



# GUIDE TO DOING BUSINESS IN AFRICA



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# LEX AFRICA

## GUIDE TO DOING BUSINESS IN AFRICA



# INTRODUCTION

## About LEX Africa

*Doing business in Africa is associated with diverse challenges and risks and must accordingly be founded on a strong legal base.*

LEX Africa is an alliance of leading law firms with over 600 lawyers in over 20 African countries which was founded in 1993 and was the first legal alliance focussing solely on Africa. Only African law firms join the Alliance subject to strict performance and selection criteria to ensure world class standards of legal practice.

Each member's key specialist focus is on general, corporate, commercial and regulatory law as well as litigation and dispute resolution.

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Member firms share similar values and commit to the highest professional, ethical and service delivery standards. A lawyer exchange program and specialist LEX Africa practice and industry sector groups have been established.

## Our Mission

*To collaborate with member firms to drive business growth in Africa through best legal practice by attracting, developing and promoting world-class professional skills for the continuing success of our network and the broader African continent.*

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# ANGOLA

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### COUNTRY INFORMATION

In 2014 Angola carried out the first census since independence in 1975 which indicated that the country had a population of approximately 24.6 million. 51.6% of the population were women and 48.4% are men. The average annual population growth is 2.8 % and life expectancy is 50 years. The population is mainly concentrated in the capital, Luanda (6.5 million). The 2014 information was updated in March 2016 and indicated that the country had a population of more than 25 million with more women – about 13 million – than men – about 12 million. The seven most populated provinces remained the same and the provinces with more than one million people are Luanda, Huíla, Benguela, Huambo, Cuanza Sul and Uíge e Bié. The majority of the population lives in urban areas. The official language is Portuguese, although some national languages such as Umbundu, Kimbundu, Kikongo and Tchokwé are also spoken. The official currency is the Kwanza (AOA).

### POLITICAL SYSTEM

Angola is a constitutional democracy. Parliament comprises 220 members elected by direct universal suffrage and secret ballot. In September 2017 João Manuel Gonçalves Lourenço was elected as the new President of Angola for a five year term, ending the 38 year rule of José Eduardo dos Santos.

### ECONOMIC INDICATORS

The sources of the indicators include Angola's National Bank, the Ministry of Finance, the International Monetary Fund and the World Bank. The State budget estimates GDP growth for 2018 at 4.9%. The non-oil based economy continues to grow especially in sectors such as agriculture, manufacturing and services. The inflation rate in the State Budget for 2018 was estimated at 25%, about 10% higher than the goal defined in the State Budget for 2017, which was 15.8%. The inflation rate in 2017 was 23.67%.

Despite the world economic crisis and the drop in the oil price, Angola is still seen as a high-growth economy offering attractive investment opportunities. Angola continues to encourage direct private investment.

### INVESTMENT CLIMATE

The government promotes private investment by national and foreign investors and strongly encourages investments in areas that will contribute to the diversification of the Angolan economy (investment outside the oil sector). The following sectors are deemed strategic for the development of the country's economy:

- Education, technical and vocational training, scientific research and innovation
- Agriculture, livestock and agro-industry
- Specialised health services
- Reforestation, industrial transformation of forest resources and forestry
- Textiles, clothing and footwear
- Hospitality, tourism and leisure
- Construction, public works, telecommunications and information technology, airport and railway infrastructure
- Production and distribution of energy
- Sanitation, waste collection and treatment.

The new Private Investment Law, approved by Law no. 10/18 of June 26th 2018, forms part of a continuous effort to make Angola more attractive to investors, in particular by providing benefits, automatic facilities and exemptions under a special regime. To this end, two private investment regimes were established:

- Prior Declaration Regime
- Special Regime.

The Prior Declaration Regime requires a simple presentation of an investment proposal to the competent body of the public administration for registration and the allocation of benefits. The Special Regime applies to private investments made in priority sectors of activity and development areas. For better regulation, the law establishes priority sectors of activity, such as:

- Education, training, higher education, technical-professional, scientific research and innovation
- Agriculture, food and agro-industry
- Specialised health units and services



- Reforestation, industrial transformation of forest resources and forestry
- Textiles, clothing and footwear
- Hospitality, tourism and leisure
- Construction, public works, telecommunications and information technology, airport and railway infrastructure
- Production and distribution of electricity
- Basic sanitation, collection and treatment of solid waste.

Development zones have also been delineated as follows:

- Zone A - Province of Luanda and Municipalities of the Provinces of Benguela, Huila and Lobito Municipality with the following benefits under the Special Regime:
  - Reduction in the property transfer (SISA) tax rate by half for the acquisition of offices and the establishment of the investment
  - Reduction of the final settlement rate and the provisional settlement rate of the Industrial Tax by 20% for a period of two years
  - Reduction in capital income tax of 25% for the distribution of profits and dividends for a period of two years.
- Zone B - Provinces of Bié, Bengo, Cuanza-Norte, Cuanza-Sul, Huambo, Namibe and other municipalities of the Provinces of Benguela and Huila with the following benefits under the Special Regime:
  - Reduction in the SISA tax rate by 75% for the acquisition of real estate for offices and the establishment of the investment
  - 50% Reduction in the real estate tax (IPU) for ownership of real estate for offices and establishment of the investment, for a period of four years
  - Reduction of the final settlement rate and the provisional settlement rate of the Industrial Tax by 60% for a period of four years and increase of amortisation and reintegration rates by 50% for a period of four years
  - Reduction in capital income tax of 60% for the distribution of profits and dividends for a period of four years.
- Zone C - Provinces of Cuando-Cubango, Cunene, Lunda-Norte, Luanda-Sul, Malange, Moxico, Uíge and Zaire with the following benefits under the Special Regime:
  - Reduction in the SISA tax rate by 85% for the acquisition of real estate for offices and the establishment of the investment
  - 75% Reduction in the real estate tax (IPU) for ownership of real estate for offices and establishment of the investment for a period of eight years
  - Reduction in the final settlement rate and the provisional settlement rate of the Industrial Tax by 80% for a period of eight years and an increase of amortisation and reintegration rates by 50% for a period of eight years.
  - Reduction in capital income tax of 80% for the distribution of profits and dividends for a period of eight years.
- Zone D - Province of Cabinda with the following benefits under the Special Regime:
  - SISA tax corresponds to half of the rate assigned to Zone C
  - Real estate tax (IPU) corresponds to half of the rate that is assigned to Zone C for a period of eight years
  - Industrial Tax corresponds to half of the rate assigned to Zone C for a period of eight years and an increase of 50%

in amortisation and reintegration rates for a period of eight years

- Capital income tax corresponds to half of the rate that is allocated to Zone C for a period of eight years.

The Prior Declaration Regime provides the following benefits:

- Reduction in the SISA tax by half for the acquisition of real estate for offices and the establishment of the investment
- Reduction in the final liquidation rate of the provisional settlement rate of the Industrial Tax by 20% for a period of two years
- Reduction in capital income tax of 25% for the distribution of profits and dividends for a period of two years;
- Reduction in stamp duty of 50% for a period of two years.

A law requiring a minimum amount of investment for foreign investors has been repealed. The new Private Investment Law no longer stipulates that it is mandatory to have an Angolan partner and it is now possible to incorporate companies with capital from abroad without a local partner. Private investors are guaranteed protection under Angolan law. In the case of expropriation, investors are entitled to fair compensation. Any change in the economic or political system which results in the nationalisation of private assets will entitle investors to receive immediate monetary compensation. Protection of intellectual property rights, licenses, banking, commercial and trade secrets is guaranteed. Parties also have access to the courts in order to obtain relief. Foreign citizens travelling to Angola must obtain a valid visa from Angola's Consular Services. Foreign investors are granted visas under a facilitated regime depending on the level of the investment.

Oil, mineral resources and diamond exploration by private entities are subject to specific legislation.

A licence issued by the Angolan National Bank (BNA) is required for any transfer of funds. The repatriation of dividends is subject to Angola's foreign exchange laws.

The Angolan government remains deeply committed to the promotion of Angolan companies and entrepreneurs and prefers Angolan companies in public tender processes. Companies operating in Angola are required to maintain a work force ratio of 30% foreign workers and 70% Angolan workers and to invest in the training of Angolan workers.

Foreigners wishing to carry out industrial or commercial operations in Angola may:

- Establish a Representative Office
- Establish a branch of the foreign company
- Incorporate a new Angolan company
- Acquire shares in an existing Angolan company
- Execute a consortium or an association agreement with an Angolan company.

A Representative Office cannot conduct independent business transactions in its own name. Its purpose is to act as a vehicle



to promote the foreign parent company in Angola and as such:

- may hire a maximum of 6 workers (or 8, in exceptional circumstances)
- must deposit a guarantee of USD60 000, which is returned when the Representative Office closes.

The establishment of a Representative Office requires the approval of the Angolan National Bank. The establishment of a branch company, a new company, the acquisition of shares in an existing company or the execution of a consortium/association agreement will require approval, depending on the size of the investment.

### INCORPORATION OF AN ANGOLAN COMPANY

In order to incorporate a company it is necessary to publish the articles of association in the Angolan official gazette and to apply for its commercial, tax and statistic registration. Under the 2015 Simplification Law, the execution of a public deed to incorporate a company is no longer mandatory. A private document in an approved template is now sufficient, and is required to be signed before an officer of the Commercial Registry Office. The execution of a public deed is still required for transfers of real estate in the incorporation process.

The Simplification Law also provides that the share capital of a limited liability company may be freely determined by the shareholders in the Articles of Association. Each share value may not be less than 1 Kwanza. The minimum value is not applicable to limited liability companies that are regulated by special laws or to which special authorisation is required for the company's incorporation (namely companies classified as financial institutions or which are incorporated under the Private Investment Regime).

The Simplification Law demonstrates the government's efforts to improve the process of incorporation of companies and their day-to-day operation. Notary and registration fees for the incorporation of a company were significantly reduced in 2014.

### EXCHANGE CONTROLS

The Angolan National Bank has implemented several regulations in order to protect foreign reserves and to stabilise the Angolan currency. Foreign exchange regulations apply to all payments and transfers between residents and non-residents concerning:

- Goods
- Current accounts
- Capital transactions.

The export of capital to foreign countries of amounts of USD1 000 000 or higher must be approved by the Angolan National Bank. Oil and gas companies are entitled to transfer amounts of up to USD3 000 000 abroad without the Angolan National Bank's prior approval for most types of transactions.

### TAXATION

The following taxes are levied by the Angolan Tax Authority (Autoridade Geral Tributária), AGT:

- Personal income tax
- Industrial Tax (Corporate Income tax)
- Capital income tax
- Real estate tax
- Consumption tax
- Stamp duty
- Inheritance and gift Tax

Resident companies are taxed on their worldwide income at a rate of 30%. The branch of a non resident company is taxed only on its Angolan revenues at 30 %. The supply of services by foreign entities is taxed at a rate of 6.5% and is required to be withheld by the Angolan contracting party upon the payment of the service. A 2% property transfer tax (SISA) is payable by companies.

A special tax regime applies to companies in the petroleum and mining sectors.

Personal Income Tax is payable on a sliding scale of up to 17% by individuals on their Angolan income regardless of their residence or nationality. Self-employed individuals are taxed at a flat rate of between 6.5% and 30% depending on turnover.

A tax amnesty for tax transgressors has been granted in respect of corporate personal tax, stamp duty, capital gains tax and property tax committed since 2012.

The Tax Authority is responsible on a quarterly basis to identify defaulting tax payers and report them to the BNA, the Ministry of the Interior and other applicable authorities. Defaulting taxpayers may be ineligible to (i) carry on capital and goods businesses (ii) renew or apply for work visas and (iii) carry out import or export operations, until their tax situation has been regularised.

In 2016 Angola had not concluded any double taxation agreements with any country. However the government is considering concluding such agreements to promote private investment and increase domestic production. Angola entered into a double taxation agreement with the United Arab Emirates early in 2017.

### IMPORT / EXPORT

Oil remains by far Angola's single major export. The government however has implemented significant measures in order to diversify the economy and the range of its exports. It has been reported that the agricultural sector is Angola's fastest growing sector outside the mining sector. The Customs Tariff of Import and Export Duties was approved in 2013 and increased customs duties on locally produced goods. Customs duty





exemptions may be granted on equipment imported as part of foreign investment. The Customs Tariff lists certain types of equipment which are exempt or subject to reduced tax rates.

## LEGAL SYSTEM

Angola has a codified legal system which guarantees the equal treatment of Angolan and foreign individuals and companies. The Angolan judicial system comprises the Supreme Court and Provincial Courts in Angolan provinces. The Constitutional Court was established in 2008.

Foreign judgments may be enforced in Angola once recognised by the Supreme Court. In 2016 Angola acceded to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. The enforcement of foreign arbitral awards previously involved a process of revision and confirmation by the Angolan Supreme Court. This will no longer be required.

Angola's Arbitration Law is strongly influenced by the United Nations Commission on International Trade Law (UNCITRAL) model law. An Agreement on Legal and Judicial Cooperation has been concluded with Portugal. An Arbitration Centre, the C.R.E.L., has been created under the umbrella of the Ministry of Justice and has been a reliable centre for extrajudicial dispute resolution since 2014.

## INTELLECTUAL PROPERTY

As a member of the World Intellectual Property Organization (WIPO), Angola is committed to the protection of intellectual property and has adopted the Paris Convention for the Protection of Intellectual Property. The Angolan Industrial Property Institute promotes the registration of patents, trademarks, names, badges, industrial designs, utility models, rewards and provenance indications.

## FINANCIAL SERVICES / INSURANCE

The Financial Institutions Law regulates banking and non-banking activities, such as insurance. The Angolan National Bank supervises banking institutions. Other financial institutions are supervised by the Capital Markets Commission or the Angola insurance Supervision and Regulation Agency.

In March 2014, the Angolan stock exchange, or "Bolsa de Dívida e Valores de Angola" (BODIVA), was established. BODIVA has a management board which is responsible for ensuring the transparency, efficiency and security of transactions, encouraging the participation of small investors and competition between operators. BODIVA began trading government bonds in May 2015. Counter trading on the equity market of BODIVA was expected to commence in 2017 but is still being prepared and the trading of futures is expected to commence in 2019. A committee to review, study and create new laws and regulations relating to stock markets has been appointed and has published the new statutes of the Capital Market Commission as well as laws regulating collective investment schemes, brokers, distributors and companies managing regulated markets and financial services. Angola has a significant number of insurance companies and banks.

## KEY STRATEGIC GROWTH INITIATIVES BY GOVERNMENT/ PRIVATE SECTOR

Angola aims to shift the focus of its economy away from the oil sector by expanding other economic sectors, such as agriculture, financial services and mining, and is currently planning a number of economic and fiscal measures to implement this strategy further.

Angola is also investing in the rehabilitation and construction of its infrastructure, roads and highways. Water and electricity production and distribution projects are part of the government's policy to improve the wellbeing of the population. For this reason the government has recently announced that the management and distribution of water will be privatised.

The government supports and provides incentives to private projects in the agricultural, cattle raising and forestry sectors as well as associated industrial projects.

In February 2016 a strategy was approved by Presidential Decree to deal with the crisis resulting from the marked drop in the international oil price. Measures implemented by the State so far include:

- Private investment and increase in domestic production  
The government is encouraging foreign investment by entering into Agreements on Mutual Promotion of Investments and Agreements to Avoid Double Taxation, as well as improving the visa application process and promoting partnerships between foreign and local investors. Specific programs will be implemented aimed at increasing domestic production through private investment and short-term exports. Mechanisms to promote exports, such as credit lines and export credit insurances, will also be implemented. The following products were identified as having potential for short-term exports: diamonds, ornamental rocks, cement/building materials, coffee, honey, fishery products and derivatives, wood, iron ore, alcoholic and non-alcoholic beverages, legumes, vegetables and tubers, iodized salt and services (transport, tourism and telecommunications). Renewable energy resources and logistic platforms projects are also to be implemented.
- Increasing non-oil tax revenues  
The withholding of several taxes under the Integrated System for State Financial Management (SIGFE) is proposed. Furthermore, the Program for Maximization of Tax Revenues for 2016 (PPRT) defines 25 priority measures such as the supervision of non oil taxes by oil companies, oversight of tax payments by key companies in the market, recovery of tax and customs debts, collection of capital applications tax (IAC) by the Angolan National Bank (BNA), collection of taxes withheld by public entities, liens over credits and movable and immovable property, review of the minimum profits table of personal income tax (IRT) and promotion of electronic communication awareness campaigns of tax obligations.





- Foreign exchange and monetary political policy  
The grant of credit to the production sector is a priority. BNA will adopt flexible measures on currency policy. Special attention to commercial banks with liquidity problems is being given.
- Rationalisation of imports  
The government intends to discourage the import of everyday consumer goods by the adoption of appropriate tax measures.
- Increase of the price of fuel  
Fuel prices will continue to increase to align them with prices on the international market.

## TREATIES AND BILATERAL AGREEMENTS

Angola is a member of the Multilateral Investment Guarantee Agency (MIGA), which provides dispute settlement assistance and guarantees for private investors. Angola has signed bilateral investment treaties with Portugal, South Africa, the United Kingdom, Italy and Germany, which have not yet been ratified. A bilateral investment treaty with Cape Verde has been executed and ratified.

Angola has adopted the Southern African Development Community (SADC) Free Trade Protocol, which harmonizes trade and customs regimes and reduces tariffs among SADC countries. Angola has also signed customs cooperation agreements with Portugal and São Tomé and Príncipe. Treaties have been signed with South Africa, the Community of Portuguese language Countries (CPLP), Namibia and the Democratic Republic of Congo.

Angola recently signed a bilateral agreement with the United States of America (USA) concerning of the Foreign Account Tax Compliance Act (FACTA) aimed at combatting tax evasion by the exchange of financial information between the two countries. Angola has also adopted the International convention on the Simplification and Harmonization of Customs procedures and recently adopted the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

## MEMBERSHIP OF INTERNATIONAL AND REGIONAL ORGANIZATIONS

Angola is a member of the United Nations (UN) and all of its key agencies, the Southern Africa Development Community (SADC), the Community of Portuguese language Countries (CPLP), the International Monetary Fund (IMF), the African Union (AU), World Trade Organization (WTO), World Bank, Organization of Petroleum Exporting Countries (OPEC) and African Development Bank (ADB), among others.

## LABOUR RELATIONS

The new General Labour Law, Law no. 7/2015 was approved on 15 June 2015. This law is a more “employer friendly” than its predecessor. Parties are now given the right to decide on the duration of the contract in question. Large companies are allowed to renew limited duration contracts for a period of 5

years. Micro, small and medium-sized companies are allowed to renew these contracts for a period of 10 years. Under the new Labour Law labour disputes may be referred to arbitration.

The average working week is 44 hours. In special circumstances, working hours may be extended to 54 hours per week. In each calendar year, workers are entitled to 22 working days of paid vacation leave. Women are entitled to a minimum of 3 months maternity leave.

Angolan law provides for dismissal for justified reasons after the employer has undertaken disciplinary proceedings. Angolan law allows for dismissal for justified reason without compensation. In the case of unjustified dismissal, the worker has the right to receive compensation.

Foreigners who wish to work in Angola need to execute an employment contract (or a promissory employment contract) in order to obtain a valid working visa.



# BOTSWANA

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### COUNTRY INFORMATION

Botswana is a landlocked country with a population of about 2.3 million. The urban population accounts for about 61% of the total population.

### TYPE OF GOVERNMENT

Botswana is a stable multiparty democracy.

### LATEST GDP FIGURES

The Botswana economy had a posigrowth of 4.3% in 2016 and the Government of Botswana predicts growth rates of 4.7% and 5.3% for 2017 and 2018 respectively. Real gross domestic product (GDP) grew by 4.8% in 2017 and the Government anticipates a growth of 4.4% in 2018. The overall fiscal balance for the 2017 is estimated to be a surplus of 16 Billion Pula.

### INFLATION RATE

The 2017 domestic inflation rate was 3.3% and the Bank of Botswana intends to keep inflation within a target range of 3–6%.

### INVESTMENT CLIMATE

Botswana is a stable democracy with an open economy. Botswana's potential as a centre for trade and investment was enhanced by the recent signing of the EU-Southern African Development Community (SADC) Economic Partnership Agreement (EPA) which accords duty and quota –free market access for Botswana's exports to the EU market.

The Government is making substantial efforts to create a favourable climate for private and foreign investment by imposing minimal restrictions on foreign investors and the privatisation of state entities. Government is considering the enactment of an Investment Facilitation Law, which will establish an investment code and stipulate service standards and turnaround times for encouraging investors.

The Botswana Investment Trade Centre (BITC) has now established a one-stop investor service centre at which it is possible for an investor to obtain all permits required to establish and operate a business in or from Botswana.

### FORMS OF BUSINESS

- Private or public limited liability company
- External company (branch of foreign company)
- Company limited by guarantee
- Partnership
- Common law trust
- Sole proprietorship
- Societies - associations of persons.

The Companies Act provides a simplified framework for the incorporation of companies and other legal entities (such as close corporations) and imposes strict obligations on corporate governance.

### FORMATION OF A COMPANY

Non-residents may hold shares in a Botswana company. One resident director is required for a private company and two resident directors for a public company. The registered office must be in Botswana. Auditors are required for non-exempt companies who must be certified public accountants practising in Botswana. Company secretarial duties are performed by secretarial services companies, most of which are attached to accounting firms. Companies are usually registered within 6 weeks.

### EXCHANGE CONTROLS

Botswana has abolished all exchange control regulations and foreign investment is welcomed. Dividends and capital gains on equity investments received from a foreign source are, subject to tax being paid, freely remittable out of Botswana in foreign currency. Interest on and the capital of foreign loans are freely remittable in foreign currency. Upon disinvestment a non-resident may remit capital in foreign currency. Foreign currency can be held and earn interest with a bank in Botswana.

Botswana securities denominated in a foreign currency may be purchased using foreign currency without converting the foreign currency into Botswana Pula. The proceeds of such Botswana securities may be paid in foreign currency and



freely remitted anywhere in the world without notification to the Central Bank.

## TAXATION

Tax is levied on income that is actually derived or deemed to be derived from Botswana sources.

Foreign source dividends and interest are deemed to be from a Botswana source and are taxable on accrual.

There is a single corporate tax rate of 22%. The corporate tax rate for non-resident companies is 30%.

The tax rate for manufacturing, International Financial Services Centre (IFSC) companies and entities operating as technology hub companies is 15% in respect of approved activities. These rates do not apply automatically and must be applied for and approved by the relevant authorities.

There are also a number of special economic zones within Botswana that offer various incentives to entities setting up and operations therefrom. In some instances, tax rates within a zone are as low as 5%.

## WITHHOLDING TAX

Withholding tax is 7.5% on all dividends paid.

Payments of rent to a resident or non-resident for the use of any land or building or both are subject to withholding tax at the rate of 5% unless:

- The rent is paid by an individual and it is not claimed or will not be claimed as a business expense by such person
- The payment of rent is less than P36 000 during any tax year
- The rent is paid in respect of accommodation in a hotel, motel, guest house or lodge
- The recipient of the rent is a person exempt from taxation.

Any surplus amount paid by a mine rehabilitation fund to a person who contributed to the fund is subject to withholding tax of 10%. The withholding tax represents a final charge to tax and the amount paid by the mine rehabilitation fund will not form part of the recipient's assessable income.

Payment of commission or brokerage for or in connection with the procurement of goods or services is subject to withholding tax at the rate of 10%. Such withholding tax will only apply to payments in excess of P36 000 in any tax year.

There is also withholding tax at a rate of 15% on management and consultancy services provided cross border by a non-resident to a Botswana resident.

## CAPITAL GAINS TAX

Tax is payable in respect of immovable property on 100% of the capital gains at the income tax rate of the particular tax payer. The gain is calculated by deducting from the sale price the cost of acquisition and the cost of any improvements. A prescribed escalation factor is applied to other movable property, including shares in a company, on 75% of the gain which is calculated

by deducting from the sale price the cost of acquisition of the property sold.

Capital gains tax is not payable on the sale of shares in a public company, as defined in the Income Tax Act, if the shares, units or debentures were held by the tax payer for a period of at least one year prior to the date of disposal.

## DOUBLE TAXATION AGREEMENTS

Botswana has entered into double taxation avoidance agreements with Barbados, Finland, Sweden, Malawi, Mauritius, Zambia, France, Namibia, Russia, Seychelles, South Africa, United Kingdom, Northern Ireland, Zimbabwe, India, Mozambique, Ireland, China, Swaziland and Lesotho. Botswana is currently negotiating DTA's with Belgium, Tanzania, Luxembourg, Kenya, Angola, Nigeria, Uganda and Japan.

## VAT

Value Added Tax (VAT) is levied at 12%.

## IMPORT / EXPORT INCENTIVES / SUPPORT

The Botswana Investment Trade Centre facilitates the establishment of export-oriented enterprises and selected services.

## MONETARY POLICY

Implementation of monetary policy is entrusted to the Central Bank of Botswana. Price stability is the main goal of monetary policy using indirect policy instruments and a framework for forecasting inflation.

## LEGAL SYSTEM

The legal system of Botswana is a mixture of Roman-Dutch and English common law principles. There are also local systems of tribal law and custom in rural districts, which govern everyday disputes and property relations but are subordinate to statutory law. The superior courts in Botswana are the Court of Appeal, the High Court and the Industrial Court.

## INTELLECTUAL PROPERTY

Intellectual property is protected by the Industrial Property Act which gives effect to various international conventions, treaties and protocols to which Botswana is a party.

## FINANCIAL SERVICES/INSURANCE

Banking services are regulated by the Banking Act, the Bank of Botswana Act and the National Clearing and Settlement Systems Act with the Central Bank as the regulatory authority.

Efforts to improve the efficiency of this sector include the expansion of electronic payments. In this respect, the relevant



systems, such as the Electronic Clearing House and Botswana Interbank Settlement System, are monitored by the Bank of Botswana to ensure that they meet important public policy objectives and attributes of safety, efficiency, stability and integrity.

Non-bank financial services are regulated by the Non-Bank Financial Institutions Regulatory Authority in terms of the Non Bank Financial Institutions Authority Act (as read with other financial services laws including the Securities Act, the Insurance Industry Act, and the Retirement Funds Act).

