




KEMPEN
GROUP

GUIDE FOR DOING BUSINESS
IN SOUTH AFRICA

2018

Driven by results and personal relationships

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ABOUT KEMPEN GROUP

KEMPEN GROUP is a member of GMN International, an association of legally independent accounting and audit firms across the world.

Offering expert financial advice in a very wide variety of business industries, we wish to form trusted, solid partnerships with companies of any size throughout the country. Delivering the best possible financial solutions with efficiency and integrity, KEMPEN GROUP continuously keeps abreast of the latest developments - tailoring its strategies to the unique needs of each client



OVERVIEW

At the southern most tip of the African continent, the republic of South Africa occupies an area of 1,219,602 square kilometres, boasting more than 3,000 kilometres of coastline divided between the Atlantic and Indian oceans.

South Africa shares borders with Namibia, Botswana, Zimbabwe and Mozambique, and with the kingdoms of Lesotho and Swaziland. The motto on South Africa's coat of arms is !ke e: /xarra //ke, a phrase in the Khoisan language meaning "diverse people unite".

According to the 2011 national census, just under 52 million people live in South Africa. Gauteng is the most populous of the nine provinces, with over 12 million people living there. Of these, approximately 52 million people, 79,6% are black Africans, 8,9% are white, and 11,5% are made up collectively of coloured people, Asians and Indians. As at 2011, there were marginally more women in the country than men, approximately 51,3% women and 48,7% men.

The majority of South Africans are Christian, with the other major religions being Hinduism, Islam and Judaism. However, South Africa is a secular democracy.

The Constitution provides for a number of institutions that support South Africa's constitutional democracy. These are: the Public Protector, the South African Human Rights Commission, the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities, the Commission for Gender Equality, the office of the Auditor General and the Independent Electoral Commission.

During 2014 South Africa held their 5th democratic elections. The African National Conference won the elections with close to 62%. South Africa is experiencing exceptional labour unrest with a recent mining strike lasting for over 5 months! South Africa has implemented certain codes in terms of Broad Based Black Economic Empowerment (B-BBEE) since 1994. Recently these codes have been amended and from 2014 onwards businesses will be evaluated, amongst others, on an overall B-BBEE score based on black ownership, black management, preferential procurement and enterprise development.

LEGAL SYSTEM

The three-tier system of government in South Africa operates at national, provincial and local level. Each level, or sphere, of government has its own executive authority and legislative authority. The principle of cooperative governance is a stated aim of the Constitution. In South Africa there is an independent judiciary. The head of the judiciary is the Chief Justice of the Constitutional Court.

ECONOMY

Although Nigeria remains Africa's largest economy, South Africa remains an economic powerhouse within Africa. South Africa's GDP was \$314,6 billion in 2015. South Africa's economy is managed within a stable political environment. The current African National Congress-led government steered South Africa through the recent global economic crisis with an economic contraction of 1,5%, while many economies fell to their knees.

Poverty remains a serious challenge in South Africa with unemployment at a level of approximately 26,5% at the end of 2016.

In line with worldwide trends, while South Africa's economy was built on primary and secondary industries, and in particular mining of minerals and metals, there is a shift towards growth in tertiary industries, such as finance and manufacturing, to name just two. Statistics South Africa reports that three provinces stand out as economic centres: Gauteng, KwaZulu-Natal and the Western Cape. This is in keeping with the fact that these are the most populous provinces.

The inflation rate was 6,4 percent in 2016, but is expected to decline to 5,7 percent by 2018. The targeted inflation rate band is 3–6%. Higher inflation rates over the past few years were driven by rapid increases in food and oil prices, a weakening rand and increases in energy costs. The weak exchange rate is a risk to inflation targeting. The repurchase (REPO) rate has increased by 2% since 2014 in an effort to keep inflation within the target band.

EXCHANGE CONTROL

The exchange control regulations of 1961, restrict the outward flow of currency in certain instances. These regulations are being relaxed over a period of time. Foreign nationals should be aware that not all inflow can automatically be returned outside the country, most of the time pre-approval from the Reserve Bank is required.

EASE OF DOING BUSINESS IN SOUTH AFRICA

South Africa is ranked 82 among 190 economies in the ease of doing business, according to the latest World Bank annual ratings. The rank of South Africa deteriorated to 82 in 2017 from 74 in 2016. Ease of Doing Business in South Africa averaged 51.60 from 2008 until 2017, reaching an all-time high of 82 in 2017 and a record low of 32 in 2008

TAX INCENTIVES AND GRANTS

Tax incentives are offered for certain small businesses to encourage employment. Tax incentives and grants also exist for companies in the manufacturing, film and export sectors, amongst others.

