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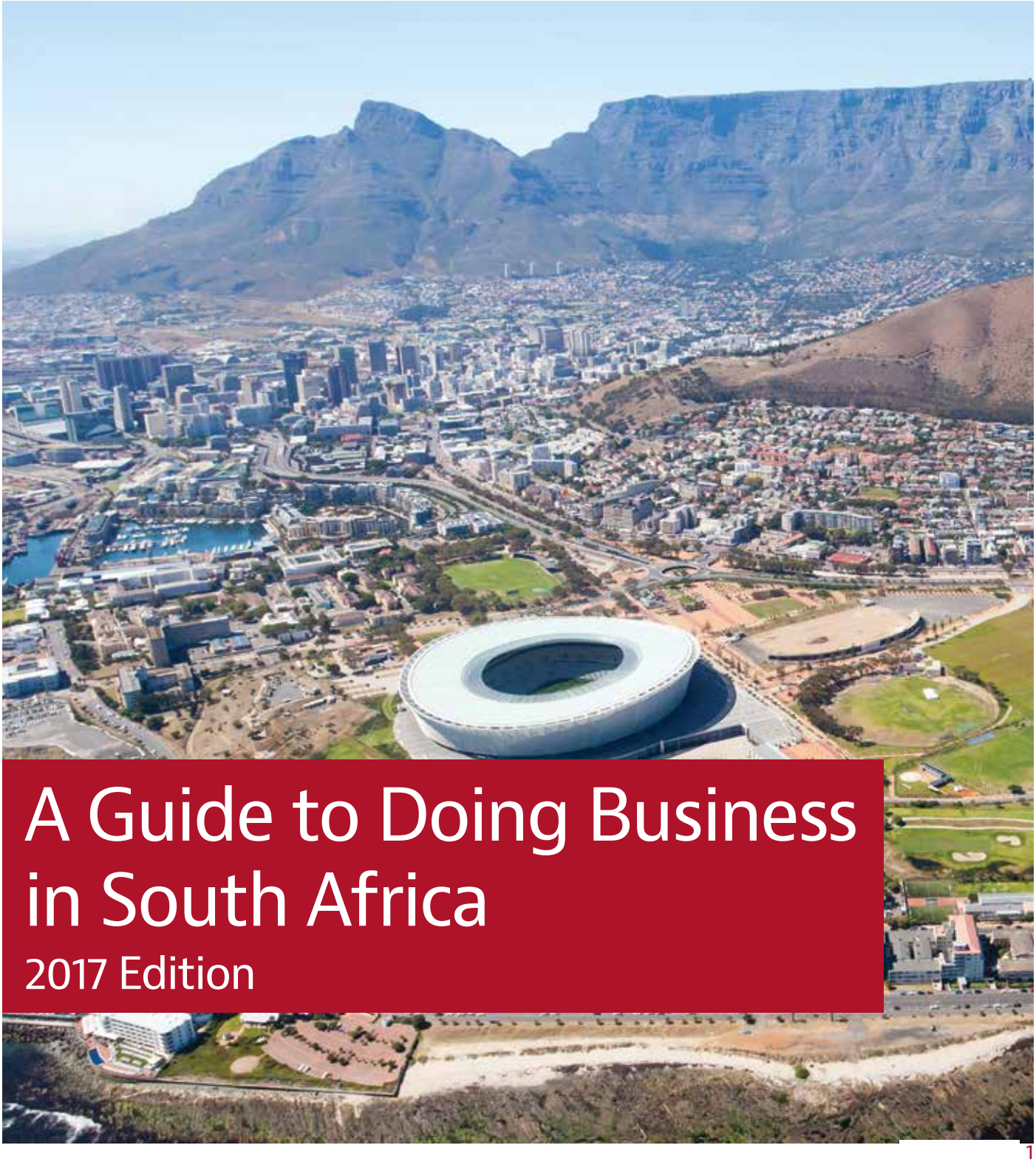

A Guide to Doing Business in South Africa

2017 Edition

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Note: Information contained in this document does not constitute legal advice

1 ESTABLISHING A LEGAL ENTITY

Private companies are simple and cheap to establish, and they can be established with only one director. The director need not be resident in South Africa. Private companies have fewer corporate governance requirements than public companies. For example, it is not necessary for a private company to appoint a company secretary or to hold an annual general meeting. It is also not a requirement that a private company appoint an auditor unless it passes a public interest test in terms of the Companies Act, 71 of 2008 (the Companies Act). The public interest test is related to the company's turnover, debt levels and number of employees, among other things.

A foreign company can follow a number of routes to establish a new company in South Africa, as set out below.

New incorporation

Incorporate a new private limited liability company through registration with the Companies and Intellectual Property Commission (CIPC) of a Memorandum of Incorporation (MOI) for the South African subsidiary. This route involves the reservation of a company name and the preparation of an MOI for the South African subsidiary, which can be completed within a few days. It is possible to make use of a standard CIPC MOI and then alter the MOI later, if necessary. Such alteration will require the shareholders to pass a special resolution (ie, requiring a majority of at least 75%).

The MOI, together with a prescribed form notice of incorporation and notice of appointment of directors, are submitted to the CIPC. Costs and timing are depicted in the table below:

Description	Cost	Timing*
Incorporating a subsidiary with a standard MOI	ZAR 25 000	3 - 10 business days from date of receipt of supporting documents.
Incorporating a subsidiary with a bespoke MOI	ZAR 35 000	Approximately 25 business days from date of CIPC changing the status of the application to 'tracking'.

*subject to backlogs at the CIPC

Shelf company

Purchase an existing shelf company, which has not previously traded and has no assets or liabilities, from a third party corporate service provider and amend the relevant company details to suit the requirements of the client (shareholder).

The following are the main steps involved:

- All the issued shares in the shelf company are transferred from the service provider to the shareholder at nominal consideration through the completion of a share transfer form.
- The shareholder is provided with a new share certificate in relation to the shares it holds in the shelf company.
- The current shelf company's director resigns and the shareholder appoints its director(s) to comprise the shelf company's new board and acquire management control (the new director/s need not be SA citizens or residents).
- The shelf company's present name is changed by special resolution (passed by the shareholder) to a name selected by the shareholder and approved by the CIPC.
- The shelf company's financial year end is changed to the financial year end selected by the shareholder and its registered address to reflect the local business address.
- Depending on, among other things, the number of employees that the shelf company may choose to later employ and its annual turnover, auditors may need to be appointed for the shelf company in the future (this should not be necessary at the outset).

Costs and timing are depicted in the table below:

Description	Cost	Timing*
Purchasing a Shelf Company	ZAR 25 000	Effective ownership of the company transfers immediately but it may take up to 10 weeks to make the necessary amendments to the company documentation.

*subject to backlogs at the CIPC

In addition to the main steps set out above and in respect of both a new incorporation and a shelf company, the following are also required:

- The appointment of a public officer, who must be a South African resident and have some knowledge of tax matters; his role is to ensure compliance of the local company with tax legislation and generally interact with the tax authorities on the local company's behalf.
- In the event that the shareholder is a foreign entity, the new share certificate must be endorsed 'non-resident' by an authorised foreign exchange dealer (any of the local retail banks); This endorsement is required in terms of the South African Exchange Control Regulations to allow the newly established/acquired company (SA resident) to remit future dividends and other distributions to the non-resident shareholder offshore.