### KEY STRATEGIC GROWTH INITIATIVES BY GOVERNMENT/ PRIVATE SECTORS

An Economic Stimulus Programme (ESP) was unveiled as a holistic action plan for achieving the goals of stimulating economic growth, accelerated employment creation and the promotion of economic diversification. The following have been identified as key sectors that will drive the programme: infrastructure, agriculture, tourism and manufacturing and services, enabled by the establishment of Special Economic Zones (SEZs) and the Economic Diversification Drive (EDD). In addition to stimulating inclusive economic growth, a key ESP objective is to re-boot government to ensure the urgent delivery of existing national priorities.

A board for the Special Economic Zone Authority has been appointed and a technical advisor for the rollout of the zones has been appointed. Priority is being given to the development of the mixed use Special Economic Zone at Selebi-Phikwe. Selebi-Phikwe Economic Diversification Unit (SPEDU) has engaged with communities in the SPEDU region to resuscitate and support development projects in such areas as piggyery, fish and farming.

The government is employing sector specific strategies to promote local industries. A statutory instrument to restrict importation of salt in small quantities has been introduced to promote market access for locally packaged salt.

The government realises that sustainable employment creation will require local and foreign investment, concentrating on Southern Africa and development in key niche areas where Botswana has a natural advantage (for example tourism).

The government continues to implement programmes that enhance citizen participation in economic activities and business ventures. A large share of government expenditure goes towards education, training and health.

Botswana Development Corporation (BDC) has recorded profits for the two years up to June 2016. Since mid-2015, just over P400 million worth of new investments has been approved with an additional P800 million expected to be approved for funding in the next few months.

Botswana's Industrial Development Policy aims to promote highly productive and efficient export industries integrated with foreign markets and technology, develop competitive manufacturing and service sectors able to compete internationally, grow supporting services and component manufacturers, create links between small and medium

enterprises with foreign firms and develop small and medium enterprises for the domestic market.

To further stimulate job creation the government has adopted an accelerated programme for job creation focused on key areas that have a high potential for labour intensive economic growth. In addition to EDD and the ESP targeted areas of agriculture, tourism and infrastructure our efforts to stimulate the economy will be given additional impetus through the establishment of Special Economic Zones (SEZs) as geographically defined economic areas providing investor friendly business environments.

A special economic zone for Kasane-Kazangula will, for example, cater for the expanded tourism, construction, transport services and market access for local agriculture that will result from the construction of the road and rail bridge at Kazangula and the water pipeline to Pandamatenga, along with associated infrastructure.

The Botswana International Trade Centre (BITC) continues to promote the country as a competitive location for investment. Business start-ups will also continue to receive critical support from the Citizen Entrepreneurial Development Agency (CEDA), which since 2008 has funded 2,288 enterprises with a total value of nearly P2.1 billion, in the process creating over 11 000 jobs. During the 2015/16 financial year, CEDA assisted 418 new enterprises with a total monetary value of P400 million, collectively generating 2,952 new jobs. The Local Enterprise Authority (LEA) is also playing its role in nurturing a culture of entrepreneurship.

### TREATIES AND BILATERAL AGREEMENTS

Botswana is a signatory to the Lome Convention with the European Union and has duty free or preferential access to the US market under the General System of Preferences with no quota restrictions.

The African Growth and Opportunity Act (AGOA) of the United States Government provides duty-free and quota-free entry of garments produced in Botswana from yarn or fabric of African or American origin (to be increased to yarn of any origin).

There are bilateral agreements with China and regional countries through the Southern African Customs Union (SACU) and Southern African Development Community (SADC) which allow preferential or limited duty-free trade.

### MEMBERSHIP OF INTERNATIONAL AND REGIONAL ORGANISATIONS

Botswana is a member of the World Bank, the United Nations (UN), SACU, SADC, the International Monetary Fund (IMF), the African Union (AU) and the AU's New Partnership for Africa's Development (NEPAD). Botswana is a member of the World Trade Organization (WTO) and a signatory to the Multilateral



Investment Guarantee Agency (MIGA) which protects investments from nationalisation or expropriation. Botswana continues to play an active and influential role in shaping the global agenda in line with its national priorities and international norms. Botswana further remains committed to the International Criminal Court (ICC) and international Criminal Justice system. The domestication of the Rome Statutes is at an advanced stage and was recently brought before Parliament.

## ROAD AND TRANSPORT

There has been measurable progress in the completion of mega road projects. In regard to the Kazungula Bridge Project, temporary works on the Zambian side is now complete whilst on the Botswana side it is 86% complete. Construction has also commenced on the Charleshill-Ncojane road in June 2016. The road sector's primary goal is to decongest public highways, especially the A1.

Botswana Railways is currently implementing its turnaround strategy to address current and future environmental dictates. Botswana Railways (BR) is refurbishing its station buildings in line with the passenger train service. Aged rolling stock continues to be a challenge in meeting the demand of BR services.

The new Air Traffic Control Tower and Technical Block construction at Maun Airport was completed and handed over in May 2016 with the Kasane Terminal building project expected to be completed in April 2017. The International Civil Aviation Organisation (ICAO) conducted a validation mission, which affirmed that Botswana had risen from 53.78% to 71.58% of effective implementation of ICAO standards.

## WATER

The efforts to maintain water supply security are challenged by recurring drought. The government continues to undertake measures, including the development of water infrastructure such as dams and water pipelines and exploit alternative water sources.

Government has established a Programme Management Office to oversee the implementation of major energy and water projects.

The extension of the North South Carrier from Moralané Break Pressure Tank to Palapye is complete and is under trial. This should improve water supply to the Greater Gaborone catchment area.

The infrastructure of the Dikgatlhong and Lotsane Dams have been completed while the associated infrastructure component for the Thune Dam (which includes the construction of a water treatment plant and distribution pipelines to ten villages in the Bobirwa Sub District) is progressing.

Other initiatives to improve water supply and sanitation in the country include the Maun Water Supply and Sanitation Phase II project, the Kanye and Molepolole Sanitation project, the Seronga/Gudigwa water supply project and the Shakawe Water Treatment Plant project.

Government is also exploring the potential water transfers with neighbouring states such as Lesotho and South Africa and the

feasibility of drawing water from aquifers along our border with Namibia and South Africa.

## ENERGY

The Botswana energy sector is regulated by the recently established Botswana Energy Regulatory Authority (BERA). BERA is responsible for the issuing of power generation and power distribution licenses to IPPs. The regulations and rules for the sector are currently being formulated and are expected to be issued soon.

Independent Power Producers are being procured for the development of an additional 300MWs at the existing Morupule B Power Station and the Morupule A power station is undergoing remedial works.

There has been a greater emphasis on the expansion of solar power and other green technologies to meet energy demands. A tender for a 100MW Sola Power Station has been issued.

With respect to the petroleum sub-sector, a quality monitoring program of petroleum products to protect consumers and the environment is in place. The construction of the Tsele Hills and expansion of the Francistown strategic reserves are progressing and it is expected that they will supply 42 days' worth of additional stock. Licenses are also now required for the importation and storage of petroleum products. The licensing authority is BERA.

A draft National Energy Policy was submitted to and approved by Cabinet in 2015. This is yet to be submitted to Parliament. This policy document is intended to guide the energy sector going forward.

## TELECOMMUNICATION

The listing of Botswana Telecommunications Corporation Limited (BTCL) was successfully implemented. Government has introduced a Postal Infrastructural Development Programme to upgrade existing and develop new post offices in all major villages, towns and cities. The Botswana Communications Regulatory Authority (BOCRA) continues to monitor the performance of the telecommunications networks. Through Botswana Fibre Networks, the government is continuing to extend the national fibre backbone network.

## BOTSWANA STOCK EXCHANGE

The Botswana Bond Market Association is due to begin the formal implementation of its mandate in collaboration with the Botswana Stock Exchange to resolve structural issues relating to impending bond market development, with a view to promote efficiency and liquidity of the bond market.

The new Botswana Stock Exchange Listing Requirements have been completed and are with the Non Bank Financial Institutions Regulatory Authority for approval. An important





introduction in such Listing Requirements is the introduction of an SME board.

## TRADE AND INDUSTRY

Efforts by agencies such as Botswana Investment Trade Centres (BITC) continue to promote domestic and foreign direct investment into the sector and provide targeted fiscal incentives to major manufacturing projects to enhance the value addition and competitiveness of their products.

## INFORMATION AND COMMUNICATIONS TECHNOLOGY

The government continues to leverage Information and Communication Technology (ICT) to improve the quality of life for Batswana, while positioning the country as a regional ICT hub.

BOCRA continues to monitor the performance of telecommunications networks and the concerns raised by the general public relating to the unsatisfactory quality of service of some of the networks.

## MINING

Botswana is renowned for its diamonds but also has deposits of copper, nickel, cobalt, gold and soda ash which are currently being mined or developed. While the minerals sector remains a principal source of revenue and primary sector for economic growth and diversification, it is currently challenged by depressed markets.

The ownership of minerals in Botswana vests in the government and mineral concessions can only be acquired in accordance with the licence regime prescribed under the Mines and Minerals Act. There are three main mineral concessions that may be issued in terms of the Act, namely prospecting licences, retention licences and mining licences.

Mining licences (except in respect of diamonds) are granted for periods of up to 25 years. The government has the right to acquire an equity interest of up to 15% in a company that applies for a mining licence.

A 5% state royalty is payable in respect of precious metal production, 3% for base metals and 10% for precious stones (including diamonds).

The Diamond Cutting and Precious and Semi-Precious Stones Amendment Bills, aimed at adapting to current downstream industry developments for improving business conditions and enabling growth, have been finalised. The amendments are expected to facilitate the policy on further beneficiation and citizen empowerment among other key issues.

## AGRICULTURE

The agricultural sector implemented initiatives to improve access roads to production centres, use of treated sewage water for irrigation, electricity connection to production clusters, improvement of infrastructure at horticulture production areas and commissioning of a National Agro-Processing Plant. These initiatives have contributed to food security and employment creation.

Crop production was affected by periods of extended heat waves and low moisture levels. The national cereal production for 2015/2016 was 54 374.20 metric tons which is 18.1% of the National Cereal requirement of 300 000 metric tons. In 2016 and early 2017 Botswana was declared drought stricken. In response to changing climatic conditions, government is promoting Climate Smart Agriculture technologies such as Conservation Agriculture.

Government is also strengthening its efforts to exploit sewage water for irrigation. For example at Glen Valley 203 hectares have been allocated to 47 farmers. The Serowe grey water re-use project is also progressing well and should be completed by early 2017.

The Botswana Meat Commission (BMC) has increased its revenue from 2013 through 2015 by about 20.4%. The BMC has also grown its export to Europe from about 6 000 tons in 2013 to just over 9 000 tons in 2015 while hoping to further increase exports in 2016 to over 10 000 tons. The Dairy Development Strategy adopted last year is beginning to bear fruit as Sunnyside farm near Lobatse has been leased to a dairy company. Production in 2016 was 4.9 million litres compared to 3.4 million litres the previous year when only 8.1% of the national milk demand was met.

Government continues to implement agricultural support schemes such as ISPAAD, LIMID, ASS and the National Agricultural Research and Development Institute (NARDI) which was launched in June 2015 following the decision to merge the Department of Agricultural Research with the National Veterinary Laboratory and the National Food Technology Research Centre (NFTRC). This will focus in areas of promoting research, innovation and training. The Botswana University of Agriculture and Natural Resources is also carrying out research in the utilization of indigenous plants for medicinal and food purposes.

## LABOUR RELATIONS

Botswana has a reputation for stability at all levels, including labour relations. The government has a low level of ratification of International Labour Organisation (ILO) treaties which indicates a reluctance to commit to or adopt a pro labour movement agenda. However the government continues to review labour laws so as to align them with changing needs. The Trade Disputes (Amendment) Act of 2016 came into effect in November 2016 whilst amendments to the Employment Act and the Trade Unions and Employers' Organisations will commence during the last quarter of 2016/2017 financial year.

## COMPETITION LAW

The Competition Authority has overseen merger applications involving foreign investors, among other transactions. Cross-border transactions can strengthen the capacity of local companies as well as empower citizens through ownership of shares in the merged business. A total of P800 million was injected into the economy in the 2015/16 year because of merger transactions.





# BURKINA FASO

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### COUNTRY INFORMATION

Formerly called the Republic of Upper Volta, Burkina Faso is a landlocked country in the middle of West Africa's "hump". It is geographically in the Sahel, the agricultural region between the Sahara Desert and coastal rain forests. Most of central Burkina Faso lies on a savanna plateau 200-300 meters above sea level with fields, bush, and scattered trees. The largest river is the Mouhoun (Black Volta), which is partially navigable by small craft.

Its size is 274 200 square kilometres with an estimated population of 18.935 million (2017 - IMF), 28.2 % of which are thought to be urban. The climate is characterized by warm, dry winters and hot, wet summers. Its landscape is mostly flat but hills dot the west and southwest regions of the country.

### POLITICAL SYSTEM

The Constitution of 2 June 1991 established a semi-presidential government with a parliament which can be dissolved by the President of the Republic. In 2000 the Constitution was amended to reduce the presidential term to five years. The Constitution is being changed to reduce the powers of the President.

The Parliament consists of one chamber known as the National Assembly which has 127 seats with members elected to serve five year terms. There is also a constitutional chamber composed of ten members and an economic and social council whose roles are purely consultative.

The attempt by the former President Compaoré to modify the constitution in order to prolong his term of office led to a mass insurrection on 30 and 31 October 2014 which led to his ousting. Thereafter, new transitional institutions (President, Government and Parliament) were set up to lead the country to free and transparent elections by November 2015. A new President and Parliament was elected on November 29, 2015 through free and transparent elections.

### LATEST GDP FIGURES

GDP per capita: US\$ 753.268

GDP: US\$ 14.659 billion (IMF- 2018)

Inflation Rate (consumer prices)

2.0 % (2018 estimate).

### INVESTMENT CLIMATE

The mining sector in Burkina Faso is of great interest to investors. American, Australian and South African corporations have recently been granted mining permits. Tax exemptions applying to investments in addition to the enactment of the investment code offer an attractive climate to foreign businesses. Moreover, fully owned foreign ownership of companies is allowed except in the mining sector. The state is entitled to ownership of at least 10 per cent of the share capital of exploitation companies. There is a Chamber of Commerce which conducts feasibility studies and helps develop business links. There are also commercial banks with correspondent relationships with American and European banks.

### FORMS OF BUSINESS

The Organisation pour l'Harmonisation en Afrique du Droit des Affaires (OHADA) has a Uniform Act on Companies which sets out various forms of business vehicles available to domestic and foreign investors such as: a société en nom collectif (general partnership), a société en commandite simple (limited partnership), a groupement d'intérêt économique (economic interest grouping), a société à responsabilité limitée (limited liability company) and a société anonyme (Public limited company). However, the following business vehicles are the most attractive for investors:

- A société anonyme (SA), which is a limited liability company with either a board of directors or a unique shareholder. The minimum share capital required is CFA 10 000 000 (about USD 20 000). Share transfers to third parties are unrestricted unless otherwise stated by the company's statutes which may require either the consent of the board of directors or the general assembly of shareholders;



- A société à responsabilité limitée (SARL), which is administered by one or more directors called “gérants”. The minimum share capital required is CFA 5 000 (about USD 9 000). Share transfers are regulated by the company's statutes and may be performed freely between shareholders but transfers to third parties require the prior consent of the majority of shareholders.

Joint ventures are often formed in the mining and the agricultural sectors.

## FORMATION OF A COMPANY

Below are the processes and estimated times (where applicable) to incorporate a company:

- Deposit subscribed capital in a bank (2 days)
- Conduct background criminal check of manager (1 day)
- Notarize the declaration of capital subscription and deposit the two acts at the notary office within three days
- Register at the Centre des Formalités de Entreprise (CEFORE) for a company registration tax number (IFU), and social security number (7 days)
- A single application form must be submitted to complete the company registration with the Trade Register and Personal Credit Bureau (RCCM) to obtain the fiscal and the professional license at the Ministry of Commerce
- Once the form is submitted, CEFORE organizes the registration with the court and other authorities. Companies are assigned a unique company identification number for company registration, fiscal identification and social security affiliation.

The official time for the completion of the registration process is 7 working days. However, it takes longer in practice because CEFORE forwards the documents to the relevant authorities. Publication can be made directly on the CEFORE website ([www.me.bf](http://www.me.bf)) for a fee of CFA 10 000 (about USD 17) or an official newspaper for a fee of CFA 52 300 (about USD 87). Costs for completing the formalities for the incorporation are CFA 47 500 (about USD 79). However the CFA 47 500 amount is paid to the CEFORE and does not include all the incorporation fees, which may be higher and depend on the amount of the share capital.

## EXCHANGE CONTROLS

Foreign investors are entitled to transfer all funds from the business, dividends, and receipts from liquidation, assets and wages. However, transfers must be completed before certified intermediaries. Exchange controls are primarily regulated by the rules of the West African Economic and Monetary Union. Transfers are authorized in the original currency of the investment.

## TAXATION

Mandatory taxes to be paid by a company per annum are as follows:

- Corporate income tax (27.5% of net profit)
- Social security contributions (16% of gross salary)

- Business license (8% + a fixed amount)
- Payroll and apprentice tax (3% of gross salary)
- Capital gains tax (10%)
- Mortmain property tax (10%)
- Tax on insurance contracts if any (20%)
- Stamp duty on contracts (CFA 200, about USD 0.33 per page)
- Value Added Tax (18%)
- Motor vehicle tax if any (CFA 50 000, about USD 84 based on the weight of truck).

Burkina Faso's customs fees are based on goods ad valorem and include a 5% customs fee, an import fiscal duty and a value added tax based on the type of equipment.

## IMPORT / EXPORT

Imports account for 2377,34 billion CFA francs (2015) of the economy and consist mainly of machinery, agricultural products, electrical goods and petroleum. Exports account for 1882,76 billion CFA francs (2015) and consist mainly of agricultural goods, cotton, livestock and shea butter. Gold is an important export.

## MONETARY POLICY

Burkina Faso's monetary policy is largely based upon liberalisation. It is determined by the Central Bank of West African States (BCEAO) whose priority is to control inflation. Its monetary policy remains influenced by the European Central Bank as the CFA franc is pegged to the Euro. Burkina Faso's BCEAO-led monetary policy is accordingly strongly influenced by the monetary policy conducted in the Euro zone.

## LEGAL SYSTEM

The legal system is based on the French civil law system. The judicial system is made up of two branches: the judiciary branch and the administrative branch. At the top of the judiciary branch is the Cour de Cassation. Beneath it are three courts of appeal (at Ouagadougou, Bobo-Dioulasso and Fada N'Gourma) and 25 Tribunals (Tribunal de Grande Instance), the most important being in Ouagadougou, Bobo-Dioulasso, Ouahigouya and Fada N'Gourma which deal with cases involving civil and criminal law. At the same level are the Tribunal de Commerce (Tribunal of commerce) at Ouagadougou and Bobo-Dioulasso dealing with commercial law and Tribunal du Travail (Labour court) at Ouagadougou, Bobo-Dioulasso and Koudougou. At the top of the administrative branch is the Conseil d'Etat. Beneath it are three administrative Courts of appeal (at Ouagadougou, Bobo-Dioulasso and Fada N'Gourma) and 25 administrative tribunals which deal with cases involving administrative law. There is also a High Court of Justice to try the President for treason and ministers for crimes.

The constitution provides for a number of safeguards including a right to public trial, right of access to counsel and a right to appeal.



In 1995 an Office of Ombudsman “Mediateur du Faso” was created for resolving disputes between the state and its citizens. During the transition, the Conseil National de la Transition (CNT) amended the Constitution provisions concerning the appointment of judges. Their appointments are managed by the Burkina Magistrates’ Council presided by the President of the Cour de Cassation.

## INTELLECTUAL PROPERTY

Burkina Faso is part of both the African Intellectual Property Organization (AIPO) and the World Intellectual Property Organization (WIPO). The AIPO amended the Bangui Protocol of 1977 which sets out common procedures based on a uniform system of protection (in addition to provisions included in international conventions to which member states have acceded).

Available protections are:

- Patents: protected for a period of 20 years without provision for renewal.
- Trademarks: protected for an initial 20-year period with a provision for renewal.

## FINANCIAL SERVICES / INSURANCE

The insurance market was liberalized in 1978. Seventeen insurance companies now operate in Burkina Faso (IZF, 2017) and handle both life and non-life insurance. The non-life sector (67% of total portfolio) is dominated by motor vehicles (44% of non-life), the remainder is mainly fire (11% of non-life), other property damage and personal accident insurance.

The insurance sector in Burkina Faso is regulated by the Inter-African Conference on Insurance Markets (CIMA). CIMA is charged with the approval, withdrawal and the supervision of insurance companies.

## KEY STRATEGIC GROWTH INITIATIVES BY GOVERNMENT

The Government has carried out substantial reforms in the banking, financial and private sectors which has enhanced economic growth. This led Burkina Faso to benefit from USD 700 million in debt relief under the Highly Indebted Poor Countries initiative (HIPC) and an education grant awarded by the Millennium Challenge Account. For example, 42 state-owned companies have been restructured including 19 major corporations in banking, brewing, mining, medicine and manufacturing. The state-owned telecommunication utility has been privatised.

## TREATIES AND BILATERAL AGREEMENTS

Burkina Faso acceded to the New York Convention on the Enforcement of Foreign Arbitral Awards on 23 March 1987. The Berne Convention and the Kyoto Protocol on climate change were ratified on 31 March 2005. Burkina Faso is a member state of the Paris Convention on Climate and has ratified it by submitting the documents of ratification on 11 November 2016.

## MEMBERSHIP OF INTERNATIONAL AND REGIONAL ORGANISATIONS

Burkina Faso is a member of the Economic Community of West African States (ECOWAS), West African Economic and Monetary Union (WAEMU) and several other organisations including the Multilateral Investment Guarantee Agency (MIGA), the African Union (AU) and its New Partnership for Africa’s Development (NEPAD) programme. It acceded to the World Trade Organization (WTO) in June 1995 and is part of the African, Caribbean and Pacific group of states.

## ECONOMIC DEVELOPMENTS

Many trade restrictions have been removed and tariffs reduced in order to generate investment. Burkina Faso is eligible for direct loans from the World Bank, the European Union and the African Development Bank. A structural adjustment program has been implemented in cooperation with the World Bank and the International Monetary Fund.

The country’s economic policy since 2011, La Stratégie de Croissance Accélérée et de Développement Durable (SCADD) (Accelerated growth and sustainable development strategy) has been aimed at poverty reduction through production based on public-private partnership.

The SCADD has now been replaced by the Plan National de Développement Économique et Social (PNDES) 2016-2020 (National Economic and social development plan) which is aimed at transforming Burkina’s economy structurally, to create strong, sustainable and resilient growth, creating decent jobs for all and leading to the improvement of social welfare.

## ROAD AND TRANSPORT

There are 15 304 kilometres of classified roads in Burkina Faso of which 3 642 kilometres are paved. The state-owned bus company has been privatised and operates 5 main routes throughout the country. The 1 260-kilometre Abidjan-Niger railway is the main transport axis although the line has not recently operated efficiently and rail traffic is in decline. Burkina Faso’s other 622 kilometres of railways are scheduled for restructuring. In 1995 a French company took control of the railroad and the line is anticipated to be rehabilitated with a USD 31 million World Bank loan. The country has 24 airports with paved runways.

## WATER

According to the 2015 report on the Burkina Faso National Drinking Water Supply and Sanitation Program, potable water and sanitation coverage is 65% in rural areas and 89% in urban areas.

Since May 2003 Ouagadougou has had a water supply crisis. Four dams located around the city can only produce



an estimated 80 000 cubic meters of water amount which constitutes an estimated 70% of demand.

Widespread damming of rivers heavily taxes the region's extremely limited water resources through evaporation and seepage and leaves the supply susceptible to microbiological threat, including bilharzia.

## ENERGY

Burkina Faso is predominantly dependent on thermally generated energy. Sonabel, the national electric company, produced 906 million kilowatt hours (kWh) in 2015 of which 93.52% was thermally produced and 6.48 hydro-electrically produced. Construction has begun on a new dam but the cost of electricity production is still significantly higher in Burkina Faso than in neighbouring countries. Although the Government is not planning Sonabel's privatisation, the market is liberalised and companies are able to compete for production and distribution with Sonabel.

Consumption of petrol products is low and wood fuel provides over 90% of domestic energy. The Government is trying to promote butane in order to slow deforestation.

## TELECOMMUNICATIONS

Communications in Burkina Faso are limited due to the low penetration of electricity even in major cities. Use of Internet and telephony are therefore low.

Telephones main lines in use: 75 075 (2015).

Mobile cellular telephones in use: 14. 446 million (2015).

In 2006 the government sold a 51% stake in the national telephone company and ultimately plans to retain only a 23% stake in the company.

Fixed line and mobile internet subscriptions number 3 724 707 with an annual growth rate of 180.25% since 31 December 2013. The sector has improved following the installation of a 22 MB fibre optic international link, a vast improvement over the previous 128 KB link. Secondary access nodes are beginning to appear in the major cities and cybercafés are providing internet access to a broader spectrum of end users.

## TRADE AND INDUSTRY

Imports of most consumer and other manufactured goods and equipment cause a chronically unfavourable trade balance. France remains the largest exporter to Burkina Faso but imports from other countries are growing. China has become a major buyer of goods from Burkina Faso. Cotton, livestock and gold are important exports. Abidjan's harbour in the Ivory Coast is used for bulk imports and exports. Other major trading partners are Singapore, Togo, Thailand and Ghana. Small-scale manufacturing consists of flour milling, sugar refining, the manufacture of cotton yarn and textiles and the production of consumer goods.

## MINING

Mining activities are confined to gold, manganese, phosphates, marble and antimony. There are also viable deposits of zinc, silver, limestone, bauxite, nickel and lead. Special customs and tax advantages are granted through the Mining Code during exploration and production stages.

## AGRICULTURE

The main food crops are sorghum, millet, yams, maize, rice and beans. Cotton is grown for export. Burkina has abandoned the production of genetically modified cotton and now engages only in the production of conventional cotton.

