cannot be changed unilaterally by one party, however they may change by operation of law.

## Notice Periods

The employer or employee may give notice to terminate the employment relationship by giving the written statutory, agreed or reasonable notice to the other party. Where an employee is illiterate, the notice must be given verbally as well. Any employee who works for more than 24 hours per month for the employer is entitled to notice in terms of his/her contract, or if no contract exists, then to the legal minimum as follows:

Period of Service	Written Notice Requirement
6 Months or less	1 Week*
6 to 12 Months	2 Weeks*
12 Months +	4 Weeks**
*cannot be reduced by agreement	
**A collective agreement may reduce the 4 week notice period to not less than 2 weeks	

If the employer complies with these statutory minimum periods or agreed notice period (contained in a contract), the notice given will be lawful. The employee may nevertheless challenge the fairness of the dismissal in terms of the LRA. Notice cannot run concurrently with any period of annual, maternity or family responsibility leave.

Fixed term contracts do not need notice to be given when they expire – unless the employee has a reasonable expectation that the contract will be renewed. Employers may decide to waive the notice period, but the worker must still be paid for the notice period. Workers who live on the premises of the employer may stay in the accommodation for 1 month if the employer ends the contract of employment prematurely.

## **Dismissal**

The LRA grants employees protection against unfair dismissal. A dismissal must be both substantively and procedurally fair. The three main grounds for dismissal are misconduct, incapacity (ill health or poor work performance) and operational requirements of the employer.

Payment on dismissal includes accrued annual leave pay, payment in lieu of notice – unless summarily dismissed or if the employee is required to work the notice period. If dismissal is due to operational requirements, severance pay of a minimum of one week's salary for every completed year of service, and any other amount that the employee is contractually entitled to.

## **Remedies for Unfair Dismissal**

The CCMA or the Labour Court may hear claims for unfair dismissal. Should it be found that the dismissal was unfair, the employee may be entitled to the following remedies: reinstatement, re-employment of the employee in other reasonably suitable work and compensation paid to the employee. Where the dismissal is found to have been discriminatory in nature, compensation of up to 24 months' remuneration may be ordered.

## Administrative Consequences of Hiring Employee(s)

	Compliance	Requirement
<b>P A Y E</b>	Registration as Employer with SARS for P.A.Y.E (EMP101 form)	Deduct tax from employees each month and pay to South African Revenue Service (SARS) by 7th day of following month. At end of each year issue each employee with an IRP5 certificate (which must reconcile with total P.A.Y.E paid). Also payable by members of CC's and directors of companies.
<b>U I F</b>	Register with the UIF and with SARS	Pay over monthly contributions on basis of 1% contribution by employee and 1% by employer based on the employees remuneration being below a certain amount (R14 872 per month). For employees who earn more than this amount, the contribution is calculated using the maximum earnings ceiling amount (R148.72).
<b>S D L</b>	Registration with SARS	1% of total remuneration paid to employees. Employers paying annual remuneration of less than R500 000 are exempt from payment of these levies.
<b>Workman's Compen- sation</b>	Register and provide annual reports re wages	Basis of assessment to be paid by employers annually.

PAYE should be withheld from remuneration paid to labour brokers unless an exemption certificate is obtained.

## **Unemployment Insurance Fund (UIF)**

The Unemployment Insurance Act and Unemployment Insurance Contributions Act applies to all employers and workers, with the following exceptions: workers working less than 24 hours a month for an employer, learners, public servants, foreigners working on contract, workers who earn only commission.

## **Employment Tax Incentive (ETI)**

- The ETI is an incentive aimed at encouraging employers to hire young work seekers.
- Aim: encourage youth to participate in economic activity, gain skills and experience.
- The incentive reduces the cost to employers of hiring young people through a cost sharing mechanism with government, by allowing employers to reduce the amount of PAYE paid while leaving the wage received by the employee unaffected.
- Employers are able to claim the incentive for a 24 month period for all employees who qualify.
- Applies to employees between the ages of 18 and 29 years, and does not earn more than R6000 per month.
- The young employee must not be an independent contractor.
- The young employee, in relation to the employer, must not be a connected person.
- The incentive does not apply to domestic workers.
- The incentive will come to an end on 28 February 2019.

The Minister of Finance designated special economic zones and industries in respect of which an employer will also qualify for the incentive.

## FOREIGN EMPLOYEES: PERMANENT RESIDENCE VISAS

<b>Permanent Offer of Employment</b>	Issued to a person who has received a permanent offer of employment in South Africa and is holder of a work visa for continuous 5 years.
<b>Critical Skills</b>	Issued to a person who is a foreign national and has demonstrated and meets the criteria in terms of the critical skills list, and holds a permanent contract of employment in SA.
<b>Direct Residence</b>	Issued to a foreign national who is the holder of a work permit for a number of years, and has received an offer of employment on a permanent basis (or is the spouse of a SA citizen or permanent resident).
<b>Child of a South African or Permanent Resident or Citizen</b>	Full birth certificate of the child.
<b>Exceptional Skills Category</b>	The applicant must demonstrate critical skills and also demonstrate over and above these, that he has extraordinary skills or qualifications. No need for a permanent contract of employment.
<b>Business Category (Establishing a Business in SA)</b>	Issued to a foreign national who intends to establish or invest in an established business in South Africa. The applicant will be required to invest a prescribed financial capital contribution.
<b>Relative Category</b>	Issued to a foreign national who is a member of the immediate family of a South African citizen or permanent resident, provided the latter provides the 'prescribed' financial assurances.
<b>Spousal Category</b>	Issued to a foreigner who has been married to or the life partner of a South African spouse for at least five years before applying for permanent residence.
<b>Retirement Category</b>	Issued to a retired person provided that person can prove that he has the right to a pension or irrevocable retirement annuity with a minimum value of R37 000 per month, or a net worth of R37 000 per month.