Registering an external company (branch office)

An 'External Company' is defined as a foreign company that is carrying on business, or non-profit activities, as the case may be, within the Republic. A foreign company must be regarded as conducting business or non-profit activities if that foreign company is:

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

Note that the external company is not considered to be a separate legal entity but merely an extension of the foreign company.

Further, an external company must have a South African resident authorised to accept service of documents on its behalf. It is possible to appoint a third party service provider to act as the person authorised to accept service.

When registering an external company, the following documentation must be lodged with the CIPC, in addition to various CIPC forms:

- The foreign company's constitution (ie, the foreign company's founding documentation).
- A certificate of incorporation for the foreign entity.
- Translated copies (in English) of each of the above documents, if the originals are not in English.
- Certified or notarised 'true copy' of the biographical page of the passport of:
  - the person signing the forms for the CIPC; each director of the foreign entity;
  - the person who will accept service on behalf of the external company; and
  - a signed mandate letter.

Costs and timing are depicted in the table below:

Description	Cost	Timing*
Establishing an External Company	ZAR 25 000	25 business days

*subject to backlogs at the CIPC

Advantages and disadvantages of each business presence option

Legal Option	Advantages	Disadvantages
OPTION 1: SUBSIDIARY		
Separate South African legal entity	The South African company will have a separate legal identity from that of the foreign company. This is beneficial from a liability perspective. The South African company allows for flexibility in that the shareholding in the South African company may be adjusted in the future in order to allow for participation by a BBBEE partner. Such participation by a BBBEE partner will allow the South African entity to do business in South Africa competitively. This is dealt with in greater depth below.	In the event that the shareholder is a foreign entity, the subsidiary will be subject to withholding tax on dividends at the rate of 15%, subject to any applicable relief under the relevant Tax Treaty.
Newly incorporated entity	This allows company information, such as the name of the company, the identity of the directors and the shareholding to be recorded from inception. This also allows for a bespoke MOI to be drafted from the outset, whereas Shelf Companies are incorporated with the standard CIPC MOI.	Obtaining effective ownership of the company may take longer than purchasing a shelf company as a result of backlogs at the CIPC.
Shelf company	The company is already established and is therefore available immediately. This may be less costly than incorporating a new entity. However, if the MOI is amended at a later stage, such costs would be in addition to the costs of purchasing the shelf company.	Effecting the necessary corporate changes, such as the name change and the change of directors, may be delayed due to backlogs at the CIPC.
OPTION 2: EXTERNAL COMPANY		
External company	A branch office will not be subject to withholding tax when repatriating profits to its head office.	The external company is not a separate legal entity and is therefore, for liability purposes, not separate from the foreign parent company. In order to bring a BBBEE partner into the shareholding structure so as to be competitive in the South African market, the BBBEE partner would have to become a shareholder of the parent company itself. This is not always feasible and also results in value leakage as the BBBEE partner is not only sharing in the business to be empowered, ie, the South African business, but would also be sharing in the foreign parent company's other international business as a shareholder.

2 TAX IMPLICATIONS

Corporate tax

A company is taxed at a rate of 28% on taxable income and at an effective rate of 22.4% on capital gains. Upon registration with the CIPC, a company will automatically be registered as a taxpayer with the South African Revenue Service (SARS) for corporate tax purposes. Securities transfer tax is levied on the transfer of shares at a rate of 0.25%.

Provisional tax

A company automatically qualifies as a provisional taxpayer. Provisional tax is not a separate tax but is an advance payment of corporate tax based on a company's estimated corporate tax liability for the year. Within six months of the beginning of the year, 50% of the estimated tax liability for the tax year in question must be paid, with the balance payable by the last day of the year. A third voluntary top up payment may be made within seven months after the end of the year, where the year ends in February, or within six months after the end of the year in any other case. The final corporate tax liability of the company is determined based on an assessment issued by SARS, resulting in either tax being paid to SARS by the company or a refund by SARS to the company depending on the amount of provisional tax paid for the year in question. There is no separate provisional tax registration.

PAYE, UIF and SDL

Employees and directors of private companies are subject to payroll taxes, whereby the employer is obliged to withhold employees' tax (PAYE) and contributions to the Unemployment Insurance Fund (UIF) from the employee's or directors remuneration. PAYE is a withholding of income tax at the applicable income tax rate for the individual in question. The maximum rate of income tax for an individual is ZAR 533 625 + 45% of taxable income above ZAR 1 500 000. The employer and the employee/director each contribute to the UIF an amount equal to 1% of remuneration but not exceeding ZAR 14 872 per month. The employee's/director's UIF contribution is withheld by the employer. SDL is payable by the employer if the employer pays or expects to pay total remuneration for all employees and directors in excess of ZAR 500 000 per annum. SDL is payable at the rate of 1% of total remuneration for all employees/directors. A company is required to register for payroll taxes with SARS within 21 days of becoming an employer. The registration is typically granted at the time of submission of the application, assuming the application is in order. The company must complete a separate registration with the UIF. The process usually takes 21 working days from submission of the application.

VAT

A company will generally be liable for VAT on the supply of goods and services at a rate of 14% of the consideration for the supply concerned. A company is obliged to register for VAT with SARS if it has during any preceding 12-month period made supplies (i.e., turnover) exceeding ZAR 1 million, or will make supplies exceeding ZAR 1 million over any future 12-month period in terms of written contractual obligations. Voluntary registration is permitted in certain circumstances. The registration is completed in real time, provided all documentation is in order.

Import/export licensing

The company must register with SARS as an importer and/or exporter if the intention is to import and/or export goods to/from South Africa. Depending on the nature of the goods being imported or exported, it may, in addition, be necessary to obtain an import and/or export licence from the International Trade Administration Commission.

3 BLACK ECONOMIC EMPOWERMENT

Compliance with BBBEE in South Africa is not legally mandated. Instead, the point of departure for BBBEE in South Africa is that an entity will aim for a higher BBBEE rating level in order to attract customers looking to improve the enterprise and supplier development element on their own BBBEE scorecard and to remain competitive in the market.

The main law governing BBBEE is the Broad-Based Black Economic Empowerment Act, 53 of 2003 (the BBBEE Act), as amended.

The BBBEE Act provides the framework for the implementation of BBBEE initiatives/programmes as well as the publication of the Codes of Good Practice for BBBEE (the 2007 Codes) and the Amended Codes of Good Practice for BBBEE (the 2015 Codes). There are also a number of sector-specific BBBEE charters and codes that govern particular fields.

The 2015 Codes

The 2015 Codes came into force on 1 May 2015.

The 2015 Codes:

- define the key terms and concepts relating to BBBEE;
- specify the elements of an enterprise that will be measured; and
- spell out the method for measuring each of the BBBEE elements.

The New Generic Scorecard

The 2015 Codes introduced a new generic scorecard, which changes the recognition levels of a BBBEE contributor's status and increases the minimum score for each level. As such, a company that wishes to achieve the same level as it previously would have had under the 2007 Codes will need to increase its total score significantly in order to maintain such a level under the 2015 Codes.

The 2015 Codes have reduced the seven elements in the 2007 Codes to five elements by consolidating 'Employment Equity' with 'Management Control' and merging 'Preferential Procurement' and 'Enterprise Development' to form 'Enterprise and Supplier Development'.