## LABOUR RELATIONS

Employees' rights are guaranteed by both the New Labour Code, enacted in 2008, and the Labour Court. There is a well-organized trade union movement and employers are required to give employees prior notice of termination except in cases of gross misconduct such as theft or obvious neglect. The duration of the notice is fixed by the law based on the grade of the employee.



# CAMEROON

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### COUNTRY INFORMATION

Cameroon is a country located in the Gulf of Guinea and has a population of about 23 439 189 million inhabitants. It has a surface area of about 475 000 square kilometres and is a member of the Economic Community of Central African states known under its French acronym as CEMAC. The country is bilingual with English and French as official languages.

Situated at the meeting point between West and Central Africa, Cameroon is a special country with more than 200 ethnic groups and cultures assimilated into a cohesive whole. Its rich cultural diversity has earned it the description of "Africa in miniature". Cameroon's varied climate and abundant rainfall favour agricultural activity, livestock breeding and fishing. These activities form the backbone of the economy and have made Cameroon the principal food producing country in Central Africa. Cameroon has dense forests with many tree species covering over 20 million hectares. The country also has several mineral resources including oil, gas, bauxite, iron ore, cobalt and gold. Cameroon has three main ports (in Douala, Limbe and Kribi) and three international airports (in Douala, Yaounde and Garoua).

Its main exports include oil and gas, cocoa, coffee, timber, aluminium, banana, cotton, rubber, palm oil, pineapples and tea. Penja pepper and Oku honey are among the best in the world. In September 2013, they were certified as Geographical Indications by the African Intellectual Property Organization (OAPI). With their international registration certificates, these natural and agricultural products are the first to benefit from intellectual property protection in Cameroon and among the first in Africa.

Cameroon also has vast hydroelectric potential and several hydroelectric dams have been constructed such as Memve'ele. The country also has a good telecommunications network and has increasingly modernised roads and railway infrastructure.

### ECONOMIC INDICATORS (2017 ESTIMATES)

GNI per capita is USD1 200.

### INFLATION RATE

The inflation rate was 0.6% in November 2017.

### POLITICAL SYSTEM

Constitutionally, Cameroon has a President who is the head of State and a Prime Minister who is the head of government. Executive power is exercised by the government. Legislative power is vested in the National Assembly and the Senate.

### FORMS OF BUSINESS

With the OHADA Uniform Act of January 30, 2014 governing commercial companies any person, regardless of nationality, can choose among the following types of registered companies, to establish a business:

- Private Company
- Limited Partnership
- Private limited company
- Public limited company
- Simplified joint-stock company
- Economic interest group.

Foreign companies may open either a branch or a representative office in Cameroon.

### PRIVATE LIMITED COMPANIES (SARL)

The Law of December 14, 2016 has reduced the minimum share capital for a private limited company (SARL) to 100 000 CFA francs. It is now possible to set up a private limited company with such minimum share capital through a "one stop shop" within approximately 3 working days. The minimum nominal value of shares is 5 000 CFA francs. However where the share capital is equal to or above 1 000 000 CFA francs, the services of a notary public are required for the incorporation and the company can be set up within approximately 10 working days. There is no requirement for local shareholders.





Whatever the share capital, a private limited company may be created by one shareholder and the share capital must be fully subscribed by the shareholders upon incorporation of the company. Shares representing contributions in cash must be paid upon subscription of the capital by at least half of their nominal value. The payment of the balance can be made in one payment or by instalments within a period of two years from the registration of the company with the Trade and Personal Property Credit Register pursuant to the terms provided in the articles of association or before any capital increase.

The management of the company is simple and generally handled by one or more managers and the general assembly of shareholders. A constituent general assembly is required to appoint an auditor for the evaluation of contributions in kind.

The manager may either be appointed in the company's articles of association or in a subsequent instrument. The appointment of external auditors is not required except where the company meets two of the following requirements at the end of a fiscal year:

- A share capital above 125 million CFA francs
- An annual turnover of more than 250 million CFA francs
- A permanent workforce of more than 50 persons.

The management of private limited companies is flexible given that there is no board of directors and few statutory regulatory requirements.

### PUBLIC LIMITED COMPANIES (SOCIÉTÉS ANONYMES)

Public limited companies must have a minimum share capital of 10 million CFA francs. The nominal value of its shares is freely determined by the shareholders in the articles of association. It may be set up within two to three weeks. Depending on its business activity local shareholders may be required.

The share capital of the public limited company must be fully subscribed for before the date of the signature of the articles of association. Only 25% of the share capital representing cash contributions must be paid upon incorporation and the rest is payable within three years from the date of registration of the company in the Trade and Personal Property Credit Registry or before any capital increase. A public limited company may be created with one shareholder. There are two types of public limited company, namely public limited companies with a managing director and public limited companies with a board of directors.

A board of directors is optional where the public limited company has less than four shareholders. Where this is the case, the management and control of the company will then be in the hands of a managing director.

Where a public limited company is to be managed by a board of directors, it must be made up of at least 3 (and not more than 12) shareholders. Non shareholders may be appointed to the board. The management of the company is exercised by a general manager who can also act as the chairman of the board. The appointment of auditors is optional where the company does not make a public call for capital but mandatory where it makes a public call for capital.

### BRANCH AND REPRESENTATIVE OFFICE OF A FOREIGN COMPANY

A branch shall be a commercial, industrial or service-providing establishment which belongs to a company or a natural person and which has been granted a certain degree of autonomy in its management. The branch has no distinct legal personality and forms part of the parent company or the natural person who owns it. It is registered at the Trade and Property Credit Register.

A representative or liaison office is an establishment owned by a foreign company and is generally set up in order to create a link between the parent company and a new market where the office is situated. It has no managerial autonomy at carries out only preparatory or auxiliary activities in relation to the company that created it. The representative office may obtain information and provide information to the parent company. It is registered at the Trade and Property Credit Register but does not have a distinct legal personality.

### INVESTMENT CLIMATE AND INCENTIVES

To facilitate, promote and attract productive investments geared towards strong, sustainable and shared economic growth as well as job creation, Law No 2013/004 of April 18, 2013 lays down incentives for private investment.

The law applies to investment operations relating to the creation, extension, renewal, asset re-structuring and/or conversion of businesses. However, it is not applicable to investment in sectors governed by special instruments, in particular the upstream oil, mining and gas sectors, as well as those under the general partnership contracts regime.

The incentives are available to foreign natural or legal persons, whether or not established in Cameroon, which conduct business in Cameroon or hold shares in Cameroon companies, with a view to encouraging private investment and boosting national production.

Common incentives are tax, customs, financial and administrative incentives. Special incentives are available for enterprises carrying out investments that contribute to certain priority objectives. These incentives are exemption from Value Added Tax on investment programme loans, exemption from property tax on built-on and non-built-on estates on landed property dedicated to a processing plant and all immovable property extensions, direct goods clearance at the request of the investor, fixed registration fees and the special temporary admission of industrial equipment and materials.

The grant of the incentives is subject to an approval from the Minister for Private Investment and the Minister of Finance.





## EXCHANGE CONTROLS

Cameroon is a member of Economic and Monetary Community of Central African States (CEMAC). CEMAC has a central bank (BEAC) and a monetary union which has entered into a monetary cooperation agreement with France on 23 November 1972.

The currency in CEMAC member states is the CFA franc. This currency is issued by BEAC and has an unlimited convertibility with the Euro.

Inward direct investments require prior declaration. At the time that an inward direct investment is declared, confirmation should be obtained from the Ministry of Finance that the usual guarantees for the repatriation of capital and profits will apply.

Transfers of funds outside the CFA franc zone for settlement of imports should be declared for statistical purposes. The transfer of an amount in excess of 5 million CFA francs must be domiciled with an authorised intermediary, namely a bank.

## TAXATION OF RESIDENT ENTITIES

Resident entities are assessed on profits or income earned from operations in Cameroon or from transactions effected in Cameroon, subject to the provisions of applicable tax treaties. A commercial entity is resident in Cameroon if its headquarters or effective management is in Cameroon or if it has a permanent establishment or a representative in Cameroon. However the profits of a company not fulfilling the above conditions will still be taxable in Cameroon where they carry out activities that comprise a full business cycle in the country.

Company tax is currently levied at the rate of 30%. In addition, a local surcharge of 2% of the company tax is payable. Special rates can be approved under the special incentive tax regime.

A minimum company tax is payable annually equal to 2% of the turnover of the company. A local surcharge of 10% is also payable. The minimum company tax is payable each month on the turnover realised in the preceding month as advances on the annual tax. Tax treatment of losses include the carrying forward of losses for up to four years although losses of one entity may not be transferred to another entity (including a subsidiary) and in the case of a corporate reorganisation.

A special company tax is imposed on the transfer of shares and interest subject to transfer duty. Within one month of their establishment, companies must make a "declaration of existence" at the Tax Collection Office of the area where their head offices are located.

## TAXATION OF NON-RESIDENT ENTITIES

Non-resident entities are taxable only on income derived from Cameroon. Tax is levied at the same rate and in accordance with the same rules applicable to resident entities (see above). A non-resident entity must appoint a solvent representative in Cameroon for tax purposes. If a representative is not appointed, the resident taxpayer who entered into a service contract with

the non-resident taxpayer is jointly liable with the non-resident taxpayer for the payment of taxes and the discharge of other tax obligations arising from the service contract.

## TAX TREATMENT OF GROUPS OF COMPANIES

Cameroon tax laws contain no special provisions for groups of companies. A company is always treated as an independent entity and it is not possible for companies, however related, to combine their results for tax purposes. Special rules do however limit the taxable portion (for company tax purposes) of a dividend paid by a subsidiary to its parent company to 10% if certain conditions are met (see section on Dividends below).

## TAX TREATMENT OF BRANCH OFFICES AND SUBSIDIARIES

The profits of a branch office or a subsidiary of a non-resident company are subject to company tax in the same manner as those of a resident company (see above). Subject to the provisions of applicable tax treaties, the profits of branch offices of non-resident companies and those that do not have their head office in Cameroon are deemed to be distributed at the end of each tax year to non-resident persons. Such profits are subject to a dividend withholding tax at the rate of 16.5% (which is the same rate that applies to dividends paid abroad).

## CORPORATE ASSESSMENTS AND PAYMENTS

The tax year runs from 1 January to 31 December each year and a company's financial year, for official purposes, must correspond to the tax year. A return showing the company's results for the financial year must be filed by 15 March of each year, along with any supporting documents requested by the tax authorities. The tax authorities may adjust the results shown in the return. The taxpayer has the right to respond to the adjustments and has recourse to the courts if an agreement cannot be reached with the tax authorities.

## DIVIDENDS

Dividends received by a resident company from a resident or non-resident company are subject to company tax but the recipient company has the right to set off any Cameroon tax withheld from the dividend against its company tax liability. In the case of dividends received from a non-resident company, foreign tax paid on the dividend cannot be credited against Cameroon company tax unless an applicable tax treaty provides for such credit. The treatment of dividends received by corporate shareholders depends on whether:

- The shareholder has at least a 25% shareholding in the company
- The parent companies and their subsidiaries have their registered office in Cameroon or another CEMAC member state



- The stocks or shares have always been registered in the name of the holding company, and, where the shares concerned were not allotted on issue, whether the company undertakes to keep them in registered form for two consecutive years at least.

If these requirements are met, only 10% of the net dividend received is subject to tax. If the dividend paid is disclosed in the financial statements of the company in the same year that the receipt of the dividend is disclosed in the financial statements of the shareholder, the withholding tax paid by the company is set off against the withholding tax payable by the shareholder on any dividend distributions subsequently made by that shareholder.

### CAPITAL GAINS

Capital gains, other than those realized on the goods resulting from the free allocation of shares, beneficiary shares, shares or bonds, following the merger of public limited companies, even single-member companies, limited liability, even if they are unipersonal, they are exempt from the tax on the profits made by these companies, provided that the absorbing or new company has its head office in Cameroon or in another CEMAC State. The same scheme is applicable when a public limited company, or a limited liability company brings all of its assets to two or more companies formed for that purpose - a case of division - or a part of its assets to a company incorporated in one of these forms - partial contribution - provided that:

- The company or companies benefiting from the contribution have their head office in Cameroon or in another CEMAC state;
- The contributions resulting from these agreements take effect on the same date for the various companies that benefit from them and entail the immediate dissolution of the transferring company upon their completion, in the event of a merger or demerger.

### WITHHOLDING TAX ON IMPORTS AND SELLING PRICE

There is a withholding tax of 1% of the total customs value of imported goods or 1% of the selling price of purchases made. The withholding tax on the selling price of purchases is levied at the rate of 5% for non-registered taxpayers.

### TAX TREATMENT OF INDIVIDUALS

Individuals resident in Cameroon are taxable on their worldwide income. The Tax on the Income of the Individuals is due by any natural person having in Cameroon his fiscal domicile.

### PERSONAL ASSESSMENTS AND PAYMENTS

Individual taxpayers must file tax returns each year by 15 March. However, taxpayers whose sole earnings are salaries, wages, pensions, life annuities and/or capital gains from securities or income from real estate and whose taxes are withheld at source are exempted from the obligation to file a tax return. The procedures for payment of personal income tax vary according to the type of income. Payment of personal income tax on income from salaries, wages, pensions and annuities is made by withholding at source. Income from securities and,

in some cases, income from real estate is also withheld at source. Personal income tax on other income is assessed after submission of the return and must be paid within fifteen days following the issue of the notice of assessment. The taxpayer is directly responsible for paying income tax on the following types of income: industrial and commercial profits, professional earnings and agricultural profits.

### VALUE ADDED TAX (VAT)

Cameroon introduced Value Added Tax (VAT) from 1 January 1999. It is levied on all commercial transactions and activities except those that are specifically exempted. All exports of taxable products and similar transactions are assessed at 0%. All other transactions are assessed at the rate of 17.5%. Late payment of VAT attracts interest at the rate of 1.5% per month up to a maximum of 30% of the principal VAT due. Fines are levied for various omissions in discharging VAT obligations.

### BUSINESS LICENCE TAX (KNOWN IN FRENCH AS PATENTE).

Any natural person or corporate body of Cameroonian or foreign nationality operating any economic, commercial or industrial activity or carrying out any other profession not included among the exemptions set forth in this General Tax Code, is liable for the business licence tax assessed on the basis of the annual turnover declared by the taxpayer under the various categories provided by the General Tax Code. The tax is calculated by applying a digressive rate to the turnover of the taxpayer for the last but one years. This rate is fixed by the regional or local authorities which receive the proceeds of the business license, within a duly determined range per turnover bracket.

### DEDUCTIONS

Tax deductions are allowed for reasonable expenditure incurred in performing activities that produce assessable income. Expenditure considered either excessive or unnecessary for the reasonable needs of the business will be disallowed to that extent. The following are deductible: overhead expenses (like sundry remuneration and provision of services, rental expenditures, taxes, charges and fines, insurance premium, acts of liberality, gifts and subsidies), financial costs, actual losses, depreciation, provisions and claims and debts expressed in foreign currency.

### REGISTRATION, STAMP AND OTHER DUTIES

Registration fees are fixed, proportional, progressive or depressive, depending on the nature of the instruments and transfer liable thereto. Generally, private instruments and those of administrative services, notaries, and judicial or extrajudicial services as well as declarations are subject to registration. The minimum fee for registration is 2000 CFA francs. The time limit for the registration of instruments depends on the type



of instrument and runs from 15 days to 6 months. Failure to register instruments and declarations pertaining to the transfer of real estate is subject to a fine equivalent to 50% of the fees due per offence.

There are special stamp duties payable on certain documents such as passports and visas, Identity cards, resident permits and resident card, national driving licenses, vehicle registration licence, firearms licence, licences for hunting and like activities, bill of lading, registration certificates for appliances subject to the tax on games of chance and leisure and transport contracts. The duties vary as follows:

- Proportional duties: 1% to 15%
- Degressive and progressive fees: 0.25% To 10%
- Fixed rates: 4000 FCFA to 50.000 FCFA%.

Stamp dues are also payable on motor vehicles and advertising. For advertising on cigarettes and alcoholic beverages, as defined by the General Tax Code, the rate of stamp duty is 10%. Luminous signs and plaques placed on the facades of commercial and industrial establishments to indicate their locations are exempted from stamp duty on advertising. There is an airport stamp duty for all commercial flights departing from Cameroonian territory.

#### LAND AND LANDED PROPERTY ACQUISITION

In Cameroon, the State is the custodian of all land and guarantees to all natural persons and corporate bodies having landed property the right to freely enjoy and dispose of such property. Land can be acquired either through grants, lease, allotment, assignment, transfer, dismemberment and merger depending on whether it is a national land or a privately owned land.

Natural persons and corporate bodies of foreign nationality or incorporation wishing to invest in Cameroon as well as diplomatic and consular missions and international organizations may conclude lease agreements or purchase land, except in border areas. Deeds drawn up for this purpose require the prior approval of the Minister of Land, failing which they are null and void. Deeds to establish, transfer or extinguish real property rights must be drawn up by notary, failing which they are null and void.

A non resident who owns built-on and non-built-on estates will pay property tax if they are in main towns or in urban areas with urban infrastructure and amenities such as tarred or earth road, water supply, and electricity and/or telephone networks. However if they rent a building under an emphyteutic contract, or rehabilitation lease, or the building is subject of an authorisation of temporary occupation of the public domain which is taxable in the common law jurisdiction, the property tax will be issued in the name of the emphyteutic construction or rehabilitation lessee or authorisation holder. If land is to be used exclusively for purposes of farming, stock breeding and/or fishing, it is exempted from property tax. The property tax is determined from the value of land and buildings as declared by the owner and the rate of this tax is 0.1%. Property tax is due on 1 January of the fiscal year of assessment and must be voluntarily settled by no later than 15 March.

#### LABOUR RELATIONS

In Cameroon, the right to work is a basic right and the State has to make every effort to help citizens to find and secure their employment. Work is also a national duty incumbent on able-bodied adult citizens.

Labour relations between wage-earners and apprentices under the supervision of employers are regulated by Law No 92/007 of 14 August 1992 which instituted the Labour Code. This Code is supplemented by several ministerial regulations and also collective agreements regulating a particular sector.

Employment contracts are freely negotiated by the parties and maybe recorded in whatever manner the parties find convenient. However, any form of evidence may be adduced to prove the existence of an employment contract an employment contract may be concluded for a specified duration or an unspecified duration. Where the contract is concluded for a specified duration, it may not be concluded for more than two years with one renewal. Contracts of foreign workers may be renewed only after endorsement by the Minister of Labour.

Irrespective of the place where the contract is concluded and the residence of either party, every contract of employment which is performed in Cameroon (even partially) is governed by the Labour Code. However the Labour Code will not apply to an employee who is on secondment for a period not exceeding six months.

During the existence of the employment contact, workers and employers without any distinction whatsoever, can freely and without prior authorisation, apply to set up an employers association or union. Foreign applicants must have resided for not less than five years in Cameroon.

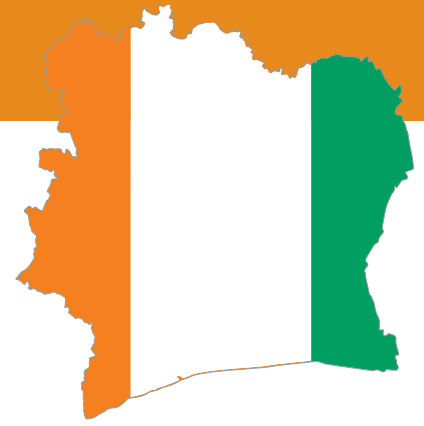
#### EXPATRIATE STAFF AND FAMILIES

In Cameroon, labour can be outsourced to foreigners on production of a certificate issued by the Minister of Unskilled Labour confirming that there is a lack of skilled Cameroon workers. However foreigners are permitted to work in Cameroon in professional qualifications. A foreigner who comes to Cameroon for an assignment not exceeding six months will not require a work permit. Applications for work permits must be submitted to the Ministry of Labour. Entry visas are required for foreign visitors.



# CÔTE D'IVOIRE

## F.D.K.A ASSOCIATION D'AVOCATS



### FIRM INFORMATION

**Website address:** [www.fdka.net](http://www.fdka.net)

**Languages spoken:** French and English

**Address:** Résidence les Harmonies-Rue du Docteur Jamot, 01 BP 2297 Abidjan, Côte d'Ivoire

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### COUNTRY INFORMATION

The Côte d'Ivoire covers an area of 322 462 square kilometres and has a population of about 24.5 million inhabitants including foreign residents. As a former French colony, its official language is French. Its currency is the CFA Franc (FCFA). The population is mainly rural. There are six important ethnic groups:

- The Senoufo group in the North
- The Malinké group in the North West
- The Mandé group and the Wê group in the West
- The Krou group in the South-West and West
- The Akan group in the Centre, the South and the East.

The north of the country is grassy savannah, the centre is savannah and the south is forested. In the west there are mountains including Mont Nimba, the highest in the country (1753m). The climate is essentially tropical, but in the north there are dry hot winds during November to February. In all the regions there are two seasons, a dry and rainy one.

### POLITICAL SYSTEM

Côte d'Ivoire has a presidential system. The country suffered from severe political instability and civil war from 1999 to 2011. Political stability and the security situation have markedly improved since 2011. For example, the United Nations Educational, Scientific and Cultural Organization (UNESCO) returned to Abidjan in September 2013, the African Development Bank (AfDB) completed the relocation of its headquarters to Abidjan in late 2014 after a 10-year absence and the International Cocoa Organization's headquarters moved to Abidjan in April 2017 after 44 years in London.

### INVESTMENT CLIMATE

Côte d'Ivoire is the leading economy in the West African Economic and Monetary Union (WAEMU) in terms of GDP, according to the Central Bank of West African States, the Banque Centrale des Etats de l'Afrique de l'Ouest (BCEAO). Following the end of the 2011 post-election crisis, in March 2012, the Government adopted the first National Development Plan (NDP), which sought to create an environment conducive to development, in order to boost economic growth and employment. A second 2016-2020 NDP, supported by development partners including the International Monetary

Fund, aims to transform Côte d'Ivoire into an emerging country with a strong industrial base. With GDP growth expected to reach 7% in 2018 and 2019, Côte d'Ivoire continues to be one of the fastest growing economies in Africa according to the World Bank.

The Investment Code of 2012 provides investment incentives for all private investments made in Côte d'Ivoire, excluding investments eligible for specific aid plans under the tax code or particular laws. There are two investment regimes, the declarative regime and the approval regime. The main benefits provided by the Investment Code are:

- Exemption from tax on industrial and commercial profits, non-commercial profits and agricultural profits
- Exemption from business tax and licenses
- Tax exemption on land holdings
- Exemption from income tax for housing made available to staff
- Reduction of 50% on custom duties
- Exemption from Value Added Tax.

These exemptions are for 5 to 15 years depending on the place of the investment.

### PRIVATISATION

According to the law on privatisation, the government may transfer its rights in state owned companies to private individuals or entities by a bid process and under the control of a privatisation committee. The privatisation may be done through:

- Transfer of assets
- Transfer of shares
- Renunciation of a pre-emptive right to subscribe for shares
- Share capital increases
- Mergers
- Dissolution or liquidation.

The government may restrict the shareholdings of foreign transferees or local companies controlled by foreigners.



## FORMS OF BUSINESS

- Partnership
- Co-operatives
- Private limited liability company
- Private unlimited liability company
- Public limited liability company
- Sole proprietorship
- Joint venture.

## FORMATION OF A COMPANY

The Centre de Promotion des Investissements en Côte D'Ivoire (CEPICI) is a "one stop" body to assist investors with all administrative and tax procedures including the formation of a company. The formation of a company comprises the following stages:

- Preparing the articles of association
- Signature of the articles of association by the shareholders
- Registration of the articles of association
- Filing the articles of association with a court registrar
- Filing a declaration of payment with a notary
- Social and tax registration
- Publication of the incorporation.

It takes about one month to comply with all these formalities.

## EXCHANGE CONTROLS

Rule N°09/2010/CM/UEMOA on the external financial relations of the member states of the West African Economic and Monetary Union (WAEMU) (also known in French as UEMOA and of which Côte d'Ivoire is a member) requires that any foreign exchange transaction, movement of funds or payments between a WAEMU member and a non WAEMU country must be done through the Central Bank of West African States (the BCEAO), post-offices or authorised agents. In addition, within WAEMU's area, the same restrictions apply to foreign exchange transactions, movement of funds and payments between residents and non-residents as well as loan transactions, the issue and sale of stock and fixed assets and foreign currency transactions. However, the following payments are exempt:

- Allowances to residents who travel abroad
- Any money transfer which does not exceed FCFA 500 000
- Certain payments for example relating to the delivery of merchandise, salaries and fees, royalties, interests and dividends, dowries, estates and tax.

## TAXATION

Any company which conducts business in Côte d'Ivoire must register with the tax authorities in order to obtain a taxpayer identification. Companies must register with the CNPS in order to acquire a social security number and pay monthly or quarterly employees' social security contributions. They must also pay contributions to the FDFP for apprenticeships and training of employees.

The Direction Générale des Impôts (DGI) is responsible for applying fiscal and para-fiscal legislation and preparing and applying international tax treaties. As such, it is responsible for

determining the tax base and the collection of taxes and fiscal and para-fiscal revenue (other than customs duties) on behalf of the State. It is also responsible for managing tax disputes relating to the tax base and tax collection.

Côte d'Ivoire's taxation system for natural persons include categorical taxes and a base tax on overall revenue, after deduction of categorical taxes. The base for general income tax is the net overall income of natural persons. This is a progressive tax with a specific rate per earning band.

The tax on industrial and commercial profits is due on profits generated in Côte d'Ivoire, in particular arising from commercial or industrial activities, provision of services, crafts or forestry, agricultural, mining or oil operations. Special provisions are provided for the taxation of the mining and oil sectors.

The ordinary tax rate is 25% for legal entities and 20% for individuals. The ordinary tax rate for companies operating in the telecommunications sector is 30%. However, the amount of the tax may not be lower than a minimum amount equal to 0.5% of revenues (all taxes included) for the ordinary tax regime and 2% for the simplified tax regime, subject to certain exceptions. Special provisions apply to the mining and oil sectors.

