

South Africa: Investor's Handbook 2012/13



the dti

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REPUBLIC OF SOUTH AFRICA

Deloitte.

Foreword

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It is with great pride that the Department of Trade and Industry (**the dti**) and Deloitte bring you this updated edition of *South Africa: Investor's Handbook*.

South Africa has a number of characteristics that make it a compelling investment destination on the African continent. The *Handbook* provides investors with a broad overview of the social, regulatory and economic environment in which they can expect to operate, highlighting the key features and investment incentives which we believe make doing business in South Africa an attractive proposition.

It is hoped that this publication will serve as the single most comprehensive and authoritative source of information for investors, exporters and businesses arriving at our shores. Please contact us for further information and advisory support (see contact details on the left).

The Department of Trade and Industry (**the dti**)

Deloitte
South Africa

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Disclaimer

Unless otherwise stated, the information in this Handbook is based on conditions that existed in August 2012. The authors accept no responsibility for any errors this guide may contain, whether caused by negligence or otherwise, or for any loss, however caused, sustained by any person that relies on the information herein. While all attempts have been made to provide up-to-date statistics and other details, this Handbook is not exhaustive and readers are advised to consult with their advisors and/or the relevant government agency.

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Value proposition

Why invest in South Africa?

The South Africa of today is one of the most sophisticated, diverse and promising emerging markets globally. Strategically located at the tip of the African continent, South Africa is a key investment location, both for the market opportunities that lie within its borders and for the opportunity that exists as a gateway to the rest of the continent, a market of nearly 1 billion people.

South Africa is the economic powerhouse of Africa and it was admitted to the BRIC group of countries of Brazil, Russia, India and China (now called BRICS) in 2011.

South Africa has a wealth of natural resources (including coal, platinum, coal, gold, iron ore, manganese nickel, uranium and chromium).

It has world-class infrastructure, exciting innovation, research and development capabilities and an established manufacturing base.

South Africa has sophisticated financial, legal and telecommunications sectors, and a number of global business process outsourcing (BPO) operations are located in the country.

It has political and macro-economic stability, an abundant supply of semi-skilled and unskilled labour, and it compares favourably to other emerging markets in terms of the overall cost of doing business. For professional jobs, labour costs are less than half of the cost of European countries. For

manufacturing jobs, labour costs are around one-third cost of Europe.

One of the main reasons for South Africa becoming one of the most popular trade and investment destinations in the world is due to the country ensuring that it can meet specific trade and investment requirements of prospective investors.

The South African Government has introduced wide-ranging legislation to promote training and skills development and fast-track the building of world-class skills and competences.

South Africa's unrivalled scenic beauty and reputation for delivering value-for-money make it an attractive leisure and business travel destination.

It has a favourable demographic profile and its rapidly expanding middle class has growing spending power.

The special International Headquarter Company (IHQ) regime makes South Africa an attractive location for multinational companies wanting to invest into Africa.

South Africa has a host of investment incentives and industrial financing interventions that are aimed at encouraging commercial activity, and its trade rules favour a further expansion in South Africa's burgeoning levels of international trade.

Fast facts and quick stats about South Africa¹

Political

- According to the Open Budget Index, South Africa has the most transparent budget in the world. (*International Budget Partnership*).
- South Africa is the only African country that is a member of the Group of Twenty (G20) countries.
- In the Economist Intelligence Unit (EIU)'s Survey of Democratic Freedom, South Africa ranks 31st out of 184 countries.
- According to the Global Competitiveness Report 2011/12, South Africa is the 34th most transparent in terms of government policymaking out of the 139 countries ranked.
- WorldAudit.org ranks South Africa as the 40th least corrupt nation out of 150 nations surveyed, ahead of Italy, Turkey, Brazil and Mexico. Transparency International ranks South Africa at 52 out of 150 countries.
- WorldAudit.org ranks South Africa as the 43rd most democratic country, ahead of India, Brazil, China and Russia, out of the 150 countries surveyed. The Freedom Institute places South Africa 29th.
- South Africa ranks as the 61st strongest state out of 177 countries in the Fund for Peace's Failed State Index 2010. The index measures state vulnerability based on 12 social, economic, political and military indicators.
- South Africa ranks 52 out of 150 countries on the Transparency International corruption list where 1 is the least corrupt. (*Economist*).
- In terms of the Global Competitiveness Report 2012, South Africa's biggest improvements over the past year have been: reliability of police services (South Africa moved from 104 to 95); brain drain (South Africa moved from 62 to 48); intensity of local competition (South Africa moved from 63 to 49), availability of latest technologies (South Africa moved from 51 to 39) and Gross National Savings as a % of Gross Domestic Product (GDP) (South Africa moved from 98 to 72).
- "Personal satisfaction" with the country's democracy rose from 49% in 2008 to 60% in 2011, according to the continent-wide Afrobarometer Research Group.

Economic

- In 2012, at 5.5%, South African interest rates were at a 30-year low.
- South African tax revenue has increased from R100 billion in 1994 to R742.7 billion in 2011/12.
- South Africa's debt to GDP ratio is 32% (USA 100%, Japan 200%, and UK 90%). The World Bank recommends a ratio of 60%.
- South Africa exported 36.9% more vehicles in 2010 than 2009. South Africa is ranked 1st out of 142 countries in respect of regulation of security exchanges, according to the World Economic Forum Global Competitiveness Report 2011/12.
- The South African stock market rose 16.09% in 2010, ranking 8th out of the G20 nations and ahead of all of the G7 countries. (*Bespoke Investment Group*).
- South Africa is ranked 1st out of 142 countries in respect of regulation of security exchanges, according to the World Economic Forum (WEF) Global Competitiveness Report 2012/13.
- South Africa is ranked 1st in respect of auditing and reporting, according to the Global Competitiveness Report 2012/13.
- South Africa's banks rank 2nd in the world for soundness, according to the Global Competitiveness Report 2012/13.
- The South African Rand was the second best performing currency against the US Dollar between 2007 and 2011, according to Bloomberg's Currency Scorecard.
- South Africa ranked 1st in platinum output, 2nd in palladium output, 3rd in gold output, 6th in coal output and 9th in wool output. (*Economist*).
- South Africa is ranked 2nd out of 183 countries for good practice in protecting both borrowers and lenders when obtaining credit for business (*World Bank Doing Business Report 2011*).
- South Africa is ranked 10th out of 183 countries for good practice in protecting investors in business (*World Bank Doing Business Report 2011*).
- South Africa ranks 7th out of 45 countries in the "Big Mac Index 2012". The price of a Big Mac is 42% less in South Africa than in the USA. In Switzerland and Norway, it is 62% more.

¹ South Africa - The Good News. www.sagoodnews.co.za. Retrieved August 2012.

- The Johannesburg Stock Exchange (JSE) ranks 16th in terms of “largest market capitalisation” and 19th in terms of largest gains (*Economist*).
- South Africa ranks 28th in terms of number of cars produced and 18th in terms of number of cars sold (*Economist*).
- South Africa is ranked 35th out of 183 countries for ease of doing business, according to *Doing Business 2012*, a joint publication of the World Bank and the International Finance Corporation.
- South Africa ranks 41st out of 192 countries in the *Economist’s* “Biggest Exporters Index”.
- South Africa ranked 52nd out of 142 countries in the WEF’s Global Competitiveness Report 2012/13.
- South Africa ranks in the top 20 countries for agricultural output.
- MTN has been ranked Africa’s most valuable brand in the “BrandZ Top 100 Most Valuable Global Brands 2012 Survey”. MTN becomes the first and only African brand to make the list, debuting at position 88 in the world.

Tourism

- South Africa ranks 24th in terms of tourist arrivals at 11.3 million (France 79 million, UK 28 million, Switzerland 8.5 million, India 5.2 million) (*Economist*).
- Cape Town was named the top tourist destination in the world in the 2011 Travellers Choice Destination awards.
- OR Tambo airport is the best airport in Africa, according to the World Airport Awards 2010/11. It was also in the top three most improved airports in the world for the same period.
- South Africa is ranked 66th out of 139 in the WEF’s Travel and Tourism Competitiveness Report 2012/13.
- According to CNNgo (CNN’s travel website), Cape Town is the 9th most loved city in the world in 2012.



Sport

- South Africa was the first African country to host the FIFA Soccer World Cup in 2010. It is only the second country in the world to have hosted the Cricket, Rugby Union and Soccer World Cups.
- In 2009, the Springboks became the first international team to be world champions in both 15-a-side and Sevens rugby.
- South Africa is home to the world's largest individually timed cycle race (the Cape Argus Cycle Race), the world's largest open water swim (the Midmar Mile) and the world's largest ultra-marathon (the Comrades Marathon).
- Five South Africans hold the world extreme swimming world record for swimming 2.5 kms around Cape Horn.
- Since the 1940s, South African golfers have won more golf majors than any other nation, apart from the United States.
- According to the *Cricketer* magazine, Newlands in Cape Town was second best Test match venue in the world in 2012. Lords was first.
- South Africa finished the 2012 London Olympic Games as Africa's best performing country, placing 24th on the medals table. With three golds, two silvers and one bronze medal, the London Olympics were South Africa's most successful Games since the country was readmitted to the Olympic fold at the 1992 Barcelona Olympics. South African swimmer Cameron van der Burgh, 24, set a new world record for the men's 100-metre breaststroke at the 2012 London Olympic Games. His record time, 58.46 seconds, shaved 0.12 seconds off the previous record of Australia's Brenton Rickard.
- As the first amputee to compete in the Olympics athletics competition, Oscar Pistorius rewrote the book on what is possible and was one of the leading stories of the Games. Not only did he compete in the 400 metres, he also made it to the semi-finals.



Education

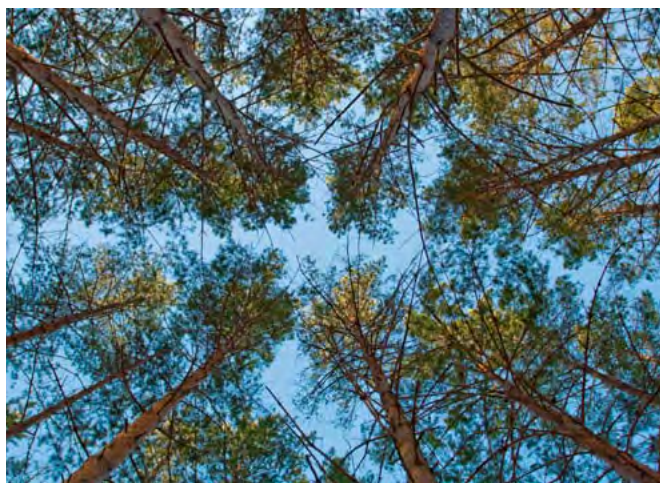
- South Africa has 30 000 schools (7 000 secondary, 23 000 primary). In 1994 only 12 000 had electricity. Now 24 000 have access to electricity.
- The University of South Africa (UNISA) is a pioneer of tertiary distance education and is the largest correspondence university in the world with approximately 300 000 students.
- South Africa's learner to teacher ratio improved from 1:50 in 1994 to 1:31 in 2010.
- The University of Pretoria's Gordon Institute of Business Science (GIBS) is the highest ranked African business school and is ranked 47th overall in the world (*Financial Times Executive Education rankings 2012*).
- According to the Times Higher Education World University Rankings 2011/12, University of Cape Town (UCT) is ranked the 103rd best university in the world. Stellenbosch is ranked 268 and Wits 274.
- According to the Global Competitiveness Report 2011/12, South Africa is ranked 13th out of 142 countries for its quality of management schools.
- 61% of South African primary school children and 30% of high school children receive free food as part of the school feeding scheme.
- The first Master of Business Administration (MBA) programme outside of the US was started by the University of Pretoria in 1949.
- Stellenbosch University was the first African university in the world to design and launch a microsatellite.
- 297 new Early Childhood Development (ECD) centres have been set up and registered in the first quarter of 2011.



Environmental

- In 1991, South Africa became the first country in the world to provide full protection status for the Great White shark within its jurisdictional waters. Countries including the USA, Australia, Malta and Namibia followed suit later.
- In 2011, Cape Town was considered to have the 5th best Blue Sky in the world, according to the UK's National Physical Laboratory.
- Johannesburg ranked 2nd among countries from Asia-Pacific, Middle East and Africa in dealing with urbanisation and environmental challenges in 2011, in the MasterCard Insights Report on Urbanisation and Environmental Challenges.
- South Africa is the only country to house an entire floral kingdom (fynbos), one of only six on the planet.
- The Vredefort Dome (or Vredefort crater) in the Free State is the largest verified impact crater on Earth at between 250 km and 300 km in diameter and is estimated to be over 2 billion years old.

- South Africa has the highest level of international certification of its tree plantations in the world. Over 80% of South African plantations are certified by the Forest Stewardship Council (FSC). (*Paper Manufacturers Association of South Africa*).
- All paper in South Africa is produced from plantation grown trees, recycled paper or bagasse (sugar cane fibre). Fibre is not sourced from the wood of rainforests, indigenous or boreal trees. This is a myth, often wrongfully perpetuated by e-mail footnotes (*Paper Manufacturers Association of South Africa*).
- The proportion of the South African population using improved drinking water sources was 91% in 2010, up from 83% in 1990 (*WHO/UNICEF, March 2012*).



Social and infrastructure

- South Africa's population is the 27th largest in the world (there are 230 countries, only 80 have a population in excess of 10 million).
- The current police to population ratio is approximately 1:308 (South African Police Service (SAPS) - April 2011). This ranks South Africa as the 9th best.
- There are 195 000 in the employ of SAPS. There are 411 000 in the employ of private security companies. Total 606 000. Divide by 49 000 000. Conclusion: for every 80 citizens there is someone looking after some or other aspect of safety and security. Or put differently, 1 250 security officials per 100 000 citizens (*Business Day*).
- The percentage of the South African population with access to clean drinking water increased from 62% in 1994 to 93% in 2011. Access to electricity increased from 34% in 1994 to 84% in 2011.
- In 2010, 13.5 million South Africans benefited from access to social grants, 8.5 million of which were children, 3.5 million pensioners and 1.5 million with disabilities. In 1994, only 2.5 million people had access to social grants, the majority of which were pensioners.
- Since 1994, 435 houses have been built each day for the poor.
- Two South African cities were voted among the world's "Top 100 Most Liveable Cities" in the 2010 study conducted by Mercer Human Resource Consulting. Cape Town was ranked 86th and Johannesburg 90th.
- South Africa ranks 8th out of 142 countries on the Legal Rights Index (*Global Competitiveness Report 2011*).
- South Africa ranks 30th out of 142 countries on property rights (*Global Competitiveness Report*).
- Johannesburg is ranked as the 87th largest city in the world. Tokyo is the largest with a population of 36 million (*Economist*).
- South Africa ranked 34 out of 192 countries in terms of infrastructure and 12th for our rail network.
- South African media ranks 38th out of 178 countries in the Worldwide Press Freedom Index 2010, higher than France, Italy, Spain, Portugal and all of the other BRICS countries.



- Out of 230 cities surveyed around the world, Johannesburg ranks the 151st and Cape Town the 171st most expensive city for expatriates to live in, according to the 2010 Cost of Living Standards Survey from Mercer Human Resource Consulting, ahead of Tokyo (2), Moscow (4), Hong Kong (8), London (17), Paris (17), Tel Aviv (19), Sao Paulo (21), Sydney (24), Rome (26), New York (27), Dubai (55) and Auckland (149).
- South Africa is the 19th largest producer of energy (*Economist*).
- South Africa has the 17th longest road network in the world and ranks 29th in terms of most used, but does not feature in terms of most crowded (*Economist*).
- South Africa ranks 25th in terms of most air travel (*Economist*).
- According to the Minister of Rural Development and Land Reform, Gugile Nkwinti, 90% of the land re-distributed to emerging farmers (approximately 930 farms) is lying fallow and unproductive.
- South Africa's rail network was ranked 11th in terms of longest networks and 9th in terms of millions of tons per km transported in 2012/13. (*Economist*).
- South Africa ranks 24th in terms of lowest divorce rate per 100 000 of population. (*Economist*).

Miscellaneous

- South Africa has 11 official, state-wide languages, more than any other country.
- The only street in the world to house two Nobel Peace Prize winners is in Soweto. Nelson Mandela and Archbishop Desmond Tutu both have houses in Vilakazi Street, Orlando West. South Africa ranks 7th in terms of number of Nobel Peace prizes (*Economist*).
- Two of the world's most profoundly compassionate philosophies originated in South Africa: "ubuntu" (the belief in a universal bond of sharing that connects all humanity) and Gandhi's notion of "passive resistance" (Satyagraha), which he developed while living in South Africa.
- The Western Deep Level Mines are the world's deepest mines at approaching 4km.
- South Africa houses one of the three largest telescopes in the world at Sutherland in the Karoo.
- South Africa is the first (and to date only) country to build nuclear weapons and then voluntarily dismantle its entire nuclear weapons programme.
- South Africa rank 12th in terms of beer consumption (China 1, USA 2, Russia 3, Brazil 4 and Germany 5).
- South Africa has 45 million active cell phones (population 49 million), ranking in the top five globally in terms of cell phone coverage.
- South Africa has 66 colour TVs per 100 households, nine telephone lines per 100 population and 90 mobile telephone subscribers per 100 population (*Economist*).
- Two Cape Town restaurants are in the top 50 restaurants in the world according to the S.Pellegrino World's 50 Best Restaurants list 2010. La Colombe restaurant in Constantia, Cape Town, was voted the 12th best and Le Quartier Francais in Franschoek came in at 31.
- South Africa has 8.5 computers per 100 population (UK 80, Spain 40, South Korea 47 and USA 80) (*Economist*).
- South Africa ranks 31st in terms of internet users per 1000 population (*Economist*).
- South Africa ranks 16th in terms of cinema visits per 1000 population (*Economist*).
- South Africa does not feature on the "brain drain" list of 20 countries (*Economist*).

General information about South Africa



Introduction^{2,3}

The Republic of South Africa (also referred to as South Africa, SA or RSA) is a state in Southern Africa. It is a parliamentary republic comprising nine provinces which is located at the Southern tip of Africa.

South Africa is a constitutional democracy in the form of a parliamentary republic. It is one of the founding members of the African Union, and has the largest economy of all the members. It is also a founding member of the United Nations (UN) and NEPAD. South Africa is a member of the Commonwealth of Nations, Antarctic Treaty System, Southern African Development Community, South Atlantic Peace and Cooperation Zone, Southern African Customs Union, World Trade Organization, International Monetary Fund, Group of 77, G20, G8+5 and BRICS.

South Africa is known for diversity in cultures and languages. About 79.5% of the South African population is of black African ancestry divided among a variety of ethnic groups speaking different languages, nine of which have official status. South Africa also contains the largest communities of European, Asian, and racially mixed ancestry in Africa.

² http://en.wikipedia.org/wiki/South_Africa.

³ SouthAfrica.info. <http://www.southafrica.info/about/facts.htm>. Retrieved August 2012

Official Name

Republic of South Africa.

Capitals

Cape Town (legislative), Pretoria (administrative), Bloemfontein (judicial).

Head of State

Mr Jacob Gedleyihlekisa Zuma - elected President of South Africa in 2009.

Form of State

Federal, comprising a central government and nine provincial governments.

Measures

Metric system.

Electricity current

220 / 230 Volts AC50HZ.

Time

GMT + 2 hours.

Corporate information

(Business hours - a broadly based guideline).

Monday to Friday 08h00 to 17h00

Saturday 08h30 to 13h00

In metropolitan areas many large department stores are open until 17h00 and sometimes later on weekdays, and on Saturdays and Sundays from 09h00 to 13h00 (sometimes later).

Fiscal year

1 March to 28 February.

Banking hours

Monday to Friday 08h30 to 15h30

Saturday 08h00 to 11h00

The last working day of each month 08h30 to 15h30. Cash is readily available from Autoteller Machines (ATMs) 24 hours a day.

Currency

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

Bank note denominations:

R200, R100, R50, R20, R10.

Coin denominations:

R5, R2, R1, 50c, 20c, 10c, 5c.

Public holidays 2012 / 2013⁴

1 May (Workers Day)

16 June (Youth Day)

9 August (National Women's Day)

10 August (School Holiday)

24 September (Heritage Day)

16 December (Day of Reconciliation)

17 December (Public Holiday)

25 December (Christmas Day)

26 December (Day of Goodwill)

1 January 2013 (New Year's Day)

21 March 2013 (Human Rights' Day)

22 March 2013 (School Holiday – Coastal)

29 March 2013 (Good Friday)

1 April 2013 (Family Day)

27 April 2013 (Freedom Day)

Geography

South Africa is divided into nine provinces covering 1 221 037 km² (471 443 miles²). Broadly speaking, South Africa comprises two main regions: an inland plateau fringed by coastal plain on three sides. The main industrial and commercial areas are centred in Cape Town, Durban, Johannesburg and Pretoria. The main harbours are Durban, Cape Town, Port Elizabeth, East London, Richard's Bay and Saldahana Bay. There are no commercially navigable rivers.

Climate

Temperate, warm and sunny.

Summer 15°C to 35°C. Winter 0°C to 20°C.

Overall, dry. Annual rainfall, 464mm; world average, 857mm.

Economic region

Sub-Saharan Africa.

Official languages

Eleven official languages: Afrikaans, English, Ndebele, Sepedi, Sesotho, Seswati, Setswana, Tsonga, Venda, Xhosa and Zulu. Though English is commonly used in public and commercial life, it is only the fifth most-spoken home language. English is the business language.⁵

Population^{6,7}

Population 48.81 million (July 2012 estimate).

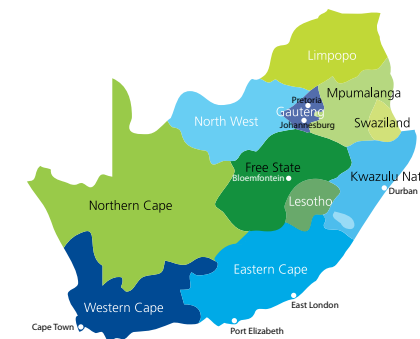
(44.8 million (Oct 2001 census)).

(Mid-2011 estimate: 50.6 million).

(Country comparison to the world: 26).

Growth rate: 0.412% (2012 estimate).

(Country comparison to the world: 217).



⁴The Public Holidays Act (Act No 36 of 1994) determines whenever any public holiday falls on a Sunday, the Monday following on it shall be a public holiday.

⁵ http://en.wikipedia.org/wiki/South_Africa.

⁶ Statistics South Africa website.

⁷ World Bank.Development Indicators Database. 2012.

World Bank Indicators - Population

Completeness of birth registration (%) in South Africa	91.8
Death rate; crude (per 1,000 people) in South Africa	15.2
Age dependency ratio; old (% of working-age population) in South Africa	6.8
Age dependency ratio (% of working-age population) in South Africa	54.1
Age dependency ratio; young (% of working-age population) in South Africa	47.3
Birth rate; crude (per 1,000 people) in South Africa	21.8
Population ages 0-14 (% of total) in South Africa	30.7
Population ages 15-64 (% of total) in South Africa	64.9
Population ages 65 and above (% of total) in South Africa	4.4
Population female (% of total) in South Africa	50.6
Population growth (annual %) in South Africa	1.1

Economy⁸

Mixed economy, upper middle-income, emerging market. (Ranked 76th in the world in terms of GDP (PPP) in 2012/13 and considered a newly industrialised country).

Abundant supply of resources, well-developed financial, legal, communications, energy, and transport sectors, a stock exchange that ranks among the top twenty in the world and a modern infrastructure supporting an efficient distribution of goods to major urban centres throughout the entire region. Largest energy producer and consumer on the continent.

The South African Rand has in recent years been the most actively traded emerging market currency in the world. Principal international trading partners of South Africa (besides other African countries) include China, the USA, Germany, Japan, and the UK.

Main exports are metals and minerals. Machinery and transportation equipment make up more than one-third of the value of the country's imports. Other imports include automobiles, chemicals, manufactured goods and petroleum.

Infrastructure⁹

South Africa has a modern and well-developed transport infrastructure. The roads are world-class. The air and rail networks are the largest on the continent and the country's ports provide a natural stopover for shipping to and from Europe, the Americas, Asia, Australasia and both coasts of Africa.

The transport sector has been highlighted by the Government as a key contributor to South Africa's competitiveness in global markets. It is increasingly being seen a crucial engine for economic growth and social development, and the Government has unveiled plans to spend billions of Rands to improve the country's roads, railways and ports.

To help boost private investment in South Africa's transport industry, the Department of Transport and the Treasury intends creating a single economic regulator within the next two years. The new regulator would provide certainty by overseeing the pricing of all transport infrastructure, including road, rail, maritime and aviation infrastructure.



⁸ http://en.wikipedia.org/wiki/South_Africa.

⁹ Sources: www.thedti.gov.za; www.southafrica.info.

Ports and shipping

Major shipping lanes pass along the South African coastline in the South Atlantic and Indian oceans. Approximately 96% of the country's exports are conveyed by sea, and the eight commercial ports are the conduits for trade between South Africa and its Southern African partners, as well as hubs for traffic to and from Europe, Asia, the Americas and the east and west coasts of Africa.

The state-owned Transnet National Ports Authority manages the country's ports. These are: Richards Bay and Durban in KwaZulu-Natal; East London, Port Elizabeth and the Port of Ngqura in the Eastern Cape; and Mossel Bay, Cape Town and Saldanha in the Western Cape. Durban is Africa's busiest port and the largest container facility in Southern Africa, while Richard's Bay is the world's largest bulk coal terminal.

According to reports, South Africa's official port operator, Transnet Port Terminals (TPT), has committed capital expenditure of R33 billion (US\$4.3 billion) over the next seven years to encourage economic growth and efficiencies in its port terminal management.¹⁰

Roads

South Africa's total road network is about 754 000 km, of which over 70 000 km are paved or surfaced roads.

While the Department of Transport is responsible for overall policy, road-building and maintenance is the responsibility of the South African National Roads Agency (SANRAL), as well as the nine provinces and local governments. SANRAL is responsible for the country's network of national roads, which grew to over 20 000 km and an estimated value of over R40 billion in 2010.

Around 3 000 km of the national roads are toll roads. About 1 800 km of these are maintained by SANRAL, while the rest have been concessioned to private companies to develop, operate and maintain.

A multi-billion Rand freeway improvement scheme has significantly eased congestion on the roads in Gauteng, the country's busiest province.

Railways

South Africa has an extensive rail network (ranked the 11th longest in the world) connecting with networks in the Sub-Saharan region. The country's rail infrastructure, which connects the ports with the rest of South Africa, represents about 80% of Africa's total.

Metrorail commuter services can be found in Cape Town, the Eastern Cape Province, Durban, and greater Johannesburg and Pretoria, focusing mainly on poorer South Africans.



Tourists and well-heeled passengers can travel on the Blue Train, one of the world's most famous luxury trains, while Shosholoz Meyl transports passengers between the country's major cities.

South Africa has also opened the door to private rail operators, with Transnet calling for private sector companies to operate branch railway lines, or feeder lines, which comprise some 35% of the country's national rail network. In his 2011 National Budget Speech, Finance Minister Pravin Gordhan announced an 18-year R86 billion programme to upgrade the country's rail transport infrastructure.

The Government has taken the safety of passengers seriously, increasing the number of railway police officers and building rail police stations in several stations in the Western Cape, KwaZulu-Natal and Gauteng. The Government also created a new rail and bus operator, the Passenger Rail Agency of South Africa (Prasa), by merging the operations of the South African Rail Commuter Corporation, Metrorail, Shosholoz Meyl and Autopax, the company that runs the Translux and City-to-City buses.

Gautrain rapid rail link

The Gautrain is an 80 km rapid railway system in Gauteng, South Africa, which links Johannesburg, Pretoria and OR Tambo International Airport. This railway is intended to relieve the traffic congestion in

the Johannesburg-Pretoria traffic corridor and offer commuters a safe and viable alternative to road travel as Johannesburg has limited public transport infrastructure.¹¹

The train offers international standards of public transport travelling at maximum speeds of 160 to 180 km per hour it will reach Pretoria from Johannesburg in less than 40 minutes. The minimum frequency between Johannesburg and Pretoria will initially be six trains per hour per direction and it will operate approximately 18 hours per day.

There are 10 stations, three of which are underground. The three main stations ("anchor stations") include: Johannesburg Park Station, OR Tambo International Airport and Pretoria. Other stations include: Centurion, Hatfield, Marlboro, Midrand, Rhodesfield, Rosebank and Sandton etc.

Secondary transport to and from stations and nearby destinations is provided by luxury buses. The trip between the airport and Sandton station will take less than 15 minutes. This purpose-designed service brings Gauteng in line with global practice which links cities by rail to international airports.¹²

The project was announced in 2000, before South Africa won the rights to host the 2010 FIFA World Cup, and in 2006 the province signed a 20-year Public Private Partnership (PPP)

¹⁰ <http://www.sagoodnews.co.za/infrastructure/index.php>

¹¹ *Business Report*. 28 July 2011. <http://www.iol.co.za/business/business-news/gautrain-joburg-to-pretoria-line-ready-1.1107888>. Retrieved 28 July 2011.

contract with the Bombela Concession Co. Consortium, which includes Murray & Roberts, empowerment organisation Strategic Partners Group, Bombardier, Bouygues and various minority shareholders.¹³ The Project is now managed as part of the Gauteng Department of Transport. Gautrain was initiated as one of 11 Blue IQ projects of the Gauteng Provincial Government (GPG).¹⁴

The first phase, the section between the airport, Sandton and Midrand, was completed in mid-2010, and by the end of September 2010, the Gautrain had transported a million passengers. The second phase (i.e. the line from Johannesburg to Pretoria) was completed and ready for commercial use by June 2011.

Airports and airlines

South Africa's main airport is OR Tambo (Johannesburg) International, and Cape Town International is the secondary airport. Other international airports – which do not handle intercontinental flights – include Durban International, Kruger Mpumalanga International Airport, Mafikeng International and Eastgate.¹⁵ The smaller airports (i.e. Bloemfontein, Port Elizabeth, East London, George, Kimberly, Pilansberg and Upington) handle only domestic flights. The 10 airports are run by Airports Company South Africa (ACSA), and handle over 98% of the country's commercial air traffic.

South Africa's airports are not only for air travellers. OR Tambo International, for instance, is host to about 20 000 people who go to work there every day to provide the multiple services that tend to be taken for granted when visiting an airport. South Africa's airports are also the heart of a network of transport arteries for cars, trucks, buses taxis and trains. Travellers are often accompanied by "meeters and greeters", adding to the community that goes to an airport to eat, drink, to browse in the shops, refresh and relax, and, of course, to fly.¹⁶

ACSA invested about R20 billion in South Africa's airports in the run-up to the 2010 FIFA World Cup, with major upgrades to Johannesburg's OR Tambo International Airport and Cape Town International Airport. The old Durban International Airport was replaced by King Shaka International Airport to the north of Durban, built at a cost of R7.9 billion. 21 Air traffic control centres, run by Air Traffic and Navigation Services, support operations that cover 145 licenced airports with paved runways and more than 580 aerodromes with unpaved runways. In 2009, 62 airlines, making 274 000 aircraft landings and carrying 16.5 million passengers (counting departures only), moved through South Africa's 10 principal airports.

The Airports Council International named Cape Town International the best airport in Africa in 2011. OR Tambo International is Africa's busiest airport and was named third best and King Shaka International fourth best airport on the continent.

South African Airways (SAA) is the largest air carrier in Africa, with connections to more than 20 cities across the continent. SAA also offers its customers 975 destinations in 162 countries and 18 100 flights daily.

World heritage sites

There are eight UNESCO World Heritage Sites in South Africa; namely:¹⁷

- iSimangaliso Wetland Park (KwaZulu-Natal: cultural heritage).
- Robben Island (Western Cape: cultural heritage).
- Cradle of Humankind (Gauteng: cultural heritage).
- uKhahlamba Drakensberg Park (KwaZulu-Natal: mixed heritage).
- Mapungubwe Cultural Landscape (Limpopo: cultural heritage).
- Cape Floral Region (Western and Eastern Cape: natural heritage).
- Vredefort Dome (Free State: natural heritage).
- Richtersveld Cultural and Botanical Landscape (Northern Cape: cultural heritage).



¹² <http://www.gautrain.co.za/about/about-gautrain/gautrain/>

¹³ [Railwaygazette.com](http://www.railwaygazette.com).

¹⁴ <http://www.gautrain.co.za/about/about-gautrain/gautrain/>

¹⁵ <http://www.southafrica.org.za/south-africa-info-airport-infrastructure.html>

¹⁶ <http://www.acsa.co.za/home.asp?pid=53>

¹⁷ <http://www.southafrica.net/sat/content/en/za/travel-tips-detail?oid=13515&sn=Detail&pid=156>

Art, culture and sport

Art and culture ¹⁹

The arts and culture of South Africa is as rich and diverse as the country itself. From music, dance, and literature to South African theatre, the country is more than a cultural hub. It is the abode of some of the most ancient and finest art in the world.

The Department of Arts and Culture of South Africa endeavours to safeguard and develop the country's cultural, artistic and linguistic heritage.

Interesting websites to visit are those of the Department of Arts and Culture (<http://www.dac.gov.za>) and Science and Technology (<http://www.dst.gov.za>) and the South African National Gallery (<http://www.iziko.org.za/sang>). ²⁰

South African arts - Historically speaking, the art community makes up a very small percentage of the total population due to limited education. With the lifting of the cultural boycott towards the end of the century, the South African artists got recognition in the international art world. Today South Africa is a storehouse of the oldest and finest rock paintings in the world in addition to the contemporary masterpieces and other works of arts and crafts that the country can be proud of. During the apartheid era, there was a huge diversity in South African art.

South African music - South African music is characterised by a fusion of local ideas with influences from other countries. Right from the days of colonisation, the indigenous people of the country were influenced by the Westerners and adopted their musical instruments and ideas. Today several pop and rock musicians have made their mark in the world of international music. Traditional music like Kwela of the forties and fifties are being redefined and even house music and techno-raves have found their individual variations in the local music culture.

South African dance - South Africa possesses a long tradition of fine classical ballet with the oldest dance company being the Cape Town City Ballet. In the post-apartheid era in South Africa, dance has attained the status of the primary means of artistic expressions. South African dance is characterised by its vitality and has gained much international acclaim. An increasing number of dance companies and choreographers are being invited overseas to perform at different festivals. Contemporary dance companies of South Africa include: Jazzart Dance Theatre (Cape Town), Free Flight Company (Johannesburg), Moving Into Dance (MID)- (Mophatong), the Soweto Dance Company, the Napac and Pact Dance Companies.

South African theatre - South Africa offers an endless variety of theatrical

experiences, ranging from the indigenous drama, dance, music and cabaret to the classical opera, ballet, West End and Broadway hits. South African theatre has an international reputation for being unique and top class. Major performing arts companies in South Africa include: State Theatre in Pretoria, Playhouse Company in Durban, ArtsCape in Cape Town, Market Theatre and Windybrown Theatre in Johannesburg.

South African literature - South Africa has some great writers and poets whose literary outputs have been acclaimed worldwide and have also won several major awards. These authors and poets have contributed greatly towards enriching the English literature. Renowned literary geniuses of South Africa include: Alan Paton, JM Coetzee, Allister Sparks, Nadine Gordimer and Zakes Mda.

Sport ²¹

Sports in South Africa have a passionate following, although remaining largely divided on ethnic lines.

Football (or "soccer" as it is known in South Africa) is the most popular sport in South Africa. It used to be the "Cinderella" sport in the days of apartheid and reflects the country's history and the struggle for democracy. ²² South Africa's soccer team is called "Bafana Bafana". South Africa hosted the 2010 FIFA World Cup, the first one hosted in Africa.

Cricket is the second most popular sport in South Africa. The national cricket team is nicknamed the "Proteas".

Other popular sports include: rugby union, boxing, hockey, surfing, netball and running. Rugby union is a popular sport among Afrikaners. The national rugby union team is nicknamed the "Springboks".