The following table represents the new generic scorecard:

Element	Weight	Bonus points
Ownership	25 points	0 points
Management control	19 points	0 points
Skills development	20 points	5 points
Enterprise and supplier development	40 points	4 points
Socio-economic development	5 points	45 points

The scoring matrix contained in the 2015 Codes is set out below:

BBBEE status	Qualification	BBBEE recognition level
Level One Contributor	= 100 points on the Generic Scorecard	135%
Level Two Contributor	≥ 95 but <100 points on the Generic Scorecard	125%
Level Three Contributor	≥ 90 but <95 points on the Generic Scorecard	110%
Level Four Contributor	≥ 80 but <90 points on the Generic Scorecard	100%
Level Five Contributor	≥ 75 but <80 points on the Generic Scorecard	80%
Level Six Contributor	≥ 70 but <75 points on the Generic Scorecard	60%
Level Seven Contributor	≥ 55 but <70 points on the Generic Scorecard	50%
Level Eight Contributor	≥ 40 but <55 points on the Generic Scorecard	10%
Non-compliant Contributor	<40 points on the Generic Scorecard	0%

Ownership has received greater focus in terms of the 2015 Codes than previously. The 2015 codes have priority elements in which entities must achieve a minimum level of compliance to avoid penalties.

The following elements of the Generic Scorecard are classified as priority elements:

- **Ownership**
  The sub-minimum requirement for ownership is 40% of net value (40% of the 8 points on the ownership scorecard) based on the Time Based Graduation Factor as provided in Annex 100 (E) to the ownership statement.
- **Skills Development**
  The sub-minimum requirement for skills development is 40% of the total weighting points for skills development.
- **Enterprise and supplier development**
  The sub-minimum requirement for enterprise and supplier development is 40% for each of the three categories, within the enterprise and supplier development element, namely preferential procurement; supplier development and enterprise development.

All entities with an annual turnover of ZAR 50 million or more must comply with all the priority elements.

Non-compliance

Non-compliance with the 40% subminimum requirement of any of the priority elements will result in the following outcomes:

- The actual points scored by the measured entity and the consequent level that the measured entity would have been achieved were it not for non-compliance with the 40% sub-minimum requirements will be recognised by the verification agency (Recognition Level).
- The measured entity's BBBEE status level will be discounted by one level down until the next applicable verification period in which the measured entity can demonstrate compliance with the 40% subminimum requirements, at which point the Recognition Level will become the applicable ratings level for that measured entity in that verification period.

Verification

In order to acquire a BBBEE rating level as set out above, an accredited BBBEE verification agency must be engaged. This agency will visit the business premises and collect information.

Thereafter, the BBBEE verification agency will request a list of documents to be submitted, and based on this will give the entity a certificate detailing their BBBEE recognition level and the points scored for each BBBEE element.

The BBBEE recognition level is valid for one year and thereafter the process must be repeated annually.

Legal input in relation to BBBEE compliance

Notwithstanding that measured entities obtain their BBBEE rating levels by being scored on each BBBEE element, legal input is generally directed at the ownership and management control elements. A BBBEE consultant will then provide input on the other three elements and will also be able to conduct a 'dry-run verification' for the measured entity before it has its BBBEE rating level verified as described above.

Commercial incentives for BBBEE

- **Customers subject to the 2015 Codes**
  The 2015 Codes do not stipulate a requirement for a particular: (a) BBBEE rating level; or (b) percentage of black ownership.

  Accordingly, entities wishing to score high BBBEE rating levels in terms of the 2015 Codes are often driven by the enterprise and supplier development needs of their own customers.

  In terms of the 2015 Codes, 40 of a possible 105 points to be scored toward a BBBEE rating level are awarded for enterprise and supplier development. This means that if an entity wants to score a high BBBEE rating level in terms of the 2015 Codes, it is necessary to procure from other entities with high BBBEE rating levels and HDSA ownership percentages.

  Accordingly, a supplier of goods or services to entities that are measured using the 2015 Codes may be required to increase its BBBEE rating level in order to remain competitive as customers attempt to increase their enterprise and supplier development points on the 2015 scorecard.
- **Government departments as customers**
  In terms of national procurement legislation read with the BEE Act, government departments and organs of state are required to contribute to BBBEE, including among other aspects, when developing and implementing their preferential procurement policies.

  As such, government departments and organs of state are required to procure goods and services from companies with a BBBEE status. The national procurement legislation does not stipulate a specific required BBBEE status, although the parties looking to do business with government are scored more favourably depending on their BBBEE rating level.

  Compliance with the requirements of the national procurement legislation has a trickle-down effect, which applies pressure on all suppliers and service providers to meet these standards.

Registration of Major BBBEE Transactions

The Department of Trade and Industry published a notice in terms of Government Gazette 40898 on 9 June 2017, setting out the final thresholds for the registration of major BBBEE transactions.

In terms of the notice, all major BBBEE transactions with a transaction value equal or exceeding ZAR 25 million must be registered with the BBBEE Commission. A major BBBEE transaction is defined as any transaction between entities that has resulted or will result in ownership points for the measured entity in terms of the ownership scorecard. The threshold for registering the transaction with the BBBEE Commission is based on the transaction value excluding administration, professional and legal fees.

All parties to a transaction have a collective responsibility to register the transaction with the BBBEE Commission. The BBBEE Regulations prescribe the requirements for the registration of major BBBEE transactions. All parties must comply with the requirements and submit the required documents.

Regarding timing, all Major BBBEE Transactions concluded on or after 24 October 2014 but before 9 June 2017 must be registered within 60 calendar days of the publication of the Notice (ie 5 September 2017). Parties may also voluntarily register any major BBBEE transaction concluded before 24 October 2014 with the BBBEE Commission, however all transactions that meet the threshold thereafter must be registered.All transactions concluded after 9 June 2017 must be registered within 15 days of the transaction being concluded.

4 EXCHANGE CONTROLS

Applicable law

The main laws governing South African exchange controls are the following:

- Currency and Exchanges Act 9 of 1933 (Currency and Exchange Act)
- Exchange Control Regulations, which were promulgated on 1 December 1961, as amended from time to time (Exchange Control Regulations).

Exchange controls

Exchange controls are administered by the Financial Surveillance Department of the South African Reserve Bank (SARB) and authorised dealers. Authorised dealers are certain commercial banks that have been appointed to act as agents of the SARB in respect of certain transactions. All exchange control applications must be made through an authorised dealer.

The Exchange Control Regulations set out the requirements for approval of applications made to an authorised dealer. Regulation 10(1)(c) prohibits the direct or indirect export of capital. Generally, exports made in exchange for an arms length quid pro quo are not considered to be in contravention of the regulation. Determining what constitutes an arm's length quid pro quo transaction generally involves the application of the OECD's transfer pricing methodologies. The OECD defines arm's length transactions as "commercial and financial transactions between related companies". However, the transactions should be valued as if they had been carried out between unrelated parties, each acting in their own best interest.

All South African residents (both individuals and companies) are subject to exchange control in relation to transactions involving foreign exchange. Transactions between a subsidiary in South Africa and its holding company outside of South Africa are consequently regarded as being between a resident and a non-resident, and are therefore subject to the approval of the SARB.

Endorsement of controlled securities

In terms of regulation 14 of the Exchange Control Regulations, no person may acquire or dispose of a controlled security without the permission of the SARB.