Value Added Tax (VAT) is applied to activities carried out against payment such as deliveries of goods and provisions of services, excluding salaried and agricultural activities. Imports, operations carried out by developers, real estate agents and similar persons. Specialised transports and the delivery of materials extracted in Côte d'Ivoire are also subject to VAT. WAEMU set the basic rate of VAT at between 15% and 20%, with a restricted list of exemptions. However, in accordance with WAEMU community standards, the member states of the WAEMU have the option of applying a reduced VAT rate ranging from 5% to 10% for certain products and operations. With respect to Côte d'Ivoire the base rate was reduced by the Finance Act 2003 from 20% to 18% and applies to revenues before tax.

## IMPORTS/EXPORTS

Importers require permits and certificates from, and must be registered with, the Ministry of Trade. In addition and depending on the products imported, an importer may be required to obtain a certificate from the relevant ministry (e.g. the import of medicine requires a certificate from the Ministry of Health). Permits and certificates are also required for export activities. For example, only authorized companies and cooperatives can export cocoa and coffee from Côte d'Ivoire.

## MONETARY POLICY

As a member of WAEMU, Côte d'Ivoire's monetary policy is defined by the central bank of WAEMU (the BCEAO). The CFA Franc is pegged to the Euro at 1 Euro to 655.957 FCFA.





## LEGAL SYSTEM

Like many former French colonies, the legal system is based on the French civil law model.

## INTELLECTUAL PROPERTY

Patents, trademarks, commercial marks, design or patterns are protected by statute. Côte d'Ivoire is a member of the African Intellectual Property Organization (OAPI), a treaty relating to intellectual property protection between 17 (mainly Francophone) African countries. Registrations must be made in Yaoundé, Cameroon.

## FINANCIAL SERVICES/INSURANCE

Banks and financial institutions are governed by the rules of WAEMU. They are regulated by WAEMU's Bank Commission. There are 28 banks in Côte d'Ivoire. Côte d'Ivoire's insurance business is regulated by the insurance code of member states of the InterAfrican Conference of Insurance Marketes (Conférence Inter africaine des Marchés d'Assurance (CIMA)). Approximately 30 insurance companies compete to attract the interest of a population that has not yet developed sufficient interest in insurance products. In the distribution of their products, insurance companies work with intermediaries, including brokers and general agents, such as Gras Savoye and Marsh & McLennan, that still largely dominate the market for company insurance. The Ivorian insurance market also includes a reinsurer and international reinsurance companies or reinsurance representatives.

## TREATIES AND BILATERAL AGREEMENTS

The following treaties and bilateral agreements have been signed by Côte d'Ivoire:

- Double taxation treaties with France, Germany, Belgium, Norway, Canada, United Kingdom, Italy, Switzerland and Tunisia
- Bilateral investment treaties with Germany, Italy, Netherlands, Sweden, Switzerland, United Kingdom, Usa, China, Qatar, Canada and Belgium
- The double taxation treaty of the West African Economic and Monetary Union signed on 26 September 2008 and which came into force on 1 January 2009
- The Kyoto protocol on climate change was ratified on 23 September 2007
- The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal in 1992.

## MEMBERSHIP OF INTERNATIONAL AND REGIONAL ORGANISATIONS

Côte d'Ivoire is a member of the World Bank, the International Monetary Fund (IMF), the World Trade Organisation (WTO), the African Union (AU), the United Nations (UN), the African Development Bank (ADB), the West African Economic and Monetary Union (WAEMU or UEMOA in French), the Economic Community of West African States (ECOWAS), the Inter-African Conference on Insurance Markets (ICIM), the West African Development Bank (WADB) and the Organization for the Harmonization of Business Law in Africa (OHADA).

## ROAD AND TRANSPORT

The road network is estimated at 85000km with only 6500km of paved road including 150km of expressway. Côte d'Ivoire also has approximately 20 ferry boats and approximately 4600 engineering structures, including over 300 bridges. Côte d'Ivoire is linked to Burkina Faso by a railroad of 1156km. Côte d'Ivoire has more than 500km of coastline and two seaports in San Pedro and Abidjan, with San Pedro being a deep sea port. The Abidjan Port Authority handles approximately 87% of Côte d'Ivoire's international trade. Côte d'Ivoire has 27 airfields open to public air traffic, three of which are international (Abidjan, Yamoussoukro and Bouaké).

## ENERGY

Côte d'Ivoire's reserves of petroleum and natural gas are estimated at 100 million barrels and 700 billion cubic meters respectively. It produces 100 000 barrels of oil and about 108 million cubic meters of natural gas daily. Local demand for petroleum (about 25 000 barrels per day) and gas (about 108 million cubic meters) is covered and the balance is exported. Electricity in Côte d'Ivoire is generated from thermal and hydroelectric plants. With the commissioning of the Soubré dam in March 2017, the country now has six hydroelectric dams and four thermal power stations fueled by natural gas sourced primarily from Côte d'Ivoire, with an installed overall capacity of 2,163 MW (including Soubré's capacity of 275 MW).

## TELECOMMUNICATIONS

Telecommunications are regulated by the Code of Telecommunications of 2012. This Code establishes three regimes: the regime for individual licenses, the regime for general authorisation and the regime for declaration and free activities. A new regulator, the Autorité de Régulation des Télécommunications de Côte d'Ivoire (ARTCI), has also been established. There are three mobile telephone operators, two fixed telephone operators, five Internet providers and many value-added service providers. The sector is supported by high-quality and modern infrastructure as well as an expanding market.

## TRADE AND INDUSTRY

Industry constitutes the main part of Côte d'Ivoire's formal private sector. Côte d'Ivoire produces a variety of goods such as processed agricultural products, cement, pharmaceuticals and chemicals, glass, plastics, textiles, cigarettes, wood, soap, refined oil, beverages, alcohol, furniture, reinforced concrete and paper. The primary industrial activity is in agro-foods. The agrifood sector has largely diversified and remains primarily focussed on the milling industry, the processing of coffee and cocoa, fruits and oilseeds, poultry, as well as the production of sugar, beverages and canned fish. A variety of businesses, including subsidiaries of multinationals, share this growing market.





## MINING

Côte d'Ivoire has deposits of gold, iron, bauxite, nickel and cobalt. However, the contribution of the mining sector to Côte d'Ivoire's Gross Domestic Product is negligible and is estimated at only 1%. Most deposits are not exploited. The import or export of gold from or to a foreign country requires the prior approval of the Minister of Finance.

## LABOUR RELATIONS

Labour relations are governed by the Labour Code of 2015, its implementing decrees and collective bargaining agreements of 1977 between employers and trade unions. There are two kinds of employment contract, a long-term contract and a fixed term one. Expatriates require a work permit. The law formally forbids discrimination on any basis (such as religion, race and gender). The guaranteed minimum wage is FCFA 60 000. Companies are required to register their employees for social security.



# DEMOCRATIC REPUBLIC OF THE CONGO (DRC)

## EMERY MUKENDI WAFWANA & ASSOCIES-SCP



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### GENERAL INFORMATION

The Democratic Republic of Congo (DRC) is located in Central Africa. To the north, it borders the Republic of Congo, the Central African Republic and South Sudan. To the east, it borders Uganda, Rwanda, Burundi and Tanzania. To the south, it borders Zambia and Angola and the Atlantic Ocean to the west. The DRC is the second largest country in Africa and the eleventh largest in the world. With a population of over 76 million people, the DRC is the most populous French-speaking country, the fourth most populous nation in Africa and the nineteenth most populous country in the world.

### THE ECONOMY AND BUSINESS OPPORTUNITIES

DRC's economy is predominantly export-oriented, with a focus on mining products. The DRC boasts an abundance of natural resources, namely forests and minerals such as diamonds, gold, copper, tin, Colombo tantalite or coltan, bauxite, iron, manganese, cobalt, petroleum and methane gas. Tourism is not a developed industry in the DRC as a result of civil war in the region. Agriculture is a driving force of the economy despite the fact that cropland only comprises 3% of the national territory. The main crop produced is coffee, while the main products are wood (afromosia, ebony, wenge, iroko, sapele, sipro, tiama, tola, kambala and lifaki) and rubber. There are opportunities for investments in the mining, petroleum, agricultural production, forestry exploitation, local manufacturing, infrastructure and tourism sectors in the eastern part of the country.

### POLITICAL SYSTEM

The Constitution, promulgated on 18 February 2006, established the institutions of the Third Republic and introduced a democratic and semi-presidential system with a bicameral parliament.

### LEGAL SYSTEM

The main provisions of private law can be traced back to the 1804 Napoleonic Civil Code. The Congolese legal system, however, is predominantly based on Belgian law. The Constitution endorses the separation of powers doctrine, emphasising the independence of the judiciary, legislature and executive. The judiciary comprises the Constitutional

Court, "Cour de Cassation", the Council of State, the Supreme Military Court, as well as the civil and military prosecutor's offices attached to these courts. Specialised courts may also be established.

The DRC is party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention). Currently, foreign arbitral awards from outside OHADA member States are recognized and enforced in the DRC, after a Tribunal of competent authority has granted enforcement. However, this will soon change after the DRC's recent accession to the New York Convention. The DRC is the 153rd State to become a party to the New York Convention.

### INFLATION RATE

The inflation rate was 4.135% in October 2017.

### GROSS DOMESTIC PRODUCT

The growth of the Congolese economy increased in June 2017, rising to 3.2% from 2.4% in 2016, with an increase of 0.8%.

### ACCESSION TO OHADA TREATY

The DRC's accession to the Treaty of the Organisation pour l'Harmonisation en Afrique du Droit des Affaires (Organisation for the Harmonization of Business Law in Africa) (OHADA) presents both opportunities and challenges to companies doing business in the DRC, as well as in the other OHADA member countries such as Benin, Burkina Faso, Cameroon, Central African Republic, Chad, Comoros, Congo Brazzaville, Ivory Coast, Equatorial Guinea, Gabon, Guinea Conakry, Guinea Bissau, Mali, Niger, Senegal and Togo.

### GENERAL CORPORATE LAW

Investors will consider the implementation of the OHADA Uniform Act on Commercial Companies and Economic Interest Groupings (the 'AUSGIE', from the acronym formed by its



French name) as a positive development. Unlike the previous legal framework, the AUSGIE's reach is expanding to better suit the business needs of OHADA Member States and their potential investors, with amendments having been implemented from 30 January 2014. The new AUSGIE came into force on 5 May 2014. Commercial companies and economic interest groups formed prior to this date are required to update their Articles of Association in accordance with the new AUSGIE before 5 May 2016. Articles of Association of any company which are not updated by 5 May 2016 will be deemed to be void. One of the major innovations of the revised AUSGIE is the introduction of a new corporate entity, namely the simplified joint stock company (*société par actions simplifiée* or SAs). Any company formed prior to the revised AUSGIE can be transformed into a SAs.

## JOINT VENTURES

Major foreign investment in the mining sector has traditionally taken the form of joint ventures concluded with either foreign investors or DRC entities (often public-sector entities). The management and administration of these joint ventures frequently requires negotiations between shareholders in order to ensure that a proper balance is achieved between control of management and strategy, voting rights and rights to dividends. The DRC has already adopted a series of progressive and modern codes relating to various industrial sectors (Mining Code, Forestry Code and Investments Code) which has made those sectors attractive to foreign investors. New laws have been promulgated recently such as the Law No 15/005 of 17 March 2015 on the insurance code and the Law No 15/012 of 1 August 2015 on the hydrocarbon general regime. However, existing company law prevents controls from being implemented (particularly shareholder control over management) to protect the interests of parties to these joint ventures. Parties to joint ventures have had, therefore, to introduce these controls themselves through private joint venture agreements, which do not always fit into the current legislative framework and are difficult to enforce. The implementation of AUSGIE, however, will make it easier for joint venture parties to conclude these agreements in a manner that is both consistent with the applicable legislation and enforceable. In future these arrangements may be incorporated in the joint venture's statutes or Articles of Association which are filed with the local commercial registry and are a matter of public record.

## MAIN FORMS OF COMMERCIAL COMPANIES

AUSGIE creates 5 types of companies:

- Société en Non Collectif (SNC)
- Société en Commandite Simple (SCS)
- Société par Action Simplifiée (SAS)
- Société à Responsabilité Limitée (SARL) - limited liability companies, formerly private limited liability companies known as SPRL's
- Société Anonyme (SAs) - formerly known as SARL's (public limited liability company's), which are the equivalent of continental European companies.

These companies will enable joint venture parties to negotiate arrangements within a familiar framework. Subject to certain limitations, parties are free to create different categories of

shares with diverse voting and dividend rights and enjoy a certain measure of freedom in determining how the company in question should be managed. SARL's and SAs have proved to be the two most popular types of company.

The OHADA SARL does not have a board of directors and the management is exercised by one or several managing directors (*gérants*). However, certain decisions may only be made by the shareholders. The challenge for investors, when dealing with this type of company, is ensuring that strategic decisions are not decided by the *gérants* without the input of the shareholders. The difficulty is that, according to the applicable law, the *gérant* is fully entitled to represent the company in its dealings with third parties, unless the third party has been specifically notified that shareholder approval is a requirement.

The OHADA SA by contrast usually has both a board of directors (*conseil d'administration*) and management consisting either of a Chairman and Chief Executive Officer (*Président-Directeur Général*) or, at the option of the shareholders, a separate Chairman of the Board (*Président*) and Chief Executive Officer (*Directeur Général*), appointed by the Board. This allows for a balance of power and control, particularly well-suited to joint ventures between foreign investors concerned with long-term strategic decisions and local parties whose focus is on the day-to-day management of the company. Alternatively, for companies with less than three shareholders, it is possible to opt for management by a single managing director (*administrateur général*) similar to the OHADA SARL. This form of management can be particularly useful for wholly-owned subsidiaries. The single shareholder SA is an improvement on the seven shareholder SARL currently used in the DRC.

In order to avoid the burdensome regime of SARLs formed under current DRC law, most companies in the DRC were incorporated as a *société privée à responsabilité limitée* (or SPRL) notwithstanding that the SPRL was initially intended for privately held or closed companies (such as family-owned businesses). As a result of the OHADA Treaty, DRC companies will be required to bring their constitutional documents (statutes) in line with the rules governing the relevant corresponding OHADA type of company. This implies that a company established as a SPRL may opt for the OHADA SARL form, which is the most similar OHADA form. However, it may be advisable for certain businesses that are incorporated "by default" as SPRLs to convert to an OHADA SA (the typical open capital company), which is in practice likely to be the most suitable form in which to conduct their business.

*Sociétés Anonymes* (SAs) is a new form of company. It presents a significant improvement for investors. With the sole requirement that the SAS be represented by a chairman, the Reformed Uniform Act on companies allows the shareholders to organise their governance as they see fit, and therefore to tailor the SA's Articles of Association to their precise needs such as the structure of governance bodies, the rules applying to such bodies and the powers of the shareholders. SAs must



have a Chairman (Président), which may be a corporate entity (represented by an individual) or an individual, vested with full powers of management. Such powers may be restricted by the Articles of Association, but as in a SA, such restrictions are not binding on third parties. The Articles of Association may also determine alternative forms of management, such as a board, committees, general manager or deputy general manager, although in all cases the Chairman remains the legal representative with full powers to bind the company, notwithstanding any other provisions in the Articles of Association.

### IMPROVED CORPORATE GOVERNANCE

AUSGIE and the other OHADA Uniform Acts which came into force on 12 September 2012, also bring about challenges for foreign investors. It is possible that limitations on the number of offices that directors or officers may hold in different companies, might make it difficult to obtain local talent for such positions. The revised AUSGIE, however, is far reaching in terms of improved corporate governance. It has reinforced the application of good governance principles by:

- Prohibiting directors from participating in any vote on their own remuneration
- Specifying the types of contracts that require the prior approval of a SA or SAS' board of directors
- Introducing the concept of "abuse of equality"
- Introducing new offences relating to the management of companies, such as the failure by directors to submit the company's financial statements within a month of their being approved by the shareholders.

These developments provide additional comfort for private equity investors, particularly those owning minority stakes, as they make portfolio company management more accountable. Under the revised AUSGIE, a competent court can appoint a provisional administrator when the operation of a company is deadlocked as a result of action or inaction by its shareholders or another corporate body. In addition, AUSGIE takes the practical constraints on investors into account by providing for meetings and votes to take place via video conference and by permitting decisions taken at the shareholder and board level to take place via written resolution.

### ACCOUNTING AND AUDITING

Other changes to the legislative framework will also present both incentives and challenges for investors. All SA companies and certain SARL companies meeting specified thresholds of share capital, total annual turnover or levels of employment, are required to designate official statutory auditors (commissaires aux comptes) to review and certify the company's accounts. This provides a safeguard against irregularities in the accounts (every major international accounting firm maintains offices in a number of OHADA member states) and grants auditors the power to trigger "alert proceedings", which require management to respond to queries in the event of financial difficulties. The OHADA Uniform Act on Accounting Law (AUL) creates a comprehensive framework for accounting rules and procedures, which may differ from the international accounting standards used by major international companies. The AUL

rules require a company's financial year to coincide with the calendar year and impose an obligation on companies to close their annual accounts on 31 December.

### INSOLVENCY

The OHADA Uniform Act on Insolvency Proceedings also provides a comprehensive framework both for companies encountering financial difficulties and seeking relief from the demands of creditors, as well as for creditors filing their claims.

### TAXATION

The general system of taxation in the DRC is based on the principle of territoriality and tax is accordingly levied on all income derived from the DRC. The following are the main taxes:

- Corporate tax at 40%
- Corporate tax for mining companies at 30%
- Withholding tax on income from movables at 20% and for mining activities at 10%
- Personal income tax rate is based on a sliding scale with a maximum of 30%
- Property tax is levied from USD0.30 To USD1.50 Per square metre of the built property
- Tax on rental income at 22%
- Valued Added Tax (VAT) at the uniform rate of 16% on the local sale, import and provision of services. The law introducing VAT was promulgated in 2010 but its effective date was 1 January 2012. VAT replaced turnover tax which is no longer applicable in the DRC.

### INVESTMENT CLIMATE AND EXCHANGE CONTROLS

DRC welcomes all foreign investment. The exchange control regulations currently in force are very liberal and commercial banks are authorized, subject to certain tax being paid, to freely transfer dividends, capital gains, interests and capital on foreign loans out of the country. Upon disinvestment, investors may freely remit capital without any restriction. Residents of the DRC are authorized to hold foreign currency accounts with local commercial banks. The following fees and restrictions apply to remittances:

- The Central Bank of Congo (BCC) levies a royalty of 2% on any payment to or from abroad regardless of the status of the transferor and transferee
- Cross-border transfers to and from the DRC, with a value equal to or greater than USD10 000 (including, entry of capital as direct investment, portfolio and other investments, including pre-financing of exports), must be made through an approved credit institution or intermediary and are subject to an RC declaration
- Revenues (remuneration, direct investment, portfolio, and other investments income, such as profits, dividends, leasehold interests) can only be received or transferred through an approved bank.



## INTELLECTUAL PROPERTY

Patents, trademarks, designs, and commercial names are protected by the provisions of the Intellectual Property Law. There is a general registry located at the Ministry of Economy where trademarks, patents and designs may be registered. The DRC is a member of the World Intellectual Property Organization (WIPO).

## FOREIGN INVESTMENTS AND INCENTIVES

The DRC has promulgated an Investment Code to encourage the investment of local and foreign capital in activities which contribute to the economic and social development of the country. The Code provides for one general regime under which incentives may be granted. For a project to benefit from the provisions of the Code, the investment must be at least USD10 000 for small and medium sized businesses and USD200 000 for other enterprises.

The Investment Code provides certain advantages for foreign investments. It sets the conditions, benefits and rules for direct investment, both domestic and foreign, in areas other than mining, oil, banking, insurance and reinsurance, arms production and military related activities, production of explosives, assembling equipment, military equipment and paramilitary or security services, as well as commercial activities. Investors can only benefit from these advantages for a specific period of time depending on the geographical location of their investment.

The Investment Code does not govern investments in the mining sector. The Mining Code provides for some incentives to private investors, including:

- Exemption from customs duties on the export of samples for analysis and industrial tests
- Exemption from customs duties on the import of foreign expatriate staff's property
- Full exemption of customs duties on exports in relation to the mining project
- A reduced rate on professional profit tax contribution
- A reduced rate on the exceptional contribution on the compensation of expatriates.

The Investment Code also provides the following concessions and incentives:

- Duty-free imports of all new plant, machinery and equipment associated with the project in question, as well as spare parts up to 10% of the Cost, Insurance and Freight (CIF) value of the equipment
- Duty free exports of local semi-finished or finished products
- Exemption from corporate tax and tax on share capital
- Exemption from real estate or property taxes.

The duration of these exemptions depends on the location of the investment and may vary from three to five years.

## MEMBERSHIP OF INTERNATIONAL AND REGIONAL ORGANISATIONS

The DRC is a member of the International Monetary Fund (IMF), World Bank, United Nations (UN), African Union (AU) and African Development Bank (ADB). The DRC's accession to OHADA is viewed as a promotion of the rule of law, as the OHADA Common Court of Justice and Arbitration has been established as the highest court of appeal with the power to overturn decisions by local DRC courts. The DRC is a member of the Washington Convention establishing the International Center for Settlement of Investment disputes (ICSID) which applies to disputes between the DRC and nationals of other ICSID contracting States. The DRC is also party to several bilateral investment treaties that provide for arbitration in the case of disputes between the DRC and a national of a bilateral investment treaty contracting state.





# ETHIOPIA

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### COUNTRY INFORMATION

Ethiopia covers a total area of 1.14 million square kilometers. The country has 74.3 million hectares of land suitable for agriculture out of which only 18 million is currently utilised. The population is estimated to be 102 million (2016). There are nine autonomous regional state governments and two city administrations. The city administrations are accountable to the federal government. There are two major seasons in Ethiopia: dry and wet. The dry season begins in October and lasts through May and the wet season lasts from June to September. With altitudes ranging from 148 meters below sea level to 4 620 meters above sea level, the country has 18 major and 49 sub agro-ecological zones, each with its own agricultural and biological potential.

### POLITICAL SYSTEM

The country has a federal government structure with multiparty system. The head of state is the President and the head of the government is the Prime Minister.

### ECONOMIC INDICATORS

- GDP: USD73 billion (2016) with GDP growth of 10.3 % (2014)
- Interest Rates: the minimum bank deposit rate is 5%, the bank lending rate is 14%, the bond yield is 5.5% and treasury bills yield less than 2%.
- Prevailing Exchange Rate: No fixed currency exchange rate. A floating system is utilised in Ethiopia
- Inflation Rate: 7.4 % (2014)
- Foreign Exchange Reserves: USD3.785 billion (2014)
- Budget: USD11 billion for 2015/16 fiscal year.

### INVESTMENT CLIMATE

Ethiopia has made considerable progress in economic and social development since 1992 as a result of the implementation of favorable policies and strategies that have been instrumental in improving the national economy. The government acknowledges the vital roles the private sector can play in the economy and has revised the investment laws over five times over the last twenty 26 years in order to make it more attractive, transparent and competitive.

Ethiopia remains an untapped and unexploited market for investors. The major sources of foreign direct investment are China, India, Sudan, Germany, Italy, Turkey, Saudi Arabia, Yemen, the United Kingdom, Israel, Canada and the United States of America.

Some of the main reasons foreign investors choose Ethiopia as their place of destination are the booming economy, infrastructure development, good investment opportunities and incentive packages, political stability, low corruption, abundant and inexpensive labour, the climate, geographical location and the fast growing local demand for products and services.

The government has opened Ethiopia to foreign investors and is offering different attractive investment incentives in different sectors of investment. Although all opportunities are not open to foreign investors, the government has exhaustively listed investment areas that are allowed for foreign investors and those that are exclusively reserved to local investors. Incentive packages differ based on the type of investment and the place of investment. The government has also introduced industrial development zones that can be established by the private sector, the government or jointly by the government and the private sector. The industrial development zones and parks offer better incentives package and one-stop shop services. Some of the government organisations that facilitate trade and investment in Ethiopia are the Investment Commission, the Investment Board which is headed by the Prime Minister, Ethiopian Commodity Exchange, Ethiopian Revenue and Customs Authority, Ministry of Trade, Ministry of Industry, National Bank of Ethiopia, Ministry of Labour and Social Affairs and the Commercial Bank of Ethiopia.

The second Growth and Transformation Plan (GTP II) that is being implemented is intended to make Ethiopia one of the middle income countries by 2025. Over the past few years Ethiopia has shown tremendous growth in its economy. Economic growth statistics show that Ethiopia's economy has been growing at an average of 10%. Moreover the prospects



are very positive. The International Monetary Fund has indicated in its report released in January 2018 that Ethiopia's economy will grow at an average of 8% in the medium term. The report further indicates that Ethiopia is in the top five fastest growing countries in the world.

Ethiopia enjoys preferential market access to some of the most lucrative markets of the world such as the US and the EU, for example, as a result of the African Growth and Opportunity Act (AGOA) and Everything But Arms (EBA) initiatives that allow Ethiopian products to have duty free and quota free access to US and EU markets respectively.

Privatisation is offering a good opportunity for both domestic and foreign investors, especially in agriculture, manufacturing and the hotel and tourism sectors. An investor who wishes to acquire state-owned enterprises is invited to participate in a competitive bidding process. To facilitate the privatisation process the government has established an autonomous government body called the Ethiopian Privatisation and Public Enterprise Supervising Agency. Recently, the ruling party has indicated that it will expand the scale and reach of privatisation and open the telecommunications power, shipping and airline sectors to the private sector. Some of the biggest companies in the country such as Ethio Telecom (the only provider of telecom and internet services), Ethiopian Airlines (which is the most successful airline in Africa) and Ethiopian Shipping Lines will now be open for private investment.

A foreign investor who has invested foreign capital in Ethiopia or a foreign investor who has re-invested the profits derived from its foreign investment in Ethiopia can remit the following in convertible currency: profits and dividends, principal and interest payments on external loans as approved by the National Bank of Ethiopia, payments related to technology transfer agreements, collaboration agreements and/or the proceeds from the sale or liquidation of an enterprise.

In considering doing business in Ethiopia, foreign investors should be aware that they may encounter shortages of foreign currency to import raw materials or to repatriate profits. However, such shortages are usually temporary and the government is providing incentives to manufacturers and traders to export their products to generate foreign currency with the view to stabilise Ethiopia's foreign currency reserves.