South Africa's sporting achievements goes wider than the "big three" sports, however. In a country of magnificent golf courses, for example, South Africa has bred some world-beating stars including Bobby Locke, Gary Player, Ernie Els, Retief Goosen, Trevor Immelman, Charl Schwartzel, Louis Oosthuizen and others. South Africa has also bred world champions among our swimmers, athletes, surfers, boxers, tennis players and more. ²³

South Africa was absent from international sport for most of the apartheid era due to sanctions, but started competing globally after the country's white electorate voted in a referendum in favour of a negotiated settlement of the apartheid question. The South African Government and SASCOC have been striving to improve the participation of the previously excluded majority in competitive sports.

¹⁹ <http://23independenceday.com>

²⁰ http://old.southafrica.co.za/coming_to_sa_37.html

²¹ http://en.wikipedia.org/wiki/Sport_in_South_Africa

²² <http://www.safarinow.com/cms/sport-in-south-africa/irre.aspx>

²³ <http://www.southafrica.info/about/sport/sportsa.htm>

Food and drink^{24,25}

South Africa has a fantastic culinary tradition and its wines are famous throughout the world. The cuisine of South Africa is sometimes called "rainbow cuisine", as it has had a variety of multicultural sources and stages. The cuisine can be generalised as:

- Cookery practised by indigenous people of Africa such as the Sotho and Nguni-speaking people.
- Cookery that emerged from several waves of colonisation and immigration introduced during the colonial period by people of Dutch, German, French and Indonesian descent (since 1652) Afrikaner, British descent (since 1805 and 1820 Settlers) and their slaves or servants. This includes the cuisine of the so-called Cape Malay people, which has many characteristics of Indonesia and cooking styles from neighbouring colonial cultures such as Portuguese Mozambique.

South Africa also has a significant "eating out" culture. While there are some restaurants that specialise in traditional South African dishes or modern interpretations thereof, restaurants featuring other cuisines such as Moroccan, Chinese, West African, Congolese and Japanese can be found in all of the major cities and many of the larger towns. In addition,

there are also a large number of home-grown chain restaurants, such as Spur and Dulce Cafe.

There is also a proliferation of fast food restaurants in South Africa. While there are some international players such as McDonald's and Kentucky Fried Chicken active in the country, they face stiff competition from local chains such as Nando's and Steers. Many of the restaurant chains originating from South Africa have also expanded successfully outside the borders of the country.

Typical South African foods and dishes include: Amasi, sour milk, mealie pap, biltong, biryani and bobotie, chutney, frikkadelle (meatballs), koeksisters, milkart, pumpkin fritters, potjiekos, rusks, tomato bredie, vetkoek and waterblommetjie bredie (water flower stew).

Wine made from imported grape varieties such as chenin blanc, chardonnay, merlot and shiraz has been made in the Western Cape for three centuries. Two local specialities are Muscat d'alexandrie (made from hanepoot), a sweet dessert wine, and Pinotage, a uniquely South African cultivar developed from pinot noir and cinsaut (hermitage) grapes.

South Africans are also prolific beer drinkers, especially when eating outdoors or watching sport. Maheu, a sorghum-based beer, is widely drunk in shebeens and beer halls.

Education²⁶

South Africa's Constitution guarantees equality and non-discrimination, cultural freedom and diversity, the right to basic education for all and equal access to educational institutions.

The majority of pupils in South Africa attend government-assisted schools, under a single national system which is organised and managed on the basis of nine provincial sub-systems. However, private schools run by church denominations or private enterprises are an important feature of the educational system. Private school pupils generally follow the same syllabuses as their fellow pupils in government schools. The school year commences in January and ends in December.

During a child's school career, he/she will probably attend the following schools:

- Pre-primary: To become compulsory between six and seven in the near future.
- Primary: It is compulsory for children to start in the year they turn seven. Primary education usually takes seven years to complete.
- Secondary: This usually takes five years and most subjects can be taken on the higher or standard level (grade).

- Post-school and tertiary training: Provided countrywide by numerous universities, technical colleges, numerous teacher training colleges and a number of other institutions. UNISA offers correspondence courses world-wide.



²⁴ http://en.wikipedia.org/wiki/South_African_cuisine
²⁵ <http://www.zuidafrika.nl/food-and-drink>

²⁶ http://old.southafrica.co.za/coming_to_sa_37.html

Law

South African law is founded on the Roman-Dutch law, although aspects of our law (particularly the company laws and the law of evidence) have been heavily influenced by English law. General commercial legal practices relating to transactions and the drafting of commercial agreements are generally globally applicable and in line with developed countries.

There is a world-class and modern Constitution (including a Bill of Rights) in place which regulates human rights and all legislation.

Trade and industry is undertaken within the framework of a free enterprise economy. The courts are open to foreigners on exactly the same terms and conditions as South African citizens, although many commercial disputes are resolved through arbitration by agreement between the parties.

Industrial relations

Any foreign employees working in South Africa for a South African employer will be protected by South African employment laws. The employment relationship will, therefore, be governed and regulated by South African employment law.

Trade unions remain an important force in South Africa, active in most industries, representing about 25% of the work force. The Congress of South African Trade Unions (COSATU) is the largest of three major trade union centres (COSATU, FEDUSA and NACTU) in South Africa.²⁷ A list of registered trade unions can be accessed at: www.workinfo.com/registeredtradeunions.htm or www.labourguide.co.za/general/registered-trade-unions-in-South-Africa.

Collective bargaining is regulated by the Labour Relations Act. The Labour Relations Act 66 of 1995 (the Act) promotes collective bargaining and, in particular, sectoral level collective bargaining, as the desired method of setting wages and conditions of employment. The Act strongly promotes centralised bargaining at industrial or sectoral level. Most collective bargaining occurs at employer level, but some industries are regulated by industry level bargaining councils where bargaining between employer and employee organisations will take place.

The Labour Relations Act also regulates and deals with dismissals or termination of employment, which must be both substantively and procedurally fair. Minimum terms and conditions of employment on the other hand is regulated by the Basic Conditions of Employment Act 75 of 1997.

Immigration - Visas and permits²⁸

South Africa's immigration system is regulated by the Immigration Act of 2002. This Act ensures that access to foreigners is granted in order to promote economic growth, while at the same time ensuring that security considerations are fully satisfied. An amendment Bill has been presented to amend the classes of work permits and a number of other administrative measures. These amendments are expected to be in place in early 2013. It is important to consult the Department of Home Affairs website (www.dha.gov.za) or offices for the latest regulations.

Currently the Act sets out the categories of permits available. There are three basic components to the South African system: visas, temporary residence permits and permanent residence permits.

In order to determine which would be the most suitable permit class to apply for, the applicant must approach a reputable immigration practitioner, the nearest South African embassy or the Department of Home Affairs in South Africa.

²⁷ http://en.wikipedia.org/wiki/Trade_unions_in_South_Africa

²⁸ Department of Home Affairs

Visas

Some countries are exempt from obtaining visas before coming to South Africa, others not. Nationals from countries that are exempt from visas can enter South Africa and obtain a visitor's temporary residence permit at the port of entry (up to the limit of their visa exemption for visits that justify this form of entry, such as business meetings and holidays). Nationals that are not exempt from visas are required to obtain a visa at the South African embassy before they depart for South Africa.

As the list for visa exemptions can change without notice, it is advised that the applicants confirm their visa exemption status on the official website of the Department of Home Affairs at: www.dha.gov.za/immigration_services/non-exempt_countries.

Alternatively, contact the nearest South African embassy. A list for embassies is available at: www.dfa.gov.za/consular_information.

Temporary residence permits

There are various categories of temporary residence permits, ranging from visitor's permits for tourism to work permits. These permits are valid for periods of between three months and 24 to 36 months. Generally, the principle is to apply for the permit that most closely applies to your circumstances before coming to South Africa, at the relevant South African embassy or High Commission.

Aligned to the Immigration Act, the following categories of temporary residence permits can be applied for:

- Visitors permit.
- Study permit.
- Treaty permit.
- Business permit (to establish an own business or to invest in an existing business venture).
- Medical treatment permit.
- Relatives permit.
- Work permits.
 - o Quota work permit
 - o General work permit
 - o Exceptional skills work permit
 - o Intra-company transfer work permit.
- Retired persons permit.
- Corporate permit.
- Exchange permit .

Each of these categories have their own set of requirements. In order to obtain the relevant permit, these requirements must be met exactly as stipulated. In cases where some of the requirements mentioned in the regulations cannot be met, there is a mechanism that can be used to ask that these requirements be waived. To ascertain the list of requirements, it can be viewed at: www.dha.gov.za/Immigration_services/temporary_residence_permits, or a reputable immigration practitioner can be approached. There is a fee chargeable by the Government for the process of these permits. The relevant fees

are available at: www.dha.gov.za/immigration_services/Price_list.

Work permits

For individuals who wish to apply for a work permit, four options are available.

An employer can apply for an **intra-company temporary residence work permit** if the employee is only required to work in South Africa for less than 24 months and is being transferred to a branch, subsidiary or affiliate abroad. It is important to note that this permit cannot be renewed. However, the Department of Home Affairs is currently looking at extending this two-year period to four years. Another option is the **general temporary residence work permit** if the employer has advertised the position in the format prescribed by law. Alternatively, the **quota temporary residence work permit** can be applied for if the post was not advertised but an individual falls within one of the categories of permits as determined by the critical skills list. The final permit for employment is the **exceptional skills permit** for those individuals whose qualifications or experience can be termed exceptional. Whether or not an individual is exceptionally skilled is determined on a case-by-case basis. For further information refer to: www.services.gov.za.

It is important to note that as the work permit applications can take time, the necessary planning must be done up front in order to avoid complications and delays when mobilising staff to South Africa.

Permanent residence permits

The permanent residence permits are, as the name implies, permanent in nature. A worker can thus apply for a temporary residence permit or a permanent residence permit, if they qualify for the requirements set out in each class of application. The various classes are as follows:

1. *Foreigner with five years continuous work permit status*

This category applies to a foreigner who has been a holder of a work permit, including one issued under a corporate permit, for a period of five years and has proven to the satisfaction of the Director-General of Home Affairs that he or she has received an offer for employment.

2. *Spouse of a South African citizen or permanent resident for a continuous period of five years*

This category applies to a person who has been the spouse of a South African Citizen or permanent resident for a period of five years, provided that a good spousal relationship exists and on condition that the permit shall lapse if, within two years after the date of issue of the permanent residence permit, the relationship no longer exists, except in the case of death.

3. *Child of a South African citizen or permanent resident under 21 years of age*

This section applies to the child of a South African Citizen or permanent resident under the age of 18 years. A permanent residence permit under this section is issued on condition that it shall lapse, unless an application for its confirmation is submitted within two years after the date on which the child turns 21 years of age.

4. *Child of a South African citizen*

This section applies to the child of a citizen and no age restriction applies since the child of a South African citizen by birth or descent qualifies for South African citizenship on the basis of his/her parent's citizenship status. This category is applicable to South African citizens by naturalisation.

5. *Worker*

A permanent residence permit may be issued to a foreigner of good and sound character that has received an offer for permanent employment.

6. *Person possessing extraordinary skills or qualifications*

A foreigner who has demonstrated to the Director-General's satisfaction that he or she possesses extraordinary skills/qualifications, and to those members of such foreigner's immediate family determined by the Director-General under the circumstances or as may be prescribed.

7. *Person who wishes to establish or invest in an existing business*

This category is applicable to a foreigner who intends to establish a business in the Republic, or who already holds a temporary residence permit to conduct a business in the Republic, or who intends to invest in an existing business in the Republic.

8. *A refugee as referred to in Section 27(c) of the Refugees Act*

This category is applicable to Refugees as referred to in Section 27(c) of the Refugees Act, 1998 (Act No. 130 of 1998), subject to any prescribed requirement.

9. *A retired person*

This category is applicable to a foreigner who intends to retire in the Republic, provided that such foreigner proves to the satisfaction of the Director-General that he or she has:

- The right to a pension, or an irrevocable annuity, or a retirement account which will give such a foreigner a minimum prescribed amount for the rest of his/her life; or
- That the person concerned has a minimum prescribed net worth.

10. *Financially independent*

This category is applicable to a foreigner who has proven to the satisfaction of the Director-General she or he has a prescribed minimum net worth, and has paid a prescribed amount to the Director-General.

11. *A relative of a South African citizen or permanent resident within the first step of kinship*

This category applies to a foreigner who is a relative of a citizen or a permanent resident within the first step of kinship.

A permanent residence application takes between one to two years to process. (An important point to note is that it is advisable to seek advice before applying for permanent residence as there could be tax and Reserve Bank implications.) The categories of permanent residence applications can be divided into those for workers and those who are not workers. It is important to ensure that the individual qualifies for a permanent residence permit before applying.

The requirements for the different classes of permanent residence can be viewed at: www.dha.gov.za/Immigration_services/Permanent_residence_permits.

For additional information on permits and visas (published by the Department of Home Affairs) refer to: **Addendum 11: Immigration - Permits and visas.**

Immigration - Other practical aspects

Customs and excise regulations

As a rule, immigrants are allowed to bring household goods and used equipment necessary for the practising of their professions into South Africa duty-free. (The required application forms can be obtained from any South African embassy or Mission). The importation of a vehicle is subject to more conditions, taxes and provisions. To import a foreign vehicle into South Africa, you will also need permission from the South African Bureau of Standards. It is recommended that you make use of a customs clearing agent's services where necessary.

For additional information on customs and excise regulations refer to: **Addendum 12: Customs and excise regulations – Guidelines for immigrants and travellers.**

Registering a business in South Africa²⁹

To successfully register a business in South Africa the following procedures would be required:

- Decide on the type of business entity that you wish to form.
- Decide on a name for the enterprise (with at least two other alternatives).

²⁹ www.cipro.co.za

- Undertake a name search on the Companies Intellectual Property Registration Office (CIPRO) website (www.cipro.co.za) to ensure that your preferred name has not been reserved by another enterprise.
- Reserve your proposed name, by completing the relevant forms available from CIPRO.
- Draw up a business plan.
- Await a registration number for your proposed enterprise from CIPRO.
- After receiving your enterprise number, apply for your VAT number, Income Tax number, Pay-As-You-Earn (PAYE), Skills Development Levy (SDL) and Unemployment Insurance Fund (UIF) number from the South African Receiver of Revenue (SARS).
- Register your logo as a trade mark with CIPRO.
- Ensure that all of the enterprise's intellectual property has copyright on them.
- If you have a unique product that you would like to patent, register this as a patent with CIPRO.

For further information on registering a business in South Africa contact CIPRO at:

Website:	www.cipro.co.za
	info@cipro.gov.za
Customer contact centre:	
Tel no:	0861 843 384
Fax no:	0861 843 888
International tel:	+27 12 394 9500
International fax:	+27 12 394 9501

Alternatively, the National Youth Development Agency (NYDA)'s guide on "Starting Your Own Business" can be downloaded from their website at: www.youthportal.org.za.

Opening a bank account in South Africa³⁰

If you are a foreigner, opening a bank account in South Africa should not be a problem, as long as you are in possession of a valid work or residency permit. By law, South African banks are required to ask for proof of identity (you must be at least 18 years of age) and residential address. You will have to provide passport and proof of address (a utility bill usually suffices). You may also have to make an opening deposit of a significant amount.

The type of bank account that you will be able to open in South Africa depends on the type of permit that you have been issued with. Should you have a work permit, you will be able to open a normal resident

account with no restrictions. Should your entry visa not permit you to earn an income in South Africa, a non-resident account will be opened. This account is subject to the restriction of not permitting South African currency to be deposited i.e. can only be funded by foreign currency. In both instances you will require the following documentation:

- Valid passport with entry visa.
- Letter of introduction from your foreign bank.
- Three month's bank statements from your current bank.
- Proof of residential address.

Some exceptions may nonetheless be made.

A resident's account may only be opened by a person holding a valid residents permit.

Opening an account for a business in South Africa should not be a problem if and where your company has been registered in South Africa. The bank will most likely request providing the founding documents of the company, as well as proof of the company's operating address. However, these documents should be on hand after obtaining a business permit.

Note:

In accordance with South African law, a bank account may not be opened via the internet or over the phone. It would, therefore, be necessary to visit the bank in person and provide the correct documentation.

Credit and charge cards commonly accepted in South Africa include: Diners, Mastercard, Standard Bank Card, Visa and American Express. Cash can be drawn from most ATMs, with withdrawal fees varying from bank to bank. Traveller's cheques are also a fairly common form of accepted payment or exchange, also incurring variable commission fees. All major credit cards are accepted and South Africa possesses both a nationwide network of ATMs and a robust, rapidly growing online banking system. Daily withdrawal limits for ATM cards are usually capped at R2 000 (€218) with each withdrawal incurring a fee. This fee varies widely, depending on size of withdrawal and bank type.

A locally issued card is not required in order to draw cash. As long as the bank card is supported by VISA, MasterCard, American Express, Diners, VISA-Electron or Maestro, withdrawals of cash from local ATMs or directly from a local bank can be made. A maximum withdrawal amount of R2 000 per day applies. Transaction fees will vary from bank to bank, and fluctuate with the currency exchange rate.

³⁰ <http://www.initiateimmigration.com/working-in-south-africa/bank-accounts/>

Applying for a business permit/licence³¹

A business permit/licence may be required to establish a business or invest in South Africa. In fact, in certain instances trading without a valid licence may be illegal and a punishable offence.

Foreigners may apply for a business permit at a South African Foreign Office or at the Department of Home Affairs office.

To establish a business in South Africa, a capital of at least R2.5million is required. To invest in an existing business, the capital contribution of the business must be R2.5 million and be part of the intended book value of the business. (The amount may be only reduced if your business falls within the sectors of national interest.)

Suggested procedures to follow in applying for a business permit/licence include the following:

- Go to any nearest Home Affairs office or South African Foreign Office if applying from abroad.
- Complete forms BI-947 and BI-29 if you have a representative.
- Submit the following:
 - A passport valid for no less than 30 days after expiry of the intended visit.
 - A medical report and radiological reports, if applicable.

- Police clearance certificates in respect of all countries resided in for one year or longer.
- A business plan, outlining the feasibility of the business.
- Proof or an undertaking that at least five South Africans or permanent residents will be permanently employed in the business.
- A written partner agreement containing full details of the partners/directors and their residential status in the Republic, if the application is in respect of an investment in an existing business.
- An undertaking to register with SARS.
- A certification by a chartered accountant that at least R2.5 million in cash or a capital contribution of at least R2.5 million or a combination of cash and a capital contribution amounting to R2.5 million is available. (You must intend to invest or already have invested the prescribed amount or capital contribution of the book value.)

Note:
The cost of a business permit/licence is approximately R1 520.

³¹ http://www.services.gov.za/services/content/Home/ServicesforForeignNationals/Permanentresidence/Applicationforabusinesspermit/en_ZA?pid=106&tid=331#contactinfo

Forms to be completed include the following:

- Application for permanent residence permit (BI-947).
- Power of attorney in respect of an application/extension of (an) immigration permit(s) or temporary residence (BI-29).

Some useful tips include:³²

- Depending on the location of the business, you will either be dealing with a metropolitan council, a local town municipality or an area district council. Either way, you will be dealing with the licensing office or licensing department in that municipality or council. It is advised you first call your local council to confirm whether or not you need a business or trade licence, and where you can obtain the necessary information and application forms. Also find out whether or not your business will require any additional permits or certificates.
- Business or trade licence requirements are governed by the National Business Act and apply throughout the country, whereas permits and certificates are generally issued in terms of local authority by-laws. These by-laws tend to differ from municipality to municipality.
- Make sure that the licensing department issues you with proof of application and payment of fees before you leave their offices.

Once an application has been submitted, the licensing department will send a report to the other municipal departments involved in the process. Each of these departments will then need to do a site inspection to ensure that the business complies with the following:

- Any law that relates to health and safety.
- Any law and/or town planning scheme which relates to land use rights.
- Any law applicable to building control in compliance with the national building regulations and Building Standards Act, 1977.
- Any law applicable to noise and air pollution.
- Any law applicable to public safety.

Once all the departments have approved the application, the business or trade licence is issued. The licence remains valid until such time as ownership changes or the activity specified on the licence changes.

For any further advice or information regarding business permits/licences contact the Department of Home Affairs at: 0800 601 190 (within RSA) +2712 406 2500 (abroad).

Buying property ³³

Essentially, there are no restrictions on non-residents/foreigners buying property in South Africa except for a prohibition on "illegal aliens" owning immovable property in South Africa.

³² <http://bizconnect.standardbank.co.za/start/registrations-legalities/a-licence-to-trade.aspx>

³³ <http://www.propertyforsale.co.za/showArticle.php?type=buyerInfo&articleId=44>

Non-residents will naturally have to adhere to the same rules, regulations and processes which residents are subject to, should the non-resident not wish to purchase property in his or her individual name and alternatively purchase in the name of an entity (e.g. company or trust) then this entity would need to be locally registered and meet the requirements associated with the chosen entity, such as those contained in the Companies Act.

Should a non-resident not acquire property in an entity, then that money brought in will be represented as a loan to the local entity which would require exchange control approval. In most cases, however, property is registered in the name of the purchaser as an individual.

Note:

A non-resident is even permitted to purchase South African property over the internet, without even entering the country. However, should they intend to live on the property, they would need to comply with the Immigration Act, and have either a valid permit to temporarily remain in the country or be in possession of a permanent residency permit.

With regards to bringing foreign funds into South Africa for a property acquisition, foreign funds may be deposited into any nominated bank account in South Africa (usually the estate agent or transferring attorney's

trust account into which the deposit for the property and the balance of the purchase price is paid). When the non-resident transfers funds into a South African account from a foreign source, a record of such funds entering South Africa are kept (known as a "deal receipt"). This is an important piece of documentation that must be kept for purposes of repatriation of the funds.

As far as borrowing money in South Africa to purchase property, the South African Reserve Bank will consider all foreigners not having their domicile in South Africa to be non-residents, barring foreigners with South African work permits who will be considered residents for the duration of their work permit. Non-residents are thereby restricted in their borrowing ratio to 50% of the purchase price, while the remaining 50% must be brought into the country in cash from a foreign bank.

In order to qualify for a South African mortgage bond, the non-resident will need to provide proof of earnings and comply with the Financial Intelligence Center Act, which pertains to the non-resident's identification for money laundering purposes and involves production of certain documents such as passport and proof of residential address. In order for a non-resident to service repayments on a mortgage bond, he/she will need to open a non-resident account, which can be done from abroad or from within the country.

Other than the purchase price, the purchaser is usually liable for other costs including, for example, transfer duty (this is not payable if the seller is VAT registered), transfer fees, deeds office levies, pro-rata rates and taxes/sectional title levies, as well as the costs of obtaining a rates/levy clearance certificate.

If the property is not bonded, it will be in the purchaser's best interests to obtain insurance. This is compulsory if the property is bonded and normally arranged by that bank.

Where non-residents decide to sell the property, they will be allowed to remit the proceeds offshore. Money from a foreign source may be repatriated in due course according to South Africa's Exchange Control Regulations, together with any profit, proportionate to that non-residents share-holding in the property. On transfer to the non-resident purchaser of the property, the title deed will be endorsed "non-resident" and/or a "deal receipt" retained by the banking institution when the foreign funds were originally introduced into the country. (This facilitates the repatriation of the funds and profit on sale of the property.)

Note:

If the purchase was financed with funds borrowed in South Africa, that portion of the purchase price cannot be repatriated out of the country unless the bond has been settled in full.

Furthermore, if a foreigner takes up permanent residency in South Africa and signs a "Declaration and Undertaking" at a South African bank they will be considered a resident for exchange control purposes and only able to repatriate funds within five years of their immigration, following which they will be considered akin to a South African and subject to the same regulations and limitations. The repatriation of funds will be also be subject to Capital Gains Tax (CGT).

Health insurance ^{34,35}

It is recommended that immigrants take out medical/life insurance upon arrival in the country. Practically, this means securing your own private medical aid scheme, which depending upon the level of cover you select, will provide you with various options in the private healthcare sector. (It is strongly advised that when deciding on the type and extent of medical insurance, individuals should make sure that it covers all family present and future health requirements in South Africa.)

When buying private health insurance, South African, as well as international companies, should be considered.

³⁴ www.justlanded.com.

³⁵ <http://www.propertyforsale.co.za/showArticle.php?type=buyerInfo&articleId=44>

Note:

If you aren't covered by South African social security and need comprehensive private health insurance to obtain a residence permit, you must ensure that your health policy will be accepted by the authorities.

Each level has a different limit on the total annual medical costs, the minimum usually being R2 million/€206,500 (although you're recommended to have much more cover, many companies provide cover of up to R7.5 million/€774,385 and some companies limit the charges for specific treatment or care such as specialists' fees, operations and hospital accommodation).

South African companies - The largest medical insurer in South Africa is Discovery Health (www.discovery.co.za). One of the smaller recommended healthcare providers is Selfmed (www.selfmed.co.za).

If you already have private health insurance in country other than South Africa, you may be able to extend it to include South Africa rather than taking out a new policy.

South African business practices and etiquette

For a comprehensive overview of common business practices and etiquette in South Africa refer to:

Addendum13: South African business practices and etiquette.

How to apply for a police clearance certificate (PCC)

For practical guidelines on how to apply for a police clearance certificate in South Africa refer to:

Addendum14: How to apply for a police clearance certificate (PCC).

Choice of business entity

The principal methods of doing business in South Africa are by using a:

- Company (public or private) incorporated under the Companies Act 71 of 2008).

Note:

Most international insurance companies offer health policies for different areas, e.g. Africa, Europe, worldwide excluding the US, and worldwide including the US. Most companies also offer different levels of cover, e.g. basic, standard, and comprehensive and "prestige".

- Personal liability company.
- Partnership.
- Business trust.
- Sole proprietorship.
- External company (branch of a foreign company).

Stock exchange

The JSE Ltd (JSE) is licenced as an exchange under the Securities Services Act, 2004, and is Africa's premier exchange. It has operated as a market place for the trading of financial products for nearly 120 years. In this time, the JSE has evolved from a traditional floor-based equities trading market to a modern securities exchange providing fully electronic trading, clearing and settlement in equities, financial and agricultural derivatives and other associated instruments and has extensive surveillance capabilities. The JSE is also a major provider of financial information. In everything it does, the JSE strives to be a responsible corporate citizen.

The JSE is a valuable commodity in South Africa's economic landscape. As South Africa's only full service securities exchange, it connects buyers and sellers in five different markets: equities, which includes a primary and secondary board; equity derivatives; agricultural derivatives; and interest rate instruments. The JSE holds a treasured position as one of the top 20 exchanges in the world in terms of market capitalisation (*JSE Brochure: JSE - Africa's premier exchange*).

Note:

1. South African law used to provide for a business entity type called Close Corporations (CCs) until the Companies Act 71 of 2008 came into force on 1 May 2011. CCs may no longer be created. However, existing CCs will continue to operate until they are converted into companies.
2. Companies operate on the basis of limited liability. As a general rule, members are not liable for the debts of a company. However, there are exceptions to this rule. Branches of foreign companies are accorded legal status in South Africa by virtue of registration as external companies but are not recognised as separate legal entities (except for exchange control purposes). Tax and other considerations affect the choice of a particular form of business entity. The most commonly adopted forms of doing business by foreign investors are private companies and branches.

The JSE provides companies with the opportunity to raise capital in a highly regulated environment through its markets: the Main Board and the Alternative Exchange (AltX). (The Main Board is for established larger companies, and the AltX is the breeding ground for vigorous younger companies that are to become the powerhouses of the future.) Listing on the JSE can provide a company many benefits including: access to capital to grow your business; an enhanced public profile; an ability to attach a value to your company; Black Economic Empowerment (BEE) deals are facilitated; and if you're an international company, a listing can be used as a springboard into the rest of Africa.

The JSE is regarded as a mature, efficient, secure market with world-class regulation, trading, clearing, settlement assurance and risk management. It has harmonised its listing requirements, disclosure and continuing obligations with those of the London Stock Exchange (LSE) and offers superb investor protection.

JSE securities exchange SA market capitalisation
(Rand billion at period end June 2012)

2005	2006	2007	2008	2009	2010	2011	2012
3,586.1	5,041.5	5,696.8	4,541.9	5,929.1	6,698.7	6,908.5	7,354.1

Future JSE developments envisaged may include:

- The creation of a market along the lines of the Alternative Investment Market on the London Stock Exchange or the Neuermarkt (in Frankfurt) for bracket venture capital and development boards.
- The introduction of tougher listing rules.
- The education and guiding of companies regarding the requirements of listing and the duties of a listed company.
- The introduction of free-float indices under the FTSE/JSE Africa Rand.
- The purchasing of the South African Futures Exchange.
- The demutualisation of the JSE and its listing.
- The creation of a financial reporting panel by the JSE Securities Exchange and the SA Institute of Chartered Accountants (SAICA), as advised by the Myburgh Commission.
- The creation of a pan-African exchange by initially enabling investors to trade in shares from Ghana, Namibia, Zimbabwe and Zambia. Later it intends to expand this across the rest of Africa.

Key economic data

Interest rates

Prime rate (August 2012):	8.50%
Repo rate (August 2012):	5.00%
R157 (August 2012):	5.62%
R186 (August 2012):	7.40%
Sabor (August 2012):	4.813%

(Source: Reserve Bank)

Currency

US\$ = R8.94 (November 2012)
£ = R14.26 (November 2012)
€ = R11.52 (November 2012)
US\$ = R7.562 (2011 average)

(Source: Reserve Bank)

Rate of inflation

CPI (October 2012):	5.6% y/y
PPI (September 2012):	4.2% y/y
(2011 average):	5.03%

(Source: Statistics South Africa)

Market capitalisation

Market capitalisation (June 2012):	R7 354.1 billion
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(Source: Johannesburg Stock Exchange)

Other

GDP (2nd Quarter 2012):	3.2% q/q
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(Ranking in terms of GDP size: 25th largest in the world)

Unemployment (3rd Quarter 2012):	25.5%
Doing business (2012 ranking):	35

(Source: Statistics South Africa)



South Africa: An economic overview

Key drivers of the South African economy ^{36,37,38}

South Africa's economy has traditionally been rooted in the primary sectors - the result of a wealth of mineral resources and favourable agricultural conditions. However, the economy has been characterised by a structural shift in output over the past four decades. Since the early 1990s, economic growth has been driven mainly by the tertiary sector - which includes wholesale and retail trade, tourism and communications. Now South Africa is moving towards becoming a knowledge-based economy, with a greater focus on technology, e-commerce and financial and other services.

Among the key sectors that contribute to the GDP and keep the economic engine running are manufacturing, retail, financial services, communications, mining, agriculture and tourism.

Increasingly the Green Economy is taking prominence as the country is moving away from traditional coal fired power stations to cleaner energy production. South Africa's strategy is to make cleaner, more efficient use of the country's abundant, low-cost coal reserves in the near term while at the same time expanding the use of low-emission energy technologies and renewables.

Mining and minerals

South Africa is a world leader in mining. The country is famous for its abundance of mineral resources, accounting for a significant proportion of world production and reserves, and South African mining companies are key players in the global industry.

Apart from its prolific mineral reserves, South Africa's strengths include an extremely high level of technical and production expertise, and comprehensive research and development activities. South Africa is also home to the world's deepest mine, Western Deep Gold Mine in Gauteng, which delves 3.6 km into the earth.

The country has world-scale primary processing facilities covering carbon steel, stainless steel and aluminium, in addition to gold and platinum. It is also a world leader of new technologies, such as a ground-breaking process that converts low-grade superfine iron ore into high-quality iron units.

³⁶ The Department of Trade and Industry (**the dti**), *Investors Handbook*, 2009. www.thedti.go.za.

³⁷ <http://www.medioclubsouthafrica.com>.

³⁸ www.southafrica.info

With the growth of South Africa's secondary and tertiary industries, the relative contribution of mining to South Africa's GDP has declined over the past 10 to 20 years. Nonetheless, the industry is continually adapting to changing local and international world conditions, and remains a cornerstone of the economy, making a significant contribution to economic activity, job creation and foreign exchange earnings.

In 2009, according to the Chamber of Mines of South Africa, the industry contributed:

- 8.8% directly, and another 10% indirectly, to the country's GDP.
- Over 50% of merchandise exports, if secondary beneficiated mineral exports are counted.
- About 1 million jobs (500 000 directly).
- About 18% of gross investment (10% directly).
- Approximately 30% of capital inflows into the economy via the financial account of the balance of payments.
- 93% of the country's electricity generating capacity.
- About 30% of the country's liquid fuel supply.

Furthermore, in 2009, South Africa's

mining industry was the largest contributor by value to Broad-Based Black Economic Empowerment (B-BBEE) in the economy, in terms of the value of B-BBEE transactions completed.³⁹ South Africa is the world's biggest producer of gold and platinum. Mining remains an important foreign-exchange earner, with gold accounting for over one-third of exports. South Africa is also a major producer of coal, manganese, chrome, platinum, and diamonds, accounting for a significant proportion of both world production and reserves. In 2009, the country's diamond industry was the fourth largest in the world, with only Botswana, Canada and Russia producing more diamonds each year.

While holding the world's largest reserves of gold, platinum group metals and manganese ore, the country has considerable potential for the discovery of other world-class deposits in areas yet to be exhaustively explored. Its prolific mineral reserves include precious metals and minerals, energy minerals, non-ferrous metals and minerals, ferrous minerals and industrial minerals. Only two strategic minerals (crude oil and bauxite) are not available in the country.

In addition, South Africa has a high level of technical and production expertise, comprehensive research

and development (R&D) activities. The country also boasts world-class primary processing facilities for gold, platinum, carbon steel, stainless steel and aluminium.

Lucrative opportunities exist for downstream processing and adding value locally to iron, carbon steel, stainless steel, aluminium, platinum group metals and gold. A wide range of materials is available for jewellery, including gold, platinum, diamonds, tiger's eye, and a wide variety of other semi-precious stones.

For this purpose the Government has developed a minerals beneficiation strategy, which seeks to fundamentally transform the industry from being largely resource-based to knowledge-based. It also complements programmes of Government, such as the New Growth Path, NIPF (IPAP 2), energy security, skills development and others.

South Africa's financial sector

South Africa's financial services sector boasts dozens of domestic and foreign institutions providing a full range of services including commercial, retail and merchant banking, mortgage lending, insurance and investment.

The South African banking system is well developed and effectively regulated, comprising a Central Bank, a few large, financially strong banks

and investment institutions, and a number of smaller banks. Investment and merchant banking is competitive. The country's "big four banks" (Absa, First National Bank, Standard Bank and Nedbank) dominate the retail market.

The country's banking sector compares favourably with those of industrialised countries. Many foreign banks and investment institutions have set up operations in South Africa over the past decade. Electronic banking facilities are extensive, with a nationwide network of ATMs and internet banking facilities available.

Ongoing amendments to exchange controls, as well as financial market legislation, make South Africa an attractive investment prospect and brings it in line with international best practice. Past notable amendments have included, for example, the National Payment System Act of 1998 (which confers greater powers and duties on the South African Reserve Bank to provide clearing and settlement facilities, bringing the South African financial settlement system in line with international practice on settlement systems and systematic risk management procedures) and the introduction of payment clearing house agreements and agreements pertaining to settlement, clearing and netting agreements, and rules to create certainty and reduce systemic and other risks in inter-bank settlement.

³⁹ <http://www.southafrica.info/business/economy/sectors/mining.htm>.

Recent developments in South Africa's exchange control environment include among others, the withdrawal of the application process to make new outward foreign direct investments where the total cost of such investment does not exceed R50 million per company per year. Under this new dispensation, the responsibility for ensuring that the foreign investment purposes has been placed on the authorised dealer (i.e. a commercial bank) facilitating the transaction. South African companies who want to use this dispensation are still required to show anticipated benefits to South Africa as a result of the foreign direct investment.