A controlled security is defined as any security that is registered in the name of a non-resident, or of which a non-resident is the owner, or in which a non-resident has an interest.

The control over the acquisition or disposal of a controlled security is exercised by placing the endorsement 'non-resident' on all securities owned by non-residents or in which non-residents have an interest. The purpose of these restrictions is to allow non-residents freedom to deal in securities abroad or credited to a non-resident account, while residents are prevented from defeating the aims of the exchange control system. Accordingly, the endorsement of a controlled security as 'non-resident' has the effect of protecting a nonresident investor.

In practice, a formal application to the SARB is not required as an authorised dealer may endorse shares, allow the transfer of the funds and cancel the endorsement once transferred back to a South African resident.

Local borrowing restrictions

This is an important restriction for foreign companies as it is a restriction on the local borrowings of business entities that are 75% or more owned or controlled by non-residents. The purpose of the restriction is to ensure that the local company is adequately capitalised from abroad and is not excessively geared with the use of local funding.

Local borrowings include overdrafts, local discounting, financial leasing of capital equipment, mortgage bonds, preference shares and debentures not subscribed for by equity shareholders, and local shareholders' loans.

To the extent that the local shareholders lend more than the foreign shareholders proportionate to their respective shareholdings, the excess would also be local borrowings. Excluded from the restriction is normal commercial credit for the sale of goods and services rendered.

Penalties and fines

In terms of regulation 22 of the Exchange Control Regulations any person who:

- contravenes or fails to comply with any provision of the regulations;
- contravenes or fails to comply with the terms of any notice, order, permission, exemption or condition made, conferred or imposed thereunder;
- obstructs any person in the execution of any power or function assigned to him by or under the regulations;
- makes any incorrect statement in any declaration made or return rendered for the purposes of the regulations (unless he proves that he did not know, and could not by the exercise of a reasonable degree of care have ascertained, that the statement was incorrect); or
- refuses or neglects to furnish any information which he is required to furnish under the regulations, shall be guilty of an offence and liable upon conviction to a fine not exceeding ZAR 250 000 or to imprisonment for a period not exceeding five years, or to both such fine and imprisonment.

5 ANTI-CORRUPTION AND BRIBERY

The Companies Act

The main laws governing South African companies are as follows:

- Companies Act, 71 of 2008; and
- Regulations promulgated in terms of the Companies Act (Company Regulations).

Social and ethics committees have been introduced into South African law by section 72 of the Companies Act, read together with regulation 26(2) and 43 of the Company Regulations. In terms of regulation 43 of the Company Regulations, a social and ethics committee must now be established by:

- every state-owned company;
- every listed public company; and
- any other company that has, in any two of the previous five years, had a public interest score of at least 500 points.

In terms of regulation 26(2) of the Company Regulations, the public interest score of a company is calculated as the sum of the following at the end of each financial year (it is worth noting that a newly established company is unlikely to primarily meet the prescribed public interest score):

- The number of points equal to the average number of employees of the company during the last financial year
- One point for every ZAR 1 million (or portion thereof) in third party liability of the company, at the financial year end
- One point for every ZAR 1 million (or portion thereof) in turnover during the financial year
- One point for every individual (natural person) who, at the end of the financial year is known by the company to directly or indirectly have a beneficial interest in any of the company's issued securities.

In terms of regulation 43(5) of the Regulations, a social and ethics committee has to monitor the company's activities with regards to matters in relation to:

- social and economic development;
- good corporate citizenship, including the company's:
  - promotion of equality, prevention of unfair discrimination, and measures to address corruption;
  - contribution to development of the communities in which its activities are predominantly conducted or within which its products or services are predominantly marketed; and
  - record of sponsorship, donations and charitable giving;
- the environment, health and public safety, including the impact of the company's activities and or is products or services;
- consumer relationships, including the company's policies and record relating to advertising, public relations and compliance with consumer protection laws; and
- labour and employment matters.

The Prevention and Combating of Corrupt Activities Act, 12 of 2004 (PCCA)

Corruption is primarily regulated by the PCCA, which criminalises bribery.

In terms of the PCCA, a person that offers and/or accepts any gratification in an effort to influence another person to act in a manner that constitutes unauthorised or improper inducement to do or not to do something, is guilty of the offence of corruption, for which the following penalties may be imposed:

- In the case of a sentence to be imposed by a High Court, a fine or imprisonment (up to life imprisonment)
- In the case of a sentence to be imposed by a regional court, a fine or imprisonment for a period not exceeding 18 years
- In the case of a sentence to be imposed by a magistrate's court, a fine or imprisonment for a period not exceeding five years.

In addition, any person who is convicted of the offence of corruption may be blacklisted, that is, listed in the register of persons convicted of corrupt activities in respect of tenders and contracts.

Further, where an amount involved is or exceeds ZAR 100 000, a person of authority has the duty to report their knowledge or suspicion of an offence of corruption, theft, fraud, extortion and forgery, to the South African Police Services. Failure to do so may result in an offence with the possibility of imprisonment for a period of up to 10 years.

6 LICENSING AND TRANSFER OF INTELLECTUAL PROPERTY INTO OR OUT OF SOUTH AFRICA

The cross-border transfer and licensing of intellectual property in South Africa is regulated under South Africa's exchange control regime. This is applicable to both registrable intellectual property, such as patents, trade marks and designs, and unregistered intellectual property, such as copyright.

Currently, the Currencies and Exchanges Act, 9 of 1933, prohibits the exporting of any 'capital' out of the Republic without first having acquired prior approval from the Financial Surveillance Department of the South African Reserve Bank (SARB). This is based on SARB's primary mandate to protect the currency reserves and tax base of South Africa and to regulate any capital movement into and out of the country. Capital has, since 2010, been defined as including intellectual property.

The following intellectual property transaction require the prior approval of the SARB:

- any transfer (assignment) of intellectual property South African resident to a non-resident; and
- any royalty payment for:
  - an in-bound license of intellectual property; or
  - an out-bound license of intellectual property between related parties.

Assignment/transfer (export) of intellectual property

The assignment of intellectual property from a resident proprietor to a non-resident proprietor is regulated under regulation 10(1)(c) of the Exchange Control Regulations, which prohibits the export of any capital (including intellectual property, by definition) without prior exchange control approves from SARB.

This, coupled with the approach adopted by SARB towards such assignments, has the consequence that assignment of intellectual property in terms of South Africa is extremely difficult.

In addition, South African exchange control prohibits the creation of so-called 'loop structures'. These are ownership structures, whereby a South African resident controls a non-resident which, in turn, owns a South African asset (the South African asset is held by a resident indirectly through a non-resident). SARB has, in the past applied such prohibitions to the ownership of intellectual property.

This approach to intellectual property is further emphasised in South African tax legislation. Under the South African Income Tax Act, 58 of 1962, if intellectual property is assigned out of South Africa (from a resident to a non-resident) and subsequently licensed back to a South African resident such intellectual property would be regarded as 'tainted intellectual property'. Licensees of 'tainted intellectual property' are not allowed to deduct royalties paid for the use of intellectual property as an expense for income tax as per section 23I of the Income Tax Act. This is a further disincentive export of intellectual property.

It is worth noting that, per the Minister of Finance's budget speech for 2017, exchange control and tax reforms are under consideration in order to relax the above restrictions of the movement of intellectual property.