### LARGEST COMPANIES

Local: Ethio Telecom, Ethiopian Electric Power Corporation, Metal Engineering Corporation, Commercial Bank of Ethiopia, Midroc Group, Ethiopian Airlines, Ethiopian Shipping Lines S.C.

Multinationals: PVH, Ethio Telecom, Ethiopian Electric Power Corporation, Total Red Sea, Libya Oil Limited, Heineken, Diageo, Dangote and H&M.

### FORMS OF BUSINESS

Ethiopian law provides for the following forms of business organisations: sole proprietorship, General Partnership, Ordinary Partnership, Limited Partnership, Joint Venture, Private

Limited Company, Share Company, cooperative societies and commercial representative offices and branches of foreign business organisations.

### FORMATION OF A COMPANY

There are two types of companies under Ethiopian law, a private limited company and share company. Private limited companies require a minimum of two and a maximum of fifty persons and a fully paid capital of 15 000 Birr (Ethiopian Currency) for their establishment. The minimum number of persons required to establish share companies is five. This entity must have a board of directors consisting of three to twelve shareholders. The capital of companies engaged in mining and petroleum operations is determined by the Ministry of Mines based on the project and the operations intended to be executed.

The minimum capital requirement for foreign investment is USD200 000 for an investor who invests on its own and USD150 000 for a foreign investor investing jointly with a domestic investor. Similarly, the minimum capital required of a foreign investor investing in architectural or engineering works or related technical consultancy services, technical testing and analysis or in publishing work is USD100 000 if the investment is made wholly on its own or USD50 000 if the investment is made jointly with a domestic investor.

### EXCHANGE CONTROLS

Foreign exchange is controlled by the National Bank of Ethiopia (NBE). Only banks and authorised dealers in foreign currency or those who obtained permit from NBE can engage in foreign exchange transactions.

### TAXATION

There are three major types of taxes in Ethiopia: direct taxes, indirect taxes and stamp duty. Direct taxes include tax on income from employment, personal income tax, business profit tax, tax on income from rental of buildings, tax on interest income deposits, dividend income tax, tax on income from royalties, tax from tax on income from games of chance, tax on gains from transfer of certain investment property, tax on income from rental of property, tax from rendering of technical services outside Ethiopia, agricultural tax and land use tax. Indirect taxes include turn over tax, excise tax, value added tax and customs duty. Every person deriving income from dividends from a share company or withdrawals of profits from a private limited company are subject to tax at the rate of 10%.

### IMPORT / EXPORT

The government supports exports as it is a source of hard currency for the country. Rather than importing products the government encourages the use of local products either for consumption or as raw material for the production of goods. Foreign investors engaged in the agribusiness sector and



manufacturing are entitled to export their own products. Import businesses are almost exclusively reserved for domestic investors.

## MONETARY POLICY

Monetary policy is implemented by the National Bank of Ethiopia. The principal objective is to maintain price and exchange rate stability and support sustainable economic growth.

## JUDICIAL ENVIRONMENT

The Ethiopian Legal system is a mixture of common law and civil law legal systems. The supreme law is the Constitution. In Ethiopia, State and Federal judicial power is vested in the courts. The Federal Supreme Court has the highest and final judicial power over federal matters and State Supreme Courts have the highest and final judicial power over state matters. Nevertheless, the Federal Supreme Court has a power of cassation over any final court decision containing a basic error of law.

## INTELLECTUAL PROPERTY

Ethiopia has different laws governing intellectual property rights. These laws are divided into three categories: trademark, copyright, neighbouring rights and inventions, minor invention and industrial design laws. The organization responsible for regulating intellectual property rights is the Ethiopian Intellectual Property Office.

## FINANCIAL SERVICES / INSURANCE

Engaging in business activities in the financial sector such as banking, insurance and micro finance institutions is limited to Ethiopian nationals only. All these financial sectors are licensed and regulated by the National Bank of Ethiopia. Different laws regulate the financial sector such as the Banking Business Proclamation No. 592/2008, Insurance Business Proclamation No. 746/2012 and Micro finance Business Proclamation No. 626/2009.

## KEY STRATEGIC GROWTH INITIATIVES BY GOVERNMENT/PRIVATE SECTOR

The government has designed five year growth plans known as Growth and Transformation Plans (GTP) to facilitate the economic growth of the country and improve the livelihood of the people. Currently, the second GTP is being implemented. In the first GTP the government achieved tremendous results in the social, economic and cultural development of the country. The government participates in the implementation of the GTPs including by investing in selected strategic sectors via public enterprises if there is a lack of interest and funding by the private sector.

## TREATIES & BILATERAL AGREEMENTS

Ethiopia has concluded a number of bilateral investment treaties and double taxation avoidance treaties with different countries around the world. Ethiopia is a beneficiary of the African Growth and Opportunity Act (AGOA) and Everything

But Arms (EBA) initiative that allow Ethiopian products to have duty free and quota free access to the US and EU markets respectively.

## MEMBERSHIP OF INTERNATIONAL & REGIONAL ORGANISATIONS

Ethiopia is a member of the Common Market for Eastern and Southern Africa (COMESA), African Union (AU), UN, World Bank, NBI (Nile Basin Initiative), African-Development Bank, FAO, IBRD, IDA, IFC, IFAD, ILO, IMF, ISO, ITU, MIGA, UNCTAD, UNIDO, WIPO and other international organisations.

## ROAD AND TRANSPORT INFRASTRUCTURE

In 2015 Ethiopia expanded its road network to 121 171 km. Ethiopia is expanding this to 200 000 km by the end of the second Growth and Transformation Plan in 2020. The annual growth rate of roads is 10.7%. The railway line that connects Ethiopia with Djibouti Port has become operational. The construction of railways that connect the various towns and regions in the country is underway. Recently, a light railway transport service became operational in Addis Ababa. In addition to road and railway transport the government is also enhancing its capacity in the sea transport and air transport sectors.

## WATER

Ethiopia has an abundance of water resources. The government is extensively using water resources to develop irrigation and generate big hydro-electric power generating dams.

## ENERGY

The main source of energy in Ethiopia is hydroelectric power. The government is also attempting to exploit petroleum, minerals and wind farm technology as an alternative source of energy. In the past twenty years the government has constructed nine energy projects using hydro power and wind technology. The Gilgel Gibe III hydroelectric project, which was completed in 2014, is generating some 1870 MW of hydroelectric power. The Great Ethiopian Renaissance Dam (GERD), which is about 65% complete, is expected to generate 6400 MW when it becomes operational with full capacity. Ethiopia is exporting electricity to neighboring countries like Kenya, Sudan and Djibouti.

## TELECOMMUNICATIONS

The sole telecom provider, Ethio Telecom, which is a state owned enterprise and provides a wide range of telecommunication services including basic and non-basic telecom services and international and national telecom services using satellite, micro-wave Digital Radio Multi Access Systems, VSAT, VHF, UHF Long line and HF Radios.



## TRADE AND INDUSTRY

The major manufacturing sectors in Ethiopia are textiles and clothing, food and beverage products, tannery and leather goods, glass and ceramics, chemicals and chemical products, drugs and pharmaceuticals, paper and paper products, plastic products and building materials.

## INFORMATION AND COMMUNICATIONS TECHNOLOGY

Investors are encouraged to participate in information and communication technology developments.

## MINING

Ethiopia is blessed with an extensive amount of gold, tantalum, platinum, nickel, potash and soda ash. Ethiopia also has marble, granite, limestone, clay, gypsum, gemstone, iron ore, coal, copper and silica. The Federal Ministry of Mines regulates mining activities in Ethiopia.

## AGRICULTURE

Ethiopia's economy is mainly based on agriculture. Ethiopia has 74.3 million hectares of land, almost half of the total area of the country, which is suitable for agriculture but only 18 million of which is currently utilised. Ethiopia has the soil and the climate required for the production of a variety of food crops. The main crops grown are cereals, pulses and oil seeds. A broad range of fruits and vegetables and cut flowers are fast growing exports. Coffee, cotton, tobacco, sugar cane, tea and spices are the main commercial cash crops grown in the country. Apart from these, the country also has great potential for large scale production of jatropha and castor. Ethiopia is ranked first in Africa in its livestock population. Opportunities also exist in commercial forestry and the production and manufacturing of gum and incense is open for foreign investors.

## LABOUR RELATIONS

One of the reasons investors choose to invest in Ethiopia is the dynamic, abundant and cheap labour force. The labour force ranges from daily construction workers to high level educated workers. In order to regulate labour relations, the country has adopted various laws including the 1960 Civil Code, the Labor Proclamation No. 377/2003, Labor (Amendment) Proclamation 466/2005 and Labor (Amendment) Proclamation 494/2006.



# GHANA

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### POLITICAL SYSTEM

Ghana has a constitutional government under a multiparty democracy.

### ECONOMIC INDICATORS

Gross domestic product (GDP): US\$ 42.69 (2016). GDP per capita is US\$ 1707.70 (2016).

### INFLATION RATE

The inflation Rate as at January 2018 was 10.3%.

### FORMS OF BUSINESS

- Unincorporated businesses / sole proprietorships
- Incorporated partnerships
- Statutory corporations
- Company limited by shares (the liability of shareholders for the debts of the company is limited to any amounts unpaid on their shares)
- Company limited by guarantee (the liability of shareholders for the debts of the company is limited to amounts that they respectively undertake or guarantee to contribute to the assets of the company in case of liquidation)
- Unlimited companies (there is no limit on the liability of the members. The few unlimited companies that exist are mostly law firms and other professional organisations that may be prevented from operating as limited liability companies by professional rules)
- External company (incorporated bodies formed outside Ghana that seek to operate in Ghana register as external companies if they establish a place of business in Ghana).

Companies may be either public or private.

### INVESTMENT CLIMATE

The Constitution protects private property and prohibits compulsory acquisition except under due process of law. Parliamentary approval of international economic and business transactions to which the government is a party is required. Natural resource grants also require parliamentary approval.

Under the Ghana Investment Promotion Centre Act (GIPC Act) non-Ghanaians may invest and participate in the operation of enterprises in Ghana.

In the case of a joint venture with a Ghanaian, the non-Ghanaian must invest at least US\$200 000 in foreign capital or its equivalent in capital goods by way of equity participation. The GIPC Act does not prescribe a maximum percentage of Ghanaian ownership in a joint venture enterprise, but the GIPC Act requires a minimum of a 10% Ghanaian shareholding in a joint venture.

Where the enterprise is to be wholly owned by a foreigner there must be an investment of foreign capital of at least US\$500 000 or its equivalent in capital goods by way of equity capital.

In the case of a trading enterprise involved only in purchasing and selling goods owned either wholly or partly by a non-Ghanaian there must be investment of foreign capital of at least US\$1 000 000 by way of equity capital and the enterprise must additionally employ at least 20 Ghanaians.

The above minimum capital requirements do not apply to portfolio investments or enterprises established exclusively for export trading.

Incentives granted under the GIPC Act include:

- An immigration quota limited to the amount of the paid-up capital of the company
- Personal remittances of wages through authorised dealer banks
- Free transferability of dividends and profits and
- Other special incentives that may be negotiated with the GIPC to promote certain identified industries.

### TOURISM

The Ghana Tourism Authority ("GTA") oversees the tourism industry. A tourism enterprise is defined to include hotels or any company engaged in the hotel industry. The object of the GTA is to promote the sustainable development of the tourism





industry internationally and within the country. The Tourism Act, 2011 (Act 817) (the “Tourism Act”) requires that any person who exercises overall control over the daily operations of a tourism enterprise as the manager be registered with the GTA. The GTA is yet to prescribe the procedure for registration of a hotel manager. The current GTA requirement is that the manager of the hotel must be a natural person experienced in hotel management or must hold an appropriate qualification. Where the manager is a corporate entity it must in addition employ a natural person who is experienced in hotel management or a related qualification.

A person will not be registered by the GTA as manager of a hotel if the person has been declared bankrupt or has been convicted of a serious offence.

The GTA grants licences and regulates tourism enterprises. It also monitors the activities of licensees. Under the Tourism Act, a person may not operate a tourism enterprise unless he/she holds a valid licence issued by the GTA in respect of that tourism enterprise. A person who fails to obtain a license commits an offence and is liable on summary conviction to a fine of not more than GH¢1200 and/or a term of imprisonment of not more than 6 months. A licence issued in respect of a tourism enterprise is valid for 12 months and is subject to renewal on expiry.

A holder of a tourist accommodation licence is required to keep a register on the premises and to enter in the register the name and address of each guest who stays there and other particulars that the GTA may prescribe. The register must be retained by the holder of the tourist accommodation licence for at least 5 years. Each guest must be provided with a registration card which must be completed by the guest and submitted by the licensee to the GTA as demanded in writing.

A Tourism Development Fund has been established by the Tourism Act. The sources of the Fund include among others, a 1% levy payable by a patron of a tourism enterprise.

## IMPORT / EXPORT

Companies which are licensed under the Free Zones Act, 1995 (Act 504) (the “Free Zone Act”) may enjoy certain benefits under the Free Zone Act including:

- Exemption from duties and taxes on imports or exports of goods
- A 10-year tax holiday
- Post-holiday tax rate of 15%
- Foreign employees are totally exempt from payment of income tax in Ghana on income earned in the free zone subject to the existence of a double taxation agreement between Ghana and the home country of that foreign employee and if the employee is liable to pay income tax in his home country
- Shareholders are exempt from withholding tax on dividends arising out of free zone investment
- Unconditional transfer through authorised dealer banks in freely convertible currency of
  - a. Dividends or net profits attributable to the investment
  - b. Payments in respect of loan servicing where a foreign loan has been obtained

- c. Fees and charges in respect of any technology transfer agreement registered under the Act
- d. The remittance of proceeds (net of all taxes and other obligations) in the event of sale or liquidation of the enterprise or any interest attributable to the investment.

Sales of goods and services by a domestic enterprise from the national customs territory to enterprises in the free zone and single-factory zone are considered as exports. Again, a domestic enterprise is eligible to benefit from the prevailing export incentives available to a national exporter and does not require an export license for sale of any goods and services to enterprises in the free zone or single factory zone.

A free zone enterprise in Ghana may be 100% foreign owned, 100% Ghanaian owned or investors from different countries may form a company or a joint venture between. The minimum capital requirement for foreign investment under the Ghana Investment Promotion Centre Act, 2013 (Act 865) does not apply to free zone enterprises. Free zone enterprises must however, fulfil the minimum 70% export requirement.

## CUSTOMS DUTIES AND EXCISE DUTIES

Ghana has adopted the rates of customs duty under the ECOWAS Common External Tariff System (the “ECOWAS CET”). The ECOWAS CET is a 5-band tariff system which was adopted by the Authority of Heads of State and Government, 29th session, adopted per Decision A/DEC.17/01/06, the ECOWAS CET for ECOWAS Member States.

The 5-band tariff structure of the ECOWAS CET is as follows:

Category	Description	Rate
0	Essential commodities	0%
1	Essential commodities, raw materials, capital goods	5%
2	Intermediate products	10%
3	Consumer goods	20%
4	Specific goods for economic development	35%

Under the Excise Duty Act, 2014 (Act 878) as amended by the Excise Duty (Amendment) (No.2) Act, 2015 (the “Amendment No.2”), a manufacturer of excisable goods must register with the Ghana Revenue Authority. Goods liable to excise duty include malt drinks, bottled or sachet water, beer, wines, spirits, tobacco and plastics. The applicable rates of excise duty for the production of malt drinks are as follows:

- Where the quantity of local material that is used in the production is less than 50% of the total raw materials, an excise duty of 17.5% Of the ex-factory price will be paid
- Where the quantum of local raw materials used is between 50% and 70%, an excise duty of 10% of the ex-factory price will be paid

- When the quantum of local raw materials is above 70% of the local materials used, an excise duty of 7.5% of the ex-factory price will be paid.

Under the Amendment No.2, Cider beer has been included as an excisable product and the rate of excise duty payable is 17.5% of the ex-factory price.

The Excise Stamp Act, 2013 (Act 873) (the “Excise Stamp Act”) requires manufacturers and importers of specified excisable goods to obtain excise tax stamps from the Ghana Revenue Authority to be affixed on each product unit. Imported excisable goods must have the excise tax stamp affixed by the manufacturer before shipment or by the importer at the point of entry in an approved facility. A manufacturer in Ghana must affix the excise tax stamp before the product unit is delivered out of the factory. Goods to which excise tax stamps must be affixed include cigarettes and other tobacco products, alcoholic beverages, non-alcoholic carbonated beverages and bottled water. An authorised officer may, at a reasonable time, enter the premises of any manufacturer, importer, wholesaler, distributor or retailer of excisable goods for the purposes of verifying the application of the excise tax stamp on the designated products, the genuineness of the affixed excise tax stamps and to ensure compliance with the provisions of the Excise Stamp Act. The Income Tax (Amendment) (No.2) Act, 2017 (Act 956), provides for an accelerated depreciation over a period of 2 years on affixing machinery and equipment imported for the implementation of the excise tax stamp at a rate of 50% of the initial value for the first and second years.

The following are prohibited exports in Ghana:

- Illegal drugs
- Weapons, Explosives and Ammunition – unless permission has been obtained
- Knives and deadly weapons
- Counterfeit money
- Pornographic material
- Diseased animals and animal carcasses
- Plants and seeds – unless permission has been obtained.

## MINERALS AND MINING ACT

Mining in Ghana is regulated by the Minerals Commission and the Ministry of Lands and Natural Resources. The industry is governed by the Minerals and Mining Act, 2006 (Act 703) and its regulations.

The Minerals and Mining Act provides for a 10% carried interest for the government in mineral rights (reconnaissance, prospecting or mining). The Government is not precluded from further participation in mining operations, provided this is agreed between the parties.

The holder of a mineral right which includes a reconnaissance licence, a prospecting licence, a mining lease, a restricted reconnaissance licence, a restricted prospecting licence or a restricted mining lease may be granted the following:

- Exemption from payment of customs import duty in respect of plant, machinery, equipment and accessories imported specifically and exclusively for the mining operations

- Exemption for staff from the payment of income tax on furnished accommodation at the mine site
- Immigration quota in respect of the approved number of expatriate personnel
- Personal remittance quota for expatriate personnel free from tax imposed by an enactment regulating the transfer of money out of the country.

Small scale mining is reserved solely for Ghanaian citizens. The mining of industrial minerals is also reserved for Ghanaian citizens, however a non-Ghanaian citizen may be permitted to mine industrial minerals if the proposed investment is US\$10 million and above.

Investors in the mining sector of the country are required by law to:

- Incorporate a company in Ghana – the company may be wholly foreign owned
- Apply for licenses or approvals from the Ministry of Lands and Natural Resources
- Register with the Minerals Commission of Ghana.

There are local content regulations which, among other things, limit the employment of expatriates to given quotas. The regulations also require the procurement of locally available mining supplies.

The mining sector continues to face the challenge of illegal mining operations (“galamsey”) on large mining concessions. To curb the “galamsey” menace, the Government has imposed a ban on the operations of illegal miners since April 2017. An anti-galamsey task force (Operation Vanguard) has been set up to clamp down on activities of these illegal small scale miners.

## LEGAL SYSTEM

Ghana operates a common law legal system based on judicial precedent. Customary law remains an important source of law in relation to land and succession. Legislation is the source of most new law.

The Ghanaian court structure comprises:

- Supreme Court
- Appeal Court
- High Court (fast track, commercial, human rights, labour, land, and financial crimes divisions)
- Circuit Court
- District Courts.

A judgment obtained from a foreign country can be enforced in Ghana against a Ghanaian resident only where there is an agreement for the reciprocal enforcement of judgments between Ghana and the country in which the judgment was obtained. In every other case foreign judgments are enforced by way of a re-trial /re-hearing and the judgment may only serve as evidence of the liability of the other party.



Arbitral awards are enforceable under the Alternative Dispute Resolution Act if the award is made in a country which is party to the New York Convention or if there exists a reciprocal arrangement between Ghana and the country where the award was made.

### WORK PERMITS

A work permit and residence permit are required for a foreign national to engage in gainful employment. Permits are obtainable from the Ghana Immigration Service. Assistance is provided by the regulatory bodies relevant to a particular investment.

### TAXATION

The main law that regulates income tax in Ghana is the Income Tax Act, 2015 (Act 896). The Ghana Revenue Authority is the umbrella tax regulatory authority. It has the following divisions:

- Domestic Tax Revenue Division
- Customs Division
- Support Services Division.

Income Tax in Ghana is payable on income accruing in or deriving from Ghana. For non-residents, tax is levied on income which has a source in Ghana. For non-residents with permanent establishments, tax is levied on income that is connected with the permanent establishment. Non-residents who have been in Ghana for at least 183 days in a year are deemed to be resident persons and are assessable to tax in the same manner as resident individuals. The applicable rate is from 5% to 25%.

Companies registered to operate as free-zone developers/enterprises do not pay corporate tax for the first ten (10) years of operation. After the 10-year corporate tax holiday has expired, the corporate tax rate will be 15%.

The chargeable income of a company other than a company principally engaged in the hotel industry and income from goods and services provided to the domestic market by a Free Zone Enterprise after its concessionary period for a year of assessment is taxed at 25%. The chargeable income of mining and petroleum companies is taxed at the rate of 35%.

Value Added Tax (VAT) of 17.5% (which includes a National Health Insurance Levy of 2.5%) is levied on the supply of goods and services in Ghana, the importation of goods and the supply of any imported service other than certain exempt goods and services.

In relation to the following, withholding tax is charged on payments made to non-residents and which have a source in Ghana:

- |   |     |
|---|-----|
| • Dividends                               | 8%  |
| • Interest paid to individuals            | 8%  |
| • In case of any other interest           | 8%  |
| • Rent (residential property)             | 8%  |
| • Rent (non-residential property)         | 15% |
| • Natural resource payments and royalties | 15% |
| • Goods, works and services               | 20% |

### STAMP DUTY

Under the Stamp Duty Act no instrument that is subject to stamp duty is enforceable or admissible in court as evidence if the document is not stamped. The Act sets out various rates applicable to specific matters or instruments. A person dissatisfied with an assessment made under the Act may lodge an objection with the Commissioner-General within thirty days after receipt of the assessment. A determination on the objection shall be made within 21 days from the date of receipt and the Commissioner General may allow the objection in whole or in part with an amendment or disallow the objection.

### EXCHANGE CONTROLS

Ghana operates a floating exchange rate system. The Foreign Exchange Act has abolished exchange controls at the transactional level. Banks have to report foreign currency transactions to the central bank. The liberalised law and the well developed banking system and privately owned forex bureaux as well as money transfer organisations make for easy conversion and transfer of foreign currency in and out of Ghana.

An individual may operate a foreign currency account with banks in Ghana. Investments to which the GIPC Act applies are assured of unconditional transferability of personal remittances of wages through authorised dealer banks and the free transferability of dividends and profits.

### SECURITIES

The Securities and Exchange Commission (SEC) is the statutory regulator of the securities industry in Ghana. The SEC was set up under the Securities Industry Act (SIA). Under the SIA the SEC is mandated to:

- Advise the government on all matters relating to the securities industry
- Maintain surveillance over activities in securities to ensure orderly, fair and equitable dealings in securities
- Register, license, authorise or regulate in accordance with the Act or any regulations made under it, stock exchanges, investment advisers, unit trust schemes, mutual funds, securities dealers, central securities depositories, and their agents, and to control and supervise their activities with a view to maintaining proper standards of conduct and acceptable practices in the securities business
- Formulate principles for the guidance of the industry
- Monitor the solvency of licence holders and take measures to protect the interest of customers where the solvency of any such licence holder is in doubt
- Protect the integrity of the securities market against any abuses arising from the practice of insider trading
- Adopt measures to minimize and supervise any conflict of interest that may arise for dealers
- Review, approve and regulate takeovers, mergers, acquisitions and all forms of business combinations in accordance with any law or code of practice requiring it to do so



- Create the necessary atmosphere for the orderly growth and development of the capital market
- Perform the functions referred to in section 279 of the Companies Act 1963
- Review and approve all invitations to the public to acquire or dispose of securities
- Perform other functions specified under the SIA.

As part of its regulatory mandate the SEC licenses and regulates all brokers, investment advisors, custodians, trustees, stock exchanges and other players in the Securities Industry. The SEC's regulations also set out disclosure requirements for listed companies and unlisted public companies which undertake invitations to the public covering among others the publication of annual and quarterly financial statements.

A key player in the capital markets is the Ghana Stock Exchange. The GSE was incorporated as a company limited by guarantee in July 1989. Trading commenced a year later on 12 November 1990. A 9-member Council governs the GSE. Criteria for listing on the GSE include capital adequacy, profitability, spread of shares, years of existence and management efficiency.

Ghana's current exchange control regime allows non-residents to invest freely in the capital markets without restriction. Non-residents are also guaranteed free transferability of their capital and income. However, in relation to government of Ghana Notes, non-residents are only allowed to invest in Notes with a tenor of 3 years and above.

## BANKING

The Banks and Specialised Deposit-Taking Institutions Act 2016 consolidates the laws relating to, and regulates, deposit-taking business in Ghana. It applies to banks and specialised deposit-taking institutions (and their financial holding companies and affiliates). The law however does not apply to credit unions, non-deposit taking and other non-bank financial institutions which are subject to licensing and supervision under the Non-Bank Financial Institutions Act, 2008.

## INTELLECTUAL PROPERTY

Ghana is a party to the Berne Convention for the Protection of Literary and Artistic Works, the Paris Convention for the Protection of Industrial Property, the Patent Cooperation Treaty (PCT), the World Trade Organisation (WTO) TRIPS agreement, the Locarno Agreement establishing an International Classification for Industrial Designs and the Harare Protocol. Ghana is a member of the World Intellectual Property Organisation (WIPO). Ghana has signed but has not ratified the WIPO Performances and Phonograms Treaty and the WIPO Copyright Treaty.

Ghana has within the last ten years passed six intellectual property statutes namely the Trademarks Act, Patents Act, Industrial Designs Act, Layouts - Designs (Topographies) of Integrated Circuits Act, Geographical Indications Act, and the Copyright Act.

The registration of a trademark is valid for ten years from the date of filing the application and is renewable for a further term.