Additional reforms proposed in 2011 included, removing controls on emigrant blocked assets. South African emigrants are currently allowed to take R8 million offshore upon emigration. The rest of the assets are blocked and may only be released upon the payment of a 10% exit levy. Treasury proposed releasing these blocked assets without any exit levy. Furthermore, regarding individuals, the R4 million lifetime limit increased to R4 million per calendar year, subject to compliance with all tax and financial integrity legislation. Investments above the proposed threshold would require the approval of the Financial Surveillance Department of the South African

Reserve Bank. Individuals (resident-natural persons) over the age of 18 years may avail of a single discretionary allowance of up to R1 million per calendar year (in the past, R750 000 per year).⁴⁰

Regarding developments and trends within the financial sector, note that the global financial system is facing a multitude of risks, including spillover effects of the Euro-area debt crisis to other parts of the world; the risk of disorderly deleveraging by European and other banks; changes in the direction of capital flows; a sharp increase in oil prices; and concerns that the euro area will not survive in its current form. Prospects of higher global economic growth rates have also been dampened by the ever-present risk of negative feedback loops from the financial sector to the real economy. In addition, there are also risks specific to the South African economy and financial system. These risks include a possible slowdown in domestic economic growth as a result of slower global growth; a decline in house prices and higher unemployment; the unintended impact of the Basel III framework on banks and lending; and the risk of a downgrade of South Africa's credit rating.⁴¹

Tourism⁴²

Tourism is regarded as a modern-day engine of growth and is one of the largest industries globally. In addition to being a labour intensive industry, tourism holds potential to drive increases in export earnings in a trading environment that is generally less volatile than that of commodity exports.

In 2010, South Africa received approximately 8.1 million foreign tourists, of which 71% originated from Africa followed by Europe and the Americas. Total Foreign Direct Spend (excluding capital expenditure) by these tourists amounted to R72.6 billion in 2010. In the same year, it is estimated that 13.5 million South African adults took a total 29.7 million overnight trips resulting in Total Direct Domestic Spend of approximately R21 billion. This excludes the impact of an estimated 12.2 million adults that took an average of 18.6 day trips during 2010.

Over eight million tourists visited South Africa in 2011, a 3.3% increase over the 2010 World Cup year that would, if football-specific arrivals were not counted, have amounted to a 7.4% increase over 2010, well ahead of the global average of 4.4% annual growth. According to the World Travel and Tourism Council (WTTC), tourism was expected to directly contribute approximately 5% of South Africa's total GDP in 2011, with the total contribution (direct, indirect and induced) to GDP

expected to be in the order of 11.4% in the same year. The WTTC further expected tourism to directly support 594 000 jobs (4.5% of total employment) in 2011, with a total contribution of approximately 1.3 million jobs (10% of total employment).

Tourism Minister Marthinus van Schalkwyk has said that his department aims to increase South Africa's foreign tourist arrivals from seven million in 2009 to 15 million by 2020, at the same time growing tourism's contribution to the economy from R189 billion to R499 billion and creating 225 000 new jobs.⁴³

Southern Africa's biggest tourism showcase, Indaba 2012, took place at Durban's International Convention Centre in May 2012. Despite a general flat to downward trend worldwide, South Africa's tourism industry has been performing strongly, a fact that is reflected in the more than 13 000 delegates from around the world attended.

Tourism continues to be earmarked as a priority growth area in South Africa's economic growth policies.

South Africa's advanced infrastructure combined with magnificent scenic beauty, rich biodiversity, sunny climate, cultural diversity and a reputation for delivering value for money experiences have made it one of the world's fastest growing tourism destinations.

⁴⁰ Moneyweb, October 2010 <http://www.moneyweb.co.za/mw/view/mw/en/page302588?aid=512957&sn=2009+Detail&pid=287226>.

⁴¹ http://us-cdn.creamermedia.co.za/assets/articles/attachments/39129_fsr_march_2012.pdf

⁴² International Congress and Convention Association, Stats SA, World Travel and Tourism Council and the dti.

⁴³ SAinfo reporter

With such an extensive tourism resource base, South Africa offers a variety of tourism experiences including:

- Eco-tourism: South Africa boasts four UNESCO Natural World Heritage Sites and has 21 National Parks (including the world famous Kruger National Park), many of which integrate with Transfrontier Conservation areas in the Southern African region. Accommodation options in national parks and private game reserves range from budget and self-catering camps to luxury lodges.
- Cultural tourism: The rich mix of cultures, each with its own traditions, music and art forms, combined with a unique socio-political history forms the basis of South Africa's diverse cultural tourism offering. South Africa has five UNESCO Cultural World Heritage Sites - three of which offer unique paleo-tourism experiences.
- Adventure tourism: South Africa offers world-class climbing, surfing, diving, hiking, horseback safaris, mountain biking, river rafting and other extreme activities - all supported by dedicated operators.
- Business tourism: With over 1 700 conference venues, a track record of successfully

hosting major international meetings, conferences and exhibitions, South Africa is a sought after business tourism destination. South Africa holds the 34th place in the world, and 1st place in Africa for the number of association meetings held in 2009, according to the International Congress and Convention Association (ICCA).

- Sports tourism: The combination of state-of-the-art sporting venues and facilities, successfully hosting the 2010 FIFA World Cup and a number of other international sport events, and South African's passion for sport make the country a top draw card for sports teams and spectators alike.

Agriculture

South Africa has a dual agricultural economy, with both well-developed commercial farming and more subsistence-based production in the deep rural areas. Agriculture (even though it has contributed only about 3% to the GDP in the past) is an important provider of direct and indirect employment. However, there are strong backward and forward linkages into the economy, so that the agro-industrial sector is estimated to contribute about 12% of the GDP.⁴³

South Africa is not only self-sufficient in virtually all major agricultural products, but is also a net food exporter. Farming remains vitally

important to the economy and development of the Southern African region. Agricultural activities range from intensive crop production and mixed farming in winter rainfall and high summer rainfall areas to cattle ranching in the bushveld and sheep farming in the arid regions. Maize is most widely grown, followed by wheat, oats, sugar cane and sunflowers.

While 13% of South Africa's land can be used for crop production, only 22% of this is high potential arable land. The most important limiting factor is water availability. Rainfall is distributed unevenly across the country, with some areas prone to drought. Almost 50% of South Africa's water is used for agriculture, with about 1.3 million hectares under irrigation.

For the past five years, agricultural exports have contributed on average about 6.5% of total South African exports. Exports increased from 5% (1988) to 46% (2009) of agricultural production. However, South Africa is losing on its net trade balance on processed goods, owing to the growth in imports of processed goods. The largest export groups are wine, citrus, maize, grapes, sugar, apples, pears and quinces. Other important export products are undermatured ethyl alcohol, avocados, pineapples, dates, preserved fruit and nuts, as well as hides and skins.⁴⁴

Production of imported field crops and horticultural products, 2010 ('000 t)	
Maize	12 815
Wheat	1 518
Sugar cane	18 655
Grain sorghum	226
Groundnuts	100
Sunflower seed	509
Deciduous and other soft fruit	1 829
Citrus fruit	2 218
Subtropical fruit	655
Vegetables	4 458
Potatoes	1 947

Source: Directorate: Agricultural Statistics, Department of Agriculture, Forestry and Fisheries

South African agriculture and agribusiness have a number of competitive advantages, making the country both an important trading partner and a viable investment destination. Competitive advantages include, among others: world-class infrastructure, counter-seasonality to Europe, biodiversity (which allows for a vast and varied array of agricultural products), marine resources and extensive coastline commercially used both for conventional harvesting and for mariculture and aquaculture, competitive input costs particularly labour costs, trade agreements (South Africa's agriculture and agribusiness sector are benefiting from increased

⁴³ South Africa Yearbook 2010/11.

⁴⁴ <http://www.info.gov.za/aboutsa/agriculture.htm>

market access to its key trading partners, the European Union (EU) and the US, as well as to sub-Saharan countries, through a number of trade agreements) and deregulation and market freedom, having since the end of apartheid evolved from a highly regulated and protected industry to one free from all constraints, unsubsidised by Government.⁴⁵

Recent developments in South Africa's agricultural sector worth noting include, among others, the following:

- In June 2010, President Jacob Zuma launched the Masibuyele i Emasimini mechanisation scheme, a food-production intensification programme, at Marapyane Village in Mpumalanga. This project affords black farmers a realistic chance to improve production, increase yields and gain access to domestic and global markets. The project also ensures the utilisation of fallow land and seeks to resuscitate collapsed land-reform projects. By March 2010, a further increase in the productive land as a result of Masibuyele Emasimini indicated a coverage of 36 223 hectares of land. In all, 42 430 households are benefiting from this intervention.
- A budget of R862,4 million for 2010/11, was allocated to the Comprehensive Agriculture

Support Programme (CASP) to address support for food production for subsistence and for the market. The Department of Agriculture, CASP outputs for the 2010/11 financial year included the establishment of 1 739 food-security projects; creation of 760 jobs; and training and improvement of knowledge and skills of 5 089 beneficiaries to ensure that 7 961 on-farm and off-farm infrastructure targets were completed and functioning.

- By mid-2010, the implementation of the Micro-Agricultural Financial Institutional Scheme of South Africa (Mafisa) was on course with eight accredited institutions operating as intermediaries retailing Mafisa loans. Funded projects include: cotton and groundnut farmers in the Taung irrigation scheme in North West; vegetable projects in Nwanedi, Limpopo; sugar-cane farmers in KwaZulu-Natal and livestock projects in the Northern Cape. Various job opportunities were created and to fast-track service delivery, a Mafisa call centre was established to assist with information dissemination.
- The Department of Agriculture, Forestry and Fisheries is a major role player in climate-change activities within the agricultural sector. The department's climate-change programmes

and policies are aligned with South Africa's National Climate-Change Response Policy. The Climate Change Sector Plan for Agriculture (Working Paper, April 2008) outlines measures of addressing agricultural sector challenges; namely, creating awareness of climate change and the effects of climate change; improving knowledge on climate change; increasing capacity to respond to climate change impacts; research; and funding research projects.⁴⁶

Economic overview and outlook for 2012/13

Overview⁴⁷

- The GDP of 2.7% in the first quarter of 2012 is slightly down from 3.2% in the fourth quarter of 2011. The world economy slowed in the first quarter of 2012 and this has been evident in activities such as trade performance.
- South African exports of goods and services were improving in all quarters of 2011. There was, however, a decline in both imports and exports in the first quarter of 2012.
- The South African trade balance over the past five quarters shows a negative balance, concluding that South Africa is importing

more goods and services than what it is exporting.

- Both the coal mining and other (non-coal) mining sectors were favourable in promoting South African export growth, based on year-on-year change.
- South Africa's trade with the BRIC countries (Brazil, Russia, India and China) over the past five quarters shows that more goods were imported than exported. Raw mining products comprise a large portion of exports to the BRIC countries.
- Diesel-powered trucks weighing less than five tonnes are a top commodity that South Africa exports to Africa.
- In African regions, SADC continued to maintain its trading position as a top South African trading partner in exports and imports, with massive value exported to Zambia, Zimbabwe and Mozambique.
- South Africa imported high volumes of crude oil from Africa, particularly Nigeria and Angola.
- The major Eastern Asia economies of China, Japan and India remain entrusted as driving trade partners for South Africa and import iron commodity.

⁴⁵ <http://www.southafrica.info/business/economy/sectors/agricultural-sector.htm#ixzz1zjKbt0h7>

⁴⁶ Pocket Guide to South Africa 2010/11

⁴⁷ South Africa: Quarterly Trade Statistics First Quarter 2012 Prepared by the Statistical Analysis and Modelling Unit (SAM) for the Economic Research and Policy Co-ordination Unit (ERPC) The Department of Trade and Industry

Global developments ⁴⁸

- After substantial improvements during late 2011 and early 2012, the outlook for the world economy has taken a turn for the worse during the second quarter of this year, with data releases relating to economic activity surprising prognosticators on the downside and financial markets correcting once again.
- With the major advanced economies' growth continuing to be lethargic and unsteady, investors had pinned their hopes on emerging markets providing support for the global economy. Recent data, however, shows considerable weakness in emerging market economies.
- The three major risks facing the global economy - a Eurozone financial crisis, a spike in oil prices and China hard lending - still preoccupy many businesses and governments.
- Global trade growth in 2011 was estimated to reach 5.7%, and is forecasted at 4.6% for 2012. This is a reduction and suggests that world trade is shrinking as a result of the sovereign financial crisis and the consequent austerity measures.
- The main short-term risks facing South Africa include lacklustre global demand for the country's exports, as global growth stays below trend for the next few years; and pressure on Government financial sources, with increased demands on Government to deliver on its infrastructural drive. The main structural constraints on the economy include the balance-of-payments restraint, a lack of skilled labour, low labour absorption, infrastructural shortages and poor public-service delivery. The balance-of-payments constraint is highlighted by South Africa's low savings propensity. This increases the country's dependence on foreign capital inflows to help finance future investment. The persistent current-account deficit, following from a high import propensity, is financed primarily with highly volatile portfolio flows. Exports lag on the back of low international competitiveness and capacity constraints.
- There is increasing concern about how well the domestic economy can support growth in the wake of weak global demand.

⁴⁸ Dti - Same as preceding footnote.

Inflation ⁴⁹

- According to the South African Reserve Bank (SARB), inflation is forecast to revert to within the target by the third quarter of this year. CPI1 (for April 2012) came in slightly below market consensus at 6.1% compared to 6.0% in March.
- Core inflation is expected to peak at an average of 5.5% in the second quarter of 2013, marginally higher than the previous forecast, before moderating, and averaging 4.5% in the final quarter of 2014.
- Food inflation remained unchanged since March 2012, although this may be impacted in the months to come by an increase in global food prices as well as Rand weakness.

⁴⁹ www.treasury.co.za



Forecast summary – monetary indicators ⁵⁰

(% unless otherwise indicated)

	2011 ^a	2012 ^b	2013 ^c	2014 ^c	2015 ^c	2016 ^c
Real GDP growth	3.1	2.8	3.5	3.8	4.0	4.2
Gross agricultural production growth	-0.4	2.8	3.0	3.5	3.6	3.7
Consumer price inflation (average)	5.0	5.3	4.2	4.5	4.8	5.0
Consumer price inflation (end-period)	6.3	5.2	4.1	4.5	5.0	5.3
Lending rate (average)	9.0	9.2	9.6	10.0	10.5	10.0
Government balance (% of GDP) ^d	-3.7 ^b	-5.6	-5.0	-3.8	-3.8	-3.1
Exports of goods fob (US\$ billion)	102.9	100.0	103.6	105.0	106.4	107.3
Imports of goods fob (US\$ billion)	100.4	105.6	108.1	109.6	111.3	112.2
Current-account balance (US\$ billion)	-13.7	-20.9	-18.0	-17.2	-15.7	-16.9
Current-account balance (% of GDP)	-3.4	-5.5	-4.8	-4.5	-4.1	-4.5
External debt (end-period; US\$ billion)	47.3 ^b	47.6	47.6	46.3	44.1	41.0
Exchange rate R:US\$ (average)	7.26	7.90	8.17	8.25	8.55	8.95
Exchange rate R:US\$ (end-period)	8.08	7.68	8.26	8.40	8.70	9.10
Exchange rate R:¥100 (average)	9.10	9.78	9.51	9.52	9.62	9.71
Exchange rate R:€ (end-period)	10.45	9.86	10.37	10.46	10.92	11.47

^a Actual. ^b Economist Intelligence Unit estimates. ^c Economist Intelligence Unit forecasts.

^d Fiscal years beginning April 1st.

Forecast summary - business environment rankings ⁵¹

Value of index ^a		Global rank ^b		Regional rank ^c	
2007-11	2012-16	2007-11	2012-16	2007-11	2012-16
6.02	6.26	47	52	7	7

^a Out of 10.

^b Out of 82 countries.

^c Out of 17 countries: Algeria, Bahrain, Egypt, Iran, Israel, Jordan, Kuwait, Libya, Morocco, Qatar, Saudi Arabia, Tunisia, UAE, Angola, Kenya, Nigeria and South Africa.

Conclusion

South Africa is highly integrated with the world economy, which plays a central role in shaping South Africa's long-term prospects. Since 2000, the world has experienced unusually strong economic cycles and shocks, and these have been reflected in domestic demand and GDP growth. According to SARS, while fiscal and monetary policy has remained supportive of growth, current growth rates are not fast enough to support the employment gains and poverty reduction that the country requires. This will require structural reforms to set the economy on a different growth trajectory that increases labour absorption, raises competitiveness and ensures that the benefits of growth are shared. In the near term, South Africa will continue to be affected by international trade and investment trends, and remain vulnerable to slowing global demand. ⁵²

Trade summary - highlights ^{52.1}

- South Africa's top five trading partners in terms of exports (for the period first quarter 2011 to first quarter 2012) were China, the US, Japan, Germany and the UK. The top five trading partners in terms of imports (for the same period) were China, Germany, the US, Japan and Saudi Arabia.

- The services sector made the biggest contribution to exports over the period, with an average of R110 billion or 39% of the total exports.
- Exports of goods recorded successive increases from the first to the fourth quarters of 2011, followed in the first quarter of 2012 by a decline of more than 10% compared to the previous quarter.
- When excluding the services sector and focusing on the merchandise exports on detail sector level (i.e. removing all the sub-totals), the basic non-ferrous metal products are shown to have contributed 25% of all merchandise exports, followed by other (non-coal) mining products at 16%.
- The sector with the largest quarter-to-quarter increase, from the fourth quarter of 2011 to the first quarter of 2012, was the coke and petroleum sector, with an increase of 37.7%.
- Combining the relative sector importance with that of annual growth showed that both the mining sectors – coal and other (non-coal) mining – contributed 4.2% of the total 5.3% growth in merchandise exports.

⁵⁰ Economist Intelligence Unit – Economic Outlook July 2012

⁵¹ Economist Intelligence Unit – Economic Outlook July 2012

⁵² www.sars.gov.za

^{52.1} South Africa: Quarterly Trade Statistics

First Quarter 2012 Prepared by the Statistical Analysis and Modelling Unit (SAM) for the Economic Research and Policy Co-ordination Unit (ERPC) The Department of Trade and Industry

- In terms of economic region, South Africa exported the most to the Asian continent, with R61.4 billion or 36% of the total goods exported for the first quarter of 2012.
- Overall, imports of goods recorded a decline of 3.49%, from R205 billion in the fourth quarter of 2011 to R198 billion in the first quarter of 2012. Imports of services showed a fairly constant level of approximately R140 billion from the first quarter of 2011 to the first quarter of 2012, with a dip to R114 billion in the third quarter of 2011.
- South Africa's trade balances for goods and services from first quarter 2011 to first quarter 2012 indicate a trade deficit.
- The trade deficit indicates that South Africa is importing more than what it is exporting, reaching a high negative record in the first quarter of 2012.
- The South African trade balance for services had a larger deficit compared to goods, except for the third quarter of 2011, which shows a sharp increase in the deficit. However, when the third quarter is ignored, a slight decline in the deficit is seen.
- The goods side shows an increasing trade deficit, from a very low second quarter of 2011 of R10 billion to R55 billion in the first quarter of 2012.
- The South African total trade balance depicts no clear trend, although it remains in negative territory.
- In terms of commodities, the top 10 commodities exported from South Africa amounted to R61 billion. The top exported commodity was bituminous coal, not agglomerated, and in the first quarter of 2012 exports of this commodity amounted to R16.7 billion. This was followed by iron ore, concentrate, not iron pyrites, agglomerated, with a total of R9.9 billion. The top 10 commodities imported to South Africa amounts to R53.1 billion. The top imported commodity the period was petroleum oils, crude, and in the first quarter of 2012 imports of this commodity amounted to R26.4 billion, followed by the motoring original equipment components, with a total of R11.6 billion.

- Trade with the BRIC countries (Brazil, China, India and China) represented an average of 10% of the total South African exports, and between 9% and 13% of all imports into South Africa over the period first quarter 2011 to first quarter 2012.
- South Africa's trade with BRIC countries for this period was dominated by China and India. China contributes between 65% and 70% of both imports and exports of the BRIC countries, while India contributes about 17% to 25% to the aggregate BRIC trade.
- The BRIC trade balance remained in negative territory over the period, showing an increase in the deficit from R2.4 billion in the first quarter of 2011 to R11.8 billion in the fourth quarter of 2011, followed by a slight decline to R9.5 billion in the first quarter of 2012. Both coal and other (non-coal) mining made a large contribution to the South African export to BRIC countries over the period under review, at roughly 70% of all BRIC exports. The basic iron and steel sector was the third-largest contributor to the exports at an average of 10% or R3 billion. Next on the rankings were the basic chemicals and basic non-ferrous metals sectors, at 5.3% and 4.2% respectively.
- The sector breakdown of imports from BRIC countries shows the "other manufacturing" sector to be the biggest contributor to imports. This sector includes furniture, jewellery, metallic and non-metallic waste and scrap, and all manufactured products not elsewhere classified.
- Machinery and equipment was the second-largest contributor of South African imports from BRIC countries, at roughly 20% or R7.5 billion per quarter over the period.





Foreign trade

South Africa's trade agreements ^{53, 54}

Overview

Preferential market access agreements

- Southern African Customs Union (SACU).
- Southern African Development Community (SADC) FTA.
- European Union / South Africa Trade, Development and Cooperation Agreement (EU/ SA TDCA).
- SACU-European Free Trade Association (EFTA) FTA.
- SACU-Southern Common Market (Mercosur) PTA.
- Bilateral agreements with Mozambique and Zimbabwe.

Current trade negotiations

- World Trade Organisation's Doha Development Agenda.
- SACU-India PTA.
- SADC-EAC-COMESA Tripartite FTA.

Non-reciprocal agreements

- Africa Growth and Opportunity Act (AGOA).
- South African products qualify for preferential market access (i.e. no or substantially reduced customs duty) under the Generalised System of Preferences (GSP).

⁵³ The Department of Trade and Industry (the dti), Republic of South Africa. *International Trade & Economic Development Division*. - compiled September 2012.

⁵⁴ Economist Intelligence Unit : *Country Forecast - Updater*: 11 March 2011.

South African trade agreements

The South African Government's economic development strategy aims to accelerate growth and industrial development along a path that generates decent jobs.

The Government, through **the dti**, seeks to support the objectives of industrial development and upgrading, employment growth and increased value-added exports by negotiating trade agreements with other countries. The International Trade and Economic Development Division (ITED) within **the dti** is the section responsible for such trade negotiations.

These agreements take different forms. In the section below, we identify and briefly introduce the various trade agreements that South Africa is party to:

The Southern African Customs Union (SACU)

SACU was established in 1910 and is the oldest functioning customs union in the world. It has been renegotiated twice: in the late 1960s when Botswana, Lesotho and Swaziland became independent and after the inauguration of the democratic government in South Africa in 1994. The current members are Botswana, Lesotho, Namibia, South Africa and Swaziland. SACU seeks to maintain the free interchange of goods between member countries. It provides for a common external tariff for the common customs area.

All customs duties collected in the common customs area are paid into South Africa's national Revenue Fund. The Revenue is shared among members according to an agreed revenue-sharing formula.

The latest SACU Agreement came into force in July 2004. In terms of Article 31 of the new agreement, South Africa and other members of SACU jointly negotiate preferential trade agreements with third parties. SACU members have also agreed to a targeted work programme in five areas, namely: regional industrialization; review of the revenue-sharing formula to ensure a sustainable revenue-sharing mechanism that promotes development; development of a trade facilitation programme to improve border efficiency; unified engagement in trade negotiations; and establishing common institutions such as a Tariff Board and the Tribunal within an agreed policy framework.

The Southern African Development Community (SADC)

The Trade Protocol of SADC, which established a free trade area among 12 SADC member states, was implemented on 1 September 2000. The aim of SADC is to create a "community" providing for regional peace and security, and an integrated regional economy. As a regional institution it has laid the basis on which regional planning and development in Southern Africa could be pursued. It

also provides the desired instrument by means of which member states should move along the path towards eventual economic integration. Furthermore, SADC forms one of the building blocks of the African Economic Community (AEC).

Implementation of the SADC Protocol on Trade began in 2000, following its signing in 1996. The liberalisation of tariffs has taken place at different rates. In general, more developed SADC countries have reduced tariffs faster than other member states. SACU removed most tariffs in 2000, while middle-income countries have gradually reduced their tariffs each year between 2000 and 2008. In relation to the least-developed countries, tariff reductions have generally been introduced during the latter part of the phase-down period.

From January 2008 onwards, when SADC attained the status of a FTA, producers and consumers do not pay import tariffs on more than 85% of all trade in community goods in the initial 12 countries implementing the SADC Trade Protocol. The 15% of trade, constituting the "sensitive list", is expected to be liberalised from 2009 to 2012 when SADC attains the status of a fully-fledged FTA with almost all tariff lines traded duty-free. Market integration in SADC is accompanied by cross-border infrastructural development (such as the spatial development initiatives) and sectoral co-operation that aims

to build and diversify the region's production structures.

SADC, together with COMESA and the EAC, has established an on-line Non-Tariff Barrier reporting and monitoring mechanism (<http://www.tradebarriers.org>) to facilitate eliminating non-tariff barriers. This mechanism has the potential to facilitate movement of goods and will lead to increased trade. Its effectiveness is, however, dependent on the full and active participation of the business community.

To determine whether a product originates in the region, and therefore qualifies for duty-free access to the SADC market, "Rules of Origin" have been agreed to by member states. To benefit from SADC trade preferences, exporters must obtain confirmation of origin through a "Certification of Origin", obtainable from competent authorities in member states' customs offices.

The Common Monetary Area (CMA)

The CMA links South Africa, Lesotho and Swaziland into a currency union, in which the South Africa Rand is the common currency. It is allied to SACU - see above. Namibia automatically became a member upon independence, but withdrew with the introduction of the Namibian dollar in 1993. However, Namibia has chosen not to pursue its own

flexible exchange rate policy, and the Namibian dollar is at par with the South African Rand and there is no immediate prospect of change. The same is true with the lilangeni of Swaziland and the loti of Lesotho. The Rand continues to circulate freely in these countries, although it is strictly speaking not legal tender. Foreign exchange regulations and monetary policy throughout the CMA continue to reflect the influence of the South African Reserve Bank.

SADC-EAC-COMESA Tripartite FTA (T-FTA)

In 2009, the Members States of SADC, the EAC and COMESA initiated a wide-ranging initiative for integration that will be built on market integration, industrial development and infrastructure. In 2011, Members of the three groupings launched negotiations towards the Tripartite FTA (T-FTA). The FTA will, as a first phase, cover only trade in goods and core areas necessary to support that (such as Rules of Origin). Services and other trade-related areas will be covered in a second phase. Once concluded, the T-FTA will combine the markets of 26 countries with a population of nearly 600 million people and a combined GDP of US\$1 trillion, providing the market scale that could launch a sizeable part of the continent onto a new developmental trajectory. It is anticipated that these negotiations will be concluded by April 2014, with implementation of the T-FTA scheduled for 2015.

The T-FTA will form the basis for an Africa-wide FTA, which is expected to create a market of US\$2.6 trillion. This will address the challenge of small and fragmented economies in Africa. A larger, more integrated and growing market would enhance the interest of foreign investors in Africa and provide a basis for enhanced intra-African trade. This envisaged Continental FTA (C-FTA) will therefore widen and build on the integration initiatives already under way.

EU-South Africa Trade, Development and Cooperation Agreement (TDCA)

The TDCA between South Africa and the European Union was signed on 11 October 1999 and provisionally came into force on 1 January 2000, subject to ratification by the EU member states. The Agreement came into force on 1 May 2004 after it was ratified by all EU member states. In terms of the Agreement, by 2010, the EU is expected to liberalise 95% of its duties on South African originating products. In turn, by 2012, South Africa undertook to liberalise 86% of its duties on EU originating products. It means that only a limited number of product lines are not as yet subject to any of the regimes of tariff phase-down under the Agreement.

There is currently a review of the Agreement under way, which is aimed at broadening the scope of product coverage. This is taking place under the auspices of the Economic Partnership Agreement (EPA) negotiations between the SADC EPA configuration and the EC.

SACU-EFTA FTA

The FTA between SACU and the EFTA came into effect on 1 May 2008. It applies to trade relations between SACU and individual EFTA states covering trade in industrial goods (including fish and other marine products) and processed agricultural products. The Agreement also provides for future non-binding engagements on issues such as intellectual property, investment, trade in services and government procurement.

EFTA countries do not have a common agricultural policy and basic agricultural products were negotiated separately. Three Bilateral Agricultural Agreements were concluded between SACU and individual EFTA states, which form part of the main Agreement and came into force at the same time as the FTA.

On the EFTA side tariffs on industrial goods were eliminated upon entry into force of the Agreement; i.e. all customs duties on imports of originating products from SACU have been abolished. SACU shall progressively reduce customs on imports of originating products from the EFTA states.

The tariff reduction schedules are set out on the assumption that the Agreement came into force on 1 January 2006 and are not affected by any delays in the actual date on which the FTA came into force.

The United States Trade, Investment, Development and Cooperation Agreement (TIDCA)

The TIDCA between SACU and the US is a co-operative framework agreement that makes provision for the two parties to negotiate and sign agreements relating to sanitary and phyto-sanitary measures (SPS), customs cooperation, and technical barriers to trade measures (TBT). It also establishes a forum of engagement between the two parties on any matters of mutual interest, including capacity-building and trade and investment promotion.

Trade and Investment Framework Agreement (TIFA)

TIFA is a bilateral agreement between South Africa and the US that was signed in 1999, but was dormant until a decision to revive it was taken in 2010. The Agreement provides a bilateral forum for the two countries to address issues of interest including AGOA, TIDCA, trade and investment promotion, non-tariff barriers, SPS, infrastructure and others. It is the main forum for bilateral-engagement with the US on all trade-and-investment-related issues.

African Growth and Opportunity Act (AGOA)

AGOA is a unilateral assistance measure of the US government to increase trade and investment between the US and eligible sub-Saharan African countries, including South Africa. AGOA was signed into law on 18 May 2000 as Title 1 of The Trade and Development Act of 2000 in the US. AGOA extended the duty-free treatment under the US's Generalised System of Preference (GSP) programme. Importantly, AGOA eliminated most of the limitations of the GSP programme for sub-Saharan African countries, and expanded the product coverage of the GSP programme exclusively for products in sub-Saharan Africa. It has also made way for duty-free and quota-free access to the US market for apparel manufactured in sub-Saharan countries, of which the fabric, yarn and thread were of US origin. AGOA is set to expire in 2015.

SACU-Southern Common Market (Mercosur) PTA

A preferential trade (or limited scope) agreement, covering about 1 100 product lines on each side of the border, was concluded in 2008 and signed in 2009. It is currently going through ratification procedures. It is not expected to enter into force before sometime in 2013.

Generalised System of Preferences (GSPs)

What are GSPs?

The Generalised System of Preferences (GSP) is a formal, non-reciprocal system of exemption from the more general rules of the World Trade Organisation (WTO). Specifically, it is a system of exemption from the "Most Favoured Nation" principle (MFN) that obligates WTO member countries to treat the imports of all other WTO member countries no worse than they treat the imports of their "most favoured" trading partner. In essence, MFN requires WTO member countries to treat imports coming from all other WTO member countries equally, that is, by imposing equal tariffs on them, etc.

GSP, however, exempts WTO member countries from MFN for the purpose of lowering tariffs for developing countries (without also doing so for rich countries). The idea of tariff preferences for developing countries was the subject of considerable discussion within UNCTAD in the 1960s. Among other concerns, developing countries claimed that MFN was creating a disincentive for richer countries to reduce and eliminate tariffs and other trade restrictions with enough speed to benefit developing countries.

GSP applied to SA exports

South African products qualify for preferential market access (i.e. no or substantially reduced customs duty) to several countries under the GSP, including EU Member States, Japan, Canada and Russia.

Bilateral agreements

Mozambique Preferential Access Agreement

This Agreement is a wide-ranging preferential arrangement regulating mine labour, railway and port matters and trade. A limited number of Mozambican goods receive tariff preference from South Africa, subject to quotas.

Zimbabwe/South Africa Bilateral Trade Agreement

An initial agreement between South Africa and Zimbabwe in 1964 provided for preferential rates of duty, rebates and quotas on certain goods traded between the two countries. Consensus on a new trade Agreement was reached in August 1996. In terms of the new Agreement, tariff and quota levels on textile imports into South Africa will be lowered. The Agreement also extends to a large number of other products, certain quotas for agricultural products.

World Trade Organization's Doha Development Agenda

South Africa is a strong proponent of the principles of multilateralism, transparency and inclusiveness. We regard multilateralism as a necessary intergovernmental response to manage the challenges of globalisation and deepening interdependence among economies and societies around the world. The current playing field in world trade is still highly uneven and biased against developing countries' interests. In the WTO, South Africa therefore remains committed to concluding a Development Round based on the mandate agreed to in Doha. South Africa has built alliances with other like-minded developing countries to resist an outcome that is unfair, un-mandated and anti-development.

NEPAD

South Africa, in collaboration with key African countries and as one of the NEPAD five initiating countries, has been at the forefront in developing NEPAD as Africa's premier development programme, in mobilising African and international support for NEPAD and in supporting NEPAD structures and processes.

NEPAD, which was adopted in 2001, is aimed to promote and sustain socio-economic development and foster the adoption of policies that are in line with global practices. The primary objective of NEPAD is to eradicate poverty, halt the marginalisation of Africa in the globalisation process, to promote the empowerment and economic integration of women and to achieve the Millennium Development Goals (MDGs).

The implementation of NEPAD, in conjunction with the SADC Regional Indicative Strategic Development Plan (RISDP) as the regional expression of NEPAD, forms a critical pillar that contributes to the overall objective of the consolidation of the African Agenda. At a practical level NEPAD seeks to unlock the blockages relating to hard and soft infrastructure, stimulating economic activity through the various economic corridors, trade facilitation, Aid for trade and capacity building through innovative partnerships.

NEPAD provides unique opportunities for African countries to take full control of their development agenda, to work more closely together, and to cooperate more effectively with international partners. In this regard, NEPAD manages a number of programmes and projects in six theme areas, including:

- Agriculture and Food Security.
- Climate Change and National Resource Management.
- Regional Integration and Infrastructure.
- Human Development.
- Economic and Corporate Governance.
- Cross-cutting Issues, including Gender, Capacity Building and ICT.

BRICS - Brazil, Russia, India, China and South Africa ⁵⁵

Overview

BRICS refers to the economic alliance that includes Brazil, Russia, India, China and South Africa. It is believed South Africa's ascendance to the BRICS group of major emerging economies (on 13 April 2011) is a boost to the country's brand as a serious economic player and puts South Africa on the centre stage of global change, rather than on the sideline.

In addition, this partnership will not only benefit South Africa, but also the continent, as it will open up trade in Africa. Experts have made the point that the "S" in BRICS should actually stand for SADC, and not South Africa, referring to the Southern African Development Community of 15 African states, including Botswana, the DRC, Angola and Tanzania.

Membership would give Africa a stronger voice, not only within BRICS, but also across all international platforms in which the BRICS countries are individually represented.

The membership was the result of two years of in-depth planning and joint efforts by the public and private sector. The founding nations (Brazil, Russia, India and China), and now South Africa, are in a similar state of economic development, although South Africa ranks lower according to several significant indicators.

While it is agreed South Africa does not have a major world population size in comparison to the other BRICS member states, including the high-digit growth rates enjoyed by its BRICS partners, South Africa has many other positive attributes not to be undermined including, among others, South Africa's role as a major economic player in Africa, South Africa's mineral and industrial output, electricity generation capacity, road, rail, ports and communication infrastructure, sophisticated financial markets and service industries, South Africa's manufacturing capacity, membership in the G20, and level of industrialisation.

History of South Africa's membership to BRICS ⁵⁶

Political dialogue between the BRIC countries began in New York in September 2006, with a meeting of the BRIC foreign ministers. Four high-level meetings followed, including a

full-scale meeting in Yekaterinburg, Russia, in May 2008.