In-bound license transactions

In-bound licenses are those licenses whereby intellectual property owned by a foreign entity is licenced to a South African resident in exchange for royalties being paid by a South African resident to the foreign entity.

If such license is in respect of the local manufacturing of goods, the Department of Trade and Industry (DTI), acting as an advisor to the SARB, must be approached in order to obtain approval. The DTI is very prescriptive in its approach and, depending on the nature of the intellectual property, also prescribes acceptable ranges for royalty rates.

If there is no local manufacturing of a product, any agreement to pay a non-resident entity royalties is subject to the approval of the SARB. As SARB has a 'closed-door policy' such applications are not made directly to SARB but rather to an 'authorised dealer', to which SARB has delegated some of its authority. Most large commercial banks in South Africa are designated as authorised dealers and in practice the bankers of the licensee are typically used for such an application.

Out-bound license transactions

An outbound license is one where a South African entity licenses intellectual property to a foreign or non-resident entity.

Such licenses generally do not require SARB approval. However, according to the SARB Policy Communique, issued on 30 April 2016, such transactions would require approval from the SARB where the licensee and licensor are regarded as 'related persons'. This would therefore have application for outbound licenses between a South African resident company and its offshore group entities.

7 COMPETITION LAW

Applicable law

The main law governing competition law in South Africa is the Competition Act 89 of 1998 (**Competition Act**). The Competition Act applies to all economic activity in South Africa and it is enforced by the Competition Commission (**Commission**), the Competition Tribunal (**Tribunal**) and the Competition Appeal Court (**CAC**).

In terms of the Competition Act, rules for the conduct of proceedings in the Commission, Tribunal and CAC, as well as the thresholds for determining whether a merger will require notification to the competition authorities and the method of calculation for determining whether these merger thresholds have been met.

The Commission also publishes guidelines to indicate the Commission's policy approach to matters that fall within its jurisdiction. The Commission has published guidelines on: (i) small merger notification; (ii) the assessment of public interest provisions in mergers; and (iii) the determination of administrative penalties. The Commission is also in the process of finalizing guidelines for the determination of administrative penalties for failure to notify a merger as well as information exchange guidelines.

The Commission has also published a Corporate Leniency Policy (**CLP**) aimed at incentivising participants in cartel behaviour to disclose its conduct to the Commission for immunity from payment of an administrative penalty (if the relevant firm is first to disclose the conduct to the Commission and provides sufficient evidence to the Commission to successfully prosecute the remaining firms in the cartel).

Legal Framework

In order to monitor business activity in South Africa, the Competition Act sets out rules in relation to the relationships and/or dealings between competitors, suppliers, customers and joint venture partners. Certain activities, which would have a major negative effect on competition, are prohibited by the Competition Act. These activities include:

- restrictive horizontal practices, which are illegal arrangements between competitors;
- restrictive vertical practices, which are illegal arrangements between suppliers, producers and their customers; and
- abuse of a dominant position, which is the illegal use of market power by dominant firms (as defined in the Competition Act).

Restrictive horizontal practices

Section 4 of the Competition Act restricts the ability of firms in a horizontal relationship, that is, a relationship between competitors, engaging in conduct that constitutes a prohibited practice.

Certain practices are prohibited outright by the Competition Act, and are regarded as "nondefensible", in that any firms engaged in such practices are not entitled to give a justification or defence for participating in such prohibited practice. These are referred to as per se prohibited practices (or cartel conduct) and include agreements or concerted practices by competitors to:

- directly or indirectly fix a purchase or selling price or any other trading condition;
- divide markets between firms, whereby customers, suppliers, territories and/or specific types of goods or services are allocated amongst the firms; or
- engage in collusive tendering, which includes the suppression of bids, or the rotation of bids and complementary tendering among competitors.

The Competition Act does allow for a justification of some kinds of horizontal relationships between competitors, as long as the relationship does not constitute a per se prohibited practice (i.e., price fixing, market allocation or collusive tendering) and the firms concerned are able to show the competition authorities that the agreement results in technological, efficiency or pro-competitive gains, which outweigh the anti-competitive consequences that may arise. These kinds of agreements are known as rule of reason prohibitions, as the parties are entitled to give a justification or defence substantiating their conduct. An example of such an agreement exists where competitors share

confidential business information with each other where such exchange of confidential business information is not underpinned by an agreement or concerted practice to rely on this information to engage in a *per se* prohibited practice. As long as the firms can show that there is no harm caused to other participants in the market (irrespective of what level of the market they operate in), they may be allowed to continue with such an arrangement where it can be demonstrated that competition is in fact enhanced by the practice in question.

Restrictive vertical practices

Section 5 of the Competition Act deals with prohibited practices arising from a vertical relationship that exists between parties operating at different levels of a supply chain (eg, customers and suppliers). An agreement between parties in a vertical relationship is prohibited if it has the effect of substantially preventing or lessening competition in a market.

However, the Competition Act allows for a justification by firms accused of contravening the restrictive vertical practice provisions of the Competition Act if the practices result in technological, efficiency or other procompetitive gains that outweigh any anticompetitive effects.

The only per se prohibition with regard to vertical practices is that of minimum resale price maintenance. Minimum resale price maintenance occurs when an upstream supplier attempts to regulate or control the resale price of goods or services that it supplies, and implements measures to enforce or maintain the prescribed resale price, thereby reducing competition. This does not mean that there cannot be a recommended minimum resale price. As long as that recommendation is not binding on the sale of the product or service, and it appears clearly on the product itself that it is simply a recommendation, it is allowed in terms of the Competition Act. This offence attracts an administrative penalty for a first time offence.

Abuse of dominance

Dominance is not problematic from a competition law perspective, provided that the conduct of a firm does not amount to an abuse of such firm's dominance in a relevant market. In other words, any firm that meets the thresholds for dominance set out in the Competition Act cannot abuse its dominance in any particular market to disadvantage its competitors.

- According to section 7 of the Competition Act, a firm is dominant if:
  - it has at least 45% of the relevant market;
  - it has between 35% and 45% of the relevant market, unless it can show that it does not have market power; or
  - it has less than 35% of the relevant market but in fact has market power. Market power is the ability of a firm to control prices, to exclude competition or to behave independently of its competitors, customers or suppliers.

In terms of section 8 of the Competition Act, a firm that is dominant may not:

- charge excessive prices (eg, a price that is higher than, and bears no reasonable relation to, the reasonable value of that good or service);
- refuse access to an essential facility (eg, an infrastructure or resource that cannot reasonably be duplicated, and without access to which competitors cannot reasonably provide goods or services to their customers);
- engage in exclusionary acts, which is where a firm impedes or prevents a firm from entering into or expanding within a market (eg, where a firm requires or induces a supplier or customer not to deal with a specific competitor(s), or refuses to supply scarce goods to a competitor); and
- engage in price discrimination, which involves selling like products in equivalent transactions at different prices to different customers (eg, different discounts or payment terms).

The Competition Act provides defences for exclusionary acts if they can be justified on the basis of technological, efficiency and procompetitive gains.

Price discrimination by dominant firms is also not prohibited if it is based on differences in costs; is done in good faith to match benefits offered by a competitor; or is in response to specific conditions affecting the market for the goods and services.