## FOREIGN EMPLOYEES: TEMPORARY RESIDENCE VISAS

<b>General Work Visa</b>	Issued to specific applicant, in possession of a written and time specific work offer, in line with his skills and qualifications, provided it has been proven beyond reasonable doubt that SA citizens and permanent residents with the relevant skills are not available for appointment.
<b>Critical Skills Visa</b>	Issued to an individual who has critical skills as listed in the Government Gazette published by the Minister of Home Affairs, provided requirements met.
<b>Intra-company Transfer Work Visas</b>	Issued to an employee employed abroad by a business operating in South Africa as a branch, subsidiary or affiliate relationship. Issued for a maximum period of four years and are not renewable or extendable.
<b>Study Visa</b>	Issued to a person wishing to study in South Africa, provided admission to the tertiary institution has been confirmed, and it does not prejudice a South African student.
<b>Business Visa</b>	Issued to an applicant intending to establish business or invest in an existing business in South Africa. Required to obtain a Certificate issued by a registered accountant that has at least R5 million available in cash, or at least R5 million in cash and capital to be invested in SA, plus other requirements.
<b>Relative's Visa</b>	Issued to a foreign national who is a member of the immediate family of a South African citizen or permanent resident, provided the latter is able to financially support the applicant in an amount of R8 500 per month per person.
<b>Exchange Visa</b>	Issued to persons participating in programmes of cultural, economic, or social exchange organised by an organ of state or a public higher educational institution, in conjunction with an organ of a foreign state.
<b>Retired Person's Visa</b>	Issued to a retired person provided that person can prove that he has the right to a pension or irrevocable retirement annuity with a minimum value of R37 000 per month, or a net worth of R37 000 per month.

## COMPETITION LAW

A knowledge of competition law is essential for any successful business operating in South Africa, especially when creating a business strategy, launching a new product or challenging competitors.

The Competition Act, 89 of 1998, as amended, (CA) aims to maintain and promote competition in the South African market in order to:

- Provide all South Africans equal opportunity to participate fairly in the national economy.
- Achieve a more effective and efficient economy in South Africa.
- Provide for markets in which consumers have access to, and can freely select, the quality and variety of goods and services they desire.
- Create greater capability and an environment for South Africans to compete effectively in international markets.
- Restrain particular trade practices which undermine competitive economy.
- Regulate the transfer of economic ownership in keeping with the public interest.
- Establish independent institutions to monitor economic competition.
- Give effect to the international law obligations of South Africa.
- Promote employment and general socio-economic welfare.
- Promote a greater spread of ownership within the economy, in particular by increasing the ownership of historically disadvantaged individuals.
- Ensure that small business have an equitable opportunity to participate in the economy.
- Expand opportunities for South African participation in world markets, whilst recognising the role of foreign competition within South Africa.

The CA applies to all economic activity within, or having an effect within South Africa and regulates relationships between competitors and relationships in the supply chain.

Agreements or practices by parties in either type of relationship are prohibited if they have the effect of substantially preventing or lessening competition in a market (subject to certain defences).



## **Restrictive Practices and Anti-competitive Conduct**

Examples of 'restrictive practices' and 'anti-competitive conduct' are price fixing, predatory pricing and collusive tendering, all of which are prohibited.

The CA also prohibits "abuses" by "dominant" firms (firms with a market share of 35% or more).

## **Control of Mergers and Acquisitions**

Mergers and acquisitions are controlled, in that the CA requires a notification and prior approval procedure for certain mergers and acquisitions, carries significant penalties for contraventions – and reaches beyond South Africa, applying to economic activity both in and having an effect in the country.

## **Cartel Conduct**

Cartel conduct applies to parties in a 'horizontal relationship' (relationships between competitors), where three categories of conduct are prohibited.

These are:

- Directly or indirectly fixing a purchase or selling price or any other trading condition.
- Dividing markets by allocating customers, suppliers, territories or specific types of goods or services.
- Collusive tendering.

Three independent competition regulatory authorities are in place terms of the Act:

- The Competition Commission – investigative and enforcement agency.
- Competition Tribunal – adjudicates competition matters.
- Competition Appeal Court (formerly, the Competition Board) – considers appeals against decisions of the Tribunal.

There is increasing awareness in South Africa towards environmental issues and planning, both the in private and public sectors.

The overarching legislative foundation for environmental management in South Africa is The Constitution of the Republic of South Africa Act, 108 of 1996.

Section 24 of this Act provides that everyone has the right to:

- An environment that is not harmful to their health or well-being.
- To have the environment protected, for the benefit of present and future generations.

The National Environmental Management Act, 107 of 1998 is the primary environmental framework Act in South Africa which provides for co-operative environmental governance.

This Act is based on the principle that everyone has the right to an environment that is not harmful to his or her health or well-being, and enabling the administration and enforcement of other environmental management laws.

### **Some Other Relevant Environmental Legislation Includes**

- National Water Act, 36 of 1998.
- National Energy Act, 34 of 2008.
- National Forests Act, 84 of 1998.
- National Environmental Management: Biodiversity Act, 10 of 2004.
- National Environmental Management: Air Quality Act, 39 of 2004.
- National Environmental Management: Waste Act, 59 of 2008.

#### **Disclaimer:**

The information contained in this guide is of a general nature and is not intended as legal advice. The reader is advised to consult a professional adviser for further assistance and information, and for guidance on new and existing legislation which may affect the business owner, directors and officers of companies.

All references to the masculine gender shall include the feminine (and vice versa).

While every care has been taken in the compilation of this guide, no responsibility of any nature whatsoever shall be accepted for any inaccuracies, errors or omissions.

# OUR GLOBAL PRESENCE



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