The BRIC countries met for their first official summit in June 2009, in Yekaterinburg, Russia, with Luiz Inácio Lula da Silva, Dmitry Medvedev, Manmohan Singh, and Hu Jintao, the respective leaders of Brazil, Russia, India and China, all attending. The core focus of the summit was related to improving the current global economic situation and discussing how the four countries can better work together in the future, as well as a more general push to reform financial institutions. There was also discussion surrounding how developing nations, such as those members of BRIC, could be better involved in global affairs in the future. In the aftermath of the summit the BRIC nations suggested that there was a need for a new global reserve currency that is "diversified, stable and predictable".

South Africa sought membership during 2010 and the process for formal admission began as early as August 2010.

South Africa was officially admitted as a member nation on 24 December 2010 after being formally invited by China and the other BRIC countries to join the group. The group was renamed BRICS to reflect the now-five-nation membership, with an "S" for South Africa appended to the acronym.

⁵⁵ <http://www.southafrica.info/global/BRICS/roundtable.htm> Nosimilo Ramela, 13 May 2011.

⁵⁶ SouthAfrica.info - New era as South Africa joins BRICS.

[^] Cooperation within BRIC Kremlin.ru. Retrieved on 2009-06-16. Archived 2009-06-19.

President Jacob Zuma attended the 2011 BRICS summit in Sanya, Hainan province, China, as a full member. Following the 2012 Summit in India, South Africa will host the fifth BRICS Summit in 2013.

South Africa and the BRICS

South Africa's membership of the BRICS has become a vital element of our global economic strategy. The economic engagement in BRICS is being built on three pillars. First, the BRICS countries have a shared interest in pursuing the reform of multilateral institutions for global governance to give greater voice to developing countries in these institutions and, thereby, enhance the legitimacy of the institutions themselves. In particular, we have strengthened coordination in the WTO's Doha Round as well as in forums where trade and investment issues arise.

The second pillar involves building intra-BRICS cooperation. On matters relating to trade and investment, we have highlighted the importance of working to build our industrial base, enhance value-added exports, and promote technology sharing, small business development and trade and investment promotion. Innovative proposals relating to the establishment of a BRICS-led Development Bank and the possible settlement of trade in domestic currencies have also been advanced. This bank will establish a mechanism to leverage new sources of investment

from the South to address financial bottlenecks of infrastructure and industrialization, while new sources of trade finance and the settlement of trade in domestic currencies will reduce transaction costs and support growth in intra-BRICS trade.

Third, South Africa has a direct interest in extending BRICS cooperation to support Africa's economic development agenda. The BRICS countries can contribute to Africa's development by increasing financial aid to build infrastructure and industrial capacity, and increasing imports of value-added manufactured products from the continent. The abundant natural resources of Africa, the growing consumer power of Africa's emerging middle class, and high growth rates offer an opportunity to build a more sustainable and mutually beneficial relationship with Africa in the next decades.



Member countries - Overview ⁵⁷

The BRICS group is emerging as a world superpower in terms of international trade. The five countries are leading the world in growth, with each having its own unique "core competency" for making money, as follows:

Brazil

Brazil leads the world in improved utility efficiency, and is one of the few countries with a real plan for creating its own energy in sufficient amounts to meet its needs. The sugar-cane fields power excellent ethanol infrastructure, and the investment has proven to help improve the Brazilian economy with a comparative advantage in producing things cheaply.

Russia

Russia has an advantage in producing energy from its oil fields. Corruption creates a very dangerous risk that investors have priced into the market. Equities are cheap in Russia.

India

India is a very balanced portion of the BRICS group, with its power coming as a result of inexpensive labour in the services industries. Unfortunately, India currently has a negative dependency ratio, and recent upticks in wealth haven't registered to the older, poorer citizens.

China

China is leading the world in growth, but concerns about a rampant real estate market are beginning to cool investors' expectations in the short-run. A net exporter, most analysts expect that China will soon turn "consumptuous" as its consumer economy emerges. Its power, however, can be leveraged with its undervalued currency, the Renminbi.

South Africa

One of the most interesting of all the countries is South Africa. Mostly a "frontier" economy, South Africa has an excellent opportunity for growth in bringing up its uneducated, rural population. South Africa is regarded as one of the better countries in the least developed continents (Africa). In addition to South Africa's strong economy and developed infrastructure, the country's position as the gateway to the rest of Africa gives it a valuable role in BRICS.

⁵⁷ <http://www.investingblog.org/archives/831/bric-brics-economy-countries/>.

Member countries - Vital statistics ⁵⁸

Table 1: Key statistics of BRICS members

Member	Leader	Finance Minister	GDP current prices (US\$ billions)	GDP per capita (US\$ units)	HDI	Population (persons - millions)
Brazil	President Dilma Rousseff	Guido Mantega	2 449.760	12 465.306	0.718	196.526
Russia	President Vladimir Putin	Anton Siluanov	2 021.896	14 246.306	0.755	141.924
India	President Pranab Mukherjee	P Chidambaram	1 779.279	1 454.646	0.547	1 223.170
China	President Hu Jintao	Xie Xuren	7 991.738	5 898.565	0.687	1 354.861
South Africa	President Jacob Zuma	Pravin Gordhan	419.925	8 201.992	0.619	51.198

⁵⁸ IMF. www.imf.org. Retrieved August 2012.

Table 2: Global rankings of BRICS members - Various categories ⁵⁹

	Brazil	Russia	India	China	South Africa
Area	5 th	1 st	7 th	3 rd	25 th
Population	5 th	9 th	2 nd	1 st	25 th
Population growth rate	107 th	221 st	90 th	156 th	158 th
Labour force	5 th	7 th	2 nd	1 st	34 th
GDP (nominal)	8 th	10 th	11 th	2 nd	28 th
GDP (PPP)	7 th	6 th	4 th	2 nd	25 th
GDP (nominal) per capita	55 th	54 th	137 th	95 th	71 st
GDP (PPP) per capita	71 st	51 st	127 th	93 rd	77 th
GDP (real) growth rate	15 th	88 th	7 th	5 th	117 th
Human Development Index	73 rd	65 th	119 th	89 th	110 th
Exports	18 th	11 th	16 th	1 st	36 th
Imports	20 th	17 th	11 th	2 nd	34 th
Current account balance	47 th	5 th	169 th	1 st	179 th
Received FDI	11 th	12 th	29 th	5 th	31 st
Forex	7 th	3 rd	6 th	1 st	33 rd
External debt	28 th	24 th	26 th	23 rd	45 th
Public debt	47 th	122 nd	29 th	98 th	88 th
Electricity consumption	9 th	4 th	5 th	1 st	14 th
Number of mobile phones	5 th	4 th	2 nd	1 st	25 th
Number of internet users	5 th	7 th	4 th	1 st	44 th
Vehicle production	6 th	19 th	7 th	1 st	24 th
Military expenditures	12 th	5 th	10 th	2 nd	43 rd
Active troops	14 th	5 th	3 rd	1 st	59 th
Rail network	10 th	2 nd	4 th	3 rd	12 th
Road network	4 th	8 th	3 rd	2 nd	18 th

⁵⁹ The Economist. "How Solid are the BRICS?" Global Economics. <http://www2.goldmansachs.com/ideas/brics/how-solid-doc.pdf>. Retrieved 2010-09-21.

Exchange controls

Exchange control is administered by the South African Reserve Bank (SARB) which has delegated powers to Authorised Dealers (banks licenced to deal in foreign exchange).

South Africa does not impose exchange controls on non-residents, but exercises exchange controls over residents and transactions entered into between residents and non-residents.

For exchange control purposes, a "resident" is a person (a natural person or legal entity) whether of South African or any other nationality, who has taken up residence, is domiciled or registered in South Africa.

There are, in principle, no restrictions on foreign investors acquiring companies or businesses in South Africa. The introduction of capital or the acquisition of shares does not require SARB approval, but the acceptance of foreign loans by South African residents (including a South African subsidiary or branch of a foreign company) is subject to prior approval being obtained. Approval is required for the repayment of foreign loans by South African residents.

There are no thin capitalisation rules imposed in terms of exchange controls but the rate of interest payable on foreign loans will be limited in terms of SARB policies, although after approval has been

granted, interest is freely transferable from South Africa. The extent to which non-residents and entities, in which non-residents have an interest of 75% or more, may avail of local financial assistance in South Africa for local working capital purposes, is unrestricted; however, local financial assistance for financial transactions and the acquisition of residential property is restricted in terms of exchange controls.

The sale, or redemption proceeds, of assets owned by non-residents may be freely transferred from South Africa.

Dividends declared by South African subsidiaries of foreign companies, and profits distributed by a branch of a foreign company operating in South Africa, may be remitted abroad.

Residents (including resident entities) may remit payment for services actually rendered by non-residents, provided that the fees payable are not calculated on the basis of a percentage of turnover, income, sales or purchases (i.e. based on a direct charge method).

Payments to be made in respect of transfer pricing or cost sharing or cost allocation arrangements (i.e. based on an indirect charge method) require SARB approval.

The remittance of licence fees / royalties is subject to approval being granted by the SARB and / or **the dti**.

Payment for imports may be made through an Authorised Dealer, against the submission of documentation evidencing the receipt of the merchandise in South Africa.

The receipt of export proceeds by residents is controlled. Foreign currency export proceeds must be repatriated and offered for sale to an Authorised Dealer within 30 days of receipt. Exporters may grant credit of up to 180 days where it is the norm and on application to the Authorised Dealer credit terms may be extended.

Residents (natural persons) over the age of 18 years may avail of a single discretionary allowance of up to R1 000 000 per calendar year which may be utilised for any one or all of the following categories of allowances: travel (both holiday and business travel), maintenance payments, gifts or loans to non-residents, study allowance, alimony and child support payments, wedding expenses and foreign capital allowance. Residents (natural persons) under the age of 18 years may avail of travel facilities within a limit of R200 000 per calendar year.

Individuals resident in South Africa, who are taxpayers of good standing and over the age of 18 years, are permitted to remit capital abroad to invest within a limit of R4 million per calendar year, or alternatively, hold foreign currency deposits with an

Authorised Dealer.

Foreign nationals temporarily resident in South Africa may, subject to completing formalities through an Authorised Dealer, conduct their affairs on a resident basis while resident in South Africa and may expatriate accumulated earnings or capital introduced.

Investment	Comments
Listed securities	No restrictions
Real estate	No restrictions
Equity investment	No restrictions
Loans	All foreign loans subject to approval

Note:

*Local borrowing, including normal trade credit or financial assistance availed of for local working capital purposes, of a South African company in which non-residents have at least 75% ownership or controls, is not limited.

**Local financial assistance granted to emigrants and companies in which non-residents have an interest of 75% or more is restricted in respect of the acquisition of residential properties by non-residents or affected persons, and any other financial transaction, such as portfolio investments by non-residents, securities lending, hedging, repurchase agreements etc. In these cases, a ratio of 100% of invested, or shareholder funds, applies.

Repatriation of funds

Type	Comments
Dividends	No restrictions
Interest	No restrictions **
Royalties	12% withholding tax*
Equity Investments	No restriction**
Loans subject to approval	Readily granted**

*Assumes no double tax treaty relief exists.

**Provided exchange control approval was obtained on initial investment

Dividends

Dividends are freely remittable (provided the dividend will not cause the business to be "over borrowed"). The remitting bank may call for an auditor's report.

Interest

Provided exchange control approval has been obtained in advance, in respect of the loan and the interest payable. In other words, approval is required for the receipt of the loan and if prior approval for the loan has been obtained, interest may be paid without separate approval. Repayment of capital is subject to separate approval.

Royalties

Provided the royalty agreement has been approved by the SARB and / or the dti and provided the application for approval to remit the royalty is supported by the auditor's certificate.

Management fees

For exchange control purposes management fees are freely remittable, provided the fee is not based on a percentage of sales, turnover, purchases etc. A detailed invoice specifying the services and the basis of the fee must be submitted to the entity's bankers when effecting payment.

Importing and exporting

Overview ⁶⁰

The South African trade balance over the past year shows a negative balance, concluding that South Africa is importing more goods and services than what it is exporting

In 2011, South Africa's total exports to the rest of the world grew by 19.2% to R691.5 billion, with exports destined for China, Japan, the US and other African markets making up the largest contributions to this growth performance. Imports into South Africa from the rest of the world grew by 23.9% to R726.2 billion in 2011, with this growth associated mainly with imports from China, the US, Germany and Saudi Arabia.

The top export categories included precious stones and metals (mainly platinum, gold and, to a much lesser extent, diamonds), ores slag and ash (largely iron ore and, to a much lesser extent, chrome and manganese), mineral fuels (mostly coal and refined petroleum), iron and steel products,

as well as motor vehicles, parts and accessories.

The top import categories included mineral fuels (largely crude oil and refined petroleum), machinery and equipment (mostly computers, printing equipment, heavy equipment and steam turbines), electrical machinery and electronic equipment, as well as motor vehicles, parts and accessories.

Total imports and exports

Year	Imports	Exports
2007	R561.60 bn	R491.39 bn
2008	R727.89 bn	R656.13 bn
2009	R541.52 bn	R513.87 bn
2010	R585.55 bn	R590.05 bn
2011	R723.43 bn	R707.34 bn

Source: SARS year-on-year trade balance

Top 10 imported and exported commodities - 2011 (by Rand value)

Major Imports		Major Exports	
1	Petroleum oils and oils obtained from bituminous minerals, crude	1	Gold, Non-monetary: Other semi-manufactured forms
2	Distillate fuel	2	Iron ores and concentrates, agglomerated
3	Petrol	3	Bituminous coal
4	Other vehicles of a cylinder capacity exceeding 1 500 cm ³ but not exceeding 3 000 cm ³	4	Platinum, unwrought or in semi-manufactured forms, other
5	Cathodes and sections of cathodes	5	Platinum, Unwrought or in powder form
6	Unrefined copper; copper anodes for electrolytic refining	6	Ferro-chromium: Containing by mass more than 4% of carbon
7	Original equipment components: For motor cars of heading 87.03	7	Chromium ores and concentrates
8	Aircraft exceeding 15 000 kg	8	Other vehicles of a cylinder capacity exceeding 1 500 cm ³ but not exceeding 3 000 cm ³
9	Tobacco, partly or wholly stemmed or stripped	9	Iron ores and concentrates, non-agglomerated
10	Cobalt ores and concentrates	10	Filtering or purifying machinery and apparatus for gases: other

⁶⁰ <http://www.idc.co.za/media-room/articles/233-statistical-update-on-south-africa-s-economic-sectors>

Import and export procedures ⁶¹

Customs procedures affect new business operations in many areas. Most firms rely on imports for initial capital equipment and for needed production materials and supplies. Exporting firms rely on timely clearances to expedite shipments and for documentation to secure rebates.

Import permits

Most goods may be imported into South Africa without restriction. However, the importation of certain goods specified by government notice is only permitted subject to the issuance of an import permit. All second-hand goods, including waste and scrap of whatever nature, require an import permit. For goods subject to restriction, importers must be in possession of the required permit before the goods are shipped.

The International Trade Administration Commission of South Africa (ITAC) controls the issuing of permits. Additional and prior authorisation may be required from other departments with jurisdiction over the control of the goods in question. The permit can be acquired within three days, depending on the nature of the application.

For a complete list of goods currently subject to import control, an importer should approach the ITAC. There is no fee applicable. Permits are valid for 12 months from date of issue.

Applications should be filed at least two weeks prior to the date of shipment in order to ensure approval in time for shipment.

Export permits

A number of products are subject to export control and licensing. Exporters should apply directly to the government agency that controls the specific permit in question. Currently, restrictions exist on strategic goods (exhaustible resources); agricultural products and metal waste and scrap. Metal scrap must first be offered to downstream manufacturers at a discount to the price at which it can be exported (15% discount for non-ferrous; 7.5% for ferrous). If manufacturers turn down the offer, an export permit may be issued.

Registration as importer/exporter

All importers and exporters in South Africa are required to register with the Commissioner of the South African Revenue Service (SARS). Form DA 185 (plus the relevant annexures) for importers and exporters, as well as clearing agents and warehouse licencees, must be completed and submitted to SARS.

Forms are to be submitted to the SARS office closest to the area in which the applicant's head office is situated. Upon registration, applicants are issued with a unique customs code number. The registration process normally takes about two to three weeks.

SARS has recently amended their rules around foreign entities (not registered in South Africa) that wish to register for customs purposes.

Foreign entities ("foreign principals") can register with Customs (i.e. register as importer and/ or exporter), provided they simultaneously nominate a local representative ("registered agent") located in the Republic of South Africa to act on their behalf in relation to any business activity which relates specifically to Customs.

Customs clearance procedures

Import process

The clearance of imported goods generally takes a maximum of 24 hours for airfreight and two to three days for sea freight, depending on the port of entry. All required documentation must be submitted to Customs and Excise before goods can be cleared through customs.

Most transactions are covered by a bill-of-entry (Form SAD500).

Other required documentation includes:

- Commercial invoice.
- Prescribed certificate of origin when preferential duty rates are claimed.
- Negotiable copy of bill of lading or equivalent document.
- Import permit, if required.
- Rebate permit 470.03 (if applicable) for raw materials to be processed and re-exported.
- Payment, by a bank guaranteed cheque, for all applicable duties and taxes (incl. VAT), if not qualified for a deferment.

Import shipments may be cleared through customs prior to the goods arriving at a South African port. In order to avoid unnecessary delays, an importer may wish to submit an application for a tariff determination for products where the tariff heading is unknown or under dispute. These can be acquired from the Commissioner in Pretoria (submitted through the relevant branch office).

In the case of sea freight, once customs has been cleared, the importer must pay dues to Harbour Revenue, and receive a wharfage order. The importer then pays the operator and receives a release. At this point, the importer can go to the terminal and collect his goods. Use of a freight forwarder is strongly recommended.

⁶¹ the dti Investor's Handbook, 2009. www.thedti.go.za. Retrieved August 2012.

Freight forwarders commonly apply for all licences and registration numbers. They can apply for tariff determinations and provide assistance in properly classifying goods. Through the use of technology, they can clear goods quicker than an individual investor, and provide inland transport for the goods to reach the investor.

Importers need to be aware that, although the freight forwarder will assist them with the clearance process, the ultimate responsibility for the correct clearance of the goods remain theirs.

Export process

All required documentation must be submitted to Customs and Excise before goods can be cleared through Customs. Most transactions are covered by a Bill of Entry, Form SAD500. Customs can process paperwork within 24 hours.

All exports must reflect payment from the receiver of the goods. Other required documentation includes:

- Export invoice.
- Transport document.
- Export permit (if required).

Electronic processing

Most Customs offices accept electronic versions of required documentation to expedite the clearance process. SARS may request that the electronic version be supported by additional

documentation. The importer and/or the freight forwarder need to keep all customs-related documentation for a period of at least five years.

To facilitate clearance, Customs and Excise, in coordination with Transnet Port Terminals (previously Portnet) and Transnet Freight Rail (previously Spoornet), has also introduced electronic processing for the clearance of containerised cargo through a select number of district offices. Customs electronically communicates its instructions directly to the depot or terminal operators.

Deferment of payment scheme

A deferment scheme is available to qualified importers that allow the deferment of applicable import duties, and VAT. Payment is generally deferred for 30 days with seven days to settle the account. To apply for deferment, importers may apply to the local Customs Controller.

Required documentation includes:

- Application for deferment.
- Statement of income.
- Balance sheet.

The local controller will make its recommendation to the Commissioner. Following approval, the applicant will be required to submit additional documentation, including a signed agreement and any required surety bond.

Duty drawback scheme

A duty drawback scheme provides refunds for import duties paid on materials used in the production of goods exported. Manufacturers may apply for refunds after the final product is exported. Manufacturers must provide proper documentation to reconcile imported materials with exports.

Bonded warehouses

Secure bonded warehouse facilities are available at all points of entry and may be used to store imported goods without payment of duties until required for use, resale, or re-export.

Goods withdrawn from a bonded warehouse are liable for the duty applicable only if cleared out of bond for home consumption.

Manufacturing under rebate programme: SARS also administers a programme for manufacturing under rebate, whereby manufacturers may claim a rebate on imported materials used in the production of goods for export.

Imported materials must be used within 12 months. This facility is exclusively export driven, and to qualify manufacturers must have secure facilities on their premises for the storage of dutiable materials. The designated area is subject to inspection by Customs.

It is recommended that building plans be submitted to Customs prior to construction to ensure that all requirements are met. Upon approval,

manufacturers are also required to provide a surety bond. The bond amount is usually determined by SARS. The entire process can take from two weeks to two months, depending on the length of time required to obtain the bond.

Manufacturers are required to submit reconciliation statements to Customs within 12 months of the date of importation of imported materials.

Clearing agents

Clearing agents/customs brokers are available throughout South Africa to attend to all formalities necessary for the clearance of goods through customs, including any required permits, documentation, payment of duties, port charges, forwarding and transport costs.

Customs duty planning

Customs duty planning can provide significant savings for businesses locating to South Africa whether through immediate reduction in amounts of customs duty payable, improved cash flow, or by streamlining procedures and reducing overhead costs.

It is essential that businesses locating to South Africa consider specialist advice at an early stage to ensure that suitable planning opportunities are identified and maximum savings are achieved; especially since certain provisions are dependent on pre-approval from the authorities concerned.

Listed below are brief outlines of the main areas in which businesses locating to South Africa may obtain savings through customs duty planning:

Stage consignment procedures

These can benefit businesses importing capital equipment in separate consignments. Instead of classifying all the components separately, and completing full customs entries for each consignment, they may be classified as component parts of one functional unit. The customs duty applicable to the functional unit will therefore be applied, that could result in one, low customs duty, instead of many different customs duty rates, several of which might be quite high. Import documentation would also be reduced.

Customs valuation

The South African Customs and Excise Act provides for a range of additions to, and deductions from, the transaction value of goods used to determine the value for customs duty purposes of imported goods. Careful planning will ensure that the lowest legal value can be used, thus reducing the overall duty bill. Where there is trade between related parties and SARS' Customs find that the transaction value is too low for customs duty purposes, SARS can increase the transaction value. It is therefore important to ensure that the correct customs value is agreed with SARS.

Tariff classification

Tariff classification of imported goods is the responsibility of the importer, even if entrusted to a clearing agent. Classification determines the rate of customs duty payable, permit and licensing requirements and entitlement to preferential customs duty rates or rebates of duty. Customs planning enables businesses to identify lower duty liabilities and avoid import restrictions that should not apply to the product.

Inward processing relief

A full rebate of the customs duty and VAT exemption is provided for goods for processing and re-exportation. Processing includes from simple repacking of goods to the most complicated manufacturing process. Certain accounting requirements have to be followed but careful planning can reduce these requirements to a minimum.

Industrial Development Zones (IDZs)

Following the publication of the IDZ Regulations in December 2000, the Coega (near Port Elizabeth), East London, Richard's Bay and Johannesburg International Airport IDZs have been designated.

The intention of IDZs is to provide investors in the zone with direct links to an international port and the facility to import inputs and goods into the zone customs duty-free and exempt from VAT. Each zone will have dedicated customs support for faster processing of customs documentation.

IDZs are suitable for export-orientated production. Finished goods sold into South Africa could have import status i.e. it could be subject to the same customs duties and taxes applicable to any other import.

Investors will qualify for all incentives available to South African companies (other than the Export Marketing and Investment Assistance Programme).

Customs and excise warehouses

These warehouses allow the deferment of the payment of customs duties and import VAT on goods subject to customs duty. Payment is only due at the time the goods are removed from the warehouse. Certain manufacturing operations may also be undertaken in these warehouses subject to special prior approval being received from the Customs authorities.

Special dispensations are applicable to exporters if the goods are not subject to customs duty.

Anti-dumping, countervailing and safeguard measures

ITAC conducts anti-dumping, countervailing and safeguard investigations in terms of the International Trade Administration Act. Anti-dumping, countervailing and safeguard duties can be imposed in addition to the prevailing rate of customs duty applicable to the product being imported. Safeguard quotas can be imposed in the case of safeguard investigations.

A product is considered dumped

when it is exported to the Southern African Customs Union (SACU) at a price that is less than its normal value. The normal value is defined as the domestic selling price of a product in the country of export or,

in the absence of domestic sales, exports to another country or a constructed normal value.

Countervailing duties are imposed in the case of subsidies by a foreign Government in an effort to make their exports more competitive.

Safeguard measures are imposed when there is a surge in imports of a specific product. In all three instances it must be shown that it has caused injury to the relevant South African industry before final measures can be introduced. The anti-dumping and countervailing duties can be country and / or company specific and are imposed for a period of five years.

Safeguard measures will apply to imports from all countries, although least developed countries can be excluded. Proper planning can ensure that the product is not subject to anti-dumping, countervailing or safeguard investigation. When being party to an anti-dumping, countervailing or safeguard investigation, it is essential that exporters, importers and manufacturers (South African and foreign) cooperate with the investigating authority in order to get the best dispensation.

Interpretation of trade agreements and “rules of origin”

It is important to constantly monitor the changing trading environment and to develop informed marketing strategies. Companies are advised on compliance with the “Rules of Origin” provisions of the various trade agreements and assisted in mitigating risks in this area. South Africa is a beneficiary to various trade agreements such as the free trade agreements with the European Union (EU), European Free Trade Area (EFTA), the Southern African Development Community (SADC) and the Africa Growth and Opportunity Act (AGOA), which makes it an ideal location to target large developed markets.

Customs accreditation

The SARS “accreditation initiative” was introduced in February 2002, and aimed to eradicate illegitimate trade and simultaneously facilitate legitimate trade within South Africa.

Accreditation allows SARS to grant accredited status to those businesses registered under the Customs Act and which meet defined criteria.

Benefits include:

- Simplified procedures such as electronic clearances support a paperless environment and lead to quicker turnaround times.
- Consulting with business to improve customs processes.

- Less human intervention in customs transactions.

The local trading industry did not embrace this concept due to the lack of real benefits. SARS in turn has not got around to conducting customs compliance inspections to verify compliance declarations made by applicants and, as a result, the application process became somewhat of a “paper-exercise”.

SARS subsequently amended the accreditation programme and published two documents to aid applicants in understanding and assessing their compliance status with the accredited criteria namely:

- Request for information and self-assessment (document number SC-CF-06-A1).
- Quick reference guide to accreditation (document number SC-CF-07).

The documents were released due to the fact that the actual application for accreditation (the DA186) was very vague and did not provide any guidance as to what was required in order to qualify for accreditation.

The application process has, hence, been updated and applicants now need to complete the self-assessment prior to applying for accreditation on the DA186. If the self-assessment reveals that the applicant is not in a position to apply for accreditation, SARS will (together with the applicant) draw up a “Compliance Improvement

Plan” to assist the applicant to improve their compliance levels and, hence, meet the qualifying criteria for accreditation.

If the self-assessment reveals that the applicant meets the criteria for accreditation, the completed self-assessment (together with the DA186) needs to be submitted to SARS. SARS will verify the details and confirm whether or not accredited status has been granted. In the event that it is not granted, the applicant can participate in the Compliance Improvement Programme.

If SARS grant accredited status to the applicant, the applicant will be required to sign an accreditation agreement in order to complete the process and receive the benefits available under accreditation.

The applicant needs to be aware that ongoing compliance reviews by SARS will be conducted. Should the applicant’s compliance levels fall, the accredited client status can be cancelled or suspended upon review.

Lastly, industry should be aware that SARS is currently looking at revising the accreditation initiative to bring it in line with the Authorised Economic Operator (AEO) concept, which was introduced by the World Customs Organisation (WCO). This revised accreditation is known as the SARS “Preferred Trader Initiative” (PTI).

Customs Modernisation has established a PTI that is currently undertaking a pilot with importers and exporters

from key economic sectors identified by Government. The aim is to improve trade facilitation and economic protection of key industries, as well as raise voluntary compliance and increase efficiency for SARS. The intent of the PTI is to create partnerships between Customs and Business, linking specific demonstrated and audited compliance levels. “Preferred trader” forms part of the revised accreditation approach within SARS. This will award clients with a new status, which will also introduce an “account manager approach” to approved preferred traders.

SARS believes that about 80% of trade volume is undertaken by clients who should be able to demonstrate their compliance, and therefore be considered “low risk” and potentially suitable for accreditation. The mutual benefit is that customs operations at the entry/exit points of South Africa should then be able to focus on high risk consignments and allow greater facilitation to its accredited clients.

The programme is dependent upon developing a solid Customs audit capability supported by its core legal, policy, people, process and systems infrastructures. To achieve this, the PTI has developed draft audit and account management policies, procedures and standard operating programmes to guide the new programme. These are being tested by the pilot, and will be formalised in legislative rules and policy within the next year. A new accreditation policy is also being developed that will specify formal

benefits for clients linked to their compliance levels. This is in line with the EU's AEO programme, which SARS is aligning with due to the fact that the EU countries are our largest trading partners.

The assurance audits will perform tests that will score compliance against specific measures and standards. This approach will also facilitate mutual recognition from international Customs Administrations for their local status.

The new accreditation process requires the companies to complete a detailed self-assessment questionnaire that represents a due diligence report of their own compliance. SARS validates each company's declaration through an audit that performs a combination of internal systems tests and sampling of compliance.

SARS has undertaken initial discussions with neighbouring countries to help them adopt and deploy the SARS Customs Draft Accreditation Policy into an aligned Regional Accreditation and Audit Programme.

Proposed benefits of the accreditation policy

Proposed benefits of the accreditation policy include, among others:

- Reduced interventions.
- Upgraded service model for participants.
- Simplified procedures linked to accreditation (dependent on new systems and legislative provisions).

SARS is also busy with an AEO benchmarking programme, which will assist in the finalisation of the accreditation programme. The formal launch of the new accreditation programme, which includes the "preferred trader status", will coincide with legal and policy announcements in the coming year.

Re-write of the Customs Act

After nearly 10 years of behind the scenes planning, SARS on 30 October 2009 published the:

- Tax Administration Bill (TAB).
- Customs Control Bill (CCB).
- Customs Duty Bill (CDB).

The main aim of the re-write is to modernise customs systems in order to facilitate legitimate trade. The new Customs Bills are in line with international trends and compliant with South Africa's commitments. The new Bills are largely based on the Revised Kyoto Convention, which provides a "blueprint" for a modern Customs organisation.

Latest changes

While a few new concepts have been introduced, many of the changes see familiar concepts being revised with a lot of new terminology added to ensure that the Acts (and their guidelines) are in line with international protocols.

Some of the major changes to be introduced through the new Customs legislation include:

- SARS' ability to assess a duty liability has been lengthened from two to three years, which will make potential exposures much bigger than in the past.
- Provision has been made for a "self-assessment" by importers and exporters.
- Provision has been made for the "fast-tracking and simplified procedures" for accredited traders.
- Provision is made for advanced rulings.
- Goods now have to be cleared

within three, not seven, days. Given that clearing agents are already accredited with SARS and communicate with them electronically, we don't see this causing any problems at our ports.

- Period for goods to be stored in a customs warehouse ("bond store") has been reduced from 24 to 12 months.
- Accredited status holders now have to renew this status every three years.
- In addition the benefits of accreditation have been more clearly defined.
- Companies registered with SARS will need to renew their registration every three years.
- The administration procedures have been clarified, including which forms are necessary and what the time frames are.
- SARS will have far greater powers in terms of recovering debt owed to the state, including powers to arrest, being able to use a certain level of force, and being able to carry firearms.
- The provisions for the classification and valuation of goods have been expanded upon.

Note:

It is anticipated that the draft Excise Bill, as well as rules and regulations to these new Bills, will be released for public comment during 2012. SARS is aiming to have all the new Bills enacted into law by the end of the 2012 calendar year.

Overview of the the dti

the dti Vision is of a South Africa that has a vibrant economy, characterised by growth, employment and equity, built on the full potential of all citizens. To achieve this, **the dti** has become an outwardly focused, customer-centric organisation.

Purpose

the dti's Mission is to:

- Promote structural transformation, towards a dynamic industrial and globally competitive economy.
- Provide a predictable, competitive, equitable and socially responsible environment, conducive to investment, trade and enterprise development.
- Broaden participation in the economy to strengthen economic development.
- Continually improve the skills and capabilities of **the dti** to effectively deliver on its mandate and respond to the needs of South Africa's economic citizens.

Key strategic objectives

The key strategic objectives of **the dti** are:

- To facilitate transformation of the economy to promote industrial development, investment, competitiveness and employment creation.
- Build mutually beneficial regional and global relations to advance South Africa's trade, industrial policy and economic development objectives.
- Facilitate broad-based economic participation through targeted interventions to achieve more inclusive growth.
- Create a fair regulatory environment that enables investment, trade and enterprise development in an equitable and socially responsible manner.
- Promote a professional, ethical, dynamic, competitive and customer-focused working environment that ensures effective and efficient service delivery.

These five strategic objectives will be achieved through the collective effort of **the dti's** divisions and agencies, which are linked through a value chain to generate public value for economic citizens and to deliver products and services for their clients and stakeholders. These products and services include policy, legislation and regulation, finance and incentives, information and advice, and partnerships.

the dti will also achieve its objectives through the pursuit of a more targeted investment strategy, improved competitiveness of the economy, broadened economic participation of previously disadvantaged individuals to the mainstream economy and policy coherence.

National Industrial Policy Framework (NIPF)

In January 2007, Cabinet adopted the NIPF which sets out Government's broad approach to industrialisation with the following core objectives:

- To facilitate diversification beyond our current reliance on traditional commodities and non-tradable services. This requires the promotion of increased value-addition characterised particularly by movement into non-traditional tradable goods and services that compete in export markets, as well as against imports.

- The long-term intensification of South Africa's industrialisation process and movement towards a knowledge economy.
- The promotion of a more labour-absorbing industrialisation path with a particular emphasis on tradable labour- absorbing goods and services and economic linkages that catalyse employment creation.
- The promotion of a broader-based industrialization path characterised by the increased participation of historically disadvantaged people and marginalised regions in the mainstream of the industrial economy.
- Contributing to industrial development on the African continent, with a strong emphasis on building its productive capacity.

Guided by the NIPF, the implementation of industrial policy is to be set out in an Industrial Policy Action Plan (IPAP).

Regulatory requirements in South Africa

In August 2007, Cabinet approved the first: 2007/08 IPAP, which reflected chiefly “easy-to-do” actions. The 2007/08 IPAP has largely been implemented. However, there has been a growing recognition that industrial policy needs to be scaled up from “easy-to-do” actions to interventions that we “need-to-do” to generate a structurally new path of industrialisation.

A process of intensive consultation and analysis (led by the Minister of Trade and Industry) has culminated in a revised IPAP for the 2010/11 to 2012/13 financial years. It was recognised that a one-year IPAP is too short a period and that future IPAPs will be for a three-year rolling period, updated annually and with a 10-year outlook on desired economic outcomes. The 2012/13 to 2014/15 IPAP represents a significant step forward in our industrial policy efforts. As it is reviewed and updated annually, it will be continuously strengthened and up-scaled.



Corporate regulations

Introduction

The Companies Act, 2008 (the Act), constitutes a completely new corporate law for South Africa, and replaces the Companies Act, 1973 (as amended by the Corporate Laws Amendment Act) and amends the Close Corporation Act, 1984.

The Act is characterised by flexibility, simplicity, transparency, corporate efficiency and regulatory certainty. It is drafted in plain language, and is not as detailed and prescriptive as the current Act. Companies are allowed flexibility to change certain requirements to suit their specific circumstances.

The Act came into effect on 1 May 2011.

Different forms of companies

The Act provides for the classification of companies into either profit companies or non-profit companies.

Non-profit companies, which are the successors to the current section 21 companies, have to comply with a set of principles that relate mainly to the purpose or objects and policies of the company, matters related to directors and members, fundamental transactions and the winding up of non-profit companies. Also, the Act exempts non-profit companies from certain provisions of the Act.

With regard to profit companies, the Act distinguishes between four different types of companies, namely:

Private company	Personal liability company
A company that is not a state-owned company, and its Memorandum of Incorporation prohibits it offering any of its securities to the public, and restricts the transferability of its securities.	The company and the directors are jointly and severally liable for any debts and liabilities of the company.
State-owned company	Public company
An enterprise, registered as a company, which falls within the meaning of “state-owned enterprise” in terms of the Public Finance Management Act, or is owned by a municipality.	A company that is not a state-owned company, private company or personal liability company.