A patent has a term of twenty years from the date of filing of the application. Annual fees are paid in advance. Where an annual fee is not paid the application will be deemed to have been withdrawn or the patent will lapse.

The Copyright Act expressly provides for protection of copyright without the requirement of registration. The term of protection of copyright has been increased from fifty years to seventy years. The rights of the author if he is an individual are protected during the author's lifetime and seventy years after his death. Public corporations and other corporate entities also have their registered works protected for seventy years. Copyright protection extends to computer programs.

Ghana follows the International Classification for the registration of Industrial Designs according to the Locarno Agreement establishing an international classification for Industrial Designs. The registration of an industrial design is valid for a period of five years from the filing date of the application and may be renewed for two further consecutive periods of five years. There is no further protection for industrial designs after the lapse of the ten years.

Protection for layout-designs is granted if the layout-design is original and if it is the creator's own intellectual effort (and is not common-place among creators of layout designs and manufacturers of integrated circuits at the time of its creation). A layout design consisting of a combination of elements and interconnections that are commonplace is protected only if the combination taken as a whole is original. Protection of a layout-design is valid for a period of ten years from the date of commencement of protection.

Geographical indications are governed in Ghana by the Geographical Indications Act which affords protection for homonymous geographic indications for wines or other products. It also allows a person or group of persons carrying on an activity as a producer in a geographical area and a competent authority to file an application. Protection for a geographical indication is available regardless of whether it is registered.

Ghana has also introduced the National Intellectual Property Policy and Strategy 2016 aimed to strengthen the management of the intellectual property system in Ghana, encourage innovation and creativity within the system, identify the various aspects of intellectual property and provide strategies for the implementation of a functional and effective intellectual property protection system. This is expected to ensure the exploitation of intellectual property rights for the accelerated development and growth of industry, science, technology and the creative arts in Ghana.

The policy aims to bring Ghana's intellectual property rights in line with its international commitments under the WTO on TRIPS and international best practices. The policy identifies strategic policy objectives to be pursued in the next five years which



include strengthening the institutional and legal framework for protection of intellectual property rights.

## LABOUR RELATIONS

Employer-employee relationships are regulated by the 1992 Constitution and the Labour Act. The engagement of an employee beyond six months requires a contract of employment. A contract of employment may be terminated on any of the following grounds:

- By mutual agreement between employer and employee
- On grounds of ill health or sexual harassment
- Where the employee is found to be unfit on medical grounds
- Inability to work on grounds of proven misconduct, incompetence of worker, and sickness or accident.

Remuneration is based on the principle of equal work for equal pay. The statutory deductions are social security as required by the Social Security Law and income tax under the Income Tax Act.

Workers are obliged to work forty hours each week and are entitled to rest periods. Nursing mothers are entitled to one hour each day for nursing a child under one-year old. Any form of child labour or forced labour is prohibited. Employees have a right to join unions. Employers and employees may enter into collective bargaining agreements. In the event of disputes the first steps should be mediation and arbitration, and then lockouts and picketing. Every strike action organized outside the Act is illegal. Any arrangement or amalgamation that results in the severance of the relationship between the worker and the employer or a diminution in the worker's status, prior to the arrangement or amalgamation, entitles the worker to compensation known as redundancy pay.

## LAND OWNERSHIP AND LAWS IN GHANA

Land in Ghana is held primarily by stools and families with the state and individuals or corporate entities holding the remaining. A stool includes a person or body having control over community land, as a representative of that particular community. Land and all incidences affecting land in Ghana are governed by customary law with the exception of those lands which have been acquired by the government of Ghana through various legislations. There is therefore a parallel system of land tenure in Ghana, namely, customary and statutory. The customary sector holds 80 to 90 percent of all the undeveloped land in Ghana with varying tenure and management systems. Customary law is not of general application throughout the country, it varies from community to community.

## RESTRICTIONS ON THE ALIENATION OF LAND

There are some constitutional restrictions on alienation of stool land. No interest equivalent to a freehold interest can be created in stool land. A non-citizen of Ghana cannot hold a freehold interest in land and may only hold a leasehold interest for a term of not more than 50 years. A written consent from the Regional Lands Officer is required for any valid disposition of a stool land or state land.

Additionally for stool lands, there is the requirement for the consent of the Traditional Council within which the stool land falls. The Lands Bill, 2016 which is under consideration by Parliament seeks to extend the freehold restrictions on stool lands to family lands and other communally owned lands.

## REAL ESTATE AND CONSTRUCTION

A booming residential and commercial real estate business is attracting a great deal of investment from both local and foreign sources. Commercial real estate spans office buildings, shopping malls, hotel and recreational facilities, while residential real estate covers high rise apartment style buildings as well as country house styles. Funding is sourced from banks – local and foreign etc. and for residential estate prospective purchasers have mortgage finance support from the commercial banks.

## INFRASTRUCTURE

Government continues to be the major source of infrastructure-roads, air and sea ports, railways, schools, hospitals. Government has introduced a PPP policy by which it intends to share the financing and associated risks as well as rewards with the private sector. The National Policy which is the basis of the current legal framework is to give way to a PPP Act in the near future. The Ghana Infrastructure fund has been established and funded to improve access to financing of the PPP project.

## GOVERNMENT PROCUREMENT

The Public Procurement Act, 2003 (Act 663) as amended by the Public Procurement (Amendment) Act, 2016 (Act 914) (the "PPA") applies to the procurement of goods, works and services, financed in whole or in part from public funds. Furthermore, the PPA applies generally to government ministries, departments and agencies. Any Government Ministry, department or agency procuring goods, works or services must apply the procedures set out under the PPA.





# GUINEA CONAKRY

## THIAM & ASSOCIÉS BUSINESS LAW FIRM



### FIRM INFORMATION

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### COUNTRY INFORMATION

Guinea Conakry, officially the Republic of Guinea, covers an area of 245 857 square kilometres in West Africa and has a population of about 12.4 million inhabitants (July 2016 figures). There are four natural regions involving distinct human, geographical and climatic characteristics. These regions are:

- Maritime Guinea (Guinée Maritime) which covers about 18% of the country and is mainly inhabited by five ethnic groups (the Soussou, the Baggas, the Landoumas, the Nalous and the Mikhi Forè). It is a narrow coastal plain bordered by estuaries, with a flat terrain. In the monsoon season, the climate is marked by heavy rainfall.
- Middle Guinea (Moyenne Guinée) which covers about 20% of the country and is mainly inhabited by Peulh and Djallonké and Coniagui ethnic groups. The area comprises mountains like Fouta Djallon and high plateaus. The climate is characterized by low temperatures and heavy rainfall in the rainy season.
- Upper Guinea (Haute Guinée) which is a savannah region mainly inhabited by the Malinké. It covers about 41% of the country. Upper Guinea is a dry and hot region where the year is divided into the dry season from November to April and the rainy season from May to October.
- Forested Guinea (Guinée Forestière) which is a forested and mountainous region mainly inhabited by the Kissis, the Kono, the Djerzé, the Manons, the Thomas, the Thomas Manian and the Konianké.

### POLITICAL SYSTEM

A former French colony, Guinea was granted independence on October 2, 1958 and was the first French colony in Africa to be granted independence. Its official language remains French and its currency is the Guinean Franc (GNF).

Guinea is a republic and a constitutional democracy. The President is directly elected by the people and is head of state and head of government. The unicameral Guinean National Assembly is the legislative body of the country and its members are also directly elected by the people. The judicial branch is led by the Guinea Supreme Court, the highest and final court of appeal.

Elections were held in November 2010 and Professor Alpha Condé has been elected President of Guinea. He has been re-elected in 2015 for a new 5 year period.

### ECONOMIC INDICATORS

GDP: USD9.1 Billion (2017) with GDP growth of 6.7% (2017)

GDP per capita: USD702 (2017)

Inflation rate: 8.5 % (2017).

### INVESTMENT CLIMATE

Guinea has considerable potential for growth especially in the agricultural, fishing and mining sectors. However, Guinea's poorly developed infrastructure, corruption and political instability has limited foreign investment in the past. Guinea is a low-income country and its annual growth in 2017 was estimated at 6.7%. The inflation rate reached 8.5% in 2017.

Guinea is member of the Organization for Harmonization of Business Law in Africa (OHADA) which provides a common set of business laws directly applicable in its member countries such as commercial companies and economic interest groups, general commercial law, security interests and arbitration.

The 2015 Investment Code provide certain incentives as well as national laws for specific sectors (like mining and oil & gas). Guinea operates various exchange controls. The Agency for Promotion of Private Investment (APIP) promotes private investment in the country and also operates as a one stop shop for business registration.

### EXCHANGE CONTROLS

The Central Bank of Republic of Guinea (CBRG) has implemented several regulations regarding the exchange controls. The Governor of the CBRG specifies, by instruction or circular, the regulations relating to the following schemes: regime for the import of goods and services, regime for the export of goods and services, regime for the import and export of means of payment, regime for technical assistance, film



and audiovisual royalties, regime for external financing, regime for direct investment in Guinea and regime for miscellaneous current operations.

The CBRG also regulates current international transactions, i.e. all transactions between a resident and a non-resident resulting from transactions in goods, services, income (interest and dividends) and current transfers (donations, salaries, contributions, various royalties).

## FORMS OF BUSINESS

The following forms of business ruled by the OHADA Uniform Act relating to Commercial Companies and Economic Interest Groups are available:

- General Partnership (SNC)
- Limited Partnership (SCS)
- Simplified Joint Stock Company (SAS) - no minimum capital required
- Private Limited Company (SARL) - no minimum capital required
- Joint Stock Company (SA) - the minimum registered share capital is set at 140 000 000 Guinean francs.

## INCORPORATION OF A GUINEAN COMPANY

The duration of the registration procedure depends on the form of the company. In practice, it takes 5 to 10 days. The procedure concerning a SARL takes less time than that of a SAS and SA which takes more time because of the mandatory intervention of a notary. The registration procedure can be summarized as follows:

- Drafting of the articles of association
- Payment of the registered share capital
- Commercial registration with the APIP.

Once the company is registered, it can register itself with the Guinean Agency for the Promotion of Employment (AGUIPE) and the Social Security Agency (CNSS).

## TAXATION

The main taxes are:

- Corporate income tax (35% of net profit)
- Social security contributions (employer: 18%, employee: 5%)
- Payroll tax (6% of total payroll)
- Apprentice tax (3% of gross salary)
- Capital gains tax (10%)
- Value added tax (18%)
- Income tax (40%).

Income tax is payable on individuals' total net revenue sourced in Guinea in the tax year.

Company tax is payable at rates varying from 35% of any profits and revenues made by companies or other legal entities engaged in business activities in Guinea. Gains from the sale of fixed assets which are reinvested are not taken into account for the purposes of company tax (for the year in which they occurred). The tax may be paid in two instalments, both equal

to one third of the previous year's company tax. Instalments are paid no later than June 15 and September 15 of each year.

Value added tax replaced previous taxes on turnover, import turnover, production, business and services. It is paid on sales of goods and services by all individuals and entities (including collectives and state-owned companies).

## MONETARY POLICY

The monetary policy of Guinea is implemented by the CBRG. Supporting sustainable economic growth of Guinea and reducing inflation are two of the main goals of the Guinean monetary policy.

## IMPORT/EXPORT

Imports account for USD2.151 Billion (2016) of the economy and consist mainly of machinery and oil & gas. Exports account for USD1.839 Billion (2016) and consist mainly of mining raw materials (89%). Imports of goods from any country whose CIF value is equal to or higher than the minimum amount set by the competent authorities must be domiciled with a local bank.

All exports of precious materials (gold, diamonds and other gems) must be domiciled with a commercial bank or the Central Bank, at the exporter's choice. The latter must complete an exporter's certificate and undertake to repatriate the proceeds of the sale, in accordance with the regulations in force. Exports of goods other than precious materials, whatever their destination, must be domiciled with a local bank as soon as the FOB value is equal to or higher than the minimum amount set by the competent authorities, whatever its method of financing. An exemption from direct debit can only be granted by the Central Bank.

## LEGAL AND JUDICIAL SYSTEM

The legal system is based on the French civil law, and customary law. The judicial system is composed of courts of first instance, two Courts of Appeal (in Kankan and in Conakry) and the Supreme Court. A military tribunal also exists to handle criminal cases involving military personnel. A traditional system of dispute resolution exists at the village and neighbourhood level. Cases unresolved at this level may be referred to the courts for further consideration. The criminal code provides for the presumption of innocence, the equality of citizens before the law, the right to counsel and the right to appeal a judicial decision.

## INTELLECTUAL PROPERTY

Guinea is member of the African Intellectual Property Organisation (OAPI), a treaty relating to intellectual property signed by seventeen African countries to protect patents, trademarks and other intellectual property by means of a single registration in a central registry in Yaoundé, Cameroon.



## FINANCIAL SERVICES/INSURANCE

Guinea's financial system is dominated by the banking sector which comprises fifteen active banks. Guinea's banking sector is overseen by the Central Bank which serves as the agent of treasury for overseeing banking and credit operations in Guinea and abroad. The CBRG manages the foreign exchange reserves on behalf of the State. Guinea also has ten insurance firms. However, the country is not a member of the Inter-African Conference of Insurance Markets (CIMA), thus the insurance sector is regulated by the Guinean Insurance Code.

## TREATIES, BILATERAL AGREEMENTS AND MEMBERSHIP OF INTERNATIONAL AND REGIONAL ORGANISATIONS

A double tax treaty between Guinea and France was signed in 1999 and came into force in 2004. A double taxation avoidance agreement preventing tax evasion was also signed between Guinea and Morocco in 2015 and is in force. Guinea is a member of various international and regional organisations, such as the United Nations, the International Monetary Fund, the World Bank, the World Trade Organization, the African Union, the OHADA, the Economic Community of West African States (ECOWAS), the Mano River Union (MRU) with Liberia and Sierra Leone, the Gambia River Basin Development Organization (OMVG), The Senegal River Basin Development Organization (OMVS), the Niger Basin Authority (ABN) and the Global System of Trade Preferences among Developing Countries (SGPC).

## INFRASTRUCTURE

Road and transport infrastructure is very underdeveloped. National roads in Guinea represent 16% of the 44 301km of the inventoried road network. This network includes prefecture (or secondary) roads - 36% and community (or tertiary) roads - 48%. The overall state of national roads is very unsatisfactory. There are different projects that the government intends to launch with the support of development partners. The road plan contains a portfolio of nearly 30 priority projects estimated at USD1.50 Billion. One of the major projects in the near future will be to rehabilitate the 662km Conakry - Kankan rail network which no longer operates. The main river is the Niger, the third longest on the West African continent. It is 4 183km long, and its middle course is navigable for about 1 600km. There is potential for hydroelectric power plants.

## MINING, OIL AND GAS

There are significant deposits of iron ore, gold, diamonds and bauxite (25% of the world's known bauxite reserves). The mining sector represents 89% of Guinea's exports and is the second largest employer (after the public service) employing more than 10 000 permanent employees and about 200 000 temporary workers. Offshore oil reserves are being explored.

Mining activities are regulated by the Mining Code of 9 September 2011 as amended by the Law n°L/2013/053/CNT dated April 8, 2013. The sector has grown in recent years due to the government's policy of promoting private investment by

improving the legal, administrative and judicial framework. In addition, the Investment Code no longer discriminates between foreigners and nationals and allows the repatriation of profits.

## ENERGY

Guinea is endowed with significant hydropower potential. In May 2015, the 240 megawatt (MW) Kaleta hydropower plant has been commissioned and since, the total power production generated has doubled. The Guinean government, through its Ministry of Energy and Hydraulics (MEH), has started the process of adopting a new legal and institutional framework for the production, transmission and distribution of electric power. Electricité de Guinée (EDG), the national electricity company, is responsible for the public electricity service throughout the country in urban areas. Guinea's national electrification rate is approximately 26% with 11% in rural areas and 53% in urban areas (2016).

Guinea benefits from strong resource potential and long-term opportunities to export low-cost electricity throughout West Africa, in particular with the West African Power Pool (WAPP) being implemented. Furthermore, EDG has recently entered into a management contract with Veolia to improve operational performance. However, the power sector faces significant challenges such as dilapidated infrastructure, high technical and commercial losses, and poor overall financial performance.

## AGRICULTURE

Agriculture is undeveloped and involves subsistence crops (rice, peanuts, corn and cassava) and export crops (pineapples, bananas, mangoes, citrus, coffee, cacao, cotton, cashew nuts, rubber, wood and cocoa). Agricultural products contribute about 25% of the country's GDP. Guinea is not food self-sufficient and relies on imports.

## LABOUR RELATIONS

The Labour Code fixes conditions relating to employment, remuneration, transport and travel allowances, working hours, termination of employment and occupational health and safety. Any discrimination based on gender, race or age is prohibited. Employment contracts may be long term or fixed term. Expatriate employees require a labour permit from the AGUIPE. Employers are obliged to register their employees with the CNSS.



# KENYA

## KAPLAN & STRATTON

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### COUNTRY INFORMATION

Kenya covers a total area of approximately 582 650 square kilometres. The population is approximately 45 million.

### POLITICAL SYSTEM

Multiparty democracy.

### INVESTMENT CLIMATE

The Investment Promotion Act encourages foreign investment and facilitates the issue of general and industry specific licences.

There are limited foreign investment incentives available in Kenya. The main area of growth has been in light assembly manufacturing in export processing zones where 10-year tax holidays are available to approved enterprises. The Special Economic Zones Act commenced in December 2015 to promote and facilitate both global and local investors in Special Economic Zones. A Special Economic Zone under the Act will operate as a designated area with preferential trade and business policies. This Act has not yet been fully implemented as the Authority tasked with the role of overseeing the establishment and operation of Special Economic Zones has not been constituted. Enterprises licensed under the Act will be exempted from all taxes and duties that are payable under all domestic tax laws including the East African Customs Management Act, in addition to receiving other significant incentives.

The Companies Act 2015 was fully implemented in June 2016. The Act has completely overhauled the legal framework governing companies in Kenya. There have been some challenges in the implementation of the new statute such as unclear statute provisions, drafting errors as well as lack of regulations and statutory forms. There remains some uncertainty on certain aspects of the Act and presently there is an ongoing initiative by the State Law Office to review the Act and regulations with a view to addressing these issues.

The Insolvency Act 2015 was also enacted alongside the Companies Act 2015 and it has replaced the provisions of the Companies Act Cap 486 relating to the winding up of

companies. Some of the significant changes introduced by the Act include administration of insolvent companies as part of new business rescue processes and the introduction of the requirement for qualified insolvency practitioners to conduct the liquidation processes of a company.

There are no restrictions on investments by foreigners in private companies incorporated in Kenya and foreigners can be directors of companies. The requirement for 30% Kenyan ownership of foreign companies wishing to register in Kenya was abolished with effect from 1st January 2017.

Minimum Kenyan co-ownership in insurance companies, banks, telecommunications companies, engineering firms, financial sector advisers (non-statutory government policy restrictions), airlines (air services providers) and maritime services providers is mandatory. Dealings in agricultural land involving non-citizens are prohibited unless special exemption from the restriction is obtained.

The Land Laws (Amendment) Act 2016 has recently been enacted and has introduced new restrictions under the Land Act prohibiting foreigners from dealing with what is described as "controlled land" without prior approval from the Cabinet Secretary. Controlled land is defined as land in Kenya which is: (i) within a zone of 25 kilometres from the inland national boundary of Kenya; (ii) within the first and second row from the high water mark of the Indian Ocean; or (iii) any other land as may be declared controlled land under any law or statute.

Kenya's membership of the East African Community (EAC) and the Common Market for Eastern and Southern Africa (COMESA) presents opportunities for manufacturing operations to exploit the benefits of those markets. The East African Community Common Market Protocol, which provides for the free movement of goods, services, persons, labour and capital commenced on 1 July 2010. Member states have not however put in place the necessary institutional framework for enforcement. The promulgation of the 2010 Kenyan Constitution and continued government investment in infrastructure continues to enhance Kenya's business environment. The country however continues



to grapple with challenges related to devolution of government which has raised a number of teething issues that have directly and indirectly affected the private sector.

Construction, infrastructure and real estate industries continue to be very active.

### FORMS OF BUSINESS

- Company limited by guarantee
- Co-operatives
- Foreign companies otherwise known as branch offices
- Joint venture companies
- Limited liability partnerships
- Multinational companies
- Non-Governmental Organisations (soon to be known as Public Benefit Organisations)
- Partnerships
- Private or public limited liability companies
- Private unlimited liability companies
- Sole proprietorship
- Sole traders
- Trusts.

### FORMATION OF A COMPANY

Companies and foreign companies (branch offices) must be registered at the Companies Registry based in Nairobi. Businesses such as banks, telecommunications and insurance companies require special licenses from the regulators of these sectors. Transition to the new legislative framework under the Companies Act 2015 is ongoing after the relevant provisions of the new law relating to formation of companies were brought into operation in November 2015. The process of registration of companies has also been modified with the introduction of an online government portal known as e-Citizen onto which applications are submitted and processed. The introduction of e-Citizen is in line with the government's project of digitising all its processes and this has invariably improved the timelines involved in the registration of companies.

### REGULATORY FRAMEWORK

There is an active Capital Markets Authority. The statutory Capital Markets Authority and Nairobi Securities Exchange regulations govern issues of and dealings in securities listed on the Nairobi Securities Exchange.

The Competition Authority regulates the creation or strengthening of monopolies, including acquisitions and takeovers of businesses where a change in control occurs.

### EXCHANGE CONTROLS

There are no exchange control restrictions. Residents may hold foreign currency accounts. Foreign exchange for eligible transactions is purchased from commercial banks without any controls. Eligible transactions include payments in respect of dividends, capital and interest on loans, current account transactions and proceeds on disposal of investments.

### TAXATION

Currently the main taxes are as follows:

Tax	Rate
Income tax on individuals	30%
Corporate tax	30%
Branch of a foreign company	37.5% (non resident)
VAT	16% (8% for petroleum and petroleum products)
Capital gains tax	5%
Creation or increase in share capital	1%
Stamp Duty on transfers of land	2% or 4% of value of land depending on location

Kenya has double taxation treaties with Canada, Denmark, Norway, Sweden, India, Zambia, United Kingdom, Germany, France, Tanzania, Uganda, South Africa, Mauritius and Iran and is currently negotiating a number of others with various countries. The USA does not have a double taxation treaty with Kenya.

Various capital deductions are available on industrial buildings, hotels, plant and machinery and mining investment. Capital allowances are provided on the basis of cost on a reducing balance basis.

Benefits-in-kind paid to employees such as motor cars, housing and loans are taxable. Employee taxes are based around a pay-as-you-earn income tax deduction, a national social security fund and a national hospital insurance levy. Excise and customs duties are also payable depending on the nature of the goods produced or imported. There are no death duties/taxes payable on personal estates.

### LEGAL SYSTEM

Kenya has a well developed legal system, partially inherited from its colonial past, with English common law forming the basis, but combining traditional customary law and elements of Islamic law with regard to marriage and succession. Kenya adopted a new Constitution on 27 August 2010 which sets a reform agenda for better governance and a path to democratic stability.

Kenya has a four tier court system, namely Magistrates Courts, High Court, Court of Appeal and Supreme Court. There is provision for enforcement in Kenya of certain foreign judgments and arbitral awards.

Kenya is a signatory to and has adopted the 1923 Protocol on Arbitration Clauses of the League of Nations and the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. The Arbitration Act is now operative and embodies most of the provisions of the UNCITRAL Model Law.





## INTELLECTUAL PROPERTY

Protection is provided by statute. Kenya is a signatory to the Paris and Berne Conventions, the TRIPS Agreement, the African Regional Intellectual Property Organisation (ARIPO), Harare Protocol and the Madrid Agreement and Protocol. There are public registries for trade and service marks, designs and patents.

## FINANCIAL SERVICES/INSURANCE

Kenya has the most sophisticated financial and capital markets in the East African region. The Central Bank of Kenya is responsible for the management of Kenya's financial and banking system with the Treasury. Bank supervision is of a high standard. Currently, M-Pesa, which is a mobile phone-based money transfer service (owned by Kenya's biggest telcom firm, Safaricom) has revolutionised the financial sector and it is the most preferred method for transactions in both formal and informal sectors although it is not regulated by the Central Bank of Kenya.

The Capital Markets Authority is responsible for the regulation and supervision of the capital markets, including the Nairobi Securities Exchange. The Insurance Regulatory Authority is responsible for the regulation of the insurance sector.

## MEMBERSHIP OF INTERNATIONAL AND REGIONAL ORGANISATIONS

Kenya is a member of the EAC, COMESA, African Union (AU), United Nations (UN), African Caribbean and Pacific Group of States (ACP) and the British Commonwealth.

## TRANSPORT

The government is currently spending large amounts of money to improve infrastructure including major ring roads around Nairobi. Nairobi has a commuter rail service system which was introduced to ease traffic congestion but this is not yet fully functional.

There are a number of huge transport infrastructure projects under way including a standard gauge railway whose phase I (from Mombasa to Nairobi) is already complete and operational while construction of phase II (from Nairobi to Naivasha) is underway and expected to be completed by June 2019. This railway system is expected to considerably reduce the time and cost expended for both cargo and passenger transport. This is the biggest infrastructure project in Kenya since independence and eventually the new railway is envisaged to connect Kenya, Uganda, Rwanda and South Sudan.

## WATER

Water is regulated under the recently enacted Water Act 2016, and by the Water Resource Authority which has completely taken over the functions of the previous Water Resource Management Authority. This statute has also created new bodies to replace the previous ones including (i) the National Water Conservation and Pipeline Corporation with the National Water Harvesting and Storage Authority, (ii) Water Services

Trust Fund with the Water Sector Fund, (iii) Water Services Boards with Water Works Development Agencies throughout the country. The previous statute was amended principally to devolve the roles in the management of water and water resources to local governments.

## ENERGY

The Energy Regulatory Commission (ERC) regulates the energy sector including petroleum prices based on a price capping formula. New energy legislation is expected to be passed soon by the Kenyan Parliament which will overhaul the current regulatory framework for energy and introduce provisions for regulation of new sources of energy including nuclear energy.

## TELECOMMUNICATIONS

The Communications Authority of Kenya regulates the telecommunications sector which is fully liberalised.

## MANUFACTURING

There is historically no substantive industrial manufacturing carried on in Kenya.