Mergers and acquisitions

Where mergers and acquisitions are concerned, the competition authorities must be notified of a transaction that constitutes a merger, as defined under section 12 of the Competition Act. A transaction will require notification to the competition authorities:

- when one or more firms directly or indirectly acquires or establishes direct or indirect control

over the whole or part of the business of another firm;

- where the parties meet the asset and turnover thresholds prescribed by the Competition Act; and
- where the merger has an economic effect within South Africa.

There are three categories of mergers that are categorised based on the prescribed financial thresholds[1], as outlined in the table below:

Category	Combined Threshold*	Target Threshold**
Large merger	> ZAR6.6 billion	> ZAR190 million
Intermediate merger	ZAR560 million - ZAR6.6 billion	ZAR80 million - ZAR190 million
Small merger	< ZAR560 million	< ZAR80 million

*Combined Threshold: assets or turnover (whichever is higher) of the target firm and the acquiring firm.

**Target Threshold: assets or turnover (whichever is higher) of the target firm.

Both thresholds must be met for a transaction to be classified as either an intermediate or large merger.

In terms of section 13A(1) of the Competition Act, parties to an intermediate or large merger must notify the Commission in the prescribed manner and form and on payment of the prescribed merger filing fees. The Commission will investigate both intermediate and large mergers and will consider whether:

- the merger is likely to substantially prevent or lessen competition;
- the transaction results in any technological, efficiency or pro-competitive gains that outweigh any possible anti-competitive outcomes that the transaction may have; and
- any benefit to the public interest (including the effect the transaction may have on employment) may be relied upon to justify the transaction. Employment, as a public interest consideration, is taken particularly seriously by the competition authorities and the competition authorities will generally insist on the imposition of conditions to protect employment or limit employment losses as a result of a merger.

1 The Commission published draft revised merger thresholds for public comments on 9 June 2017, but the financial thresholds have not yet been revised.

In respect of an intermediate merger, the Commission will decide to approve, conditionally approve or prohibit the merger, based on its assessment of the impact of the merger.

In respect of a large merger, the Commission will make a recommendation to the Tribunal to either approve, conditionally approve or prohibit the merger. The ultimate decision to approve, conditionally approve or prohibit the merger rests with the Tribunal and where the merging parties oppose the recommendations of the Commission, contentious merger proceedings are heard by the Tribunal.

In terms of the guidelines on small merger notification, parties to a small merger are only required to notify the transaction to the Commission if at the time of the transaction, any firm involved in the transaction (or any group firm) is under investigation by the Commission or are respondents in proceedings pending before the Tribunal or the CAC. Parties to a small merger may also voluntarily notify the Commission or the Commission may require that the parties notify of the merger in the prescribed form within six months of implementation, where the Commission is concerned that the transaction may prevent or lessen competition or cannot be justified on public interest grounds. The Commission will decide to approve, conditionally approve or prohibit small mergers notified to it.

Apart from the Commission, firms involved in an intermediate or large merger must inform (by providing a version of the notification to the Commission in which all non-confidential information is redacted) any of the following parties of the transaction:

- a registered trade union representing a substantial number of employees; and
- the employees concerned or representatives of the employees concerned (if a substantial number of the employees are not represented by a trade union)

The Commission's decision in respect of a small or intermediate merger may be reviewed or appealed by the parties to the Tribunal. The Tribunal has jurisdiction over large mergers, and if the merging parties in large mergers or the appealed small or intermediate mergers are not satisfied with the decision of the Tribunal, the appeal may be taken to the CAC.

An appeal against a Tribunal decision must be made within 20 days of the decision but late appeal can be condoned if good cause is shown. The appeal may be made by a party to the merger or any trade union, employee or employee representative (who had to be given notice of the merger in terms of the Competition Act), provided they participated in proceedings before the Tribunal.

On having heard the appeal, the CAC may:

- set aside the decision of the Tribunal and approve the merger, or approve the merger subject to conditions or prohibit implementation of the merger;
- amend the decision of the Tribunal by adding or removing restrictions or by including or deleting conditions; or
- confirm the decision of the Tribunal.

Where the CAC hands down a decision, such decision will stand unless it can be:

- varied by that court;
- appealed successfully to the Supreme Court of Appeal (in limited circumstances); or
- revoked by the Tribunal.

Penalties and fines

In terms of the Competition Act, the Tribunal may impose administrative penalties on firms that:

- engaged in a per se prohibited horizontal or vertical restrictive practice, and certain abuse of dominance contraventions (irrespective of whether it is a first time offence or not);
- engaged in rule of reason prohibited practices (horizontal or vertical), certain abuse of dominance contraventions and price discrimination (only if it is a repeat offence);
- contravened or failed to comply with an interim or final order of the Tribunal or CAC; and
- implemented a merger without approval from the competition authorities (where such approval was required).

An administrative penalty may not exceed 10 percent of the relevant firm's annual turnover in South Africa and from exports from South Africa for the preceding financial year. Section 59(3) of the Competition Act sets out several factors that must be taken into account by the Tribunal when considering the level of administrative penalty to impose on a firm, being:

- the nature, duration, gravity and extent of the contravention;
- any loss or damage suffered as a result of the contravention;
- the behaviour of the respondent;
- the market circumstances in which the contravention took place;
- the level of profit derived from the contravention;
- the degree to which the respondent has cooperated with the Commission and the Tribunal; and
- whether the respondent has previously been found in contravention of the Competition Act.

The Tribunal has developed a six-step methodology for calculating an appropriate administrative penalty (taking into account the factors listed above). This methodology has been accepted by the CAC and was adopted by the Commission in its guidelines for the determination of administrative penalties. This six-step methodology entails the following:

- Step 1: Determination of the affected turnover in the relevant year of assessment.
- Step 2: Calculation of the base amount, being the proportion of the relevant turnover ranged between 0 to 30 percent.
- Step 3: The base amount is multiplied by the duration of the contravention.
- Step 4: .The amount in Step 3 is rounded off if it exceeds the statutory cap of 10 percent of the total turnover.
- Step 5: Consideration of mitigating and aggravating factors.
- Step 6: The amount in Step 5 is rounded off if it exceeds the statutory cap.

The Competition Amendment Act 2 of 2009 (Competition Amendment Act) makes provision for criminal liability for directors or persons with management authority that cause a firm to engage in or knowingly acquiesce to any engagement in cartel conduct. Although the Competition Amendment Act was passed into law in 2009, it lay dormant and certain of the provisions that relate to criminal liability for cartel conduct only came into effect between May and June 2016. Individuals that engage in cartel conduct may be subject to prosecution in their personal capacities, and the sanctions upon conviction are severe and allow for up to 10 years' imprisonment and/or a penalty of up to ZAR 500 000.

At any stage prior to the final determination of prohibited practice proceedings, a party may enter into a consent agreement, which the Tribunal may confirm as a consent order. The consent order need not contain an admission of guilt and may incorporate an award of damages to a complainant as well as the agreed administrative penalty. It should, be noted, however, that the Commission is increasingly requiring that consent orders contain admissions of guilt. This is a factor that will impact on the consenting firm's liability in a case for civil damages based on prohibited conduct which is the subject of a consent order.

The Competition Act makes it clear that the Tribunal and the CAC have no jurisdiction over the assessment of the amount and the awarding of damages arising out of a prohibited practice. Therefore, a party wishing to claim damages must do so in the civil courts, after obtaining a certificate from the Tribunal or CAC that a firm has engaged in prohibited practice. A consent order may include an agreed award of damages to a complainant, in which case the complainant may not further claim damages in a civil court.