Transparency and accountability

The Act requires companies to adhere to a number of measures to ensure transparency and accountability.

Among others, all companies are required to:
Have at least one office in the Republic, and to register the address of such office (or its principal office) with the Commission.
Keep certain records in written or electronic form for a period of seven years.
Keep accurate and complete accounting record.
Prepare annual financial statements.
Submit an annual return, including a copy of its annual financial statements and any other prescribed information. The content of this report is prescribed in Regulations to the Act.

The Act requires public companies and state-owned companies to have audited financial statements. Certain categories of other companies may be required by the Minister in Regulations to have their annual financial statement audited. All companies that are not required (either in terms of the Act, or by Regulations) to have their financial statements audited may opt to either have their annual financial statements

audited voluntarily or to have it independently reviewed. Regulations set out exactly what is meant by independent review, what standards should be used, what professional qualifications are required for reviewers, etc.

Enhanced transparency and accountability

Although all companies are subject to transparency and accountability requirements (as set out above), public companies and state-owned companies are obliged to appoint a company secretary and an audit committee (comprising at least three members). All companies that are obliged to have audited financial statements must appoint an independent auditor. All other private companies, personal liability companies and non-profit companies may choose to include these enhanced transparency and accountability requirements in their respective Memoranda of Incorporation.

Company finance

The authorisation and classification of shares, the numbers of authorised shares of each class, and the preferences, rights, limitations and other terms associated with each class of shares, must be set out in the company's Memorandum of Incorporation, and may only be changed by special resolution of the shareholders.

However, directors are given special powers in that the board of the company may (except if the Memorandum of Incorporation provides otherwise) change the number of authorised shares of any class of shares or to classify or reclassify any shares.

The interests of minority shareholders are protected by requiring shareholder approval for shares and options issued to directors and other specified persons, or financial assistance for share purchases.

Capital adequacy

The Act introduces a new arrangement for capital adequacy. This arrangement abolishes the concept of par value shares and nominal value shares, and requires a solvency and liquidity test. In terms of this test, when one considers all reasonably foreseeable financial circumstance of the company at a particular point in time, the company's total assets fairly valued should equal or exceed its total liabilities (including contingent

liabilities) fairly valued and it should be clear that the company will be able to pay its debts as they become due in the course of business for a period of 12 months thereafter.

A new framework for debentures provides companies with significant freedom to create financial instruments.

Governance

A range of matters are dealt with, including a shareholder's right to be represented by proxy, notice for and conduct at meetings, election of directors, disqualification of persons to be directors, removal of directors, board committees and board meetings, director's personal financial interests, standards of directors' conduct, liability of directors and prescribed officers, and the indemnification of directors.



Standards of directors conduct

Directors of all types of companies are required to meet the same standards of conduct and behaviour as defined in the Act.

A person, acting in the capacity of director, must exercise his powers and perform his/her functions:

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.

Director liability

Directors of a company may be held jointly and severally liable for any loss, damage or costs sustained by the company as a result of a breach of the director's fiduciary duty or the duty to act with care, skill and diligence. In addition, a director may also be held liable where he or she:

- Acts in the name of the company without the necessary authority.
- Is part of an act or omission while knowing that the intention was to defraud shareholders, employees or creditors.
- Signs financial statements that are false or misleading in a material respect.

- Issues a prospectus that contains an untrue statement.

The strict standards of directors conduct and liability are somewhat tempered by the fact that companies are allowed to advance funds to cover the expense of litigation against directors, to indemnify directors in certain circumstances or to purchase insurance to protect either the director or the company. Directors may never be indemnified for liability resulting from willful misconduct or willful breach of trust.

The standard of conduct, and the provisions relating to personal liability, also applies to "prescribed officers". A prescribed officer is any person that exercises general executive control over and management of the whole, or a significant portion, of the business and activities of the company.

Takeovers and fundamental transactions

Fundamental transactions are transactions that would fundamentally alter a company, including the disposal of substantially all of its assets or undertaking, a scheme of arrangement, or a merger or amalgamation.

The Takeover Regulation Panel is tasked with regulating affected transactions. The Minister published takeover regulations to regulate the detail requirements for fundamental transactions.

The Act provides detailed rules pertaining to notification and the process for share purchases, and includes provision for the compulsory acquisition of minority shareholding in a takeover. The current regime with regard to mandatory offers and “squeeze out” have, for the most part, been retained (with some adjustments), while the rules pertaining to mergers and amalgamations have been clarified and amended significantly.

The process for approval of transactions that would fundamentally alter a company is set out in the Act. Fundamental transactions require approval by special resolution adopted by shareholders. In any fundamental transaction, dissenting minority shareholders are given a remedy in that they may demand that they be paid fair value for their shares (appraisal rights).

Business rescue

The Act provides for a process to rescue companies that are financially distressed. A company is in financial distress when it is likely to be insolvent in the near future.

Business rescue proceedings may be initiated either by ordinary company resolution, or failing that, a court order.

Business rescue proceedings entail the appointment of a business rescue practitioner to supervise the company and its management on a temporary basis. During this time a moratorium is placed on the rights of claimants against the company. The business rescue practitioner is tasked with the development and implementation of a plan to rescue the company by restructuring its affairs, business, property, debt and other liabilities, and equity in a manner that maximises the likelihood of the company continuing to exist on a solvent basis.

The Act recognises the interests of all affected persons (which might be either a shareholder, a creditor, trade union or the employees of the company), and provides for their respective participation in the development and eventual approval of a business rescue plan.

The business rescue plan is either adopted or rejected by all parties with voting interests (which include creditors, employees and shareholders, depending on the circumstances). A business rescue plan that has been adopted is binding on the company, the creditors and every holder of the company’s securities. Where the plan is rejected, the company will be liquidated.

Enforcement

A number of statutory bodies are established to enforce the provisions of the Act:

Companies and Intellectual Property Commission (CIPC) is responsible for:
<ul style="list-style-type: none"> Monitoring proper compliance with this Act by companies and directors. Receiving and investigating complaints concerning alleged contraventions of this Act. Promoting the reliability of financial reports by investigating non-compliance with financial reporting standards. Registering and de-registering companies, directors, business names and intellectual property rights.
Companies Tribunal is responsible for:
<ul style="list-style-type: none"> Assisting in the resolution of disputes where any person applies to the Companies Tribunal for relief as an alternative to applying to a court. An arbitration decision by the Companies Tribunal is binding on the Commission or the Takeover Regulation Panel.
Takeover regulation panel is responsible for:
<ul style="list-style-type: none"> Regulating fundamental transactions.
Financial reporting standards council is responsible for:
<ul style="list-style-type: none"> Consulting with the Minister of Trade and Industry on the making of regulations establishing financial reporting standards.

King III

Introduction

Boards of directors are confronted with many difficult decisions on a regular basis. The right choice is not always obvious. The King Report on Governance for South Africa 2009 (King III) provides a list of best practice principles to assist and guide directors to make the right choice for their company. Although King III refers to “companies” and “directors”, the principles apply to all institutions, including public sector institutions.

The best practice principles have become an indispensable guide on corporate governance to directors, executives and regulators alike. King III provides guidance to all corporate entities on various governance related aspects, including:

- Ethical leadership and corporate citizenship.
- Boards and directors.
- Audit committees.
- The governance of risk.
- The governance of information technology (IT).
- Compliance with laws, rules, codes and standards.
- Internal audit.
- Governing stakeholder relationships.
- Integrated reporting and disclosure.

King III and the Companies Act

The new Companies Act codifies the standard for directors’ conduct and regulates the liability of directors where the standard is not met. Directors are obliged to act in good faith, in the best interest of the company and with the required level of skill and diligence. These standards will be enforced by the CIPC, and shareholders and other stakeholders of a company will hold the company and its directors accountable.

In contrast, there is no statutory obligation on companies to comply with King III. The underlying intention of King III is not to force companies to comply with recommended practice (King II required companies to “comply or explain”), but rather for companies to “apply or explain”. Directors are accountable for the governance and well-being of the company, and to the body of shareholders. Where directors opt not to implement the recommended practices as set out in King III, they should be able to explain their reasoning and motivation to the shareholders.

As directors can be held personally liable for non-compliance with their statutory duties as set out in the Companies Act, they need to ensure that each and every decision is taken with care. Indeed, every decision counts. Most, if not all of the recommended best practice principles set out in King III relate to the legislative duties of directors

to exercise powers to perform their functions in good faith and for a proper purpose in the best interest of the company. In addition, they should do it with the degree of care, skill and diligence that may reasonably be expected of a director. As such, King III constitutes a valuable guide to directors and other office bearers to ensure compliance with the provisions of the Companies Act. It is recommended that directors pay close attention to the enumerated principles, and aim to apply all such principles. Of course, where they choose not to apply a particular principle, they should be able to explain that decision to shareholders.

Focus of King III

King II highlighted corporate citizenship and integrated sustainability, the so-called triple bottom line, in terms of which companies needed to account not only for economic and financial issues, but also for social and environmental issues. King III builds on this principle by emphasising sustainability. Directors have accountability to shareholders and an obligation to all stakeholders (including shareholders) to ensure that the company’s resources are utilised so as to ensure the continuing viability of the company. This involves not only environmental sustainability (resource management with an eye on future needs), but also issues such as social responsibility (ensuring a positive impact on the community within which the company operates),

respect for human rights, and the effective management of stakeholder relationships (including the utilisation of alternative dispute resolution mechanisms to resolve potential disputes efficiently, expeditiously and inexpensively).

A focus on sustainability will not only positively impact a company’s risk management, but also its strategic planning processes. Governance, strategy, risk, performance and sustainability have become intrinsically linked, and directors should ensure that the company’s strategy accounts for sustainability issues. Directors also need to ensure adequate sustainability reporting to all stakeholders.

King III also points out that the economic value of a company can no longer be based on the balance sheet only. Rather, the economic value will be impacted by a range of non-financial issues such as brand and reputation, stakeholder relations and goodwill, an evolving and forward looking strategy, environmental sustainability, social responsibility, quality of governance, etc.

What's new in King III

Although the King III Report builds on the pertinent issues as raised in King I and King II, the promulgation of the Companies Act, as well as the focus on sustainability necessitated the inclusion of or renewed emphasis on a number of issues. These include:

- Integration of strategy, sustainability and governance.
- A number of matters concerning the board and directors, such as the composition of the board, duties for the chairperson and the Chief Executive Officer (CEO), the board appointment process, director development, remuneration, and performance assessment of directors.
- Clearly defined role and functions of the audit committee.
- While not a new concept, emphasis on the risk-based approach to internal audit and the strategic positioning of the internal audit function within the company.
- Inter-relation between risk management and the company's strategic and business processes.
- The concept of combined assurance.
- Alternative dispute resolution and stakeholder relationships.
- IT governance and IT risk management.

- Compliance with laws and regulations.
- Integrated reporting and disclosure.

A number of issues discussed in King II have subsequently been incorporated in the Companies Act, and since these matters are now legislated, they are no longer expressly dealt with in King III. These matters include the business judgment rule, distinction between audit and non-audit services, enforcement of financial reporting standards, and the need for enforcement of the recommended principles.

Boards and directors

King III confirms the role of the Board as the focal point for corporate governance. The board has collective responsibility to provide and ensure good governance. As such, it is the responsibility of the directors to ensure, among others, that the company:

- Operates ethically and with integrity, and as a responsible corporate citizen.
- Considers the interests of the community within which it operates.
- Integrates governance, strategy, risk, performance and sustainability.
- Complies with laws and regulations.

- Identifies and manages risks.
- Employs structures and processes to ensure the integrity of its integrated reporting.

Although the directors are ultimately accountable for adherence to appropriate best practice principles, the direct responsibility of the Board is focused on the design and adoption of adequate policies, inculcating the required culture to adhere to such policies, and the subsequent oversight of the implementation of such policies. Management bears responsibility for the implementation of policies, strategy, business plans and the like.

In order to ensure the effective functioning of the Board, King III proposes a unitary board structure comprising executive, non-executive and independent non-executive members. The majority should be non-executives, of whom the majority should be independent. The Board should be chaired by an independent non-executive director. The CEO of the company should not also fulfil the role of the Chair of the Board.

King III further proposes a formal election and induction process for new Board members, ongoing director development, and emphasises the importance of effective Board performance. It also provides guidance on remuneration of directors and executives, and the composition and responsibility of Board committees.

King III proposes that the Boards of all companies establish audit,

risk, remuneration and nominations committees, and be assisted by a competent company secretary.

Audit committee

Although the Companies Act prescribes the composition and functions of the audit committee for certain categories of companies, King III proposes that all companies should appoint an audit committee. The audit committee should comprise at least three members and all members should be independent non-executive directors. The committee as a whole should have sufficient qualifications and experience to fulfil its duties, and should be permitted to consult with specialists or consultants after following an agreed process. The terms of reference of the audit committee should be approved by the Board.

The functions of the audit committee in relation to the external auditor include:

- The nomination of the external auditor for appointment and to verify the independence of the auditor.
- Determining the audit fee and the scope of the appointment.
- Ensuring that the appointment complies with the requirements of the Companies Act.
- Determining the nature and extent of non-audit services.
- Pre-approving any contract for non-audit services.

The board may delegate certain aspects of risk management and sustainability to the audit committee. King III introduces the concept of integrated reporting (which combines financial and sustainability reporting) and allows for the board to delegate the review of integrated reporting to the audit committee. In this regard, the audit committee should recommend to the board the need to engage external assurance providers to provide assurance on the accuracy and completeness of material elements of integrated reporting.

King III adopts a wide approach to the audit committee's responsibility for financial risk and reporting to include:

- Financial risks and reporting.
- Review of internal financial controls.
- Fraud risks and IT risks as it relates to financial reporting.

King III further introduces the combined assurance model. In terms of this model, assurance should be done on three levels, i.e. management, internal assurance providers and external assurance providers. The audit committee should ensure that a combined assurance model is applied to provide a coordinated approach to all assurance activities.

Internal audit

King III advocates a risk-based approach to internal audit. In order for internal audit to contribute to the attainment of strategic goals, the internal audit function should be positioned at a level within the company to understand the strategic direction and goals of the company. It should develop a programme to test the internal controls *vis-a-vis* specific risks. The internal audit function should provide assurance with reference to the adequacy of controls to identify risks that may impair the realisation of specific goals, as well as opportunities that will promote the achievement of the company's strategic goals.

As an internal assurance provider internal audit should form an integral part of the combined assurance model. It should provide a written assessment of internal controls and risk management to the board, and specifically on internal financial controls to the audit committee.

Governance of risk

King III emphasises the fact that risk management should be seen as an integral part of the company's strategic and business processes. The board's responsibility for governance of risk should be set out in a risk management policy and plan. The board should consider the risk policy and plan, and should monitor the whole risk management process.

While the board remains responsible for the risk management policy and the determination of the company's risk appetite and risk tolerance, management is responsible for the design, implementation and effectiveness of risk management.

The board should receive combined assurance regarding the effectiveness of the risk management process.

The board may assign its responsibility for risk management to the risk committee. Membership of this committee should include executive and non-executive directors. Where the company decides to assign this function to the audit committee, careful consideration should be given to the resources available to the audit committee to adequately deal with governance of risk in addition to its audit responsibilities.

Stakeholder management and alternative dispute resolution

King III proposes that companies institute measures to ensure that they are able to proactively manage the relationships with all their stakeholders, including shareholders. The company should encourage constructive stakeholder engagement. The board should strive to achieve the correct balance between the interests of all its various stakeholder groupings and promote mutual respect between the company and its stakeholders.

Alternative dispute resolution has become a trend worldwide, and not merely an alternative to the judicial system. Rather, alternative dispute resolution can be used as a management tool to manage and preserve stakeholder relationships and to resolve disputes expeditiously and inexpensively. This approach is in line with the directors' duty to act in the best interest of the company and their duty of care. The inclusion of dispute resolution clauses in contracts, as well as the utilisation of formalised alternative dispute resolution channels, is recommended.

IT governance

As IT systems have become such an integral part of doing business, King III provides specific guidelines to ensure effective IT governance. It is necessary for directors to ensure proper IT governance, the proper alignment of IT with the performance and sustainability objectives of the company, and the proper management of operational IT risk, including security. The risk committee may be assigned responsibility to oversee the management of IT risk. In addition, the audit committee should consider IT as it relates to financial risk and reporting.

Compliance with laws, rules, codes and standards

The board is responsible for overseeing the management of the company's compliance risk. The board should ensure awareness of and compliance with laws, rules, codes and standards throughout the business. In turn, management is responsible for the implementation of an effective compliance framework and processes, and for the effective management of the company's compliance risk. The board may mandate management to establish a compliance function to implement measures and procedures to ensure that the board's policy on compliance is implemented.

Integrated reporting and disclosure

King III proposes integrated reporting to ensure that all stakeholders are able to assess the economic value of the company. This entails the integration of the company's financial reporting with sustainability reporting and disclosure. The board should ensure that the positive and negative impacts of the company's operations, as well as plans to improve the positives and eradicate the negatives, are conveyed in the integrated report. King III suggests that the board may delegate oversight of the integrated report to an appropriate committee (either the audit committee or a sustainability committee). The audit committee should oversee the provision of independent assurance over sustainability issues and should assist the board by reviewing the integrated reporting and disclosure to ensure that it does not contradict financial reporting.

Timeline for implementation

King III is effective from 1 March 2010.

Retention of records

Record type	Retention period (years) originals
Accounting records	
Books of prime entry	
<ul style="list-style-type: none"> Cash books, creditors ledgers, fixed asset registers, general ledgers, journals, petty cash books, purchase journals, sales journals, subsidiary journals and ledgers, as well as supporting schedules to such books of account, etc. 	15 (Originals if microfilmed - 5 years)
<ul style="list-style-type: none"> Vouchers, working papers, bank statements, costing records, creditors invoices and statements, debtors invoices and statements, goods received notes, journal vouchers, payrolls, purchase orders and invoices, railage documents, salary and wage registers, sales tax records, tax returns and assessments, etc. 	7
Employee records	
<ul style="list-style-type: none"> Expense accounts, payrolls, employee tax returns etc. 	7
Statutory and share registration records	
<ul style="list-style-type: none"> A copy of its Memorandum of Incorporation. 	Indefinite
<ul style="list-style-type: none"> A record of its directors, including all its current directors, as well as past directors (information on past directors should be kept for a period of seven years after the past director retired from the company). 	7*

* In terms of section 24(1) of the 2008 Companies Act.

Record type	Retention period (years) originals
Statutory and share registration records	
<ul style="list-style-type: none"> Copies of all reports presented at an annual general meeting of the company, for a period of seven years after the date of any such meeting. 	Minimum 7 years from date of last meeting
<ul style="list-style-type: none"> Annual financial statements and accounting records, for seven years. 	Minimum 7
<ul style="list-style-type: none"> Notices and minutes of all shareholders meetings, including all resolutions adopted by them, and any document that was made available by the company to the holders of securities in relation to each such resolution, for seven years. 	Minimum 7
<ul style="list-style-type: none"> Copies of any written communications sent by the company to all holders of any class of the company's securities, for a period of seven years. 	Minimum 7 years from date on which each communication was issued
<ul style="list-style-type: none"> Minutes of all meetings and resolutions of directors, or directors' committees, or the audit committee, for a period of seven years. 	Minimum 7 years from date each resolution adopted
<ul style="list-style-type: none"> A securities register or its equivalent in the case of a profit company, or a member's register in the case of a non-profit company that has members. 	Minimum 7
<ul style="list-style-type: none"> A record of the company secretary and auditor (if applicable). 	Always keep updated
Other documents	
Customs and Excise Act	
<ul style="list-style-type: none"> Import and export documentation. 	5
Compensation for Occupational Injuries and Diseases Act	
<ul style="list-style-type: none"> Records of wages paid, time worked and payment for piece work and overtime, and of any particulars prescribed for at least four years after the date of last entry in those records. 	7**

** In terms of section 24(1) of the 2008 Companies Act.

Record type	Retention period (years) originals
Insolvency Act	
<ul style="list-style-type: none"> The insolvent's record of his transactions. 	3
Occupational Health and Safety Act	
<ul style="list-style-type: none"> The following records must be kept in terms of OHS Act: 	5
<ul style="list-style-type: none"> - A copy of the Act (if there are more than 19 employees). 	
<ul style="list-style-type: none"> - An incident register. 	
<ul style="list-style-type: none"> - Certificate of compliance. 	
<ul style="list-style-type: none"> - First aid certificate (valid for three years). 	
Value Added Tax Act	
<ul style="list-style-type: none"> Books of account, recording the supply of goods to or by the vendor, invoices, tax invoices, credit and debit notes, bank statements, deposit slips, stock lists and paid cheques. 	5
<ul style="list-style-type: none"> - Information in book form - five years from last entry. 	
<ul style="list-style-type: none"> - Computerised records must be kept in printout form, not just on disk or tape. 	
Capital Gains Tax	
<ul style="list-style-type: none"> All records pertaining to capital transactions: 	
<ul style="list-style-type: none"> - Where a taxpayer was never required to register. 	5
<ul style="list-style-type: none"> - Where a taxpayer determined a taxable gain or assessed capital loss, the retention period starts from the date on which the Commissioner received the return. 	4

Labour regulations ⁶²

Overview

The South African employment relationship between an employer and an employee, as well as the terms and conditions of employment that apply to such a relationship, is governed by the following sources:

- The common law.
- The employment contract or letter of appointment.
- Employment policies and procedures.
- Collective agreements concluded with trade unions or organised labour.
- Sectoral determinations and bargaining council agreements that regulate basic conditions of employment in a specific industry.
- Legislation.

The employment relationship is fundamentally governed by the employment contract. Employment policies and procedures generally supplement the employment contract by incorporating their provisions into the contract. The employment contract is, however, always subject

to sectoral determinations, bargaining council agreements and employment legislation that provide minimum standards, rights and entitlements to the employment relationship.

Some of the most important terms and conditions of employment that must be adhered to in South Africa from an employment law perspective, include the following:

- An employee's ordinary hours of work should not exceed 40 hours in any one week or nine hours in a day. Any work over this will constitute "overtime" work.
- Any time worked by employees after the completion of their ordinary hours will constitute overtime, and will have to be paid at one and one half times the employee's ordinary rate.
- If an employee, however, earns in excess of a certain threshold per annum (which is currently R149 736) such an employee will not qualify for overtime pay.
- Every employee will be entitled under the Basic Conditions of Employment Act (BCEA) to three consecutive weeks' paid annual leave.

- In terms of the BCEA, an employee will be entitled to 30 day's paid sick leave in a three year cycle.
- In the event that an employee is required to work on a public holiday which falls on a day which otherwise is an ordinary working day for such an employee, the employee will have to be paid at one and one-third times the employee's ordinary rate.
- An employer must pay an employee who works on a Sunday at double the employee's wage for each hour worked, unless the employee ordinarily works on a Sunday, in which case the employer must pay the employee at 1.5 times the employee's wage for each hour worked.
- An employee will be granted three day's paid leave during an annual leave cycle which the employee is entitled to take for family reasons (family responsibility leave).

The above constitute some of the most important terms and conditions of employment regulated by the BCEA.

Employment law - General

There are numerous Acts that impact on the employment relationship in South Africa, which are discussed briefly below.

The Labour Relations Act (LRA)

- The LRA seeks to govern how the parties to an employment relationship interact with each other. It sets out how the terms and conditions of employment will be negotiated, formulated and applied.
- The primary objective of the LRA is to realise and regulate the fundamental rights of workers as entrenched in the Constitution, the most important of those rights been the right to fair labour practices.
- In respect of the employment relationship, the LRA promotes fairness as the basis of all interaction between employers and employees, regardless of the status of the employee.
- Any action taken by an employer against an employee is required to be both substantively and procedurally fair.
- Substantive fairness alludes to the reason behind any action. In short there must be a justifiable and acceptable reason for any action instituted against an employee.

⁶² South African Labour Employment Guide. www.labourguide.co.za. Retrieved 10 August 2012.

- Procedural fairness refers to the manner in which any action is taken or implemented. Procedural fairness can be regarded as the “rights” of the worker in respect of the actual procedure. An example of procedural fairness in a case of alleged misconduct would be that the employee should be allowed a reasonable period of time to be allowed to prepare a response to an allegation. In many instances, the LRA sets out the procedure to be followed by an employer in effecting an action, for example, a retrenchment or dismissal. In such circumstances, the employer is obliged to follow a prescribed procedure in order to ensure that it acts within the law. Failing this, the employer could be faced with a claim for unfair conduct and the risk of financial compensation to the employee.
- The underlying principle of the LRA is “fair play” and “equity”. The dispute resolution bodies created by the LRA (the CCMA and Labour Court) are given wide powers in determining whether parties have acted fairly in regulating or terminating an employment relationship.
- Some of the major issues addressed by the LRA are for instance:

- Freedom of association and general protections.
- Collective bargaining.
- Strikes and lockouts.
- Workplace forums.
- Trade unions and employers organisations.
- Dispute resolution.
- Unfair dismissals and unfair labour practice.

The Basic Conditions of Employment Act (BCEA)

- The BCEA gives effect to the constitutional right of fair labour practices by establishing and enforcing basic minimum conditions of employment, and regulating the variation of such conditions.
- The BCEA prescribes minimum conditions of employment applicable to:
 - Working time: Ordinary hours, overtime, meal intervals, night work, work done on Sundays and public holidays.
 - Leave: Annual leave, sick leave, family responsibility leave and maternity leave.

- Particulars of employment and remuneration: written particulars, informing employees of rights, record keeping, payments, deductions and calculation of remuneration.
- Termination of employment: Notice of termination, payments on termination, severance pay and certificates of service.
- It is obligatory for every employer to provide the minimum terms and conditions as prescribed by the BCEA.
- Employers are, however, entitled to provide employees with conditions of service that are more favourable than those set out in the BCEA.
- It is important to note that many employers are required by law to register with industry specific bargaining councils which dictate the terms and conditions applicable to employees in that industry. In certain instances, a main agreement regulating a particular industry will be applicable and may provide for more favourable terms and conditions of employment.

The Employment Equity Act (EEA)

- The aim of this Act is to promote equal opportunity and fair treatment in employment through the elimination of unfair discrimination.
- Affirmative action measures must be implemented to redress disadvantages in employment experienced by designated groups, in order to ensure their equitable representation in all occupational categories of employment.
- The Act is aimed at the elimination and prohibition of unfair discrimination.
- Positive steps must be taken by an employer to eliminate unfair discrimination in any employment policy or practice.
- No one may unfairly discriminate, directly or indirectly, against an employee in any policy or practice on one or more grounds, including race, gender, sex, pregnancy, marital status, family responsibility, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, political opinion, culture, language, birth or HIV status.
- In terms of the EEA, job applicants are given the same protection as employees.

- It is not unfair discrimination to: take affirmative action measures consistent with the purposes of the EEA and/or distinguish, exclude or prefer any person on the basis of an inherent requirement of a job.
- Employers must implement affirmative action measures for people from designated groups. Designated groups mean: black people (African, Coloureds and Indians), women and people with disabilities.

Occupational Health and Safety Act No. 85 of 1993

- The Occupational Health and Safety Act requires an employer to bring about and maintain, as far as reasonably practicable, a work environment that is safe and without risk to the Health and Safety of its workers.
- This means that the employer must ensure that the workplace is free of hazardous substances, such as benzene, chlorine and microorganisms, articles, equipment and processes that may cause occupational injury, damage, disease or ill health.
- Where this is not possible, the employer must inform workers of the hazards and risks present in the workplace. The employer must also educate employees on how these may be prevented, and

how to work safely. Protective measures for a safe workplace must also be provided.

- The Occupational Health and Safety Act does not expect of the employer to take sole responsibility for health and safety.
- The Act is based on the principle that hazards and risks in the workplace must be addressed by communication and cooperation between the employer and the employees. The employer and employees must share the responsibility for health and safety in the workplace, and work together to mitigate all hazards and risks. Both parties must pro-actively participate to identify dangers and develop control measures to make the workplace safe.
- The employer and the workers are required by the Occupational Health and Safety Act to be involved in a system where health and safety representatives may inspect the workplace regularly and then report to a Health and Safety committee. The Health and Safety committee must in turn make recommendations to the employer about the improvement of health and safety in the workplace.

- To ensure that this system works, every worker must know his or her rights and duties as contained in the Act.

Skills Development Act (SDA)

- The SDA has the objective of providing a framework to devise and implement national, sectoral and workplace strategies to develop and improve the skills of the South African workforce.
- The aim is to provide for recognised occupational qualifications. A levy for the funding of skills development of 1% is imposed on employers for this purpose (Skills Development Levies Act 1999). This means that 1% of a company's wage bill is spent on the education and training of their employees, but 80% of this levy may be claimed back if the training is performed by suitably registered trainers.
- Employers who have paid the skills levy can claim skills grants from their industry Sector Education and Training Authority (SETA).

Employee rights - Dismissals ⁶³

Every employee has the right not to be unfairly dismissed. The Labour Relations Act (No. 66 of 1995) recognizes three grounds on which a termination might be legitimate. These are the conduct of the employee, the capacity of the employee, and

the operational requirements of the employer's business.

Requirements for fair dismissals:

- There must always be a fair reason for the dismissal.
- The dismissal must have been affected in accordance with a fair procedure.

When an employer contemplates dismissing one or more employees for reasons based on operational requirements the employer must consult with the employee/ representative.

During consultation the parties should reach consensus on the following:

- Appropriate measures to avoid the dismissals.
- Minimise the number of dismissals.
- Change the timing of the dismissals.
- To mitigate the adverse effects of the dismissals.
- The method for selecting the employees to be dismissed.
- The severance pay for dismissed employees.

⁶³ <http://www.labourguide.co.za>

The employer must disclose in writing to the other consulting party all relevant information, but are not limited to:

- The reasons for the proposed dismissals.
- The alternatives that the employer considered before proposing the dismissals; and the reasons for rejecting each of those alternatives.
- The number of employees likely to be affected and the job categories in which they are employed.
- The proposed method for selecting which employees to dismiss.
- The time when, or the period during which, the dismissals are likely to take effect.
- The severance pay proposed.
- Any assistance that the employer proposes to offer to the employees.

For further information on employee rights – dismissals, refer to:

Addendum 17: Employee rights - Labour Relations Act Schedule 8: Code Of Good Practice: Dismissal.

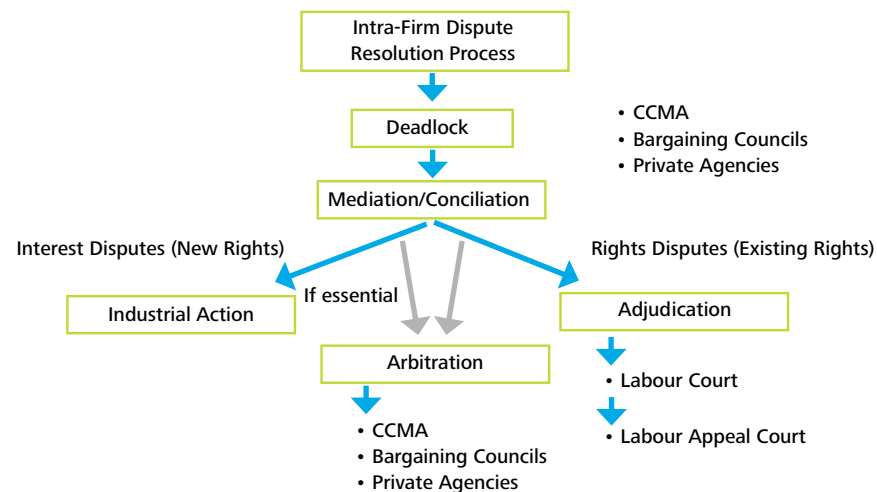
Dispute resolution ⁶⁴

The Labour Relations Act (LRA) regulates individual and collective employment relations. It created the institutions and processes for dispute resolution. These institutions include the Commission for Conciliation, Mediation and Arbitration (the CCMA) and the Labour Courts.

The CCMA has the power to licence private agencies and bargaining councils to perform any or all of its functions. This allows parties in dispute the choice of which institutions to assist them although the bargaining council where it exists for parties is always the first institution of engagement and if there is no bargaining council then the CCMA has jurisdiction.

The figure below shows the structure of the dispute resolution system in South Africa. If there is a deadlock in a dispute at the firm level, the parties to a dispute must refer their dispute to conciliation. The procedure of processing disputes takes into account the different kinds of labour disputes. The process makes a specific distinction between disputes of interests and disputes of rights. Classification of disputes is important because it determines which resolution technique to use in resolving the dispute. The use of industrial action in relation to interest disputes is considered appropriate as a method of last resort.

Figure 1: Structure of dispute resolution in South Africa



⁶⁴ <https://www.labour.gov.za>

Conciliation ⁶⁵

Conciliation is a process where a Commissioner meets with the parties in dispute, and explores ways to settle the dispute by agreement. At conciliation a party may appear in person or only be represented by a director or employee of that party or any member, office bearer or official of that party's registered trade union or registered employer's organisation. The meeting is conducted in an informal way.

The Commissioner may begin by meeting jointly with the parties and asking them to share information about the dispute. Separate meetings between the commissioner and each party may also be held. Parties are encouraged to share information and to come forward with ideas on how their differences can be settled.

A Commissioner is given wide functions in conciliation. The Commissioner may determine a process which may include mediation, facilitation or making recommendations in the form of an advisory arbitration award. A commissioner may cause persons and documents to be subpoenaed, and has the power to enter and inspect premises and seize any book, document or object that is relevant to the dispute. The Commissioner's role is to try to resolve the dispute within 30 days of it being referred to the CCMA.

If the dispute is settled, an agreement will normally be drawn up and that ends the matter. The Commissioner will issue a certificate recording that the dispute has been settled.

Note:

Parties should ensure that internal procedures and processes have been exhausted prior to making a referral to the CCMA. The Labour Relations Act encourages parties who are in dispute to first attempt to try and reach an amicable solution to the dispute by exploring internal mechanisms.

Arbitration

When conciliation fails, a party may request the CCMA to resolve the dispute by arbitration. At an arbitration hearing, a Commissioner gives both parties an opportunity to fully state their cases. The Commissioner then makes a decision on the issue in dispute. The decision, called the "arbitration award", is legally binding on both parties. Attempts must generally be made to resolve the dispute through conciliation. If it cannot be resolved by conciliation, the parties can go to arbitration or the Labour Court, the Act specifies which dispute goes to which process.

In an arbitration hearing the party in dispute may appear in person or be represented by a legal practitioner, a director or employee of the party or

any member, office-bearer or official of the party's registered trade union or registered employers' organisation. Lawyers are not normally allowed to represent parties in arbitrations over dismissal disputes. They can be used though if the Commissioner and the parties consent, or if the Commissioner decides that it is unreasonable to expect a party to deal with the dispute without legal representation.

The decision of the Commissioner is legally binding on the parties and it ends the dispute. Arbitration awards are sent to the parties within 14 days of the arbitration.

Note:

Pre-arbitration conference: By agreement between the parties or when so directed by the Director or a Senior Commissioner, the parties to the proceedings must hold a pre-arbitration conference to:

- Determine facts in dispute, common cause facts, issues to be decided, and relief claimed.
- Exchange documents that will be used in the arbitration.
- Draw up and sign a minute of the pre-arbitration conference.

For more information on dispute resolution procedures in South Africa refer to: **Addendum 18: Dispute resolution procedures in South Africa.**

Broad-Based Black Economic Empowerment (B-BBEE)

What is B-BBEE?

B-BBEE is the South African Government's policy to drive and encourage economic transformation. The policy is aimed at empowering "black" people and redresses the inequalities of the past. 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.

Why should your business be B-BBEE compliant?

At the outset it should be stated that Broad-Based Black Economic Empowerment Act, No. 53 of 2003 (B-BBEE Act) does not require private and public companies to comply with its requirements. However, compliance with the B-BBEE Act would be highly beneficial. Some of the benefits are:

- Additional points will be awarded to companies that have a certain level of B-BBEE compliance when calculating scores for the awarding of tenders by government organisations in South Africa. This is in terms of the Preferential Procurement Policy Framework Act No.5 of 2000.