## INFORMATION AND COMMUNICATIONS TECHNOLOGY (ICT)

This is a fast expanding sector and good opportunities for investment continue to exist in this sector. The Kenya ICT Board has the mandate to promote development and investment opportunities in ICT.

## OIL

With the recent discovery of profitable oil and gas deposits in Kenya, there is increased focus on petroleum and gas exploration. The slump in global petroleum prices has caused activity in oil exploration and development ventures in the region to be slower than in 2014. Exploration is however not expected to stop and investment in the sector is still ongoing. The Petroleum (Exploration, Development and Production) Bill 2015 is pending in Parliament and seeks to overhaul the legal framework governing upstream and midstream petroleum activities in Kenya.

## MINING

Mining in Kenya is regulated by the Mines and Geology Department under the Ministry of Mining. Mining does not contribute considerably to Kenya's economy, however, certain mining projects in the recent past may have a significant positive impact on Kenya's exports.

The regulatory regime for mining in Kenya has recently been overhauled following the enactment of the Mining Act 2016. The Act has repealed the old Mining Act (Cap. 306 of the Laws



of Kenya), the Trading in Unwrought Precious Metals Act (Cap. 309 of the Laws of Kenya) and the Diamond Industry Protection Act (Cap. 310 of the Laws of Kenya). These previous laws had been in force for about 70 years and were considered outdated and inadequate for the growing sector.

## TOURISM

Kenya has one of the biggest and most diverse tourism industries in East Africa. The tourism sector in Kenya has experienced a steady growth in 2016 following a slump in 2014 and 2015. Tourism remains one of the largest foreign exchange earners in Kenya and is a key economic driver. There has been a spike in conference tourism in Nairobi following a number of high level international conferences held within the city.

## AGRICULTURE

This is one of the main income earners for the country especially in recent years with the expansion of the floriculture and horticulture sectors. Tea and coffee are major crops.

## LABOUR RELATIONS

The terms and conditions of employment are regulated by the Employment Act, the Labour Institutions Act and the Employment and Labour Relations Court Act.

The Labour Institutions Act governs the functions, powers and composition of various labour related bodies, such as the National Labour Board as well as the appointment, functions and powers of officers responsible for labour matters.

The Labour Relations Act governs the establishment, registration, dissolution and operation of trade unions, federations of trade unions, employers' organisations and federations of employers. The Occupational Safety and Health Act regulates safety, health and welfare in the workplace.



# LESOTHO

## WEBBER NEWDIGATE

### FIRM INFORMATION

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### COUNTRY INFORMATION

The Kingdom of Lesotho is a landlocked country entirely surrounded by the Republic of South Africa. It is just over 30 000 square kilometres in size with a population of approximately two million. It is the only independent state in the world that lies entirely above 1 400 metres in elevation. Its capital and largest city is Maseru.

### LATEST GDP FIGURES

Real gross domestic product (GDP) grew by an estimated 3.3% in 2016. Diamond mining in Lesotho has grown in recent years and may contribute 8.5% to GDP by 2015, according to current forecasts. Inflation was measured at 3.2% in 2015.

### POLITICAL SYSTEM AND INVESTMENT ENVIRONMENT

Lesotho has a parliamentary system and constitutional monarchy. The Prime Minister is head of government and has executive authority. The King largely serves a ceremonial function. The Constitution provides for an independent judicial system and protects civil liberties such as freedom of speech, freedom of association, freedom of the press, freedom of assembly and freedom of religion. Lesotho has a dual legal system consisting of customary and general laws.

In May 2015, after competitive elections, a coalition government was formed, the second in Lesotho's history.

Lesotho's economy is based on the export of diamonds, water sold to South Africa, manufacturing, agriculture, livestock and to some extent the earnings of labourers employed in South Africa. Lesotho also exports wool, mohair, clothing and footwear. Government revenue comprises of SACU receipts (41%), tax revenue (44%), grants (6%) and other (9%).

A new Companies Act came into force in May 2012 and introduced major changes to the corporate environment. The Companies Registry introduced an online webportal where all company related matters are transacted including the registration of new companies.

### FORMS OF BUSINESS

- Private or public limited liability companies
- Single Shareholding Companies
- Non-profit Companies
- External companies (being branches of foreign corporate bodies)
- Partnerships (which include consortiums and joint ventures)
- Sole proprietorships
- Co-operatives
- Statutory corporations
- Trusts.

### COMPANIES

The private limited liability company is the most common entity used for business. There is no longer a minimum share capital for companies.

The Companies Act allows a private limited liability company to be registered with only one shareholder (with a maximum of 50 shareholders). A new set of filing forms have replaced those used under the old Companies Act and a new regulatory filing regime has been introduced. The Companies Act also provides for the electronic filing of documents. Under the Companies Act, directors face personal liability for breaches of duties owed to shareholders and shareholders are required to approve any major transaction by special resolution.

At least 51% of the shares in a company must be held by Lesotho citizens if specified trading licences are needed or where it is intended to acquire title to land by lease from the State (under the leasehold land tenure system which applies in Lesotho).

The financial accounts of a company must be audited by an auditor registered to practise in Lesotho although the Income Tax Department still accepts without query financial statements from South African external auditors.



Company registration process takes a few days at a cost of approximately 7500 Maloti which includes all fees payable to the Registrar of Companies but does not cover Value Added Tax, licensing and related procedures.

### EXTERNAL COMPANIES

A foreign company may register as an "external company" in terms of the Companies Act and must do so within 10 days after establishing a place of business in Lesotho. This will require filing (with the Lesotho Registrar of Companies) the foreign company's statutes of incorporation, the full names and addresses of one or more persons resident in Lesotho, who are authorised to accept service of documents in Lesotho, as well as the address of the place of business of the external company in Lesotho.

### PARTNERSHIPS

Partnership agreements must be reduced to writing and signed by all the partners before a Notary Public. These agreements must be registered in the Deeds Registry under the Partnerships Proclamation of 1957. A partnership agreement must also be cancelled in writing. Partnerships are restricted to twenty persons. The Proclamation essentially records the common law applicable to partnerships.

### BANKS

The issue of banking licences is governed by the provisions of the Financial Institutions Act. A minimum paid-up capital of ten million Maloti is required.

### INSURANCE COMPANIES

The establishment and operation of insurance companies is governed by the provisions of the Insurance Act, 2014. The regulations prescribe the forms to be used, fees payable and capital requirements. There are also requirements for the amount of working capital as well as margins of solvency.

### TAXATION

This is regulated by the Income Tax Act together with regulations promulgated under the Act. The tax rates are:

- Residents: the first 54770 Maloti at 20%, this excess at 30% (these are small abatements)
- Non-residents: 25%
- Withholding tax must be deducted at source at the standard rate on dividends, interest, royalties, natural resource payments and charges for a management or administrative service. Withholding tax is levied at 10% of the gross amount of any payment to a non-resident under a Lesotho-source services contract
- Capital gains tax applies subject to certain exemptions
- Value added tax is payable on most goods sold and services rendered at the rate of 15%. Basic foodstuffs are zero-rated. The registration threshold is turnover in excess of 850 000 Maloti per year.

### DOUBLE TAXATION AGREEMENTS

Lesotho has signed bilateral treaties relating to double taxation with the United Kingdom, South Africa and Mauritius. It is negotiating tax treaties with Botswana and the Seychelles. The government has also approved negotiations with Namibia, Swaziland, India, China, United States of America and Australia.

### EXCHANGE CONTROLS, TREATIES, BILATERAL AGREEMENTS AND MEMBERSHIP OF INTERNATIONAL AND REGIONAL ORGANISATIONS

Lesotho is part of the Rand Common Monetary Area. Both South African Rand and Maloti are accepted as currency on the basis of a 1:1 ratio. Exchange controls apply and are subject to the provisions of the Exchange Control Order and Exchange Control Regulations administered by the Central Bank of Lesotho, which functions in conjunction with the South African Reserve Bank. The commercial banks in Lesotho are appointed as authorised dealers in foreign exchange subject to certain limits. Lesotho is also a member of the Preferential Trade Area (PTA), the Southern African Development Community (SADC), the British Commonwealth, the United Nations (UN) and the Southern African Customs Union (SACU).

### MONETARY POLICY

Implementation of monetary policy is entrusted to the Central Bank of Lesotho. Price stability is the main goal of monetary policy using indirect policy instruments and a framework for forecasting inflation.

### TRADING LICENCES

The issue of licences is governed by the Trading Enterprises Order and the Trading Enterprises Regulations. Certain licences are restricted to local citizens or companies controlled by local citizens. There is currently under review a proposal to replace the trade licence regime and to introduce a system where licences will be issued on a risk based approach. It is unclear as to how and when this system will be introduced.

### INTELLECTUAL PROPERTY

Protection is provided by statute (there is a public registry in Maseru) for patents, trademarks, designs and copyright.

### LEGAL SYSTEM

The legal system of Lesotho is a mixture of common law principles and statutory law. There are also local systems of tribal law and custom in rural districts which govern everyday disputes and property relations but are subordinate to statutory law. The superior courts in Lesotho are the Court of Appeal, the High Court, the Commercial Court and the Land Court.



## INFRASTRUCTURE

The road network is estimated at 6000km with only 1 404km of tarred roads. Several projects are under way to upgrade roads and other infrastructure including water purification plants. The country's only international airport outside Maseru has two asphalt runways and offers a direct link to South Africa's main airports.

## TELECOMMUNICATIONS

The telecommunications sector is regulated in terms of the Communications Act 2012 and like other African countries, Lesotho is experiencing rapid growth in the mobile telephone market.

## MINING

Lesotho is world renowned for its diamonds recovered from kimberlite and the diamonds from some of its mines are of exceptional quality. Mining is also a major contributor of direct foreign investment. The mining sector is regulated by the Mines and Minerals Act, 2005.

## AGRICULTURE

Agriculture is undeveloped and consists largely of subsistence crops (mainly maize and wheat). It contributes 7.8% of Lesotho's GDP. Lesotho is not self-sufficient in terms of food production and relies on food imports.

## LABOUR RELATIONS

The labour force is estimated at 854 600, the vast majority of which is employed in subsistence farming. Lesotho has a very high unemployment rate (estimated at 45%). Labour relations are governed by the Labour Code Order of 1992 and foreign workers require a work permit before taking up employment in Lesotho.

## TOURISM

Lesotho has unparalleled natural beauty and the tourism sector offers growth opportunities in setting up accommodation, tour operating and high altitude adventure businesses.

## CANNABIS

Lesotho is currently at the forefront of legalising cannabis for medicinal purposes and the legal framework is now being drawn up to encourage investors. During the fourth quarter of 2017 and the start of 2018 the market has seen intense movement in this sector. The government issued a limited number of operators licences. Some of these licence holders are at advance stages of cultivation. The main market for export of the product is Canada but in time other markets will open as the product becomes more acceptable in other countries.





# MALAWI

## SACRANIE, GOW & CO.



### FIRM INFORMATION

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### POLITICAL SYSTEM

Multiparty democracy since 1994.

### GROWTH RATE

5.1% as at 2017. It is expected to be at 4.1% in 2018. (Source: Reserve Bank of Malawi (RBM) Annual Economic Report 2018).

### INFLATION RATE

11.5% (2017).

Current Inflation rate is estimated officially to be about 9.5%.

### INVESTMENT CLIMATE

The Government is eager to continue attracting foreign investment in both the private and public sectors. Malawi has opened up and liberalised its economy. Malawi is encouraging foreign private investment in the electricity (both grid as well as solar) generating and mining industries as well as tourism, local production for export and adding value to agricultural products. Tobacco remains a key export crop.

The Government is also encouraging private sector participation in the economy. The Government is pursuing stable macroeconomic policies by exercising fiscal and monetary discipline in terms of its international obligations and maintaining stable interest rates to curb inflation. The "cashgate" scandal in 2013 and perceptions of corrupt practices within some of the State owned companies continue to negatively affect the economy.

The exchange rate for the Malawi Kwacha (MWK) is floating.

The number of counters on the Malawi Stock Exchange is 14. The shares market is now very active compared to the last few years. There are likely to be several new listings next year.

### FORMS OF BUSINESS

- Private or public limited liability company
- External company (i.e. a branch of a foreign company)
- Partnership

- Trading trust
- Sole trader.

### FORMATION OF A COMPANY

Both local and foreign companies must be registered with the Registrar of Companies. Companies can be incorporated and registered within 7 days. A local company must have a registered office in Malawi and a foreign company must have a documentary agent in Malawi. Companies must have at least one resident director. Businesses not operating as incorporated companies or trusts are required to register their business names and the name(s) of the proprietor(s) of the business. Licences are required for certain types of business and other registrations are required for various purposes such as income tax, service and other taxes.

### EXCHANGE CONTROLS

Exchange controls exist in Malawi and are managed by the Reserve Bank of Malawi (RBM). Foreign investment capital in the form of equity or loans needs to be registered with the RBM. The RBM's prior approval is required for the terms and conditions of foreign loans, foreign investment in the form of equity and remittance of dividends (and capital in the event of disinvestment), technical, management and consultancy contracts with non-residents, licensing and royalty arrangements and technology transfers. These approvals are granted in respect of transactions concluded on internationally prevailing terms, conditions and standards. It takes about 4 weeks to process applications with the RBM. Payment for goods and services can now be remitted through authorised dealer banks as agents of RBM without any delay.

### TAXATION

Tax is levied on income from actual and deemed Malawi sources at the following rates:

- 30% for companies (35% for foreign companies), 30% for life assurance businesses and 21% for Pension Funds (Investment Income)



- 30% for ecclesiastical, charitable or educational institutions of a public character or trusts
- 30% for the mobile telecommunication industry
- Sliding rates from 0% up to 30% (based on annual income) for individuals and partnerships
- 30% for approved companies operating in an export processing zone
- 0% for a period less than not exceeding 10 years for companies in priority industries or 5% for companies not incorporated in Malawi in each case.

Almost all taxpayers operating businesses are required to pay estimated advance tax on a quarterly basis. Operating losses can be carried forward indefinitely for agricultural and mining industries and for six years for manufacturing and trading industries.

There are other taxes including, among others:

- Value added tax (VAT) on annual turnover in excess of 10 million Malawi Kwacha (the standard rate is 16.5%)
- A turnover tax of 2% for tax payers whose turnover is between 2 to 6 million Malawi Kwacha
- Duty is charged on the import of goods
- Surtax is charged on imports, services and locally manufactured goods
- Capital gains tax - any gain from the sale or voluntary disposition of a capital asset must be included in assessable income. Rollover relief is allowed on capital gains realised from the disposal of business assets if the business acquires qualifying replacement assets within 18 months
- Taxes on land and buildings (based on their valuation) is payable to local authorities
- Mineral rights duty is payable for an exclusive prospecting licence
- Stamp duty is payable at the rate of 1.5% on the transfer of land and buildings, leases and securities not capable of trading on the capital market. Stamp duty on debentures and legal mortgages is 0.60% of the value of the security. Transfers of shares are exempt from stamp duty
- Fringe benefits tax on 'perks' is payable by the employer at 30%
- A training fund tax at 1% of the basic payroll of employees.

Malawi has introduced thin capitalisation rules based on a rate of 1:3 equity: loan (from affiliated parties) gearing ratio requirements.

Tax must be withheld (in accordance with the relevant rates) when making certain payments such as rentals, royalties, fees and commissions, payments for any supplies to traders and institutions, carriage and haulage, tobacco and other farm products, public entertainment, payment to contractors and construction industries, bank interest and remitted to the Malawi Revenue Authority.

Malawi has entered into double tax treaties with various countries including the United Kingdom, France and South Africa.

## INVESTMENT INCENTIVES

The following are some of the available allowances and incentives:

- Certain capital allowances
- Certain allowances for expenditure including a 100% investment allowance to a manufacturer for new buildings/plant machinery in the first year
- Mining allowances of 100% of mining expenditure incurred in the first year of assessment
- An allowance of 2.5% for newly constructed commercial buildings with a value of 100 million Malawi kwacha or more
- Allowances for bad or doubtful debts, rental paid in respect of property used in the production of income and interest incurred in
- Respect of property used in the production of income
- Export allowances for non-traditional exports and for the deduction of international transport costs
- A 50% allowance on social contributions paid directly for the building of a public hospital or school, or the sponsoring of youth sporting development activities.
- Donations to approved charities allowable for tax purposes up to K5Million Kwacha.

Malawi does not offer any special incentives to foreign investors. Incentives in priority industries, like the mining, electricity generating and petroleum industry for foreign investment, have to be specifically negotiated by investors with the Government.

## COMPETITION LAW

Under the Competition and Fair Trading Act a takeover of an entity by another entity which is likely to result in a substantial lessening of competition in any market, requires the prior authorisation of the Competition and Fair Trading Commission. Any purported takeover in contravention of the law is of no legal effect. The Competition Commission for the Common Market for Eastern and Southern Africa (covering 21 African countries including Malawi) is headquartered in Lilongwe and commenced operations in January 2013.

## INTELLECTUAL PROPERTY

Protection of patents, certain trademarks, design and copyrights is provided for by statute. Registries exist for trademarks, designs, patents, companies, business names and ownership of immovable or real property. Malawi has acceded to Aripo and the Patent Corporation Treaty.

## LEGAL SYSTEM

Based on English common law.

## COURT SYSTEM

Malawi has an independent judiciary consisting of the Malawi Supreme Court of Appeal, the High Court of Justice,



Magistrates Court and Industrial Relations Court. The Malawi Supreme Court of Appeal, which is the highest appellate court hears appeals from the High Court of Justice. All substantive appeals from the High Court of Justice are heard by the full bench of 9 justices of appeals from the Malawi Supreme Court of Appeal. The Malawi Supreme Court of Appeal is committed to delivering its judgments and rulings within about 60 to 120 days of hearing the appeal.

### LABOUR RELATIONS AND EXPATRIATES

Labour relations are regulated under the Employment Act and ILO practices. Child labour is not permitted. The labour force is plentiful in Malawi and wages are relatively low compared with other African countries.

A foreign resident requires a permit to reside in Malawi and may not take up employment or engage in any business, profession or other occupation unless his permit authorises such activity. A work permit can be processed within 90 days in respect of key staff or expertise not reasonably available in Malawi. Where the level of investment is up to US\$100 000, an investor can obtain work permits for only two key positions. For investments in excess of US\$100 000, the investor's requirements for expatriate employees are generally approved other work permits are generally approved if local skills are not available.



# MAURITIUS

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### COUNTRY INFORMATION

Mauritius is a small island measuring 720 square miles. It is located some 2 500 km off the coast of Africa. It has a multi-racial population of more than one million comprising Hindus, Muslims, Creoles, Chinese and Franco-Mauritians.

The Dutch, who were the first settlers, arrived in 1598. The French arrived in 1723 and occupied the island until 1810. It was the French who introduced a legal system based on the French civil and criminal law. In 1810, the British captured Mauritius from the French after winning the battle of Grand-Port. Britain governed Mauritius until 12 March 1968 when the island was granted its independence and became a republic.

Mauritian territory incorporates the island of Rodrigues (some 600 kilometres to the east) which is 119 square kilometres in area. Two tiny dependencies to the north of Mauritius (the Agalega Islands and the Cargados Carajos Shoals also known as the St. Brandon Rocks) are unpopulated. Nonetheless, their location permits the nation's exclusive economic zone (EEZ) to cover about 1.9 million square kilometres of the Indian Ocean. The population of Mauritius is estimated to be 1 300 000 with a population density of 672 per square kilometre.

Mauritius has transformed its economy from a mono-crop economy. The main pillars of the economy now are tourism, textiles, manufacturing, agriculture and financial services.

### POLITICAL SYSTEM

Mauritius is a multiparty democracy. The Government is elected every five years. The last general elections took place on 10 December 2014.

### ECONOMIC SYSTEM

- Latest gross domestic product (GDP) Figures: US \$ 13.34 billion
- Real GDP Growth: 4 %
- GDP/Capita: USD 10186.10
- Inflation Rate: 1.5%.

### LEGAL SYSTEM

Substantive Mauritian law consists of both statutory law, i.e. Acts of Parliament, and the common law which comprises the Civil Code and English common law and case law. Acts of Parliament have the force of law once they have been proclaimed in the Government Gazette. Statute law includes by-laws and regulations made by ministers under Acts of Parliament.

The Mauritian legal system is a mixture of the English and French systems. Mauritian criminal law, for instance, is inspired by the French penal code but the procedure used, as well as the law of evidence, is English. The company law is English but the Droit de Société which is equally used is French. The Complaint with Summons and Pleas are drafted in English whereas examination-in-chief and cross-examination may be carried out in French and Creole, with the permission of the court. Mauritius has a hybrid legal system in which the French civil law and the English common law form part. The French Civil Code, the French Code de Commerce and the French Penal Code — as amended to suit the Mauritian context — apply in Mauritius alongside the English common law system.

Company law, trust law, constitutional and administrative law, maritime law and employment law have been imported from the English legal system. Private international law, however, is based on French private international law.

### COURT STRUCTURE

The Supreme Court has a Chief Justice and seventeen Puisne Judges who also serve on the Court of Criminal Appeal and the Court of Civil Appeal. Magistrates serve on the Intermediate Court, the Industrial Court and ten District Courts. There is a right of appeal to the Judicial Committee of the Privy Council in London (the Privy Council also sits in Mauritius from time to time). The President of the Republic in consultation with the Prime Minister nominates the Chief Justice. The President nominates other Judges on the advice of the Chief Justice and



the Judicial and Legal Service Commissions. Defendants have the right to counsel, including court-appointed counsel in case of indigency.

## FORMS OF BUSINESS

- Limited or unlimited liability company
- Private or public company
- Partnership ("Sociétés Civiles" and "Sociétés Commerciale")
- Foreign company (branch)
- Company holding a category 1 business licence (private, public, limited life or partnership)
- Protected cell company
- Limited life company
- Investment company/Funds
- Limited partnerships
- Foundations
- Private Pension Schemes
- Trusts
- Sole trader.

## FORMATION OF A COMPANY

The most common form of business vehicle is the private company limited by shares. An application for incorporation of a company must be submitted to the Registrar of Companies. The following structures are available:

- Domestic companies (as opposed to global business companies)
- A category 1 Global Business Company ("GBC 1") if the proposed company is issued with a Global Business Licence by the Financial Services Commission ("FSC").

The name of the company must first be reserved at the Registrar of Companies (which takes two days) and the application for registration at the Registrar of Companies must be filed on confirmation of the availability of the name. The Registrar of Companies normally gives its acceptance of registration within three business days and issues the certificate of incorporation of the company after payment of the registration fees. Other important facts are:

- There is no minimum or maximum share capital
- Shares can be issued for consideration other than cash
- There are no restrictions on rights attaching to shares
- There are no restrictions on foreign entities or individuals holding shares in a company in Mauritius. However, the Prime Minister's approval is required for foreign shareholders in companies holding immovable property or long-term leases of immovable property
- Directors are responsible for the management of the company but major transactions must be approved by shareholders. A GBC1 company must use a management company for incorporation and keeping records of the company at a registered office in Mauritius
- There must be a minimum of 1 resident director for domestic companies and minimum of 2 resident directors for a GBC1
- Directors are responsible for managing the business and affairs of the company and must act in good faith and in the best interests of the company (section 143, Companies Act)
- Annual audited financial statements and an annual report must be filed with the Registrar of Companies/Financial

Services Commission within six months of the close of the financial year (this is applicable to companies other than small proprietary companies)

- GBC's must file an annual report and financial statements with the FSC
- The FSC must be notified if a person becomes the holder of 20% or more of the company's shares or a GBC company's voting powers.

## OFFSHORE COMPANIES (GBC 1 COMPANIES)

GBC1 companies are one of the most popular offshore products in Mauritius. The Companies Act 2001 and the Financial Services Act 2007 now govern the registration and incorporation of GBC1 companies.

At present more than 10 000 GBC1 companies have been incorporated in Mauritius. Most of them have been incorporated to take advantage of the Mauritian network of double tax treaties. An application for incorporation of GBC1 companies must be channelled through the FSC through a management company.

A GBC1 company may be set up by direct incorporation either with or without a constitution, or by registration of a branch of a foreign company or by way of continuation if the law in the country of origin allows continuation following deregistration. An application for a GBC1 company should be accompanied by:

- A business plan of the proposed activities to be carried out by the applicant
- The applicable processing fee
- A legal certificate signed by a law practitioner in Mauritius
- Supporting certified copies of Customer Due Diligence documentation
- Incorporation documents including:
  - Copy of constitution (where adopted) and of the legal certificate required under the Companies Act 2001
  - Certified copies of relevant statutory forms required under the Companies Act 2001 for the incorporation of a company.

The application is submitted to the FSC. The FSC will process the application for the licence for the GBC1 and send the application to the Registrar of Companies for incorporation of the company as a GBC1 company.

A GBC1 company incorporated in Mauritius may elect to be resident in Mauritius and may take advantage of its wide network of double tax treaties. A GBC1 company which elects to be resident in Mauritius for tax treaty purposes may apply for a tax residence certificate if the following conditions are satisfied:

- Two directors must be resident in Mauritius, of sufficient calibre to exercise independence of mind and judgement (a GBC1 company may have one director, like all other companies that may be registered in Mauritius, but for tax





treaty purposes the company must be managed by at least two directors resident in Mauritius at all times)

- The registered office and the secretary of the company must be in Mauritius
- Board meetings must be held in or chaired from Mauritius
- Banking transactions must at all times be channelled through a bank account with a bank holding a banking licence in Mauritius
- Statutory records, such as minutes of meetings and the members' register, must be kept at the registered office
- Accounting records must be maintained at its registered office in Mauritius in accordance with the Companies Act 2001
- The auditors must be resident in Mauritius and must have its statutory financial statements to be audited in Mauritius.

In determining whether the conduct of business is managed or will be managed and controlled from Mauritius, the FSC is required to take into consideration whether a corporation:

- Will have or has at least 2 directors, resident in Mauritius, who are appropriately qualified and are of sufficient calibre to exercise independence of mind and judgment
- Will maintain or is maintaining at all times its principal bank account in Mauritius
- Will keep and maintain or is keeping and maintaining, at all times, its accounting records at its registered office in Mauritius
- Will prepare, or proposes to prepare or prepares its statutory financial statements and causes or proposes to have such financial statements to be audited in Mauritius
- Will provide or provides for meetings' of directors to include at least 2 directors from Mauritius
- Which is authorised/licensed as a collective investment scheme, closed end fund or external pension scheme, is administered from Mauritius.