Finally, it is a criminal offence to contravene or fail to comply with an interim or final order of the Tribunal or CAC, or to engage in certain conduct, such as improperly doing anything to influence the Tribunal or the Commission concerning any matter connected with an investigation. A fine of up to ZAR 500 000 and/or imprisonment for a term not exceeding 10 years can be imposed.

8 LABOUR LAW

Applicable law

South African employment laws apply to all employees in South Africa, regardless of citizenship or legal status. The primary laws governing employment relationships in South Africa are as follows:

- Labour Relations Act, 66 of 1995 is the primary piece of law governing labour law in South Africa. The LRA aims to give effect to the constitutional right to fair labour practices.
- Basic Conditions of Employment Act, 75 of 1997 prescribes the minimum terms and conditions of employment.
- Employment Equity Act, 55 of 1998 provides for the promotion of the constitutional right to equality, the elimination of unfair discrimination and the implementation of employment equity to redress historical discrimination and to achieve diversity in the workplace.

In addition, certain industries are subject to sectoral determinations or collective agreements, which further regulate terms and conditions of employment.

Labour Relations Act, 66 of 1995

The LRA regulates the organisational rights of trade unions and promotes and facilitates collective bargaining at the workplace and sectoral level. In addition, the LRA regulates the right to strike and the recourse to lock-out employees, and provides for dispute resolution mechanisms.

South African law requires just cause for termination. To guard against a successful unfair dismissal claim, any termination must be both substantively and procedurally fair. Three fair reasons recognised for termination are:

- misconduct committed by an employee;
- the incapacity of the employee (based on poor work performance, ill health or injury); and
- the operational requirements of the employer based on the employer's structural, economic, technological or similar, colloquially referred to as retrenchments or redundancies.

The pre-termination procedure to be followed will depend on the substantive reason for the termination.

The LRA also creates a state-funded statutory employment tribunal to resolve employment disputes.

Basic Conditions of Employment, Act 75 of 1997

The BCEA provides for minimum terms and conditions of employment relating to the regulation of working time (including pay for overtime, Sunday work and public holiday work), leave (annual, sick, family responsibility and maternity leave), particulars of employment and remuneration, notice periods and payments on termination.

Even where there is no formal employment contract, an employer is required to give an employee written particulars of employment when the employee starts work. The particulars of employment include details of the names of the employer and employee, place of work, date on which employment began, occupation of the employee or brief description of the work, hours of work, leave, remuneration and benefits.

Employment Equity Act, 55 of 1998

The EEA contains a general prohibition against unfair discrimination in the workplace. In addition, designated employers have additional obligations relating to affirmative action.

In the private sector, a designated employer for purposes of the EEA is defined as follows:

- an employer who employs 50 or more employees;
- an employer who employs fewer than 50 employees but has a total annual turnover that is equal to or above certain industry-specific thresholds; and
- an employer bound by a collective agreement that appoints it as a designated employer in terms of the EEA.

A designated employer must collect information and conduct an analysis in order to identify employment barriers that adversely affect people from designated groups. When conducting this analysis,

the designated employer is required to review its employment policies, practices, procedures and the working environment in order to identify employment barriers that adversely affect people from designated groups.

All designated employers must have an employment equity plan. The plan must set out the following:

- objectives to be achieved for each year of the plan;
- affirmative action measures that will be implemented;
- where black people, women and people with disabilities are underrepresented, the numerical goals to achieve equitable representation within each occupational level in the workplace;
- timetable for each year of the plan for the achievement of goals and objectives;
- duration of the plan (not shorter than a year or longer than five years);
- procedures that will be used to monitor and evaluate the implementation of the Plan and whether reasonable progress is being made towards implementing employment equity;
- internal procedures to resolve disputes about the interpretation or implementation of the Plan;
- people responsible for monitoring and implementing the plan; and
- any other prescribed matter

The plan aids designated employers in reaching the goal of employment equity in the workplace. The EEA is also aimed at continuity, as the designated employer is required to prepare a subsequent plan before the end of the term of an existing plan.

Designated employers are required to submit a report to the Director-General every year. The first report will refer to the initial development of and consultation around the plan. Subsequent reports will detail the progress made in implementing the plan.

9 EMPLOYMENT VISAS FOR FOREIGN-NATIONAL EMPLOYEES

Foreign nationals must obtain a work visa, except where the person concerned may qualify for:

- a visitor's visa with consent to work (for placements up to 90 days, with the option of one renewal in country for a further 90 days, to provide services, attend business meetings or provide training in South Africa);
- an exchange visa (either as part of a recognised exchange programme or, in the case of foreigners aged 25 years or younger, for employment that does not exceed a period of one year);
- obtaining consent to work on a retired person's visa; or
- part-time work of up to 20 hours per week on a study visa authorising study at a recognised tertiary institution.

Broadly speaking, there are three types of work visas available to foreign nationals wanting to work in South Africa, namely:

- General work visa
- Critical skills visa
- Intra-company work visa

General work visa

- Due to the prescribed requirements for obtaining a general work visa, this visa type is difficult and time-consuming to secure.
- This is primarily as a result of the requirement to demonstrate that, despite a diligent search, the company in South Africa is unable to find a suitable citizen or permanent resident with qualifications or skills and experience equivalent to those of the foreign national. The foreign nationals prospective employer is required to apply to the Department of Labour for a certificate confirming this. Practically, this means that the company will have to advertise the position, consider and interview applicants, and explain why the position cannot be filled by a citizen or permanent resident in South Africa.
- As a result, it can take up to a year to secure a general work visa and there is no guarantee that it will be issued.
- A general work visa may be granted for a period not exceeding five years.

Critical skills visa

- The Minister of Home Affairs has determined which skills and/or qualifications are critical for South Africa and published a closed list of such skills and/or qualifications. Foreign nationals who possess the skills and/or qualifications on the list may apply for a critical skills visa.
- In such a case, the company does not have to demonstrate that it was unable to find a suitable citizen or permanent resident for the relevant position. Therefore, if a foreign national qualifies for a critical skills visa, this option is more preferable than a general work visa.
- A critical skills visa may be granted for a period not exceeding five years.

Intra-company transfer visa

- An intra-company transfer visa may be granted to a foreign national who is an employee of a foreign company, allowing him or her to work for another group entity in South Africa.
- One of the requirements for an intra-company transfer visa is that the foreign national must be employed by the foreign company for at least six months before the application is made.
- For international groups, these are the most common types of visas used to secure temporary work authorisation for foreign nationals.
- An intra-company transfer visa may be granted for a period not exceeding four years.

In addition to the above visas that may be granted to individual applicants, a corporate applicant who is operating a business in South Africa and wishes to employ foreigners can apply for a corporate visa. There are a number of financial and other undertakings that are required before a corporate visa may be granted. There are also similar requirements relating to demonstrating an inability to find a suitable citizen or permanent resident for the relevant position. The Director-General, in consultation with the Department of Labour and the Department of Trade and Industry, will determine

the maximum number of foreigners to be employed in terms of the corporate visa. A corporate visa may be granted for a period not exceeding three years.

Foreign nationals do not require a separate residence visa as a work visa confers the right to temporarily work and reside in South Africa. Accompanying family members will need to apply for an accompanying spousal/dependant visa under the foreign national's work visa. However, should the spouse or children need to work or study in South Africa, they will need to apply for authorisation to work or study in South Africa.