⁶⁵ <http://www.ccma.org.za/Display.asp?L1=32&L2=13>

- Clients will leverage their suppliers B-BBEE rating in order to achieve a higher B-BBEE rating for their companies in the possibility of acquiring Government tenders. This means that your clients are more likely to want to contract with a supplier who is B-BBEE compliant.

An example of an EEC would be a programme that supports the National Skills Development Strategy.

Management control

This indicator refers to the percentage of black persons in executive management and on the board of Directors. This is intended to ensure that black people are represented at the levels of management where they will have influence in the strategic direction and core management of the enterprise.

Employment equity

This indicator looks at black employees as a percentage of staff in a company. This is aimed at bringing about equitable representation of black people in all occupations and at all levels of business organisation.

Preferential procurement

This is an indicator that looks at purchases from organisations with good B-BBEE ratings.

Skills development

This is an indicator that looks at the skills spend on black employees for education, learnership and internships as a total percentage of the total payroll.

Enterprise development

This obliges government departments and state-owned entities to procure services from suitably black empowered companies. Private entities are encouraged to procure services from black empowered entities as well.

How does your business achieve a suitable B-BBEE rating?

Fortunately for your business, new companies established in South Africa are deemed to have a level 4 B-BBEE status by default for their first year of trading. A level 4 status is suitable for doing business with the Government. This means that your business is between 65% and 75% compliant with the B-BBEE Act. Your percentage will be calculated according to the criteria taken from the generic "scorecard" which can be found in the B-BBEE Act.

Your B-BBEE rating will be determined according to the following criteria taken from the generic scorecard:

Ownership

The ownership indicator is an indicator of the percentage share of economic benefits and voting rights held by black persons. The B-BBEE Act provides that multinational companies may acquire ownership points through Equity Equivalent Contributions (EEC), which are measurable against the value of the operations in South Africa.

Corporate social investment (CSI)

This criterion covers contributions made in uplifting and benefiting beneficiaries in gaining access to the economy, as well as uplifting and providing services to accessing the economy. It is calculated as a percentage of the net profit after tax.

Your business points are then totalled and based on your total points your B-BBEE status is determined.

B-BBEE status	Qualification on the generic scorecard	B-BBEE recognition level
Level 1 contributor	100 points on the generic scorecard	135%
Level 2 contributor	85 but less than 100 points	125%
Level 3 contributor	75 but less than 85 points	110%
Level 4 contributor	65 but less than 75 points	100%
Level 5 contributor	55 but less than 65 points	80%
Level 6 contributor	45 but less than 55 points	60%
Level 7 contributor	40 but less than 45 points	50%
Level 8 contributor	30 but less than 40 points	10%
Non-compliant contributor	Less than 30 points	0%



Fortunately for your business, new companies established in South Africa are deemed to have a level 4 B-BBEE status by default for their first year of trading. A level 4 status is suitable for doing business with the Government.

It should be kept in mind, that if your businesses turnover is between R5 and R35 million a year, the Qualifying Small Enterprise (QSE) scorecard will be utilised instead of the generic scorecard. The QSE Scorecard is less onerous and only four criteria need to be fulfilled.

Specific charters exist for certain sectors in South Africa and will apply to your business if you are involved in these sectors. The sectors are:

- The financial sector.
- The construction sector.
- Property sector.
- Agricultural sector.
- Marketing, communications and advertising sector.
- Aviation sector.
- Tourism sector.

B-BBEE goals are best set over a number of years rather than as a shot-gun approach. Advice should be sought by businesses wanting to establish offices in South Africa regarding this often complex and misunderstood piece of South African legislation.

B-BBEE procurement ⁶⁶

Section 217 of the Constitution of the Republic of South Africa, states that when an organ of state in the national, provincial or local sphere of government, or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective. Furthermore, it stipulates the need to implement a procurement policy that will provide for categories of preference in the allocation of contracts; and the protection or advancement of persons, or categories of persons disadvantaged by unfair discrimination.

The Preferential Procurement Policy Framework Act (PPPFA) was enacted as a result of the aforementioned section of the Constitution. The PPPFA stipulates that when Government assesses contracts, it must take into account a preference point system which prescribes functionality, price and reconstruction development programme (RDP) goals.

The preference point system determines that: For contracts below R500 000, 80 points will be allocated for price and functionality and the remaining 20 points for RDP goals; for contracts above R500 000, 90 points will be allocated for price and functionality and 20 points for RDP goals.

In December 2006, when the B-BBEE Codes of Good Practice were approved for gazetting, Cabinet directed **the dti** and National Treasury to amend the PPPFA, so as to advance the objectives of the B-BBEE Act and its related strategy, as these two pieces of legislation were not appropriately aligned. This process led to the amendment of the Preferential Procurement Regulations as interim measures to align themselves to the B-BBEE Codes of Good Practice.

Although the B-BBEE Act does not place a legal onus on the private sector to comply with its provisions, it does, however, place a legal onus on organs of state to contribute to B-BBEE, including among other aspects, when developing and implementing a preferential procurement policy.

In addition to achieving the 20 points allocated to the preferential procurement element of the Codes of Good Practice, government entities must procure goods and services from companies with a good B-BBEE status. This has a trickle-down effect which applies pressure on all suppliers and service providers to meet these standards. The impact that this cascading implementation has on procurement in general is the increase in market access for black companies.

The (interim measures) draft regulations proposed the 80/20 preference point system for the procurement of goods and services with a Rand value of R1 million, and a 90/10 preference point system for the procurement of goods and services with a Rand value of above R1 million, to strengthen the contribution of small,

medium and micro-sized enterprises (SMMEs).

Furthermore, the draft proposed the allocation of point systems on the following basis: With regard to the 80/20 principle, 20 points are allocated to a bidder in respect of its B-BBEE status level, as contemplated in the draft. Further, with regard to the 90/10 principle, 10 points are allocated in respect of the bidder's B-BBEE status level.

Note:

The Minister of Trade and Industry, Dr Rob Davies, has gazetted the B-BBEE Codes of Good Practice, signalling the start of a 60-day public commentary period in which business and members of the public can submit their comments for consideration. The Gazette follows the unveiling of the Codes, which took place on 2 October 2012 in Midrand.

Key changes in the revised Codes include: adjusted B-BBEE scorecard in accordance with Government's key priorities; reduction of scorecard elements from seven to five; enhanced recognition status of black-owned Exempted Micro Enterprises (EMEs); introduction of threshold requirements for priority elements of ownership, skills development and enterprise and supplier development; and the revision of thresholds for EMEs, Qualifying Small Enterprises and Large Enterprises.

⁶⁶ <http://www.thedti.gov.za>.

National Empowerment Fund (NEF)

Overview

The NEF was established by the National Empowerment Fund Act No. 105 of 1998 (NEF Act), to promote and facilitate black economic equality and transformation. Its mandate and mission is to be the catalyst of B-BBEE. Specific objectives of the NEF are as follows:

- To foster and support business ventures pioneered and run by black enterprises.
- To improve the universal understanding of equity ownership among black people.
- To contribute to the creation of employment opportunities.
- To encourage the development of a competitive and effective equities inclusive of all persons in South Africa.
- To encourage and promote savings, investments, and meaningful participation by black people.
- To provide black people with opportunity of, directly or indirectly, acquiring shares or interest in private business enterprises.
- State allocated investment (SAIs) that are being restructured or in private business enterprises.
- To generally employ schemes businesses and enterprises as

may be necessary to achieve the objectives of the NEF Act.

The NEF's role is to support B-BBEE. As the debate concerning what constitutes meaningful and sustainable B-BBEE evolves, the NEF anticipates future funding and investment requirements to help black individuals, communities and businesses achieve each element of the Codes of Good Practice. These include a focus on preferential procurement, broadening the reach of black equity ownership, transformation in management and staff and preventing the dilution of black shareholding.

The NEF differentiates itself not only with a focused mandate for B-BBEE, but by also assuming a predominantly equity-based risk to maximise the Empowerment Dividend. Reward should balance the risk with the application of sound commercial decisions to support national priorities and Government policy such as the Accelerated and Shared Growth Initiative for South Africa (AsgiSA) or targeted investments through the dti's Industrial Policy Framework. The work of the NEF therefore straddles and complements other Development Finance Institutions (DFIs) by allowing the organisations to work in close collaboration.

Products and services

The iMbewu fund

This fund is designed to promote the creation of new businesses and the provision of expansion capital to early stage businesses. The iMbewu Fund aims to cultivate a culture of entrepreneurship by offering debt, quasi-equity and equity finance of up to R20 million comprising:

- Entrepreneurship finance.
- Procurement finance.
- Franchise finance.
- Rural and community development projects.

Rural and community development

The rural and community development projects facilitate community involvement in projects promoting social and economic upliftment. In accordance with the B-BBEE Act, it aims to increase the extent to which workers, cooperatives and other collective enterprises own and manage business enterprises. Also it supports the B-BBEE Act objectives of empowering local and rural communities.

The corporate fund

This fund is designed to improve access to B-BBEE capital and has three products - Acquisition Finance, Project finance and Expansion Finance. These products provides capital to black-owned and managed enterprise,

black entrepreneurs who are buying equity shares in established white-owned enterprises, project finance and B-BBEE businesses that are or going to be listed on the JSE. Funding ranges from R5 million to R100 million and details of the three products are provided below:⁶⁷

- **Acquisition finance**
This product caters for BEE applicants seeking to buy equity in existing business and provides funding from R5 million to R100 million.
- **Project finance**
This product provides capital of R5 million to R25 million per project for BEE applicants seeking to participate in medium-sized green-fields projects with total funding requests of between R10 million and R200 million.
- **Expansion capital**
NEF will provide funding of R5 million to R100 million to entities that are already black-empowered, but seek expansion capital to grow the business.
- **Capital markets**
This product invests in BEE enterprises, particularly those owned by black women that seek to list on the JSE or AltX market.

⁶⁷ [www.nefcorp.co.za/Funding br Solutions/Products Services.aspx](http://www.nefcorp.co.za/Funding%20Solutions/Products%20Services.aspx)

- **Liquidity and warehousing**
This product assists BEE shareholders who need to sell a portion of all their shares (as minority stakes in utilised firms are hard to sell). Also acquires and temporarily warehouses these shares before selling them to new BEE shareholders where existing financing structures are costly and/or inefficient.
- **Strategic projects finance**
The strategic project finance will facilitate the acquisition of the equity in large strategic projects where NEF assumes the role of BBE partner. The NEF will warehouse equity on behalf of the BEE participants with the aim of drawing transformation within large national projects of a strategic nature.

Strategic projects fund

It provides Venture Capital Finance to develop South Africa's new and strategic industrial capacity within sectors identified by Government as the key drivers to economic growth.

Non-financial business support

- **Pre-investment business support unit**
Applications for funding may be submitted by excellent entrepreneurs who, however, may struggle to navigate the necessary application procedures and manage their businesses. The NEF therefore assists with funding advice, business planning and general assistance to help ensure that applications are of sufficient quality to complete all steps in the application process.
- **Post-investments business support unit**
Black businesses need to be robust and self-sustaining for B-BBEE to succeed. Recognising this fact, the NEF established structures to monitor its clients for risk and provide advice when needed. Although start-ups are inherently higher risk, the rewards for success are job creation and increased capital for further start-ups.
- **Legal Services Unit (LSU)**
The LSU provides legal services to the entire NEF and drafts legal agreements, assists with due diligence reviews and registers necessary documents.

Intellectual property

Introduction ⁶⁸

Intellectual Property (IP) is anything created by the mind, which is capable of being protected against use by another person, whether in terms of South African law or foreign Intellectual property law and including any rights in such creation but excludes copyrighted work such as a thesis, dissertation, article, handbook or any other publication, which in the ordinary course of business is associated with academic work.

South Africa is a signatory, member state of all of the major international intellectual property treaties and conventions, including:

- The Paris Convention.
- The Paris Cooperation Treaty.
- The Berne Convention.
- International Convention for the Protection of New Varieties of Plants (UPOV).
- The WIPO Copyright Treaty.

South African IP law is governed by: The Intellectual Property Laws Amendment Act 38 of 1997 and the Intellectual Property Rights from Publicly Financed Research and Development Act No. 51 of 2008.

There are various forms of IP that may be protected:

Patents

(Patents Act No. 57 of 1978)

- A patent is a certificate issued by the state and grants the patentee a monopoly in an invention for a limited period of time.
- An invention may include an article, apparatus, product, device, process, or method.
- A patent may be granted for an invention provided that the invention is:
 - New;
 - Involves an inventive step; and
 - Is useful or applied in trade, industry or agriculture.
- Similar to a portion of land, a patent may be sold, licensed or rented.
- It is important to note that the novelty requirement is worldwide. An invention for which patent protection is wished to be claimed should have never been made available to the public anywhere else in the world.
- The Act excludes a number of things from being patentable inventions, including methods of treatment on humans or animals and methods for doing business.

⁶⁸ www.moorepatent.co.za

Trade marks

(Trade Marks Act No. 194 of 1993)

- A trade mark is a mark used or proposed to be used by a person in relation to goods or services to distinguish these goods or services from the same kind of goods or services connected in the course of trade with any other person.
- A trade mark may consist of a number of signs, including a logo, name, signature, word, letter, numeral, shape, configuration, pattern, ornamentation, colour or container. However, it is essential for the mark to be represented graphically through writing, drawing, photography or any other visual depiction.
- A trade mark registration lasts for a period of 10 years and is renewable every 10 years thereafter.
- Trade marks are territorial and should be registered in the country in which exclusive rights are wished to be claimed, unless the proprietor can prove that it is a well-known mark.
- Protection of well-known marks (whether registered or unregistered) is incorporated in the Act under the Paris convention.
- Currently, the registration process in South Africa is about two years from the date of filing

an application. Therefore, it is advisable that an availability search is conducted prior to filing an application to avoid wasting time and costs.

Designs

(Designs Act No. 195 of 1993)

- Design protection may be obtained for either an aesthetic design which relates to the appearance of an article to which the design is applied, or a functional design which relates to the appearance of an article dictated by the function which the article is to perform, or both.
- In order to qualify for Design registration:
 - Aesthetic designs must be new and original.
 - Functional designs must be new and not common place in the art in question.
- It is important to note that the novelty requirement is worldwide. The design in question has to be absolute novel and thus has never been made available to the public anywhere else in the world.
- Furthermore, an article to which the design is applied has to be intended to be multiplied by an industrial process to be registerable under the Designs Act.
- Aesthetic design registrations last for a maximum period of 15 years and functional design

registrations for a maximum period of 10 years from the date of registration thereof or from release date, whichever date is earlier, subject to the payment of the prescribed renewal fee.

Counterfeit goods

(Counterfeit Goods Act No. 37 of 1997)

- This Act provides protection to the owners of trade marks, copyright and others, against the trade in counterfeit goods and further against the unlawful application, to goods, of the subject matter of their respective intellectual property rights and against the release of goods of that nature (so-called counterfeit goods) into the channels of commerce.
- Protection measures for these owners include:
 - Prohibiting of certain acts in relation to counterfeit goods, as well as the possession of counterfeit goods in certain circumstances.
 - Penalties in relation to offences in that regard.
 - Authorisation to South African Police Services to enter premises, search for, and seize and remove (suspected) counterfeit goods for detention, pending the finalisation of civil or criminal proceedings.

- Authorisation to the Commissioner for Customs and Excise to seize and detain counterfeit goods, or suspected counterfeit goods, imported into or entering the Republic, and to provide for incidental matters.

Copyright

(Copyright Act No. 98 of 1978)

- The owner of a copyrighted work is given the exclusive right to perform certain specified acts in respect of his work, or to authorise others to do so, and therefore the right to prevent unauthorised persons from performing those acts. Only certain categories of works qualify for copyright protection and are listed in the Act as the following:
 - Literary works.
 - Musical works.
 - Artistic works.
 - Cinematograph films.
 - Sound recordings.
 - Broadcasts.
 - Programme-carrying signals.
 - Computer programmes.
 - Published editions.
- The maximum duration of copyright protection is 50 years, but commencement of this period varies according to the type of work.

- With the exception of cinematographic films, no registration of copyright is possible in South Africa. In order for copyright to subsist in a work, it must be original and reduced to material format.

Plant Breeders' Rights

(Plant Breeders' Rights Act No. 15 of 1976)

- In terms of this Act, a Plant Breeders' Right (PBR) may be granted for any variety of plant provided that the variety is new, distinct, uniform and stable. The variety of the plant must also be one that is recognised by the Act.
- Plant breeder rights are a form of intellectual property rights that may be applied for by 'breeders' only, included in the definition of a breeder is a successor in title.
- South Africa is a member of the International Convention for the protection of new varieties of plants.
- PBRs for vines and trees are granted for a period of 25 years and for all other varieties, 20 years from the date on which a certificate of registration of the PBR is issued.

The effect of the protection by the grant of a PBR is that any person intending to undertake production/ reproduction, conditioning for the purpose of propagation, sale or any other form of marketing,

exporting and importing, and stocking of propagating material of the relevant variety or harvested material (including plants, which was obtained through the unauthorised use of propagating material of the relevant variety); shall obtain prior authorisation by way of a licence.

Trade secrets

Trade secrets are protected by common law which also contains remedies for passing-off and unlawful competition.

Any information that is sufficiently valuable and secret, and can afford an actual or potential advantage to other users and which can be used in the operation of business or enterprise is a trade secret.

Where information is public knowledge or is generally known within the specific industry, it does not fall within the ambit of being a trade secret.

General

- The Companies Act No. 71 of 2008 provides for the registration of any name as a defensive company name and for the renewal of that registration. If the application is granted, the name shall be registered for a period not exceeding two years or to renew the registration of the name in question for a period not exceeding two years, as the case may be.

- It is possible to enforce intellectual property rights by institution of legal proceedings. The type of remedies available include: interdicts (injunctive relief), orders of infringement, delivery-up of infringing goods, and damages, and other.
- It is also possible to license intellectual property rights. In case of payment of royalties to a non-resident licensor, exchange control approval may be required.
- Regulations were issued in 2006 to deal with ".co.za" domain name disputes through cost-effective online arbitration.

Consumer protection law

Application of the Consumer Protection Act (CPA)

The CPA, the ground-breaking legislation which came into effect on 24 October 2010, imposes varying levels of obligations on suppliers, importers, distributors and manufacturers, all participants in the supply chain. Although the consumer rights under the CPA (the Act) only came into effect on 24 October 2010, organisations should be aware that certain of the provisions affect all goods supplied from 24 April 2010.

The CPA covers any transaction regarding the supply of goods and services in South Africa or the promotion (i.e. advertisement) of such goods and services concluded

after 1 April 2011 (the CPA was enacted into law on 1 April 2011) between a supplier and a consumer. The Act replaces the provisions of five previous Acts in a new and simplified manner. It is designed, in part, to address an historical power imbalance between consumers and providers by strengthening consumers' rights in their dealings with providers.⁶⁹

There are nine basic consumer rights, all of which have important implications not only for the consumer, but also the supplier.

Note:

The CPA will apply to transactions between a supplier and a consumer regarding product liability from 24 April 2010.

The CPA defines "goods" to include anything marketed for human consumption; a tangible object including any medium on which anything is or may be written or encoded; any literature; music; photograph; motion picture; game; information; data; software; code or other intangible product written or encoded on any medium; or a licence to use any such intangible product and a legal interest in land or any other immovable property.

⁶⁹ <http://jacobson.co.za/2012/03/does-the-consumer-protection-act-apply-to-residential-leases/>

The definition of “services” includes any work or undertaking performed by one person for the direct or indirect benefit of another and subject to certain exceptions, the provision of any education, information, advice or consultation, any banking services; related or similar financial services, or the undertaking, underwriting or assumption of any risk by one person on behalf of another; the transportation of an individual or any goods and the provision of any accommodation or sustenance and other similar services.

Establishing whether or not conduct is excluded is a complicated process since most exclusions are based on whether or not certain other legislation applies to goods or services.

There are nine key consumer rights provided for in the CPA, namely the: Right to Equality in the Consumer Market and Protection Against Discriminatory Marketing Practices; Right to Privacy; Right to Choose; Right to Disclosure of Information; Right to Fair and Responsible Marketing; Right to Fair and Honest Dealing; Right to Fair, Just and Reasonable Terms and Conditions; Right to Fair Value, Good Quality and Safety; and Right to Accountability by Suppliers.⁷⁰

Broadly, the Act seeks to protect consumers who are natural persons and small businesses. The wide definitions of the terms “goods” and “transactions” in the Act are clearly intended to provide significant

protection to the “man in the street” and small enterprises. The Act does have certain exclusions related to goods or services supplied to the State, under credit agreements in terms of the National Credit Act (NCA), services under an employment contract, collective bargaining agreements and most financial services governed by FAIS and insurance services.

Note:

The CPA has introduced some far-reaching changes to lease agreements for immovable property. Specifically for ordinary people, the changes effect the maximum duration (24 months) and grants the parties certain rights of cancellation.

The lessee (consumer) may terminate the lease at any time after giving 20 business days’ notice, effectively one month. The lessor must give 20 business days’ notices to cancel for a “material failure to comply with the agreement” and must give 40 to 80 days’ notice that the agreement is coming to end. After expiry, the lease continues on a month-to-month basis unless the lessee agrees to a further fixed term.⁷¹

Themes

The Act has broad themes running through it, each dealing with specific issues consumers might face. What follows is a brief explanation of these themes:

Limited exclusions

Parts and goods which may be supplied under an excluded transaction (such as a credit agreement) are still covered by the Act, it is merely the provision of the service during the entering into of the agreement (such as the actual credit agreement and its entering into) which is excluded; not the good supplied/sold.

Strict liability

Probably the most dramatic aspect of the Act is the strict liability and warranty provisions which the Act brings about in respect of goods sold to consumers and which have far-reaching financial and stockholding implications for all organisations involved in supply chain. The liability for damages caused by faulty goods is based on strict liability, meaning a consumer will not have to prove any element of negligence to succeed in its claim. In addition, the Act now provides that an affected consumer can claim economic loss in receipt of damage to them or their property. This can no longer be excluded by contract.

Automatic warranty

The Act introduces an automatic six-month warranty on all goods supplied and an automatic warranty of three months on all services. Practically, this means that all goods supplied have a legally imposed warranty of at least six months

and three months respectively (irrespective of what any contact between the parties says where this period is shorter). The nature of the warranty is even more far-reaching, as it allows the consumer the choice of having the goods replaced, repaired or refunded. This warranty will have significant implications for business.

Extension of obligations

Certain provisions, such as the warranty and liability provisions of the Act, are even more onerous on the business world in that these provisions are jointly and severally applicable to each of the retailer, importer, distributor and manufacturer. No party to the supply chain is free of liability when it comes to dealing with the consumer.

Direct marketing

When a supplier approaches a consumer in order to market his or her product, the timing or the manner in which the consumer buys is therefore controlled by the supplier. Direct marketing must be strictly managed, with a register of those consumers who do not want to receive such marketing and the regulations to the Act will prescribe times during and days on which marketing may not be sent to consumers.

⁷⁰ <http://www.pitneybowes.co.za/Media-Room/Press-releases/Archive/The-Consumer-Protection-Act-Suppliers-Part-1.shtml>

⁷¹ http://www.eaab.org.za/article/how_the_consumer_protection_act_will_affect_lease_of_property

All marketing must have a method by which the consumer can indicate that they no longer want to receive such direct marketing. Consumers may not be charged in any way for opting out of receiving direct marketing material. Also, agreements arising out of certain types of direct marketing have an automatic cooling off period of five days during which the consumer is entitled to cancel the transaction without any penalty.

Fixed term contracts and contractual content

Between 80 and 40 days before the expiry of a fixed-term agreement, a notice must be sent to the consumer advising them of this and indicating the implications of renewal of the agreement. What is concerning is that despite any provision in any agreement to the contrary, the consumer may cancel a fixed-term agreement upon expiry of the agreement without paying any penalty or at any other time, by giving the supplier 20 business days' notice in writing or in some other recorded manner.

Customer loyalty programmes

There are stringent information requirements around what must be communicated to members of such customer loyalty programmes. Benefits claimed using the programme must now be equal to those products or services which can be purchased for cash, except for a total of 90 days during a calendar year on which differentiation is permitted.

Franchise agreements

Considerable protection is afforded to those entering into franchise arrangements as franchisees. Franchise agreements allow for the use of another firm's successful business model. Significant information must be provided to the franchisee at the time that the agreement is entered into, the franchisee is afforded a cooling off period during which the cancellation of the transaction is permitted and the franchisee has greater protection when it comes to having to purchase supplies from those suppliers dictated by the franchisor.

Return of goods

The Act makes provision for four instances in which goods may be returned:

- Direct marketing cooling-off period.
- Where goods have not been seen before the purchase.
- Where the goods do not fulfil their particular purpose.
- Where there is an implied warranty of quality of the goods.

Provision is made that any return of goods, for a reason other than a fault on the part of the consumer, must be paid for by the supplier of those goods. In addition, if goods are delivered to the incorrect address or an address other than agreed, at a time other than that agreed,

ownership in those goods will pass to the person to whom they were delivered. What this means is that the missing of agreed delivery times and dates will have to be strictly managed to avoid goods from becoming "unsolicited goods", for which there are significant consequences.

Unsolicited goods

If a consumer does not expressly or implicitly request the performance of a service or the delivery of goods and the goods are delivered, or the service performed, these are unsolicited goods. This includes "demo" goods which sales people may leave with a consumer. The management of such goods will have to be stringent since, if no clear periods for use of the goods are agreed with the consumer, and clear steps are not taken by the supplier of the goods to reclaim such goods, ownership of these goods could pass to the consumer.

Enforcement

To enforce the Act, the Consumer Protection Tribunal (the CPT) has been formed. The CPT has been given aggressive investigative powers to ensure that it too can investigate practices which appear to be contrary to the spirit of the CPA, despite a consumer not reporting such practices.

The offences listed in the CPA are numerous and the penalties for non-compliance are substantial. The Act imposes fines are up to a R1 million (or 10% of turnover, whichever is the

higher) for each offence. The wide reach of the provisions means that the possibility of frequent offences is high and thus the amount of fines which an organisation could be liable for could be considerable.

It will be imperative for organisations to take the first step to determine the extent to which the Act applies to them so that the new business risks which the Act creates can be determined and mitigated. The solution will have to be organisation-wide, working through each of the organisation's functional areas so as to standardise compliance while optimising business productivity and the operational requirements of the organisation.

Competition law

The Government sought to redress the past economic imbalances that resulted from excessive concentrations of ownership and control, inadequate restraints against anti-competitive trade practices and unjust restrictions on participation by all South Africans in the country's economy. As a result, the Competition Act No. 89 of 1989 (the Act) was enacted and replaced the previous Maintenance and Promotion of Competition Act No. 96 of 1979. A number of the sections of the Act commenced on 30 November 1998, and the remaining sections came into effect on 1 September 1999.

The Act is applicable to all economic activity within or having an effect within the Republic of South Africa and thus has far-reaching consequences for local and foreign businesses operating within South Africa. It seeks to regulate prohibited practices i.e. restrictive horizontal and vertical practices and abuse of a dominant position in the market, and to control mergers.

The purposes of the Act (as stated in section 2 of the Act) are the promotion and maintenance of competition in South Africa in order to:

- Promote the efficiency, adaptability and development of the economy.
- Provide consumers with competitive prices and product choices.
- Promote employment and advance the social and economic welfare of South Africans.
- Expand opportunities for South African participation in world markets and recognise the role of foreign competition in the republic of South Africa.
- Ensure that small- and medium-sized enterprises have an equitable opportunity to participate in the economy.

- Promote a greater spread of ownership, in particular to increase the ownership stakes of historically disadvantaged persons.

Note:

In many respects, the principles of South Africa's competition law are similar to those of other major jurisdictions such as Canada, the European Union and the US.

However, South African competition law differs from foreign models in that the focus is not purely on competition issues, but also on certain public interest and social goals, such as the promotion of small businesses, the interests of employees and B-BBEE.⁷²

The Act establishes the Competition Commission, the Competition Tribunal and the Competition Appeal Court, which bodies aim to fulfil the purposes of the Act.

The functions of the Competition Commission include:

- The investigation and evaluation of alleged contraventions of Chapter 2 of the Act (i.e. restrictive practices or abuse of dominant position).
- The authorisation, prohibition or referral of mergers.

- The implementation of measures to increase market transparency and the development of public awareness of the provisions of the Act.

The Competition Tribunal adjudicates on any prohibited conduct, such as restrictive practices or abuse of dominant position. The Competition Tribunal also hears appeals from or reviews any matters that have been investigated, controlled and evaluated by the Competition Commission.

The Competition Appeal Court may review any decision of the Competition Tribunal and adjudicates appeals from the Competition Tribunal.

The Competition Commission's Corporate Leniency Policy, which was introduced in 2004, aims to eradicate and prevent cartel activity. In addition, the Competition Amendment Act No.1 of 1999, which is still to come into effect, seeks to hold any director or manager of a firm personally accountable if they cause the firm to take part in cartel conduct.

The Competition Tribunal may impose an administrative penalty of up to 10% of a firm's annual turnover in South Africa and its exports from South Africa in the event that the firm engages in conduct specified in the Act, including any prohibited practices, failure to give notification of a merger or the implementation of a merger without the requisite approval

or in contravention of a condition or decision of either the Competition Commission or the Competition Tribunal. Furthermore, in the event of the prior implementation of a merger, the Competition Tribunal may order the divestiture of any assets acquired as a result of the merger transaction.

Competition law developments

African countries are increasingly adopting competition law (including merger control which is on the rise). One of the main challenges faced by companies expanding operations throughout the African continent is therefore monitoring different competition law legislation and developments taking place to the regulatory regimes of a number of African countries. Continent-wide competition law training and compliance is therefore essential.⁷³

Environmental law

Overview of South African environmental law

The right to an environment which is not harmful to one's health or wellbeing is entrenched in the Bill of Rights of the Constitution of the Republic of South Africa, 1996 (the Constitution). This provision places the burden on the Government of South Africa to take reasonable legislative and other measures to ensure that this environmental right is attained and protected. Thus, since the Constitution came into

⁷² South Africa - The Good News. www.sagoodnews.co.za. Retrieved August 2012.

⁷³ Jason van Dijk is an associate at Norton Rose SA.

effect, the Government has enacted various pieces of legislation in order to comply with this Constitutional duty. Existing legislation has been updated and, together with the new legislation, creates the environmental regulatory framework.

The National Environmental Management Act

The National Environmental Management Act, No. 107 of 1998 (NEMA), is the overarching environmental statute that lays the foundation for other environmental legislation in South Africa. The Act aims to place people and their needs (physical, psychological, developmental, cultural and social) at the forefront of its concerns.

Section 2 of NEMA contains general principles that apply to the actions of all organs of state involved in decision-making or activities which may have a significant impact on the environment. The principles as set out in section 2 of NEMA, serve as general frameworks within which any implementation and environmental management must take. These general principles include:

- The concept of co-operative decision-making.
- The best practice principles of sustainable development and environmental management.
- Integrated environmental management.

- Community-based environmental decision-making.
- The precautionary principle.
- The “polluter pays” principle.

In terms of NEMA, certain identified activities may not commence unless and until an environmental authorisation has been obtained from the relevant environmental authority. These identified activities are listed in the Environmental Impact Assessment (EIA) Regulations.

The answer as to whether any specific activity triggers the need for an environmental authorisation is always a question of fact and will depend on various factors, including the size and nature of the operation, and whether any previous operations have been conducted on the site. It is an offence for anyone to commence a listed activity without being granted an environmental authorisation for the activity. A person convicted of an offence is liable to a fine not exceeding R5 million or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment.

If a listed activity has commenced or continues to be conducted without the requisite environmental authorisation, an application can be made for the rectification of such unlawful commencement or continuation. Such a rectification application is subject to the payment of an administrative fine not exceeding R1 million.

NEMA includes the so-called “duty of care” provision, in terms of which any person who causes, has caused or may cause significant environmental pollution or degradation must take reasonable measures to prevent such pollution or degradation from occurring, continuing or recurring or, insofar as such harm to the environment is authorised by law or cannot reasonably be avoided or stopped, to minimise and rectify such pollution or degradation of the environment. This duty of care applies, among others, to owners of land, persons in control of land or premises, or anyone who has the right to use the land or premises on which any listed activity may be performed or undertaken, which activity causes, has caused or is likely to cause significant pollution or degradation of the environment.

This duty of care has also given rise to the use of administrative tools, called directives, by environmental authorities. A directive is essentially an order from the responsible environmental authority to a person to do or cease from doing a specific activity or process which is having, has had or may have a significant negative impact on the environment. Should the person fail to comply with the conditions contained in the directive, the environmental authority is empowered to take any necessary remediation measures and then to claim the reasonable costs of such measures from the responsible person.

Environmental management inspectors, referred to as the “Green Scorpions”, are tasked to carry out the policing of certain specific environmental legislation. The Green Scorpions have very wide powers of inspection, search and seizure, and arrest.

The Environment Conservation Act

The Environment Conservation Act No. 73 of 1989 (ECA) preceded and has largely been repealed by NEMA. The provisions that have survived deal with, among other incidental issues, protected natural environments, limited development areas, regulations on noise, vibration and shock, general regulatory powers and various provisions relating to offences and penalties.

Other environmental legislation

The legislation discussed below is not exhaustive of all environmental legislation currently enacted in South Africa. Instead it serves to illustrate the diversity and extent of current legislation dealing with environmental-related matters.

The National Water Act No. 36 of 1998

The National Water Act introduced a shift away from South Africa's previous water regime, which was mainly regulated by riparian rights and permits issued in certain instances under the Water Act, 1956. It aims to fundamentally reform the past laws relating to water resources as these laws were discriminatory and not suitable to conditions in South Africa. The new Act enforces the idea that water is a natural resource that belongs to all South Africans. Under this Act, water is to be protected, used, developed, conserved, managed and controlled as a whole.

The National Water Act placed all fresh water in South Africa under the custodianship of the Department of Water Affairs (DWA). As a result, most uses of water in South Africa, where water is taken from a water resource, require a permit issued in terms of section 21 of the National Water Act in order to be legally compliant.

A water resource includes a water course, surface water, an estuary or aquifer. Certain very small uses of water do not require a permit. These include the domestic use of water and watering of gardens.

In addition to regulating the use of water, the National Water Act regulates the pollution of water resources. The National Water Act also includes duty of care provisions, similar to those contained in NEMA.

The National Environmental Management: Air Quality Act No. 39 of 2004 (NEMAQA)

The object of NEMAQA is to protect the environment by providing reasonable measures for:

- The protection and enhancement of air quality throughout South Africa.
- The prevention of air pollution and ecological degradation.
- Securing ecologically sustainable development.

In addition, NEMAQA introduces more stringent air quality controls in comparison to the previous Atmospheric Pollution Prevention Act No. 60 of 1965.

On 31 March 2001, the Department of Environmental Affairs (DEA) published a list of activities which result in atmospheric emissions that have or may have a significant detrimental effect on the environment, including health, social conditions, economic conditions, ecological conditions or cultural heritage, and minimum emission standards for those listed activities.

No person may conduct any of the listed activities without a provisional atmospheric emission licence or an atmospheric emission licence issued by a metropolitan or district municipality in terms of NEMAQA.

The National Environmental Management: Biodiversity Act No. 10 of 2004 (NEMBA)

The aims of NEMBA include the management and conservation of South Africa's biological diversity, ensuring that indigenous biological resources are used in a sustainable manner, and promoting the fair and equitable sharing of benefits arising from bio-prospecting involving indigenous biological resources. NEMBA also gives effect to ratified international agreements affecting biodiversity, such as the Convention on International Trade in Endangered Species (CITES).

The National Environmental Management: Integrated Coastal Management Act No. 24 of 2008 (Integrated Coastal Management Act)

The Integrated Coastal Management Act was enacted to determine the coastal sum of South Africa, to provide for the coordinated and integrated management of the coastal zone by all spheres of Government, and to preserve, protect, extend and enhance the status of coastal public property as being held in trust by the state for and on behalf of all South Africans.