BUSINESS VEHICLES USED BY MOST FOREIGNERS

The most common form of business vehicle used by foreign companies in South Africa is a private limited liability company. Private companies are simple and cheap to establish and there are no minimum (At least 1 share) or maximum share capital requirements. Private companies can be established with only one director and that director need not be resident in South Africa. Private companies have fewer corporate governance requirements than public companies. For example, it is not necessary for a private company to appoint a company secretary or to hold an annual general meeting. It is also not a requirement that a private company appoint an auditor unless it passes a public interest test in terms of regulations to the Companies Act, 2008. The public interest test is related to the company's turnover, debt levels and number of employees, among other things. A private company has to appoint at the very least a South African registered reviewer/accountant, there are certain requirements for foreign shareholders and it must be specifically noted when a director is a foreign national.

REGISTRATION AND FORMATION

A private company must register the following with the Companies and Intellectual Property Commission (Commission):

- Its name, directors, independent reviewer/ auditor, physical and registered address and postal address.
- Its memorandum of incorporation.

Registration of a new company generally takes between 14 and 21 days from submission of the relevant documents. It is also possible to buy an off-the-shelf company (that is, a company that has already been registered and is ready for sale). To operate through a branch, the foreign profit or non-profit company must submit certain information together with its constitutional documents to the Commission within 20 business days from when it first begins to conduct business and/or non-profit activities in South Africa.

REPORTING REQUIREMENTS

A private company must provide the Commission with up-to-date information on:

- Constitutional documents.
- Registered office.
- Directors' details.
- Secretary details (if applicable).
- Auditor/independent reviewer details (if applicable).
- Any redemption, reduction or other alteration of capital (Only authorised share capital)
- Accounting reference date.
- Certain special resolutions.
- Company name.

Any changes to this information must be updated periodically by submitting an annual return. If a private company passes the public interest test, it must file its annual financial statements with the Commission and its financial statements must be audited.

SHARE CAPITAL

A private company must have share capital, but there is no minimum (at least 1 share) or maximum amount. Shares issued in accordance with the new Companies Act 2008 do not have a nominal or par value.

MANAGEMENT STRUCTURE

Private companies are managed by a board of directors consisting of at least one director. The Memorandum of Incorporation usually allows directors to delegate their powers to a managing director or other executive managers.

MANAGEMENT RESTRICTIONS

There are no restrictions on foreign managers under the Companies Act 2008. The Companies Act 2008 requires that a company's record of directors includes each director's nationality and passport number, if they are not a South African.

PARENT COMPANY LIABILITY

A parent company is not generally liable for the debts of its subsidiaries unless it has given a guarantee, indemnity or surety.

EMPLOYMENT

Employment in South Africa is regulated by statute, common law and contract. In general, South African employment law applies to all employees working in South Africa. Although choice of law clauses are recognised, these are only enforced where the chosen law is also the law to which the contract is most closely connected. In most instances, if the employee performs the work in South Africa and is paid there, South African law will apply. In certain circumstances, it may also apply to South African employees working abroad.

The main pieces of legislation regulating the employment relationship are:

Labour Relations Act 1995 (LRA).

This grants employees protection against unfair dismissal and unfair labour practices. It also regulates collective bargaining and the transfer of undertakings as a going concern.

Basic Conditions of Employment Act 1997 (BCEA).

This regulates most contracts of employment in relation to, among other things:

- Working hours.
- Leave.
- The prohibition of child and forced labour.
- The payment of remuneration.
- Notice and payments on termination of employment

Other employment regulations that should be taken into account

- Employment Equity Act 1998 (EEA)
- Skills Development Act 1998
- Skills Development Levies Act 1999
- Unemployment Insurance Act 2001
- Occupational Health and Safety Act 1993
- Compensation for Occupational Injuries and Diseases Act 1993.

INCOME TAX

Basic income tax on individuals for the year of assessment ending 28 February 2018 is based on a sliding scale depending on the income band into which the person falls. Companies are taxed on their income at 28% and this does not differ for South Africa-sourced income of non-resident companies with a branch in South Africa. There are a number of withholdings taxes levied in South Africa (subject to double taxation treaties) such as: dividends withholding tax; interest withholding tax on non-residents; withholding tax on non-residents' royalties and similar payments; and a withholding tax on gross revenue of foreign entertainers and sports persons.

TAXES ON EMPLOYMENT

South Africa has a residence basis of tax, which means that a South African resident is taxed on any income sourced from anywhere in the world. A natural person qualifies as a South African tax resident if he is ordinarily resident in South Africa or satisfies the requirements of the physical presence test, that is, if he or she has been physically present in South Africa for:

- More than 91 days in the tax year in question.
- More than 91 days in each of the five tax years before the current tax year.
- More than 915 days over the previous five tax years.

NON-TAX RESIDENT EMPLOYEES

Generally, non-resident employees are liable for tax on income derived from a source within South Africa, subject to the terms of any Double Taxation Treaty (DTT) concluded between South Africa and the employees' country of residence. An employee might be subject to income tax in South Africa depending on the provisions of the DTT, if any, concluded between South Africa and the foreign employee's country of residence. If the employee is employed by a foreign company and is seconded to South Africa, the income tax can be withheld by a representative of the employer in South Africa. If the employer does not have a representative in South Africa, the employee is responsible for ensuring that the tax is fully paid to SARS. Non-resident employees are subject to the same rates as resident employees, unless a DTT provides otherwise. Non-resident employees who enter South Africa to carry out a contract of service within South Africa and who, on the termination of the contract must leave South Africa do not have to contribute to the unemployment insurance fund.