The processing time of the application, once all requirements have been fulfilled, varies widely depending on the type of visa applied for and the country in which the application is lodged. It can take anywhere between one week to nine months (in the case of a general work visa, which requires a report from the Department of Labour).

10 HEALTH AND SAFETY

Applicable law

The main laws governing health and safety are the following:

- Occupational Health and Safety Act, 85 of 1993.
- Compensation for Occupational Injuries and Diseases Act, 130 of 1993.

Occupational Health and Safety Act, 85 of 1993

OHSA gives workers rights regarding health and safety in the workplace. OHSA requires management to set up safety representatives and safety committees in the workplace. Moreover, the regulations give guidelines on matters such as toilets, change rooms, first aid, drinking water, washing facilities, protective clothing, machinery, stacking and packing, ladders, fire, ventilation, lighting, temperature, noise and asbestos. Inspectors appointed under OHSA have to make sure that employers and workers follow the provisions of OHSA.

Employees must take reasonable precaution over their own health and safety at work. They must follow any precaution and rule regarding safety and health. Employees must report any unsafe circumstances or accidents to the safety representative as soon as possible. Any person who acts in a reckless way, or disobeys any safety measures, may be charged.

The general duties of the employer are to provide and maintain, as far as is reasonably practicable a working environment that is safe and without risk to the health of its employees. To meet this requirement, the employer must:

- ensure that the provision and maintenance of systems of work, plant and machinery are safe and without risks to health;
- take steps to eliminate or mitigate any hazard or potential hazard to the safety or health of employees, before resorting to personal protective equipment;
- make arrangements for ensuring the safety and absence of risks to health in connection with the production, processing, use, handling, storage or transport of articles or substances;
- establish what hazards to the health or safety of persons are attached to any work which is performed, any article or substance which is produced, processed, used, handled, stored or transported and any plant or machinery which is used in the business;
- establish what precautionary measures should be taken with respect to such work, article, substance, plant or machinery in order to protect the health and safety of persons and provide the necessary means to apply such precautionary measures;
- provide necessary information, instructions, training and supervision to ensure the health and safety at work of employees; and
- not permit any employee to do any work or to produce, process, use, handle, store or transport any article or substance or to operate any plant or machinery, unless the precautionary measures contemplated above, or any other precautionary measures which may be prescribed, have been taken.

In addition, employers must:

- take all necessary measures to ensure that the requirements of OHSA are complied with by every person in its employment or on premises under its control where plant or machinery is used;
- enforce such measures as may be necessary in the interest of health and safety;
- ensure that work is performed and that plant or machinery is used under the general supervision of a person trained to understand the hazards associated with it and who have the authority to ensure that precautionary measures are implemented; and
- ensure all employees are informed of the scope of their authority as contemplated in OHSA.

Inspectors appointed under OHSA have wide powers to search the workplace, question people, ask for explanations from the employer etc. An inspector may request that the employer reports on safety precautions in its workplace.

Any person who contravenes certain provisions of OHSA shall be guilty of an offence and on conviction, be liable to a fine not exceeding ZAR 50 000 or to imprisonment for a period not exceeding one year (or both).

In certain circumstances, an employer who does or omits to do an act which causes any person to be injured at a workplace, or in the course of his employment, shall be guilty of an offence and on conviction, be liable to a fine not exceeding ZAR 100 000 or to imprisonment for a period not exceeding two years (or both).

Compensation for Occupational Injuries and Diseases Act, 130 of 1993

COIDA was enacted to ensure that employees injured whilst at work or who become ill as a result of their work, can claim compensation from the Compensation Fund. Families or dependants are also able to claim if the breadwinner dies as a result of a work-related accident or disease. COIDA does not, however, apply to contract workers.

Compensation is only payable if the accident that caused the injury occurred within the scope of the employee's employment. No payments are made in respect of temporary disablement which lasts three days or less, or results from the wilful misconduct of the employee.

COIDA obliges employers to contribute to the Compensation Fund and these contributions are based on prescribed tariffs which are reviewed annually and based on the risks related to a particular type of work.

11 YOUR KEY CONTACTS

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Vani Chetty heads up the Antitrust & Competition Practice in Johannesburg. With over 20 years' experience, Vani has practised in this market since the inception of competition law in South Africa and also launched the country's first boutique competition law practice in 2007. Today, Vani is recognised as a leading lawyer for competition by the Global Competition Review and has acted for leading, multinationals in South Africa and Africa. She has extensive experience in all areas of competition and antitrust matters.

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12 ABOUT BAKER MCKENZIE

The story of Baker McKenzie is one of imagination, determination and hard work.

When two Chicago-based lawyers, Russel Baker and John McKenzie, met in 1948 in a cab, their shared vision for the future saw rise to the establishment of the first global law firm.

From starting off with four lawyers, a secretary and fees totaling US$75,000 in 1949, to becoming the largest law firm by revenues, markets and headcount, our commitment to excellence underpins our path to success. With 77 offices in 47 countries and 13 000 people, we are the world's premier global law firm.

Our growth has been organic, giving us a strong, common culture that runs through our firm. We have followed clients into new markets, each time establishing offices driven by local lawyers and talent.

We help clients overcome the challenges of competing in the global economy by solving complex legal problems across borders and practice areas. Our unique culture, developed over 60 years, inspires our people to:

- understand local markets and customs;
- navigate multiple jurisdictions;
- work together as trusted colleagues and friends; and
- instil confidence in our clients.

Baker McKenzie in South Africa

Since its opening in 2012, the Johannesburg office has grown to more than 130 lawyers and support staff. Our lawyers offer deep knowledge of Africa's local markets and the cultural and social customs across the continent.

Our Johannesburg based team, plays an integrated part of our international Africa Practice and have worked on significant projects in more than 40 countries.

Working alongside lawyers from across the Baker McKenzie network, our locally qualified South Africa team advises governments, domestic and multinational companies, project sponsors, banks and other financial institutions on a wide range of legal issues and can deliver practical, innovative solutions that meet your legal and business needs.

Our African footprint

We were one of the first international law firms to open an office in Africa, over 30 years ago, and we continue to support and advise clients across the continent.

Our Johannesburg office focuses on Sub-Saharan Africa and our offices in Casablanca and Cairo, on the Maghreb region.

We provide our clients in Africa with an integrated service that is supported by our global reach and best practice aligned with industry and local knowledge.

Clients appreciate our ability to manage projects to international standards, mitigate risks and add bench strength when needed.

Our African Relationship Firm (ARF) initiative

Our approach to Africa takes into account that the continent is not a homogenous legal environment. A large part of delivering value to clients is being able to help them work with the best local firms across a diverse range of business and legal environments in various jurisdictions.

We have built close relationships with our referral network of ARFs, allowing us to provide a seamless service to clients across the region.

In order to bring about greater consistency in the service and quality of work provider to the client, we have worked with our ARFs and agreed on a common modus operandi, including quality standards and relationship principles.

We hold regular ARF conferences throughout the year to share experiences and develop best practices.

Baker McKenzie helps clients overcome the challenges of competing in the global economy.

We solve complex legal problems across borders and practice areas. Our unique culture, developed over 65 years, enables our 13,000 people to understand local markets and navigate multiple jurisdictions, working together as trusted colleagues and friends to instill confidence in our clients.

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