The National Environmental Management: Protected Areas Act No. 57 of 2003 (NEMPA)

NEMPA provides for the declaration and management of protected areas, to promote the sustainable use of protected areas for the benefit of all people. The system of protected areas in South Africa comprises:

- Special nature reserves, nature reserves (including wilderness areas) and protected environments.
- World heritage sites.
- Specially protected forest areas, forest nature reserves and forest wilderness areas.
- Mountain catchment areas.



The National Environmental Management: Waste Act No. 59 of 2008 (NEMWA)

NEMWA was enacted to reform the laws regulating waste management by providing reasonable measures for the prevention of pollution and ecological degradation and for securing ecologically sustainable development so as to protect health and the environment.

A person conducting a waste management activity, including (without limitation) the accumulation and storage of waste, the collection and handling of waste, the transportation of waste, and the treatment of waste, requires a waste management licence to be issued in terms of NEMWA. The remediation of contaminated land is also provided for in NEMWA.

The Hazardous Substances Act No. 15 of 1973

The Hazardous Substances Act provides for the regulation of substances which, by their nature or chemical composition, may cause injury or ill health to or death of a person. The Hazardous Substances Act aims to regulate all aspects of such hazardous substances, including the storage, transport, handling, dumping, labelling, manufacture, packaging and sale of such substances. The Hazardous Substances Act groups the various substances into different categories according to their nature. Compliance with the Hazardous Substances Act is

therefore mandatory for any person undertaking any activity in connection with such hazardous substances.

The Hazardous Substances Act relies on the South African National Standards (SANS), which provides the necessary detailed description of the various substances according to their groupings. The SANS Codes and the Hazardous Substances Act overlap with the EIA Regulations to determine what falls within the definition of hazardous substances for the purposes of determining whether and when an environmental authorisation is necessary under the EIA Regulations.

The National Heritage Resources Act No. 25 of 1999

The National Heritage Resources Act introduces an integrated and interactive system for the management of South Africa's national heritage resources. The Act also establishes the South African Heritage Resource Agency for the coordination and promotion of the management of heritage resources at a national level.

A heritage resource is any place or object of cultural significance. A heritage object may include any movable property of cultural significance, including archaeological, palaeontological, rare geological specimens or meteorites. Heritage places include any area, site, building, open space or park.

Where a site is being developed in an urban area and a building of more than 60 years old needs to be demolished or altered, the provisions of the National Heritage Resources Act may be triggered. If this is the case then a heritage impact assessment will need to be undertaken and permission may need to be obtained from the responsible heritage authority.

In the event that a site is being permitted in a rural area, and where a heritage object is discovered (for example a grave site), the National Heritage Resources Act may similarly be triggered. Heritage resources include heritage places and heritage objects.

The Conservation of Agricultural Resources Act No. 43 of 1983

This Act would be considered by authorities when determining the purposes of land use and land planning. The authorities would then need to consider whether it is more appropriate for such land to be developed as industrial land or whether such land should be kept as agricultural land. This consideration often arises when land is being developed in a pre-urban area.

The Marine Living Resources Act No. 18 of 1998

The objectives and principles of the Marine Living Resources Act include the conservation of marine living resources and the preservation of marine biodiversity, the minimisation of marine pollution, the need to restructure the fishing industry to address historical imbalances and to achieve equity within all branches of the fishing industry.

The National Radioactive Waste Disposal Institute (established by act in Parliament, Act No. 53 of 2008)

The Act applies to all radioactive waste in South Africa that is to be disposed of in an authorised waste disposal facility. The Act also provides for the establishment of the National Radioactive Waste Disposal Institute, which shall be responsible for the management of radioactive waste on a national basis.



South Africa's response to climate change

National carbon reduction commitments

At the United Nations (UN) Conference of the parties in Copenhagen (COP15) in December 2009, President Jacob Zuma announced the Government's commitment to combating global climate change. He announced South Africa's commitment to reduce national carbon emissions by 34% by 2020 and 42% by 2025 against a "business as usual" growth trajectory based on forecasts contained within the Government's "Long-term Mitigation Scenarios."

This process of regular meetings to further the ratifying countries commitment to reduce carbon emissions continued in 2011 at the Conference of Parties in Durban, South Africa. In Durban, governments took a decision to work on a new global agreement to come into effect in 2020. Under the new global agreement, South Africa may be required to take on emission reduction targets. Durban also saw the extension of the Kyoto Protocol to 2017. This extension was not supported by all countries and saw a number of countries withdraw from commitments under this international agreement.

Climate change policy, regulation and incentives

In the 2012 Budget Review, National Treasury again came out in support of placing a price on greenhouse gas emissions. National Treasury believes a modest carbon tax will begin to price emissions so that the external costs resulting from such emissions start to be incorporated into production costs and consumer prices. This will also create incentives for changes in behaviour and encourages the uptake of cleaner-energy technologies, energy-efficiency measures, and research and development of low-carbon options.

It is proposed in the 2012 Budget Documentation, that a carbon tax will be implemented in 2013/14 at a rate of R120 per ton of carbon dioxide equivalent (CO₂e) on direct emissions in line with in the Climate Change Response White Paper approved by Cabinet in 2011. The rate will increased by 10% per annum. All companies will receive a tax-free threshold of at least 60% initially. Trade-exposed and energy-intensive industries may receive a higher tax-free threshold. Companies need to ensure that they have calculated their carbon footprint and that they have understood the potential carbon tax liability on their business.

In South Africa, we have also seen the introduction of incentives to support the mitigation of greenhouse gas emissions and the growth of the green economy. An example of this is the Independent Power Producers (IPP) Procurement Programme which is run by the Department of Energy. This programme is the reformed Renewable Energy Feed in Tariff and is referred to as the REBID. The objective is to secure 3 725 MW of renewable energy onto the national grid through five bidding rounds.

This process effectively supports the creation of an industry designed to support the countries demand for electricity through Independent Power Producers (IPPs). South Africa has seen two successful bidding rounds under this programme with over 66% of the target being reached (2 459 MW secured). The projects selected in the first round are expected to achieve financial close in 2012 and start construction thereafter.

The Government has indicated that funding amounting to R800 million has been set aside over the next three years for "green economy" initiatives. Above this, an additional allocation for research into energy-efficiency technologies is proposed.

In October 2011, the Government released the National Climate Change Response White Paper. One of the challenges for business highlighted by the White Paper is the introduction of "ambitious and mandatory" energy efficiency targets for industry sectors. Although it may take some time to set these targets, business needs to ensure that it starts to measure its current energy consumption and investigate energy reduction opportunities now before it is mandated and non-compliance is costly.

In advance of national climate change legislation, the Government has introduced incentives through the tax system which seek to promote energy efficiency and exempt the sale of carbon credits from income tax.

The clean development mechanism

As a signatory to the UN Framework Convention on Climate Change (UNFCCC) and the associated Kyoto Protocol, South Africa is eligible to host projects registered under the Clean Development Mechanism (CDM).

CDM was developed with two objectives in mind. The first is to assist developing countries or non-industrialised countries to achieve sustainable development goals while reducing greenhouse gas emissions. The second objective is to assist developed countries in meeting their reduction commitments.

In order for developed countries to meet their commitments, the CDM allows for the trading of emission reductions between developed and developing countries. Developed countries can register emission reduction projects under the CDM and earn Certified Emission Reductions (CERs) or “carbon credits”. These credits can be sold to developed countries and traded on the European Emissions Trading System (EU-ETS). Purchasing carbon credits allows developed countries to meet their targets while at the same time financing emission reductions in developing countries.

South Africa’s attraction for foreign investment in CDM projects lies largely in its legacy of coal-fired power stations. More than 90% of South Africa’s power generation comes from coal, the dirtiest of all fossil fuels, with carbon dioxide emissions of approximately one kilogram per kilo-Watt-hour. As a result, South Africa’s electricity emissions per kilo-Watt-hour are twice that of the UK where their mix of power generation includes natural gas, nuclear, renewables and coal. Where a CDM project in South Africa displaces 1MW of grid electricity for every tonne of carbon dioxide abatement (earning 1 CER), it takes 2MW of UK grid electricity displacement to reduce carbon dioxide emissions by one tonne (earning 1 CER). This makes South Africa an attractive location for a CDM project.

A further reason for locating a CDM project in our country is that South Africa has the highest emissions of greenhouse gases in Africa, making up 40% of the continent’s total emissions. As such, this unfavourable state of affairs means that the opportunity for large-scale greenhouse gas emission reductions is great.

The CDM scheme was established under the Kyoto Protocol. At COP17 in Durban, it was decided that the Kyoto Protocol will be extended to 2017. This means that the CDM will continue to exist beyond 2012. However, the market (price and demand) for the CERs post-2012 from projects in South Africa is not certain. The European Commission has placed limitations on the type of credits they will allow into their local emissions trading scheme post-2012. These limitations exclude certain types of projects that are not registered before the end of 2012 in developing countries.

With these uncertainties surrounding the market for CERs, it is worth investigating opportunities outside the CDM. There are a number of countries that are investigating bilateral trading. A good example of this is the Japanese Government that will purchase carbon credits from projects in South Africa outside of the CDM. There is significant funding available for projects that reduce greenhouse gas emissions. New schemes are also emerging to

fund emission reduction projects. It is important to ensure that these funding and incentive opportunities are explored for any new capital project in South Africa. The carbon market is viewed by governments as essential to achieving the global target of limiting greenhouse gas emissions. Hence, it is likely that we will see significant growth and developments within this market in the next few years.

Environmental impact assessment ⁷⁴

South Africa’s new Environmental Impact Assessment (EIA) regulations aimed at improving the efficiency and effectiveness of the process of reporting on environmental activities, announced the Department of Environmental Affairs (DEA), came into effect in August 2010.

EIA is a pro-active and systematic process where potential environmental impacts associated with certain activities, positive and negative, are assessed, investigated and reported. The process also contributes in achieving the objectives of an integrated environmental management. EIA serves to inform officials about planned activities, and the conditions which authorisation of such activities should be subject to.

The revised regulations are the result of a consultative process (published by Minister of Water and Environmental Affairs in Government Gazette 33306, 18 June 2010) and replace the

National Environmental Management Act EIA regulations of 2006, and its associated listing notices.

As mentioned, the revised regulations signal an important step towards a more efficient and effective EIA system which seeks to streamline the EIA process. They also introduce an approach where impacts associated with a sensitive environment are treated with more care, and according to the DEA, this is achieved through the introduction of a Listing Notice dedicated to activities planned for predefined sensitive areas. The lists of activities requiring environmental authorisation prior to commencement have also been revised. This was a major focus of the amendment process as the EIA system was burdened by large numbers of applications associated with insignificant activities.

Information, communication and technology law

Introduction

South Africa is fairly new to the world of Information, Communication and Technology (ICT) law; however, we are advancing towards alignment with our international counterparts. Highlighted below is a handful of South African ICT legislation.

⁷⁴ Themba Makamo, *New EIAs to improve efficiency of environmental reporting*, August 2010 http://www.sagoodnews.co.za/environment/new_eias_to_improve_efficiency_of_environmental_reporting.html.

The Electronic Communications and Transactions Act 25 of 2002 (ECTA)

ECTA gives effect to the validity of data messages in terms of South African law, in the evidentiary context, as well as in terms of records retention legislation. In addition, ECTA contains provisions on facilitating electronic commerce in South Africa and contains various consumer protection provisions in instances where other legislation (an example of which is the Consumer Protection Act) does not apply.

In terms of the legal requirements that play a role when one deals with data messages, ECTA describes how to ensure admissibility and evidential weight of data messages by prescribing the implementation of security measures in order to ensure that the integrity of the data message remains intact.

Furthermore, ECTA gives effect to the retention of data messages in an electronic format. Thus, in terms of other South African legislation that refers to the retention periods and records to be retained, ECTA allows that these records may be retained in electronic format.

Regulation of Interception of Communication and Communication-Related Information Act (RICA)

The main purpose of RICA is to regulate the interception of certain communications, monitor certain signals and radio frequency spectrums and to provide certain communication-related information. In addition, RICA regulates making applications for, and issuing directions, authorising the interception of communications and the release of communication-related information under certain circumstances. RICA provides a general prohibition on the interception of communications, but does provide various exceptions to its provisions. In addition, RICA regulates the provision of real-time or archived communication and the process by which it should be handled.

Electronic Communications Act (ECA)

The ECA was enacted to promote convergence in the broadcasting, broadcasting signal distribution and telecommunications sectors and in order to provide a legal framework for the convergence of these sectors.

Any service provider that wishes to engage in the broadcasting or telecommunications industry must comply with the ECA and apply for the relevant licensing in terms of our law. The Independent Communications

Authority of South Africa Act (ICASA Act) works in tandem with the ECA, due to the fact that ICASA is the authority that will grant licences in terms of the broadcasting and telecommunications industry.

Protection of Personal Information Bill (PPIB)

The PPIB will be the first privacy legislation of its kind in South Africa. The PPIB contains various principles that organisations in South Africa or engaging in the provision of services in South Africa will have to comply with. These principles relate to the processing of personal information by an organisation in relation to the general life cycle of information therein. The PPIB is applicable to personal information processed from the time that such personal information is created all the way until the deletion of the personal information.

The PPIB necessitates the creation of a regulator that will be in charge of compliance with the principles outlined in the PPIB. Subsequent to this, organisations need to appoint an information officer to handle their compliance prerequisites in terms of the PPIB.

In addition, PPIB will have an effect on direct marketing practices within South Africa. The PPIB requires an “opt-in” model for direct marketing, whereas the ECTA (mentioned above) merely required “opt-out” model with respect to direct marketing. Due to

the PPIB being subject to approval by Parliament, the direct marketing provisions may change.

In terms of personal information that is be processed across borders, the PPIB describes the compliance requirements for the manner in which cross-border information flow should be undertaken by an organisation.

General

In terms of effecting ICT legal compliance initiatives in the South African context, it is regarded as common practice to implement principles of the King III Report, as well as having due regard to the ISO standards governing information security and business continuity.



Land regulations

Right to property

The Bill of Rights in the Constitution of the Republic of South Africa Act No. 108 of 1996 (the Constitution), contains a right to property clause. This right was included in the Constitution in order to protect a person's real rights in property, including ownership, lease, mortgage, lien and servitude. In terms of this property clause, no one may be arbitrarily deprived of property. In addition, should the state expropriate property it is required to pay compensation to the landowner, and any expropriation must either be for a public purpose or in the public interest.

Ownership and rights in land

A person may not enter into a verbal agreement for the sale of property. Instead, the Alienation of Land Act No. 68 of 1991 stipulates the requirements for the valid sale of property, including that the agreement must be in writing and signed by the parties to the transaction or their authorised representatives. Furthermore, the Division of Agricultural Land Act No. 95 of 1986 places restrictions on the subdivision of agricultural land.

The Deeds Registries Act No. 47 of 1937, as amended (the Deeds Registries Act), governs the registration of rights in land and any

subdivision thereof, bonds, servitudes (right or use of or a right of way over land), leases, and the registration of antenuptial contracts.

A duly qualified and admitted attorney and conveyancer is required to prepare a deed of transfer, mortgage bond, or certificate of title in order for such document to be capable of being attested, executed and registered by a registrar of deeds in a deeds registry office.

Ownership in land may be transferred from one person to another only by means of a deed of transfer executed or attested by the registrar of deeds. Other real rights in land, such as a long-term lease, may be transferred from one person to another only by way of a deed of cession attested to by a duly qualified and admitted attorney and notary public and registered by the registrar.

The transfer of ownership in land is subject to certain taxes, duties and fees. These include:

- Conveyancing fees payable to the conveyance.
- Transfer duty or VAT.
- A deeds registry fee.

Transfer duty is governed by the Transfer Duty Act No.40 of 1949. Transfer duty is calculated based on the value of the property. If vacant land is transferred, transfer duty will be calculated on the value

of the land. If an existing home is transferred (i.e. land and buildings), transfer duty is calculated on the value of the land and the buildings. From 23 February 2011, no transfer duty is payable on properties with a value below R600 000 (previously, R500 000). For property values above R600 001, the rate of transfer duty will be reduced from 5% up to R1 million to 3% up to R1 million. For properties costing more than R1 million the rate is R12 000 plus 5% on the value between R1 million and R1.5 million and for properties over R1.5 million the duty will be R37 000 plus 8% above that figure.

Transfer duty on acquisitions of properties by persons other than natural persons, was 8% of the value of the property but following this year's 2011 Budget amendments, the revised structure will now also apply to close corporations, companies and trusts. If property is purchased from a developer that is registered for VAT, such a transaction is exempt from transfer duty and the purchaser will instead pay VAT on the purchase price of the property.

In terms of the Sectional Titles Act No. 95 of 1986, as amended (the Sectional Titles Act), buildings may be divided into sections and common property. The Sectional Titles Act makes provision for the individual ownership of a section and for joint ownership of the common property. Bodies corporate may also

be established under the Sectional Titles Act to apply rules in order to ensure that the use of the common property is controlled. The transfer of ownership of sections and the registration of sectional mortgage bonds over sections is recorded in the sectional title register at the relevant deeds registry office.

South African law also provides for a person to hold a share in a share block scheme operated by a share block company. In terms of a share block scheme, the holder of a share is given certain rights or interest in the use of immovable property, which includes land and any building erected or to be erected on the land. The powers, rights and restrictions on the operation of such companies and schemes are regulated under the Share Blocks Control Act No. 59 of 1980, as amended, and no registration takes place in the deeds registry.

In terms of the Mineral and Petroleum Resources Development Act No. 28 of 2002, as amended (MPRDA), South Africa's mineral and petroleum resources are not capable of individual ownership. Instead, such resources belong to the nation and the state is the custodian thereof. The objects of the MPRDA include the provision for security of tenure in respect of prospecting, exploration, mining and production operations and to ensure that the holders of mining and production rights contribute to the socio-economic development

of the communities in which they conduct their operations. The Mining Titles Registration Act No. 16 of 1967 regulates the registration of mineral and petroleum titles in the Mineral and Petroleum Titles Registration Office.

Environmental issues relating to land are regulated under the National Environmental Management Act No. 62 of 2008 (NEMA) and regulations. In particular, the Environmental Impact Assessment Regulations (EIA Regulations) published under the NEMA list activities that may not commence before an environmental authorisation has been obtained from the Department of Environment or the relevant provincial authority, as the case may be. Such identified activities are deemed to have a potentially negative impact on the environment and may result in pollution and degradation of the environment. An environmental authorisation issued for these listed activities may stipulate conditions under which the authorisation has been issued and any such conditions must be adhered to.

Building regulations and standards

The purpose of the National Building Regulations and Building Standards Act No.103 of 1977, as amended (the National Building Regulations and Building Standards Act), is to promote consistency in the law applicable to the construction of buildings in each local authority's jurisdiction and prescribes standards for building in this regard.

The South African Bureau of Standard's Code of Practice: The Application of the National Building Regulations (SABS 0400) is important in the implementation of the National Building Regulations and Building Standards Act.

The National Building Regulations set out the specifications that must be met in respect of 21 requirements, including (without limitation) structural design, lighting and ventilation, site operations, roofs and fire protection.

Site development ⁷⁵

Although the procedures for developing a site are generally consistent throughout the country, the individual municipality or local authority defines the specific steps an investor must take. In most cases, the approval of plans, the assessment of environmental impact, and the provision of utilities (including water, sewerage, and electricity) is handled exclusively by the municipality concerned.

In general, in areas where land is already serviced and no upgrades are required, utility hook-ups are fairly simple and swift. Where capacity upgrades or servicing is required, the wait for connections may be longer.

For further information and an overview on site development procedures in South Africa, refer to: **Addendum 15: Site development procedures in South Africa.**

Building permits ⁷⁶

The municipal authority with jurisdiction over the particular site, will issue building permits. Each municipality has its own application process. Most applications must meet both the national building regulations and standards as set out in the National Building Regulations and Building Standards Act and regulations thereto, and the building codes of the relevant municipality.

Decisions to consult with exterior bodies (such as the Department of Health, local fire department, the Department of Environmental Affairs, and the Department of Water Affairs) are made by the engineer in the local authority.

The following areas are included in the approvals:

- Fire.
- Pollution control.
- Health impact.
- Frontage works.
- Elevation control.
- Drainage and coastal engineering.
- Roads.
- Sanitation.
- Sewerage reticulation.
- Structures.

Once plans are approved, the municipality conducts a minimum of five inspections of the building site. Some municipalities conduct more, especially in the case of a multi-storey building. Other inspections may be carried out from time to time, depending on the specifics of the building.

Land acquisition ⁷⁷

South Africa has a proactive land acquisition policy based on a quantified or non-quantified need or demand. In other words, the state can buy/secure suitable land that is available, on offer or have been targeted for land reform, before or after beneficiaries have been identified and quantified which can be achieved either programmatically or at a project level.

At a project level, the need or demand may or may not be quantified in terms of identified beneficiaries. In some cases, this may be quantified in terms of specific programmes and there is an indication of what type of land is needed as the need is very specific e.g. a set number of labour tenant claims are registered.

The state in this case may simply purchase the land based on the number of claims registered in the office and then commence proper planning with the selected beneficiaries.

⁷⁵ South Africa: Investor's Handbook 2010 www.thedti.gov.za.

⁷⁶ South Africa: Investor's Handbook 2010 www.thedti.gov.za.

⁷⁷ http://www.info.gov.za

In terms of the programmatic approach, land needs of potential beneficiaries are to be identified in a specific area and matched with suitable and available land in that area. The programmatic approach is therefore based on area development planning; ultimately culminating in an area development plan that will clearly stipulate the land needs.

The primary methods of acquisition employed by the South African Government in terms of its policy include expropriation, auctions and market transactions/negotiated transfers.

For a detailed overview of land acquisition processes in South Africa refer to: **Addendum 16: Land acquisition processes in South Africa.**

Alternatively, SANRAL's Land Acquisition Guideline Manual can be accessed on their website at: http://www.nra.co.za/content/Land_Acquisition_Guideline_Manual_for_consulting_engineers.pdf.



Note:

The South African Government has indicated it intends to acquire 30% of arable land from the hands of commercial white farmers by 2014. However, according to the Minister of Rural Development and Land Reform, Gugile Nkwinti, this is both overambitious and impossible. Acquiring 30% of the 82 million hectares of arable land from white farmers would cost over R40 billion, which is currently not available.

Environment assessments

Depending on the nature of the activities, some applications for building permits may require an environmental impact assessment to be carried out in terms of the EIA Regulations under NEMA. An environmental consultant must carry out the assessment at the expense of the landowner. Some investors have recently carried out social impact assessments as well. It has been estimated that the environmental impact assessments cost up to 5% of the investment.

Electricity connection ⁷⁸

Eskom, a state-owned enterprise, generates most of the electricity in South Africa. Eskom sells to local authorities, who act as redistributors. The local redistributors, in turn, supply the majority of electricity to end-users.

There are approximately 450 local redistributors. Eskom sells directly to the end-user:

- When the local redistributor is unable to meet the needs of heavy electricity users; or
- When no local redistributor has jurisdiction over a particular geographic area.

Procedures ⁷⁹

The application and installation procedures are simple and swift for a site with an existing structure and an adequate electrical supply already in place (where no equipment upgrades or added infrastructure is required). An application for the supply of electricity should be submitted to the nearest Eskom sales office at least seven days prior to the requested connection date. Connection fees range from R2 000 to R4 000, depending on the category of service (standard users, off-peak users or peak users). A cash deposit or bank guarantee may also be required to cover costs in event of non-payment.

Eskom is also able to meet the needs of investors who require capacity upgrades, such as for energy-intensive factories. For capacity upgrades, the waiting time depends on the availability of the size of transformer required. Costs are also dependent on the size of the upgrade. The utility is also able to supply "Greenfield" sites in serviced areas. However, investors

should prepare their applications well in advance, as installation can take up to 24 months for large projects. Investors may submit either an application for the supply of electricity or a letter of requirements to the nearest Eskom office. Eskom will provide an estimated quote of installation costs within 14 days of the initial application. The quote is subject to negotiation.

Water connection ⁸⁰

Local municipalities generally provide water connections. Connection times are usually fast, with the exception of those sites not serviced. The time required for connection times to serviced sites ranges from one day to two weeks. Times required for connection to unserviced sites ranges from one month to one year and more.

Telephone connection

South Africa currently has two telecommunications network operators, namely Telkom and Neotel. Telkom was, until recently, the only fixed line telecommunications network operator in South Africa. Neotel is a new entrant to this market in South Africa and at present offers coverage across 80% of South Africa.

⁷⁸ South Africa: Investor's Handbook 2010 www.thedti.gov.za.

⁷⁹ South Africa: Investor's Handbook 2010 www.thedti.gov.za.

⁸⁰ South Africa: Investor's Handbook 2010 www.thedti.gov.za.

Both Telkom and Neotel offer various solutions for individuals, as well as small, medium and large businesses. The options available for businesses include voice, internet, data hosting and value-added services.

With effect from 1 August 2012, Telkom's business line installation fee increased to R551.69 (including VAT), with a monthly rental of R191.84 (including VAT). The other digital subscriber line (DSL) options available to business customers are set out in the following table:⁸¹

DSL	Installation fee (incl. VAT)	Monthly rental
Fast (up to 1024 kbps)	R705.20	R165
Faster (up to 2 048 kbps)	R705.20	R299
Fastest (up to 4/10 mbps)	R705.20	R425

Banking

Banking licences

A company wishing to conduct banking operations in South Africa has three alternatives. All of these require the approval of the Registrar of Banks, who heads up the Banking Supervision Department of the Reserve Bank.

The three main banking establishment options are:

- A separate banking company.
- A branch of an international bank.
- A representative office of an international bank.

To establish a separate banking company, the investor must begin by incorporating a public company with the Registrar of Companies. A bank of which the business consists solely of trading in financial instruments shall manage its affairs in such a way that the sum of its primary and secondary capital, its primary and secondary unimpaired reserve funds and its tertiary capital in the Republic does not at any time amount to less than the greater of:

- R250 000 000; or
- An amount which represents a prescribed percentage of the sum of amounts relating to the different categories of assets and other risk exposures and calculated in such a manner as may be prescribed by the central bank from time to time.

The investor must then supply the information required by the Regulations to the Banks Act with the application form BA 002 for a banking licence. The following information must be included:

- Details of the applicant and the proposed bank, including notice of registered office and postal address of company.
- Memorandum and Articles of Association.
- Certificate of incorporation.
- Business Plan (including predominant business activities planned, schematic representation of group structure, dividend policy, auditors, risk management policy and names of directors and executive directors).
- A number of Banks Act returns, referred to as "BA Returns", to forecast the position for the ensuing year are required. The forecast BA Returns required are those dealing with the balance sheet, off-balance sheet activities, income statement, liquidity risk, capital adequacy, trading risk, and restriction on investments, loans and advances.
- Curriculum vitae of proposed directors and executive officers and completed BA returns relating to the fit and proper requirements of the directors and executive officers (BA020).

- Application for Approval of Appointment of Auditors (BA006).
- A report from a Public Accountant on funds received from anticipated shareholders and held in trust.
- Planned Internal Audit activities.
- Application for Permission to Acquire Share in a Bank (BA007) which must be accompanied by a written statement containing:
 - The full particulars of the applicant's shareholding in any associate.
 - The full particulars of the applicants Shareholding in any bank or controlling company other than the bank or controlling company to which the application relates.
 - In the case of the applicant being a company, the names of the company's directors.
 - Particulars of all other corporate undertakings in which the applicant holds a shareholders interest of 25% or more.
 - The reasons for the applicants desire to acquire the shares in question in the bank or controlling company concerned.

⁸¹ www.telkom.co.za; www.neotel.co.za.

Should a foreign bank seek to establish a subsidiary or a branch in South Africa, the procedures are similar to those for other investors set out above.

However, foreign banks are also required to include the following with their application:

- Foreign Bank Holding Company Resolution approving proposed formation of a subsidiary bank.
- Letter of Comfort and Understanding from foreign bank holding company.
- Letter from the foreign bank's home regulatory authority to the effect that it has no objections to the application and that it will comply with certain minimum standards of supervision.
- Board Minutes from the holding company empowering an official to sign all documents relating to the application. Approval time for a banking company, a foreign subsidiary or a branch depends on the quality of the application. Banking licences are not transferable.
- All requirements relating to a Foreign Bank establishing a branch in South Africa can be found in forms BA009 and BA023 of the Regulations relating to the Bank's Act.

The requirements for establishing a Representative Office are less onerous and it takes considerably less time to obtain approval for a Representative Office. Representative Offices cannot take deposits, but can merely act as information conduits to the parent company. Form BA010 of the Regulations relating to the Bank's Act sets out the requirements in greater detail.

For more information, please contact:

The Registrar of Banks
 South African Reserve Bank
 Telephone: +27 12 313 3196
 Facsimile: +27 12 313 3758
 Website: www.reservebank.co.za

The main sources of short-, medium- and long-term financing for companies are commercial banks. Funding an investment by way of a loan is tax efficient (i.e. if the funds are used for the purposes of a trade and in the production of income, the interest paid on the loan should be tax deductible subject to the transfer pricing and the capitalisation provisions).

Types of loans

Mortgage loans

Each commercial bank applies its own policy in the granting of a mortgage over a commercial property. The factors that it takes into account include the value of the buildings, based on a professional valuation undertaken by the bank, and where they are situated; the affordability of the applicant; and other credit lending obligations imposed on the bank by the regulators. Normally, South African banks lend about 80% of the value of a commercial property, but this can vary from one bank to another depending on individual circumstance.

Secured/unsecured loans

The most common way for a business to finance its working capital is through a credit facility. A commercial bank might be prepared to grant this credit facility on an unsecured basis depending on the financial standing of the company, taking into account, for example, whether the business has sufficient assets and cash generation ability to service the credit extension. Alternatively, the bank might require security for the credit provided, in the form of, for example, personal guarantees by the directors, physical security such as a bond over an unbounded property, or a cession of the book debts of the company.

As far as "discounting and factoring" is concerned, South African banks will also, in some cases, be prepared to discount, for example, foreign bills, trade bills, bankers' acceptances or promissory notes.

There are also a number of institutions, many associated with the banks that undertake factoring, where the institution will advance money against the client's debtors' book. Normally, factoring gives a better rate than a normal bank cession over a debtors' book, but that also depends on the quality of the book. Factoring is also commonly known as securitisation.

Corporate finance

The commercial divisions of the major banks offer standard lending products to medium-sized companies. There are also corporate finance divisions in the major banks, or specialised corporate finance institutions, which offer tailor-made solutions for larger or more complex needs, such as the financing requirements of multinationals or listed companies.

Export finance and guarantees

Commercial banks will assist with export credits, guarantees and letters of credit. The Credit Guarantee Insurance Corporation of South Africa administers an export credit insurance scheme on behalf of **the dti**.

State assistance

The state-owned Industrial Development Corporation (IDC) provides financing to the private sector to facilitate commercially sustainable industrial development and innovation to the benefit of South Africa and Southern Africa. Finance is in the form of equity, quasi equity and medium-term loan finance. Interest rates are competitive, risk-related and are based on the prime bank overdraft rate.

The IDC offers specific financing products:

- **Bridging finance:** For entrepreneurs who have secured firm contracts except for construction contracts - with Government and/or the private sector and which have short-term financing needs.
- **Financing for empowerment:** For emerging industrialists/ entrepreneurs who wish to acquire a stake in formal business by way of management buy-ins or buy-outs, leveraged buy-outs or strategic equity partnerships.
- **Financing for small- and medium-sized mining and beneficiation:** Is aimed at small-and medium-sized mining and beneficiation activities and jewellery manufacturing activities.
- **Financing for the development of the techno-industry:** Is aimed at entrepreneurs in the IT, telecommunication, electronic and electrical industries wanting to develop or expand their business.
- **Financing for the development of agro industries:** For entrepreneurs in the agricultural, food, beverage and marine sectors wanting to expand and develop their businesses.
- **Financing for the development of the tourism industry:** Is aimed at commercial projects in the medium to large sectors of the tourism industry.
- **Financing for the expansion of the manufacturing sector:** Is aimed at entrepreneurs wishing to develop or expand their manufacturing business and create new or additional capacity.
- **Wholesale finance:** For intermediaries looking for wholesale funding to lend to individual entrepreneurs.
- **Financing for the export of capital goods:** To manufacturers and providers of exported capital goods or services. The aim is to provide competitive US dollar and Rand financing to prospective foreign buyers of equipment.
- **Import credit facilities:** For local importers of capital or services requiring medium- to long-term import credit facilities.
- **Short-term trade finance facilities:** For exporters looking for short-term working capital facilities to help them facilitate export orders.

- **Project finance:** Aimed at large projects in the Metals, Petro and Chemical Manufacturing, Agriculture, Minerals and Mining, and Energy market sectors.

Restrictions on South African borrowing by foreign companies

A South African company in respect of which 75% or more of its capital, assets or earnings may be paid to the benefit of a non-resident of South Africa, or of which 75% or more of its voting power, power of control, capital assets or earnings are vested in or controlled by or on amount that it may borrow from South African lenders, is known as an "affected company". Local borrowing for these purposes is widely defined and includes virtually all forms of borrowing and financing facilities, e.g. bank loans, overdrafts, facilities and finance leases, but does not include normal trade credit extended by suppliers of goods or services.

The borrowing limit is based on a pre-set formula. For companies that are 100% foreign-owned, the local borrowing limit is 100% of the effective capital of the South African company. Effective capital includes share capital, share premium, retained earnings, shareholders' loans to the extent that these are in proportion to shareholding, deferred tax and the minimum trade credit granted to the local company by its overseas affiliates, to the extent it can be viewed as a permanent intra-group facility. For example, if a South African subsidiary is 100% foreign-owned, it will be allowed

to borrow up to 300% of its shareholder investment. If the share capital (including share premium) amounts to R2 million and the shareholders loans amount to R4 million, The total shareholder investment would amount to R6 million.⁸²

The percentage of effective capital that may be borrowed is: $(100\% + [\% \text{ local participation} \div \% \text{ foreign participation} \times 100])$.

Affected companies applying for local finance must complete the MP79 form, which discloses the assets and liabilities of the applicant company prior to the granting of the financial assistance. On application, the assets and liabilities of a number of South African companies under common control can be aggregated for the purposes of establishing the maximum level of local borrowings that may be granted to the group, such that an individual company may be "over borrowed", provided that the group as a whole is in aggregate within the borrowing limit for the group.

The South African Reserve Bank will not permit the remittance of profits or repayment of loans where, as a result of such remittance, the local borrowing limit will be exceeded and will require local borrowings to be reduced before remittance.

⁸² www.Saica.co.za/integitax/2005/1311:local_borrowings_restrictions_and_black_economic_empowerment_companies.



South African taxation

Corporate taxation

Income tax

The principal source of direct tax revenue in South Africa is income tax.

South Africa has a residence-based system of taxation:

- South African residents are therefore taxed on their worldwide income, subject to a number of exceptions.
- Non-residents are taxed on income earned from a South African source.
- The question of residency needs to be addressed in the light of any double taxation agreements.
- Any company, which is either incorporated in, or effectively managed from South Africa, is deemed to be a South African resident for tax purposes.
- Domestic companies are taxed at a flat rate of 28%. From years of assessment commencing on or after 1 April 2012, branches of foreign companies which have their effective management outside South Africa will also be taxed at a rate of 28% (prior to this date they were subject to taxation on South African-sourced profits at a rate of 33%). Trusts (other than special trusts) are taxed at a rate of 40%.

Capital gains tax

Residents of South Africa are liable for Capital Gains Tax (CGT) on capital gains made on the disposal of their worldwide capital assets:

- The inclusion rate for capital gains is 33.3% (25% prior to 1 March 2012) in respect of individuals and special trusts, and 66.6% (50% prior to 1 March 2012) in respect of companies and other trusts. The maximum effective tax rate is therefore 13.3% (previously, 10%) for individuals, 18.6% (previously, 14%) for companies and 26.7% for trusts.
- Exposure to CGT for non-residents is largely limited to disposals of South African real estate or assets of a branch business.
- Where a change of residence status is brought about, that person/company will need to establish the market value of their assets at the date they are deemed to become South African residents for tax purposes. This market value becomes the base cost which is used to calculate the capital gains upon disposal of capital assets in future. The subsequent cessation as a South African tax resident, may result in a deemed disposal for CGT.