EMPLOYERS

Employers pay corporate income tax (CIT) on their income. Both South African resident and non-resident companies pay CIT at a flat rate of 28%, except that non-resident companies only pay income tax in South Africa if they:

- Derive income from South Africa; and
- In the case of companies which are resident in a country which has concluded a DTT with South Africa, have a permanent establishment (PE) in South Africa (that is, a fixed place of business through which business is carried out, whether wholly or in part, for example, a branch).

TAX RESIDENT BUSINESS

Legal entities qualify as tax residents if they are incorporated, established, formed or effectively managed in or from South Africa.

NON-TAX RESIDENT BUSINESS

Non-resident business vehicles are only taxed on South African-sourced income. If the entity's country of residence has a DTT with South Africa, the vehicle will only be taxed on its income (business profits) in South Africa if it has a PE, and only on income/profits which is/are attributable to the PE's activities. Non-resident companies pay income tax at 28%.

DIVIDENDS PAID

Dividends received by or accrued to any person, are subject to a 20% withholding tax on dividends (Dividends tax). Dividends tax is levied in respect of dividends paid by a company. The rate of Dividends tax may be reduced by the terms of a DTT. In terms of the Income Tax Act (ITA), cash dividends paid by listed companies are deemed to be paid on the date of actual payment. Cash dividends paid by unlisted companies are deemed to be paid on the earlier of the date on which the dividends are paid or become due and payable.

Non-cash dividends (dividend in specie) are deemed to be paid on the earlier of the date on which they are paid or become due and payable. The liability for Dividends tax on cash dividends falls on the beneficial owner of the cash dividends (shareholder). The company is responsible for deducting any and all dividend tax from the dividend paid to the shareholder and paying the dividend tax over to the revenue authorities on behalf of the shareholder.

DIVIDENDS RECEIVED

Foreign dividends (dividends received from foreign companies) can either be fully exempt from income tax or partially exempt from income tax. They are fully exempt from income tax if certain specific requirements (such as the participation exemption) are met. Foreign dividends which are not fully exempt from income tax are partially exempt from income tax in terms of a formula provided for in the ITA. The effect of the formula is that the rate of income tax levied on foreign dividends can never be more than the rate of Dividends tax (20%).

INTEREST PAID

There is generally no income tax payable on interest paid to non-tax resident lenders. However, interest in the form of an annuity and interest which is attributable to a PE is subject to income tax. South African residents are subject to tax on interest income. From 1 January 2015, withholding tax on interest paid by a South African resident to a non-South African resident will be subject to a withholding tax of 15% unless reduced by the provisions of a DTT.

IP ROYALTIES PAID

With effect from 1 January 2015, royalties paid by a South African resident to a non-resident will be subject to royalty withholding tax of 15% unless reduced by the provisions of a DTT.

CUSTOMS DUTIES

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, a client of a South African seller arranges for the delivery of the goods to the client's customer in the country to which the goods are exported) are subject to VAT at 15%.

DOUBLE TAX TREATIES

South Africa is currently party to approximately 80 double tax treaties, including with the United States and the United Kingdom, and is currently in the process of re-negotiating and ratifying a number of other treaties.

MAIN BUSINESS ORGANISATIONS

The Department of Trade and Industry of the Government of the Republic of South Africa (DTI).

www.thedti.gov.za

Main activities.

Focuses on industrial development, trade, export and investment, broadening participation in the South African economy through broad-based black economic empowerment and on the development and implementation of a coherent, predictable and transparent legislative and regulatory framework.

Companies and Intellectual Property Commission (CIPC)

www.cipc.co.za

Main activities.

Established in terms of the Companies Act, 2008, its main activity is to register and maintain the registration of companies and intellectual property rights.

Takeover Regulation Panel (TRP)

www.trpanel.co.za

Main activities.

A regulatory body established in terms of the Companies Act, 2008, its main activities are to regulate affected transactions and takeovers in terms of the Companies Act and to investigate complaints with respect to affected transactions and takeover offers.

South African Revenue Service (SARS)

www.sars.gov.za

Main activities.

Established in terms of the Income Tax Act to collect revenue and ensure compliance with tax law.

Financial Services Board (FSB)

www.fsb.co.za

Main activities.

The Financial Services Board is an independent institution established in terms of the Financial Services Board Act 1990 to oversee the South African Non-Banking Financial Services Industry in the public interest.

DISCLAIMER

This guide is intended to give a very brief overview of a very complex business structure and legal environment in South Africa at this particular time. Any person or company looking to do business in South Africa should contact either KEMPEN Group or any other GMN member in South Africa. Any reliance on this guide is done so at the risk of the user. Neither KEMPEN Group nor GMN International, or any of its independent members take any responsibility for the information contained in this guide.

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