Exempt entities and Public Benefit Organisations (PBOs)

Receipts and accruals of PBOs are exempt from income tax to the extent that the receipts and accruals are not from business or trading activities, or, are from central integral, occasional or approved business or trading activities:

- Certain trading activities are totally tax free. Certain trading activities are partially taxable.
- The PBO can deduct the greater of R200 000 and 5% of its total receipts and accruals for the year.
- PBOs may register as a vendor for VAT purposes in order to claim VAT inputs on supplies made to it.
- Donations to PBOs are exempt from donations tax and bequests to PBOs are exempt from estate duty. Donations or bequests to PBOs are further not viewed as disposals for CGT purposes.
- Similar provisions exist for other exempt entities such as government departments, municipalities and the like.

Secondary tax on companies (STC)

- Prior to 1 April 2012, in addition to the normal corporate income tax at a rate of 28% (as from 1 April 2008, previously 29%) STC applied.

- However, STC was abolished on 1 April 2012 and replaced with a shareholders dividend tax of 15%.
- This brings the taxation of dividends in line with international practice.
- Historically, STC was calculated on the net amount of dividends declared at a rate of 10% (as from 1 October 2007).

Dividend tax (DT)

- The new dividend withholding tax (which came into effect on 1 April 2012 and replaced STC) will be levied at a rate of 15% (initially proposed at a rate of 10%) on dividends declared by domestic companies and shares of non-resident companies that are listed on the JSE.
- The 15% rate may be reduced under an appropriate double tax agreement.
- Dividend payments to the Government, provincial administrators or municipalities, domestic retirement funds, a rehabilitation company or trust, PBOs, various exempt bodies and domestic companies will be exempt, and foreign persons will be eligible for tax treaty relief. Exempt shareholders will have to certify their exemption status.

- In respect of in-specie dividends, the distributing company (not the shareholder) will bear the liability, although it will be subject to similar exemptions and treaty relief as cash dividends. The major implication is likely to be an administrative issue for companies whose dividends normally flow through "regulated intermediaries" (i.e. in the case of in-specie dividends) as the administrative burden will be upon the company itself.
- The proposed Value Extraction Tax (VET) which would have been a 15% charge on deemed dividends (or "value extractions"), *in lieu* of dividends tax has been withdrawn. Instead, the "dividend" definition has been broadened, which essentially means that value-transfers (understood as "deemed dividends") may still be taxed. The big difference will be that value-transfers will be subject to the normal withholding rules (as opposed to creating a tax cost for the company).
- A dividend will be deemed to be paid on the earlier of the date on which the dividend is paid or becomes payable by the company that declared the dividend.

Foreign dividends

- Foreign dividends are subject to income tax in the hands of South African residents.
- A foreign dividend means any dividend received or accrued from any company which is a "foreign company" (a company which is not a resident of South Africa). A resident means any company which is incorporated, established or formed, or has its place of effective management in South Africa, but excluding any company which is deemed to be exclusively a resident of another country for double tax treaty purposes.
- In certain cases, a foreign dividend is exempt from income tax in the hands of a South African resident. The exemptions currently have included, *inter alia*:
 - Where the resident recipient (in the case of a company, together with any other company in the same group of companies) holds at least 20% of the total equity share capital and voting rights of the foreign company;
 - Foreign dividends distributed out of profits which have been or will be taxed in South Africa (unless the profits are exempt or taxed at a reduced rate as a result of the application of a double tax treaty) or out of profits which

arose directly or indirectly from any dividends declared by a resident company (local dividends, foreign dividends) paid out of income, which has been included in the income of the resident recipient as a result of the application of the controlled foreign company provisions;

- A foreign dividend which accrues to a South African equity unit trust (not being a property unit trust), and is distributed to a unit holder as a foreign dividend. (Note that this exemption will change on 1 April 2012 to only exclude dividends on foreign shares that are listed on the JSE.)

- A general blanket exemption of 25/40 for natural persons, and 13/28 for companies and trusts, is proposed, for all otherwise taxable foreign dividends. The result will be that the maximum effective tax rate is essentially limited to 15%. However, substantial restrictions and prohibitions will apply to corporate shareholders in respect of shares not actually owned, or certain categories of trading stock, borrowed shares, etc.
- Furthermore, the foreign dividend will be exempt if that foreign dividend is received by or accrues to a person in respect of a listed share and does not consist of a distribution of an asset in specie.
- Dividends retained by collective investment schemes (i.e. not distributed to unit holders within a period of 12 months) will be taxed as ordinary revenue, and will thus not be subject to dividends tax.
- Section 10B dealing with the abovementioned exemptions in respect of foreign dividends applies from 1 March 2012, and is applicable in respect of dividends received or accrued on or after that date in so far as it applies to any person that is a natural person, deceased estate, insolvent estate or special trust; and with effect from 1 April 2012, and applicable in respect of dividends received or accrued on or after that date in so far as it applies to any person that

is a person other than a natural person, deceased estate, insolvent estate or special trust.

Tax losses

- A tax loss incurred by a company in any business activity may generally be carried forward and set off against future profits until exhausted, provided that the company continues to trade during each year of assessment.
- However, the losses earned by a foreign branch of a South African resident company cannot be set off against income from a South African source (ring-fencing applies).

Withholding tax (WHT)

- Profits remitted by or branch of a foreign company are not subject to withholding tax.
- A new withholding tax on interest paid to non-residents has been introduced with effect from 1 January 2013. Currently, the Income Tax Act provides for a near blanket exemption where non-residents earn South African interest.
- The new withholding tax will be levied at a rate of 15% and will be payable by the last day of the month following the month during which the interest is paid.
- Certain exemptions will still apply, including government

bonds, listed debt, debt owed by a local bank, local dealer and brokerage accounts and local collective investment schemes. Interest paid by headquarter companies will also be exempt. The withholding tax will not apply to non-residents who are currently not eligible for the interest exemption (i.e. individuals spending in excess of 183 days per year in South Africa and non-residents carrying on business through a South African Permanent Establishment (PE)).

- A 15% withholding tax applies in respect of gross payments made to non-resident entertainers and sportspersons performing in South Africa.
- A withholding tax is imposed on the proceeds of the sale of fixed property by non-residents where the proceeds exceed R2 million. The amounts to be withheld by the purchaser from payments made to the non-resident seller are:
 - Where the seller is a natural person - 5% of the amount payable.
 - Where the seller is a company - 7.5% of the amount payable.
 - Where the seller is a trust - 10% of the amount payable.



- A withholding tax of 12% applies to royalties. The withholding tax does not apply to amounts derived by non-resident companies from a branch or agency in South Africa, or to amounts relating to the use of certain copyrights in printed publications, or royalties paid to any controlled foreign company. This rate of 12% may be reduced in terms of the relevant double tax treaties as set out on the next page. (It is proposed that the rate of 12% will increase to 15% and will apply to all royalties paid after 1 January 2013.)

Reduced WHT rate once DTA is applied			
Recipient's country of residence	Reduced rate	Recipient's country of residence	Reduced rate
Algeria	10%	Lesotho	10%
Australia	10%	Luxembourg	0%
Austria	0%	Malaysia	5%
Belarus	5%/10%	Malta	10%
Belgium	0%	Mauritius	0%
Botswana	10%	Namibia	10%
Brazil	10% ²	Netherlands	0%
Bulgaria	5%/10%	New Zealand	10%
Canada	6%/10% ³	Nigeria	7.5%
China	7%/10% ⁷	Norway	0%
Croatia	5%	Oman	8%
Cyprus	0%	Pakistan	10%
Czech Republic	10%	Poland	10%
Denmark	0%	Russian Federation	0%
Finland	0%	Seychelles	0%
France	0% ⁴	Singapore	5%
Germany	0% ⁴	Slovak Republic	10%
Ghana	10%	Spain	5%
Greece	5%/7% ⁵	Swaziland	10%
Hungary	0%	Sweden	0% ⁴
India	10%	Switzerland	0%
Indonesia	10%	Taiwan	10%
Iran	10%	Tanzania	10%
Ireland	0%	Tunisia	10%
Israel	0% ⁴ /4.2% ⁵	Turkey	10%
Italy	6%	Uganda	10%
Japan	10%	Ukraine	10%
Korea	10%	United Kingdom	0%
Kuwait	10%	United States of America	0%

Notes:

1. The 5% rate applies to royalties paid for the use of industrial, commercial or scientific equipment or transport vehicles.
2. The reduced 10% rate only applies in relation to royalties arising other than from the use of, or the right to use trademarks.
3. The rate is reduced to 6% in respect of copyright royalties and other like payments in respect of any literary, dramatic, musical or other artistic work (but excluding royalties in respect of films or videos or other means of reproduction for use in television broadcasting), or royalties for the use of computer software, or for the use of any patent or any industrial, commercial or scientific information (excluding information in connection with rental/franchise agreements). In any other case, the rate is reduced to 10%.
4. Reduced rate only applies if the royalty is taxed in the recipient's country of residence.
5. The maximum rate is 5% on copyright royalties, including films and TV or radio media, and 7% for any patent, trade mark, design, model, plan, secret formula or process, and industrial, commercial or scientific equipment or information.

6. The rate is 4.2% (15% of the corporate tax rate) for royalties on cinematographic or television films.
7. The rate is reduced to 7% in respect of royalties for the use or right of use of any industrial, commercial or scientific equipment.
8. The 5% rate applies to copyrights for cultural, dramatic, musical and other artistic work (other than for use with television) and industrial, commercial or scientific equipment.
9. Generally, the above reduced rates do not apply where the recipient of the royalty trades through a permanent establishment in South Africa with which the right or property giving rise to the royalties is effectively connected.

Tax deductions and allowances

In addition to the general tax deduction that is permitted in terms of section 11(a) of the Income Tax Act, for business expenditure that is not of a capital nature and that is incurred in the production of income, specific tax deductions and allowances may be allowed. In the context of a business, these include:

Expenditure and losses incurred before commencement of trade

Taxpayers are entitled to a deduction for pre-trade costs incurred before the commencement of trade. "Pre-trade costs" are not defined but they would include costs such as advertising and marketing promotion, insurance, accounting and legal fees, rent, telephone, licences and permits, market research and feasibility studies, but exclude costs such as the purchase of buildings and motor vehicles, and pre-trade research and development expenses. Pre-trade costs incurred before the commencement of trade can only be set off against income from that trade.

Allowance in respect of future expenditure on contracts

Section 24C of the Income Tax Act permits the matching of receipts with corresponding future expenditure where such receipts arise in advance of the expenditure concerned. This is found in the practice of construction contracts. The section 24C allowance is typically calculated by taking the gross profit percentage applied to the receipts to date on the contract, less the costs allowed on the contract to date. The allowance should not exceed the receipts, and should not create an overall loss. The allowance deducted in the current year shall be deemed to have accrued or been received in the following year of assessment, and as a result shall be included in taxable income in the following year.

Plant and machinery

New or unused plant and machinery acquired, and used in a process of manufacture, can be depreciated for tax at the rate of 40% in the first year and 20% in the following three years. With regard to other capital assets, a wear and tear allowance may be claimed on fixed assets which are not structures or works of a permanent nature and do not qualify for other capital allowances. Write-off periods acceptable to SARS are detailed in terms of published Interpretation Notes (INs).

Transmission of electricity

An allowance equal to 5% (20-year straight-line basis) is permitted on the cost incurred by a taxpayer in respect of any assets for the transmission of electricity. The assets must be owned by the taxpayer and brought into use for the first time by the taxpayer and used directly by the taxpayer for the transmission of electricity.

Industrial buildings

Wear and tear is normally not allowed on buildings or other structures of a permanent nature. However, an allowance equal to 5% (20-year straight-line basis) of the cost to the taxpayer of industrial buildings or of improvements to existing industrial buildings used in a process of manufacture (other than mining or farming) is granted.

Commercial buildings

An allowance equal to 5% (20-year straight-line basis) is permitted of the cost to the taxpayer of new and unused buildings or improvements to buildings (other than the provision of residential accommodation). For the purposes of the 5% allowance, to the extent a taxpayer acquires part of a building without erecting or constructing that part, the following percentages below will be deemed to be the cost incurred:

- 55% of the acquisition price, in the case of part of a building being acquired.
- 30% of the acquisition price, in the case of an improvement being acquired.

Deductibility of interest

Interest may be incurred on loan funding provided by local and foreign lenders. South Africa's thin capitalisation and transfer pricing rules may restrict the deductibility of interest.

Research and development

A deduction of research and development (R&D) expenditure will be allowed at a rate of 150% of expenditure incurred on activities undertaken in South Africa directly for purposes of:

- The discovery of novel, practical and non-obvious information; or
- The devising, developing or creation of any invention,

design, computer programme or knowledge essential to the use of that invention, design or computer programme, which is of scientific or technological nature and intended to be used by the taxpayer in the production of income.

A deduction in respect of any new and unused building, machinery, plant, implement, utensils or article or improvements thereto brought into use for the first time by the taxpayer for R&D purposes, will be allowed at the rate of:

- 50% of the cost of the asset in the first year of assessment it is brought into use.
- 30% of the cost in the first succeeding year.
- 20% of the cost in the second succeeding year of assessment.

Note:

Section 11D of the Income Tax Act (for R&D expenditure) has been rewritten with the major change being the requirement that R&D projects be pre-approved in order to qualify for the additional allowances.

Learnership allowance

An allowance of R30 000 per annum is available as a deduction by employers for each registered learnership agreement. A completion allowance of a further R30 000 is available on completion.

Where the learnership is two years or longer, the completion allowance will be the number of years times R30 000. Learners with a disability qualify for an additional R20 000 allowance. The learnership tax incentive is scheduled to expire in September 2016.

Transfer pricing and thin capitalisation

Transfer pricing issues in South Africa are regulated by section 31 of the Income tax Act supported by SARS Practice Note No. 7 (PN 7).

South Africa follows the OECD (Organisation for Economic Cooperation and Development) guidelines on transfer pricing and uses the "arm's length" standard/principle to test transactions between connected persons.

In determining an arm's length price/consideration, the five transfer pricing methods recommended by OECD are used. These include:

- Comparable uncontrolled price (CUP) method.
- Resale price (RP) method.
- Cost plus (CP) method.
- Profit split (PS) method.

- Transactional net margin method (TNMM).

Although there is no legislative requirement for organisations to prepare transfer pricing policies and documentation for South Africa, the risk of an adverse transfer pricing audit from SARS is increased in the absence of such documentation. In view of the above, it is critical that any transactions between a foreign entity and any related SA entity be considered from a transfer pricing perspective.

The rules on thin capitalisation, which apply to financial assistance granted by non-resident entities to SA tax resident related parties, are contained in section 31 of the Act, supported by SARS Practice Note No.2 (PN 2). In terms of PN 2, a debt-to-equity ratio of 3:1 is currently permitted.

For inbound loans, the accepted/"safe-harbour" interest rate is the SA prime lending rate plus 2% for Rand-denominated loans and relevant interbank rate plus 2% for loans denominated in foreign currency.

The entire transfer pricing provisions have been replaced. Although the revised provisions were to come into effect on 1 October 2011, the implementation has been delayed and slightly revised provisions came into effect on 1 April 2012, effecting years of assessment commencing on or after 1 April 2012.

The amendments have been made to align the provisions more closely with OECD guidelines. A revised Interpretation Note is to be issued to provide some guidance.

Furthermore, the new section 31 no longer deals separately with the thin capitalisation rules. Instead thin capitalisation rules have been merged into the general transfer pricing rules.

This means that the thin capitalisation rules will also apply to local branches of foreign companies.

Annual disclosure and adjustments for arm's length prices will shift from SARS to the taxpayer.

Management fees

Authorised Dealers may effect payments in terms of agreements where the parties to the agreement are unrelated i.e. none of the parties have any direct/indirect interest or shareholding in each other. Where payments for management services are to be effected in terms of an agreement and the agreement is between two related parties, an application will have to be submitted to the Financial Surveillance Department of the Reserve Bank for approval.

If the fee is calculated as a percentage of turnover, profits, sales, expenses etc. it requires exchange control approval and while it will not normally be permitted, consideration will be given to it and approval may be forthcoming provided the application is supported by documentation stating that the payments will be

in compliance with South African transfer pricing rules. In the case of minimum payments or upfront payments, it may be more difficult to obtain approval.

Only in the case where an agreement relates to the local manufacture under licence, will it be necessary to refer such a matter to **the dti**, which will then consider it in terms of its policy.

Corporate rules

The corporate rules provide relief for transactions between group companies or between shareholders and their company.

In this regard a "group of companies" is defined as two or more companies in which one company (the controlling group company) directly or indirectly holds shares in at least one other company (the controlled group company) to the extent that:

- At least 70% of the equity shares of each controlled group company are directly held by the controlling group company or one or more controlled group companies or any combination thereof; and
- The controlling group company holds at least 70% of the equity shares in at least one controlled group company.

Note:

For purposes of the corporate rules, the definition of "group of companies" excludes any company that does not have its place of effective management in South Africa.

The rules cover the following transactions:

- Asset-for-share transactions.
- Amalgamation transactions.
- Intra-group transactions.
- Unbundling transactions.
- Liquidation, winding-up and deregistration.

Each of the rules has qualifying criteria and anti-avoidance provisions. The rules provide for relief from income tax, CGT, transfer duty, securities transfer tax and STC in certain circumstances. VAT relief may also be obtained if certain conditions apply.

Because of concerns that the tax base is being eroded through the use of the corporate rules, provisions have been introduced that may deny the deduction of interest incurred on borrowings arising from a transaction in terms of the corporate rules in certain circumstances, unless a directive has been obtained from SARS that the provisions will not apply.

A transferor and transferee may enter into a written agreement that the relevant provisions do not apply in the

case of asset-for-share transactions, intra-group transactions and liquidation transactions. With regard to amalgamation and unbundling transactions, the corporate rules will apply unless the parties form part of the same group of companies and jointly elect for the rules not to apply. Full particulars of any transaction falling within these provisions must be disclosed in the taxpayer's tax return for the tax year in which the transaction takes place.

Special rules apply for determining contributed tax capital where shares are issued in terms of the rules.

Controlled foreign companies

Also included in the income of a South African resident is a proportional amount of the net income (including capital gains) earned by a controlled foreign company (CFC). A CFC is any foreign company where South African residents directly or indirectly hold more than 50% of the total participation rights or more than 50% of the voting rights in that company. The proportionate income of the CFC to the participation rights held by the resident will be included in the income of the resident where the resident has participation or voting rights of 10% or more. The income is grossed up and the tax paid in the foreign country may be offset against the South African tax payable. The income of the CFC is to be determined as if the South African Income Tax Act applied to such entity.

There are rules in respect of interest, royalties and rental paid to other CFCs of the resident. These exclusions are as follows:

- Where the net income of the CFC is attributable to a business establishment in a foreign country provided that the business establishment effectively operates at arm's length (subject to certain restrictions).
- Where the net income of the CFC is included in its SA taxable income.
- Foreign dividends declared to a CFC by another CFC.
- Interest, royalties or rental income payable to a CFC by another CFC and exchange differences between such parties, where the entities are part of the same group of companies.
- Capital gains to the extent that the asset disposed of (subject to exclusions) is attributable to any business establishment of a CFC that forms part of the same group of companies as the CFC.

South African shareholders in relation to CFCs may make the following elections:

- South African shareholders who, together with any connected persons, hold an interest of at least 10% but not 20% or more in a CFC may elect (on a year-by-

year basis) to have their pro rata share of the CFCs income taxed, even though this income may be otherwise excluded. Foreign tax credits for underlying taxes paid may be claimed against this income but no excess credits may be generated.

- South African shareholders with an interest of at least 10% but not 20% or more in a foreign company which is not a CFC may elect (on a year-by-year basis) to treat their interest as a CFC interest. The South African shareholder will be taxed on the foreign income and will be entitled to claim foreign tax credits. Any subsequent distribution of profits will not be taxed.
- In 2011, there were substantial revisions to the taxable versus tax-free nature of the activities associated with a CFC. The revised rules eliminate the current transfer pricing penalty but more explicitly require an arm's length analysis when determining whether income is attributable to exempt active business activities. The anti-avoidance rules have also been revised to better target the tainted activities of concern and eliminate the use of discretionary trusts (and other forms of de facto ownership) employed to undermine the CFC regime.
- In recent years, it was announced

that cell companies would be the target of anti-avoidance legislation. The Act has been amended to achieve this result by treating each cell of an offshore cell company as a separate company for purposes of the CFC regime. The net result of this segregated treatment is to ensure that CFC status is measured on a cell-by-cell basis, thereby triggering a greater likelihood of CFC treatment.

Hybrid equity instruments, hybrid debt instruments and third party backed shares

Public debate on section 45 of the Act, and private equity acquisitions, has highlighted the need to improve the classification of corporate financing. The main problem is the erroneous classification of certain instruments as "debt" to generate interest deductions for the debtor, when such instruments more accurately represent equity financing.

Similarly, in some private equity transactions, where creditors receive exempt interest income, the deductibility of interest payments deprives the fiscus of revenue.

Excessive debt can also give rise to excessively risky transactions that may represent "credit risk" for the domestic market. To address these concerns, Government will enact a revised set of reclassification rules deeming certain debt to be equivalent to shares.

The Draft Taxation Amendment Bill, 2012, sets out various proposals to the sections dealing with hybrid debt instruments, hybrid equity instruments and third party backed shares.

These sections are anti-avoidance sections and are consistently being amended to ensure that the instruments are correctly classified as debt or equity, that South African companies remain internationally competitive in terms of funding and that these anti-avoidance sections do not impact negatively on commercial transactions.

Debt used to fund share acquisitions

Unlike most countries, South Africa does not allow for interest to be deductible when debt is used to acquire shares. Section 45 has been used as an indirect acquisition technique to facilitate the deduction of interest payments by allowing debt to be formally matched against underlying assets as opposed to shares. Given the acceptance of section 45 as an indirect share acquisition tool, it is now proposed that the use of debt to directly acquire controlling share interests of at least 70% be allowed. However, the interest associated with this form of debt acquisition of shares, will be subject to the same SARS approvals that do apply to section 45 acquisitions of assets other than shares.

Headquarter company regime

The headquarter company regime is a significant development directed at establishing South Africa as a jurisdiction of choice for investments into Africa. Essentially, the regime provides for a relaxation for headquarter companies of the controlled foreign company and arm's length rules, and for dividends declared by these companies to benefit from the same exemptions available to foreign dividends. For this purpose the following areas of tax relief will be granted to entities qualifying as headquarter companies (or their shareholders where applicable):

- Foreign subsidiaries of headquarter companies will not be treated as CFCs under the normal rules and, therefore, no "net income" of any CFC can be imputed to a headquarter company.
- Dividends declared by the headquarter company will be exempt dividends tax i.e. dividends received from a headquarter company will be taxable or exempt in the same way as foreign dividends.
- Headquarter companies engaged in financial assistance, will enjoy relief from the transfer pricing provisions to a certain extent (however, note that a new section is introduced, dealing with the

ring-fencing of interest incurred by headquarter companies for the purposes of claiming a tax deduction).

- Interest paid or owed by a headquarter company to a foreign person, to the extent that it relates to back-to-back lending arrangements, will be exempt from the withholding tax on interest.
- A headquarter company will be treated as a foreign company for the purposes of the capital gains tax participation exemption for the benefit of qualifying shareholders disposing of their interest in such headquarter company.
- A resident company will qualify as a headquarter company if the following criteria are met:
 - If, during the relevant year and all prior years, each shareholder (together with related group companies) held 10% or more of the equity shares and voting rights in that company;

- If, at the end of the relevant year and all prior years, 80% or more of the cost of the total assets of the company was attributable to equity shares in, loans to, or intellectual property licensed to any foreign company in which the company (together with related group companies) held at least 10%; provided that in determining the total assets of the company, there must not be taken into account any amount in cash or in the form of a bank deposit payable on demand; and
- Where the gross income of the company exceeds R5 million, if 50% or more of the gross income of the company consisted of dividends, interest, royalties or fees from any foreign company contemplated above or of proceeds from the disposal of shares in such foreign company or the above intellectual property.

A headquarter company must submit to the Minister an annual report providing the Minister with the information that the Minister may prescribe within such time and containing such information as the Minister may prescribe.

Other

Cross-border interest exemption

A withholding tax on interest paid to a foreign person that is not a CFC, will be introduced with effect from 1 January 2013 at a rate of 15% (initially proposed at a rate of 10%). Certain exemptions will apply (e.g. to interest received or accrued from headquarter companies and any interest received or accrued to a non-resident from another non-resident subject to certain requirements etc.).

Regional gateway initiatives

The Act removes the potential for double taxation by South African multinationals operating abroad through a variety of legislative measures, such as the use of a revised source system, and through the addition of special tax credits in the case of foreign withholding taxes imposed on South African-sourced management fees.

Functional currency rules

With effect from years of assessment commencing on or after 1 January 2011, certain entities, including branches, CFCs and headquarter companies (where South African Rand is not their functional currency), will be allowed to rely on their "functional currency" (i.e. the currency of the "primary economic environment in which the business operations are conducted") for tax purposes.

Partnerships

Partnerships are not treated as separate taxable entities. Each partner is taxed only on his or her share of the partnership's taxable income.

Mining, insurance and farming

Special rules apply to mining and insurance companies and to farming activities.

Government Islamic bonds

The 2011 Budget introduced a proposed tax framework to be enacted that will allow for Government to issue Islamic bonds (i.e. Sikuks). The regime will essentially allow for asset-based financing with the yield giving rise to tax that is equivalent to interest. These bonds will serve as the standard for risk-free Islamic financing within South Africa.

Incentives

Government has revised a number of pre-existing tax incentives. Firstly, the requirements associated with venture capital company incentive, will be greatly eased to encourage pooling of investments for junior mining and small business. Secondly, the industrial policy incentive will be enhanced for projects located within industrial development zones (IDZs) to support the objectives of the Industrial Policy Action Plan (IPAP) and the New Growth Path. Thirdly, the R&D incentive now requires a pre-approval system to curtail avoidance while providing enhanced certainty for legitimate projects. Lastly, the film

allowance for film owners has been converted into an exemption so as to encourage film profit (as opposed to the current emphasis on costs).

Calculating taxable income

Gross income	<ul style="list-style-type: none"> Receipts/accruals of a South African resident.
	<ul style="list-style-type: none"> Receipts/accruals sourced or deemed to be sourced in South Africa accruing to a non-resident.
Less: Exempt income	<ul style="list-style-type: none"> E.g. Dividends**.
Less: Allowable deductions	<ul style="list-style-type: none"> All non-capital expenses incurred in South Africa in the production of income.
Less: Other tax allowances	<ul style="list-style-type: none"> Refer summary of tax incentives.
	<ul style="list-style-type: none"> Other capital allowances on: <ul style="list-style-type: none"> Plant and machinery. Buildings and improvements to buildings etc.
Plus: Taxable capital gain*	
Equals: Taxable income	

* Capital gains are taxed with effect from 1 October 2001.

** "Foreign" dividends (those derived from profits generated from non-South African sources) accruing or paid after 23 February 2000 are, subject to certain exceptions, no longer exempt from South African tax. "Local" dividends will continue to be exempt from tax.

Current rates of taxation

Current central taxes	Government	Rates
• Company tax (non-mining)		28%
• Dividend tax		15%
• Micro businesses rate for entities with an annual turnover of </= R1 million (elective provision and conditions apply)	R0 - R150 000	0%
	R150 001 - R300 000	1% of each R1 above R150 000
	R300 001 - R500 000	R1 500 + 2% of amount > R300 000
	R500 001 - R750 000	R5 500 + 4% of amount > R500 000
• Small business corporation rate for entities with an annual turnover of </= R14 million	R0 – R63 556	0%
	R63 557 - R350 000	7%
	R350 001 +	R20 051 + 28%
• Branch profit tax 28%	As from 1 April 2012	previously 33%
• Maximum individual tax rate for taxable income of R617 001: R178 940 + 40% of the amount above R617 001		

Current central taxes	Government	Rates
VAT	On goods and services (exemptions apply)	14%
Other taxes:	<ul style="list-style-type: none"> • Capital Gains Tax (from 1 October 2001) • Customs and excise • Donations tax (20%) • Estate duty/tax (20%) • Transfer duty on real estate transactions not subject to VAT: <ul style="list-style-type: none"> - The transfer duty exemption threshold is to be increased from R500 000 to R600 000 - For properties acquired under purchase agreements concluded on or after 23 February 2011, the transfer duty rates applicable will be as follows: <ul style="list-style-type: none"> ◦ First R600 000 consideration 0% ◦ R600 001 to R1 000 000 3% ◦ R1 000 000 to R1 500 000 5% ◦ Excess over R1 500 000 8% These rates will be applicable to both natural and legal persons (CCs, companies and trusts). • Fuel levies • Motor vehicle licence • Electricity levies • Plastic bag levies • Incandescent light bulb levies • Municipal taxes on owners of real estate • Skills development levy • Airport taxes • Environmental levy • Road accident fund levy 	

Passive holding companies

A new passive holding company tax regime was introduced to eliminate perceived tax arbitrage opportunities relating to passive income between companies set up by individuals and the individual themselves. This regime came into effect from the commencement of years of assessment commencing on or after 1 January 2011.

However, with the introduction of dividend WHT at 15%, the passive holding company regime will most likely be abandoned.

Provisional tax

A first provisional tax payment is calculated using the basic amount, which is the taxable income per the last year of assessment in relation to which a notice of assessment was issued. With effect from the year of assessment ending on or after 1 March 2009, if the above-mentioned assessment is in respect of a period that ends more than one year after the latest year of assessment in relation to such estimate, the basic amount determined shall be increased by an amount equal to 8% per annum of that amount, from the end of such year to the end of the year of assessment in respect of which the estimate is made.

With effect from the years of assessment ending on or after 1 March 2009:

- In the event that a provisional taxpayer's taxable income is more than R1 million, a 20% penalty will be levied where a provisional taxpayer's second provisional tax payment is based on a taxable income that is less than 80% of the taxpayer's actual taxable income for that year.
- In the event that a provisional taxpayer's taxable income is equal to or less than R1 million, a 20% penalty will be levied where a provisional taxpayer's second provisional tax payment is based on a taxable income that is less than 90% of the taxpayer's actual taxable income for that year.

Note:

Where the amount of any estimate is not within the abovementioned 80% or 90% of the taxpayer's actual taxable income for that year, and the Commissioner is satisfied that the amount of any estimate was seriously calculated with due regard to the factors having a bearing thereon, and was not deliberately or negligently understated, or if the Commissioner is partly so satisfied, the Commissioner may in his or her discretion remit the additional tax or part thereof.

Tax administration

Note:

The Tax Administration Act 28 of 2011 was promulgated on 4 July 2012. Most sections came into effect on 1 October 2012.

Tax registration ⁸³

Any company or any CC which becomes liable for any normal tax or becomes liable to submit any return of income in terms of section 66 of the Income Tax Act No. 58 of 1962, is required to register as a taxpayer in terms of section 67 of the Act. Any such person must register as a taxpayer at SARS within 60 days after so becoming a taxpayer by completing an IT77(C) form. A registered taxpayer is required to complete and submit the annual returns of income in a prescribed form within the stipulated period.

The following entities are required to register as taxpayers for corporate income tax (CIT) purposes:

- Listed public companies.
- Unlisted public companies.
- Private company.
- Close corporations.
- Co-operatives.
- Other - Small business corporations (an entity with an annual turnover of less than R14 million).

Companies, including CCs, co-operatives and Body Corporates, are taxed at a rate as announced in the Budget Speech in February of each year and are required to submit a Return of Income: Companies and Close Corporations (IT14) within 12 months from the date on which their financial year ends. Small business corporations benefit from a staggered tax rate, and can write-off the cost of certain manufacturing assets in the year in which it is brought into use for the first time, or alternatively can register for turnover tax for micro-businesses.

For the current tax rates for companies, CCs and small business corporations refer to the tax tables above. For guidelines on how to complete your company tax return (IT14) visit the SARS website at: www.sars.gov.za/home.asp?pid=4150&tid=658.s=pubs.

Tax year

The tax year is the same as the corporation's accounting year.

Filing requirements

Companies are required to file their income tax returns annually, within 12 months of the company's financial year-end. Advance payments of tax (provisional tax) must be made twice a year, based on estimates of the final tax amount, the first payment during the first six months of the company's financial year and the second before the end of the year.

Where the provisional tax payments are less than the final tax liability, a third provisional tax return may be submitted, accompanied by an additional payment of provisional tax, within six months after the end of the tax year.

New corporate income tax return processes and procedures ⁸⁴

SARS is seeking to enhance tax compliance by companies and CCs through the verification and reconciliation of the various declarations made to SARS. An aspect of this includes the introduction of the Supplementary Declaration for Companies and Close Corporations (IT14SD).

The IT14SD is a structured Adobe form (in both PDF and Flex formats) and is intended to reconcile financial information across tax types and customs. The IT14SD consists of the PAYE, Income Tax, VAT and customs reconciliation schedules that must be reconciled and submitted by the taxpayer, where applicable. The IT14SD will be pre-populated with the following fields: income tax reference number, year of assessment and case number.

The IT14SD can be submitted through one of the following channels: eFiling, SARS branches, drop boxes at SARS branches and/or by post. SARS encourages corporate taxpayers to complete and submit their IT14SD electronically via eFiling (to register, go to SARS website at: www.sarsefiling.co.za).

Penalties

Penalties and interest are imposed for failure to comply.



⁸³ <http://www.sars.gov.za>

⁸⁴ <http://www.sars.gov.za>

Voluntary disclosure

An interim Voluntary Disclosure Programme (VDP) provided taxpayers with an opportunity to identify any existing tax exposures and to regularise their tax affairs without fear of interest and penalties. The interim VDP programme ran from 1 November 2010 to 31 October 2011, and was aimed at all taxes administered by SARS. A permanent legislative framework for voluntary disclosure, that applies to all tax types, is included in the Tax Administration Act. The main purpose of such a framework is to enhance voluntary compliance in the interest of the good management of the tax system and the best use of SARS' resources. It seeks to encourage taxpayers to come forward and avoid the future imposition of understatement penalties, other administrative penalties and interest.



Double taxation agreements (DTAs)

Existing comprehensive agreements		
Algeria	Indonesia	Poland
Australia	Iran	Portugal
Australia Protocol (2008)	Ireland Protocol (February 2012)	Romania
Austria Protocol (March 2012)	Israel	Russian Federation
Belarus	Italy	Rwanda
Belgium	Japan	Saudi Arabia
Botswana	Korea	Seychelles
Brazil	Kuwait	Singapore
Bulgaria	Lesotho	Slovak Republic
Canada	Luxembourg	Spain
China (People's Republic of)	Malawi	Swaziland
Croatia	Malaysia Protocol (March 2012)	Sweden Protocol (March 2012)
Cyprus	Malta	Switzerland (New treaty - entry into force 27 January 2009)
Czech Republic	Mauritius	Taiwan
Denmark	Mexico	Tanzania
Egypt	Mozambique	Thailand
Ethiopia	Namibia	Tunisia
Finland	Netherlands	Turkey
France	Netherlands Protocol (2008)	Uganda
Germany	New Zealand	Ukraine
Ghana	Nigeria	United Kingdom*
		United Kingdom Protocol (October 2011)
Greece	Norway	United States of America
Hungary	Oman	Zambia
India	Pakistan	Zimbabwe

* The United Kingdom treaty was extended to Grenada and Sierra Leone. * United Kingdom agreement includes Granada and Sierra Leone at a rate of 12% withholding tax for royalties. For non-treaty countries the withholding tax rate in respect of royalties and know-how payments is currently 12%. This will increase to 15% with effect from 1 January 2013.