In addition to the above, the FSC will also take into account whether a corporation meets at least one of the following criteria:

- The corporation has or will have office premises in Mauritius
- The corporation employs or will employ on a full time basis at administrative/technical level, at least one person who must be resident in Mauritius
- The corporation's constitution contains a clause whereby all disputes arising out of the constitution will be resolved by way of arbitration in Mauritius
- The corporation holds or is expected to hold within the next 12 months, assets (excluding cash held in bank accounts or shares/interests in another corporation holding a global business licence) which are worth at least usd 100 000 in Mauritius
- The corporation's shares are listed on a securities exchange licensed by the Commission
- It has or is expected to have a yearly expenditure in mauritius which can be reasonably expected from any similar corporation which is controlled and managed from Mauritius.

GBC1 Companies have to comply with these requirements by 1 January 2015.

## COMPANIES HOLDING CATEGORY 2 GLOBAL BUSINESS LICENCES (GBC2 COMPANIES)

Category 2 Global Business Companies (GBC2) are exempt from all types of taxation and tax treaty benefits. GBC2 are regulated by the Companies Act 2001 and the Financial Services Act 2007. It is ideal for investors who need a simple, low cost, flexible, tax-free, and confidential corporate vehicle to trade, hold assets and investments, collect commission, purchase non-current assets and provide international consultancy services.

The latest Budget announced by the Government of Mauritius has announced abolition of the GBC2 structure. The Budget 2018-2019 has proposed to harmonise the Global Business mechanism. In pursuance of this objective, the Category 2 Global Business Licence will no longer be issued by the Financial Services Commission (FSC). The FSC will continue to supervise these companies through a "grandfathering" provision. For companies which have a licence issued before 16 October 2017, their licences shall cease on 30 June 2021.

The financial services sector represents an important pillar of the economy but has nonetheless been subject to major challenges of late, amongst others from the OECD and the European Union. In that respect, it is continuing to evolve with the introduction of the following measures:

- The introduction of a harmonised fiscal regime for domestic and Global Business Companies and a specific fiscal regime for banks
- The deemed Foreign Tax Credit regime available to companies holding a Category 1 Global Business Licence will be abolished as from 31 December 2018
- The partial exemption regime of 80% of specified income will be introduced. This exemption shall be granted to all companies in Mauritius, except banks and shall apply to:
  - Foreign source dividends and profits attributable to a foreign permanent establishment
  - Interest and royalties
  - Income from provision of specified financial services
  - Partial exemption claimed by companies will need to satisfy pre-defined substantial activities requirements.
  - Enhanced substance will also be applicable to Captive Insurance Companies
- The existing credit system for relief of double taxation will continue to apply where partial exemption is not available
- Issuance of new Category 2 Global Business Licences will cease from 31 December 2018. Grandfathering provisions will apply up to 30 June 2021 for Category 2 Global Business companies Licenced prior to 16 October 2017
- All restrictions applicable for Global Business Companies dealing in Mauritius will be removed
- The deemed Foreign Tax Credit regime available to banks will be abolished from 1 July 2019
- All resident companies and partnerships incorporated/registered under laws of Mauritius having majority shareholdings/parts held by non-resident and which



conduct business mostly outside Mauritius will be required to seek a global business licence or an authorisation from the Financial Services Commission (FSC) through a management company

- A new framework will be set up to govern and improve the oversight of Management Companies
- The Insolvency Act will be amended to allow the FSC to petition to wind up one of its past licensees in situations where the licences have been terminated
- Relevant legislation will be amended to cater for disclosure and availability of beneficial ownership information for Anti-Money Laundering & Combatting Financing of Terrorism (AML/CFT) purposes.

## TRUSTS

Mauritius has introduced trust law for the benefit of both residents and offshore settlors. Prior to 2001, the Trust Act 1989 allowed the creation of domestic trusts based on the traditional English model, and the Offshore Trusts Act 1992 allowed the creation of offshore trusts. The Trust Act 1989 and the Offshore Trusts Act 1992 have been repealed by the Trusts Act 2001 ("TA 2001") which was introduced to fuse the domestic trust and offshore trust legislation in a bid to avoid ring-fencing. However, a distinction is still apparent and foreign settlors are in a more advantageous position than domestic settlors. Section 3 of TA 2001 provides that a trust exists where a person (known as a trustee) holds or has vested in him, or is deemed to hold or have vested in him, property of which he is not the owner in his own right, with a fiduciary obligation to hold, use, deal or dispose of it for the benefit of any person (a beneficiary), whether or not yet ascertained or in existence, or for any purpose, including a charitable purpose, which is not for the benefit only of the trustee.

Every person of full age, of sound mind and who has legal capacity to contract may create a trust and vest the property in a trustee for any lawful object other than the carrying on of any trade or business. The settlor may also be a trustee, a beneficiary, a protector or an enforcer but he/she cannot be the sole beneficiary of a trust of which he/she is the settlor.

Any property may be held by or vested in a trustee on trust. The trust property may consist of any movable or immovable property and any interest in such property including, in the case of a charitable trust, such donations as the trustees may receive. There are, however, a number of restrictions.

A major restriction under TA 2001 relates to non-citizens of Mauritius. Section 22 of TA 2001 provides that no person shall create a trust of immovable property located in Mauritius for the benefit of a non-citizen or a person who is a non-resident of Mauritius except with the authority of the Prime Minister and on such terms and conditions as the Prime Minister may specify. This restriction on foreign owners is consistent with the Non-Citizen (Property Restriction) Act which prohibits non-citizens of Mauritius from acquiring and holding property in Mauritius

without the express authorisation of the Prime Minister's Office. TA 2001 further provides that the appointment of a non-citizen as beneficiary of a trust the trust property of which includes immovable property situated in Mauritius, shall be void and of no effect.

Under TA 2001, the settlor may set up any of the following types of trust: protective trust or spendthrift trust, maintenance and accumulation trust, interest in possession trust, discretionary trust, charitable trust, purpose trust and commercial and trading trust.

The settlor of an offshore trust may not be a resident of Mauritius, and the trust must have at least one qualified trustee who is a person residing in Mauritius or a Mauritian management company or a bank authorised by the FSC to provide trusteeship services (a 'qualified trustee').

The Investment Promotion Act has been amended to allow non-resident settlors or non-resident beneficiaries of a trust to own immovable property in Mauritius solely under the Integrated Residential Schemes ("IRS") and the Real Estate Scheme ("RES") without the approval of the Prime Ministers' Office under the Non-Citizens (Property Restrictions) Act 1973, as amended. Non-citizens of Mauritius wishing to avail themselves of immovable property in Mauritius under the IRS and RES may use trust or domestic company to do so subject to registration duty applicable to IRS and RES.

## FOUNDATIONS

In 2012, the Parliament of Mauritius enacted the Foundations Act whose aim is to allow the incorporation of foundations in Mauritius. A foundation is a wealth management vehicle that is of particular appeal to countries not familiar with the concept of trusts. It has some hybrid features of both a trust and a company. A foundation can be incorporated in Mauritius for such purposes as may be provided in its charter and can be established through a will. Furthermore, it may be charitable or non-charitable (or both) to benefit a person or a class of persons. It is attractive to "High Net Worth" Individuals from civil law jurisdictions who may find in it an ideal platform for succession planning and private wealth management. It can elect to have a legal personality through registration with the Registrar of Companies (acting also as Registrar of Foundations) and can accordingly have full capacity to transact and institute legal proceedings in its own name. The latter feature is one of the main characteristics that distinguish a foundation from a trust. In a foundation, ownership of the assets is transferred to the foundation itself by the founder in order to achieve the purposes and objects of the foundation.

## EXCHANGE CONTROLS

Exchange controls have been suspended.



## TAXATION

Taxation in Mauritius is regulated by the Income Tax Act and its regulations. The Mauritius Revenue Authority (MRA) is the regulator. Mauritius offers both a low tax jurisdiction and competitively priced business costs. The Mauritius tax regime is one of the lowest in the world.

The following tax incentives are available to domestic and foreign investors:

- Income tax: under the income tax act, domestic companies and companies holding a GBC1 benefit from an income tax rate of 15%. In the case of a GBC1 the income tax rate may be reduced to 3% after application of deemed foreign tax credits
- No capital gains tax
- Royalties, interest and services fees payable to foreign affiliates are allowed as expenses provided they are reasonable and correspond to actual expenses incurred
- Interest paid on deposits in a bank holding category 2 banking licences are tax exempt
- Dividends are tax exempt
- No withholding tax on interest and royalties paid by a gbc1 company to non-residents
- No estate duty or inheritance tax is payable on the inheritance of shares in an entity holding a Global Business Licence (GBL).

## CORPORATE TAX

The Deemed Foreign Tax Credit (FTC) regime available to companies holding a Category 1 Global Business Licence will cease to apply from 31 December 2018.

A partial exemption regime will be introduced whereby 80% of specified income will be exempt from income tax. The exemption will be granted to all companies in Mauritius, except banks, and shall apply to the following income:

- Foreign source dividends and profits attributable to a foreign permanent establishment
- Interest and royalties and
- Income from provision of specified financial services.

Companies licensed by the FSC, claiming the above partial exemption, will have to satisfy pre-defined substantial activities requirement of the FSC.

The existing credit system for relief of double taxation will continue to apply where partial exemption is not available.

Deemed FTC regime available to banks will be abolished as from 1 July 2019. A new regime specific for banks will be introduced with no distinction between Segment A and Segment B income.

The tax rates will be as follows:

- chargeable income up to MUR 1.5 billion will be taxed at 5%; and
- chargeable income above MUR 1.5 billion will be taxed at 15%.

In addition, an incentive system will be introduced for banks having chargeable income exceeding MUR 1.5 billion. Under

this system, any chargeable income in excess of the chargeable income for a set base year will be taxed at a reduced tax rate of 5% if pre-defined conditions are satisfied. The Special levy on banks will be maintained until June 2019.

The tax exemption for Freeport operators and private Freeport developers on export of goods will be removed. The current tax regime will continue to apply until 30 June 2021 to companies which have been issued with a freeport certificate before 14 June 2018.

Freeport operators and private freeport developers will continue to be exempted from the Corporate Social Responsibility (CSR) contribution.

The corporate tax rate of 3% applied on profits derived by any company from export of goods will be extended to global trading activities.

For CSR, an amount of up to 25% of the 75% to be remitted to the Mauritius Revenue Authority (MRA) can be retained if a CSR programme is already started. Companies will not be allowed to offset any unused tax credit such as the foreign tax credit against CSR payable. Companies which have been granted tax holidays will be required to contribute to CSR.

Tax Deduction at Source (TDS) will be extended to 'commission payment' at the rate of 3%. In addition, the TDS rate applied on rent paid to a non-resident will be increased from 5% to 10%. TDS will not apply to director fees.

## INCOME TAX HOLIDAY

A 5-year tax holiday has been introduced for Mauritian companies collaborating with the Mauritius Africa Fund for the development of infrastructure in the Special Economic Zones (SEZs). The tax holiday will cover investments in SEZ infrastructure development and will benefit 2 eligible categories of firms: project developers and project financing institutions.

## FOREIGN ACCOUNT TAX COMPLIANCE ACT (FATCA)

On 27 December 2013, Mauritius and the US signed a Tax Information Exchange Agreement (TIEA) and a Model 1 Intergovernmental Agreement ("IGA") in relation to FATCA. The 'Agreement for the Exchange of Information Relating to Taxes (United States of America - FATCA Implementation) Regulations 2014' was published in the Government Gazette of 5 July 2014 and was made under section 76 of the Income Tax Act to facilitate the implementation of the IGA by the Mauritius Revenue Authority.

Although FATCA is a US statute it imposes on foreign financial institutions ("FFI") established outside the US certain obligations to withhold tax on behalf of, and report and disclose information to, the US Internal Revenue Service. FFIs are non-US entities that take deposits in the ordinary course of banking or other similar business, hold financial assets for the account of others,



engage primarily in the business of investing, reinvesting, or trading in securities, partnership interests or commodities, or conduct certain business as insurance companies.

The type of IGA signed is of utmost importance because it will determine whether FFIs will be required either to report information directly to local revenue services, which will in turn supply the information received to the US Internal Revenue Service (Model 1 IGA), or to report the information directly to the US Internal Revenue Service (Model 2 IGA).

FFIs within the scope of FATCA are required to report directly to the Mauritius Revenue Authority which will then transmit the information to the US Internal Revenue Service.

Banks, management companies and global business companies are now required to undergo a due diligence. The TIEA provides a list of exempt beneficial owners, and deemed compliant entities, such as governmental entities, international organisations, central banks, certain retirement funds, certain local banks with local client bases, qualified credit card issuers, controlled foreign corporations, investment advisers and investment managers and certain collective investment schemes. The TIEA also provides for some exempt products, including certain retirement and pension accounts, term life insurance contracts, accounts held by an estate, certain escrow account in connection with a court order or judgment.

## INTELLECTUAL PROPERTY

Protection is provided by statute, more specifically by the Patents, Industrial Designs and Trademarks Act, the Copyright Act and the Customs Act.

## FINANCIAL SERVICES / INSURANCE

The Financial Services Commission (FSC) was established as the regulator for the non-banking financial services sector under the Financial Services Act. The FSC is the integrated regulator for the industry and its remit encompasses those of the former regulatory bodies for securities (Stock Exchange Commission), insurance (Insurance Division of the Ministry of Economic Development, Financial Services and Corporate Affairs) and global business (Mauritius Offshore Business Activities Authority). The Commission thus licenses, regulates and supervises non-bank financial institutions in Mauritius.

## INVESTMENT CLIMATE AND INCENTIVES

The Government has ensured that doing business in and from Mauritius is easy and efficient and complies with best practices in terms of transparency, good governance and ethics. Mauritius has enacted anti-money laundering and anti-terrorist financing legislation while the business framework itself has been made simpler. Mauritius has never been blacklisted and is not on the Organisation for Economic Co-operation and Development (OECD)'s list of suspect tax havens.

Under the Business Facilitation (Miscellaneous Promotion) Act (the "BFA") all applications in respect of foreign investment are channelled through the Board of Investment (BOI). The

Government has expressed its will to amend the BFA to remove bottlenecks and streamline procedures when investing in Mauritius. Red tape has been minimised and regulatory processes re-engineered towards controls based on clearly defined guidelines. An attractive package of incentives is provided to investors in the hotel, leisure and real estate sectors. In addition the government has in the Finance Act introduced various schemes to promote foreign investment with minimum intervention by the Mauritian authorities. The Mauritian government promotes foreign direct investment with incentives for foreign investors in the freeport sector, ICT/BPO sector, financial services sector, tertiary education sector and emerging markets such as renewable energy.

Mauritius is currently ranked at the 20th place in World Bank's Doing Business 2015. Mauritius has therefore maintained its position as the premier location for doing business in the Sub-Saharan region for 5 consecutive years.

The Government in its 2013 budget reaffirmed its commitment to position the Mauritian investment platform as the lynchpin for African investments with regard to the rising number of global investment companies and funds using Mauritius as their base for investing. It is notable that for the first half of 2012, 47% of all new global business vehicles structured in Mauritius have had an African investment mandate. Statutes introduced in 2012 relating to foundations, limited partnerships and private pension funds further complement the product offerings of the jurisdiction as a financial centre of choice for the region.

Government incentives for investment include a low corporate tax rate of 15%, exemption from customs and excise duties on imports of equipment and raw materials, a low rate of 5% registration duty for notarial deeds, free repatriation of profits, dividends and capital, reduced tariffs for electricity and water and the possibility for foreign investors to acquire immovable property and obtain permanent residency under the Integrated Residential Scheme (IRS) and Real Estate Scheme (RES).

Under the IRS a foreign company or a non-resident is allowed to buy immovable property for a minimum of USD 500 000 (about €364 870) and is eligible to be granted residency. In addition a corporation holding a category 1 Global Business Licence may acquire immovable property where authorised by the terms of its licence.

## DOUBLE TAXATION AVOIDANCE TREATIES (DTA)

Mauritius has concluded 43 double tax treaties and several treaties are under negotiation. The treaties currently in force are with Australia (partial), Barbados, Belgium, Botswana, Congo, Croatia, Cyprus, Democratic Socialist Republic of Sri Lanka, Egypt, France, Germany, Guernsey, India, Italy, Kuwait, Lesotho, Luxembourg, Madagascar, Malaysia, Malta, Monaco, Mozambique, Namibia, Nepal, Oman, Pakistan, People's Republic of Bangladesh, People's Republic of China, Rwanda, Senegal, Seychelles, Singapore, South Africa, State of Qatar,



Swaziland, Sweden, Thailand, Tunisia, Uganda, United Arab Emirates, United Kingdom, Zambia and Zimbabwe.

Treaties with Gabon, Russia, Morocco, Kenya and Nigeria await ratification and treaties with Burkina Faso, Cape Verde and Ghana await signature. Treaties are being negotiated with Algeria, Canada, Czech Republic, Greece, Hong Kong, Lesotho, Malawi, Montenegro, North Sudan, Portugal, Republic of Iran, Saudi Arabia, Spain, St Kitts & Nevis, Tanzania, Vietnam and Yemen.

A Tax Information Exchange Agreement has been signed with India to promote international co-operation and effective exchange of information between the Mauritius Revenue Authority and the Securities and Exchange Board of India while preserving and protecting taxpayer's confidentiality. Other Tax Information Exchange Agreements are in force with Australia, Denmark, Finland, Norway, States of Guernsey, Iceland and the US.

Following the recent re-negotiation of the Mauritius-India Tax Treaty, investments already made by Mauritius structures and those to be made up to 31 March 2017 are protected under the Protocol and will continue to derive advantages from capital gains tax exemption. Mauritius structures, particularly Foreign Portfolio Investors, looking at investing post 1 April 2017 for an eventual disposal by 31 March 2019 should review their operations in Mauritius and reinforce substance with a view to meeting the Limitation on Benefits (LOB) Clause. Mauritius remains a favourable jurisdiction for debt structuring into India given its favourable withholding tax rate on interest of 7.5% compared to Singapore-India (10%/15%), Cyprus-India (10%) and Netherlands-India (10%/15%). Moreover, it is also generally more favourable compared to domestic tax rates in India.

### INVESTMENT PROMOTION AND PROTECTION AGREEMENTS

Investment Promotion and Protection Agreements (IPPA) have been signed and are in force with the following countries: Barbados, Belgium/Luxembourg Economic Union, Burundi, China, Czech Republic, Finland, France, Germany, India, Indonesia, Madagascar, Mozambique, Pakistan, Portugal, Republic of Korea, Romania, Senegal, Singapore, South Africa, Sweden, Switzerland and UK and Northern Ireland.

Investment Promotion and Protection Agreements with the following countries are awaiting ratification: Benin, Botswana, Cameroon, Comoros, Ghana, Guinea Republic, Mauritania, Nepal, Republic of Congo, Rwanda, Swaziland, Chad, Tanzania and Zimbabwe.

### BILATERAL TREATIES - PREFERENTIAL TRADE AGREEMENT

There is a Preferential Trade Agreement (PTA) between Mauritius and Pakistan and an Interim Economic Partnership Agreement (EPA) between the Eastern and Southern African region and the European Union.

### MEMBERSHIP OF INTERNATIONAL AND REGIONAL ORGANISATIONS

Mauritius has secured preferential access to markets with the European Union through the Cotonou agreement; with the US under the Africa Growth and Opportunity Act and with Eastern and Southern Africa through the Common Market for Eastern and Southern Africa (COMESA) and the Southern African Development Community (SADC).

### AGRICULTURE AND AQUACULTURE

Industrial Crops comprising sugarcane, tea and tobacco constitute 37% of Mauritian agriculture while food-crops account for 22%, livestock 23% and flowers, fruits and forestry account for 4%. The government supports the agricultural sector through food security strategies that are already bearing fruit. An innovative step is the local cultivation of rice with the aim of supplying the local market and for export. Furthermore, development of the agribusiness sector is high on the agenda of the Mauritian Board of Investment. It plans to attract further foreign investment in areas such as large-scale hydroponic farming, animal feed production, cattle breeding and high value added food processing for export.

The Government has implemented a plan to develop Mauritius as a world-class seafood hub. This sector has enormous business potential due to the wide exclusive economic zone of 1.9 million km<sup>2</sup>, port facilities and an attractive business environment. The further development of the Mauritian seafood industry focuses on: (i) maximising value from the landings of catches in the region, namely through the development of further processing activities for high-graded products such as Sashimi tuna; and (ii) developing sustainable eco-friendly aquaculture following new legislation authorising fish farming in the sea. Aquaculture in Mauritius has significant potential and a study has identified sites suitable for fish farming.

Situated in one of the world's cleanest oceans, Mauritius offers investment opportunities in:

- Lagoon cage culture with a production range of 300 to 500 tonnes per production unit
- Offshore lagoon cage culture with an approximate production capacity of 2000 tonnes per production unit
- Inland aquaculture farms
- Tuna ranching & fattening in cages, and
- Hi-tech production techniques such as aqua pods.

Mauritius has preferential market access for its seafood products to the European market through a partial EPA, the US market under the AGOA as well as COMESA and SADC countries.

### HOSPITALITY & PROPERTY DEVELOPMENT

The property development sector, or real estate, is a market that attracts a range of international investors, lenders, occupiers and developers seeking cross-border opportunities.





The sub-sectors include the Integrated Resort Scheme (IRS), the Real Estate Scheme (RES), the Invest Hotel Scheme (IHS), business and industrial parks, shopping malls, office buildings and marina development.

One of the measures announced in the 2015/2016 budget was the restructuring of the Integrated Resort Scheme (IRS) and Real Estate Scheme (RES). As a result, the Investment Promotion Act has been amended through the Finance (Miscellaneous Provisions) Act 2015.

The Investment Promotion Act makes provision for the introduction of a Smart City Scheme (SCS) and a Property Development Scheme (PDS). The two new schemes will be administered by the Board of Investment ("BOI") under a new set of Regulations. Government will come up with a clear roadmap and guidelines for the development of these projects that will be prescribed shortly.

The Smart City Scheme will promote targeted economic activities while at the same time consolidating the industrial and service base.

The Property Development Scheme (PDS) will attract investment from abroad by allowing non-citizens to acquire residential properties under the Scheme.

Letters of approval or certificates issued to companies to develop an IRS or RES project will continue to remain in force. Non-citizens acquiring immovable property under IRS or RES, for more than USD 500 000 or its equivalent, will still be eligible to apply for a residence permit.

### SMART CITIES

The Smart City Scheme is an ambitious economic development program aimed at consolidating the Mauritian international business and financial hub by creating ideal conditions for working, living and spurring investment through the development of smart cities across the island. There are a number of fiscal and non-fiscal incentives for investors to develop smart cities.

The smart city project is a new initiative to stimulate innovative scientific and technological activities, provide technology-driven facilities to the business community and create a vibrant city lifestyle.

These new cities will be built around the work-live-play lifestyle in a vibrant environment with technology and innovation at their core.

The concept paves the way for investors to develop and invest in:

- A mix of commercial, leisure and residential uses that, as a whole, achieves physical and functional integration and creates a pedestrian-oriented urban environment
- A combination of office, light industrial, education, medical and tourism clusters
- High technology and innovation cluster

- Infrastructure to service green-field sites with roads and inspiring landscaping
- Clean technology aimed at carbon and waste reduction, efficient transport
- Low-energy-consumption buildings
- Digital solutions, urban sensing technologies and big data analytics
- Energy production and water management and utilities
- High-end residential estate
- Real estate investment management.

### INCENTIVES

A company investing in the development of a smart city and/or its components is exempt from payment of:

- Income Tax for a period of 8 years from the issue of the SCS Certificate, provided that the income is derived from an activity pertaining to the development and sale, rental or management of immovable property other than an activity in respect of the supply of goods and services
- Value Added Tax paid on capital goods (building, structure, plant, machinery or equipment)
- Customs duty on the import or purchase of any dutiable goods, other than furniture, to be used in infrastructure works and construction of building within the Scheme
- Land Transfer Tax and Registration Duty on transfer of land to a SPV provided that the transferor holds shares in the SPV equivalent to at least the value of the land transferred
- Land Conversion Tax in respect of the land area earmarked for the development of non-residential components (office and business parks, ICT and innovation clusters, touristic, leisure and entertainment facilities including hotels and golf courses, renewable energy and green initiatives)
- Morcellement Tax for the subdivision of land.

### OTHER TAX INCENTIVES

- First-time Mauritian buyers and buyers under the Mauritian Diaspora Scheme acquiring a residential unit will be exempt from registration duty
- Full recovery of VAT in terms of input tax allowable in terms of capital goods (building structure), plant, machinery and equipment
- Accelerated annual allowance granted at a rate of 50% of the costs in respect of capital expenditure incurred by any company operating within the Smart City Scheme on energy-efficient equipment and green technology.

### LAND PURCHASE

A smart city will be developed over an area exceeding 21 105 hectares (50 arpents). Foreign companies can acquire land under the Smart City Scheme to develop projects and their key components.



## RESIDENCY

- Any person or entity including foreign companies and trusts can acquire residential units in a smart city
- Any non-citizen acquiring a residential unit above USD 500 000 under the scheme is eligible for a residence permit for himself and his family
- No restriction on rental or resale of residential units
- Possibility for a retired person to acquire life rights under the Smart City Scheme.

## MAURITIAN CITIZENSHIP

A non-citizen having held a residence permit for a minimum period of 2 years and having made an investment over USD 5 million in Mauritius may apply for Mauritian citizenship.

## SALE OF SERVICED LAND TO THIRD-PARTY DEVELOPERS

The master developer may sell serviced land to another company to develop a component of a smart city project.

## INFORMATION TECHNOLOGY (IT) / BUSINESS PROCESS OUTSOURCING (BPO)

The government intends to make the Information and Communications Technology (ICT) sector a pillar of the economy and transform Mauritius into a regional ICT hub to position Mauritius as a major destination in the region for investments in this sector. Through a well-developed and reliable infrastructure, excellent telecommunication facilities and access to a scalable and stable power grid, Mauritius is emerging as a regional hub for the provision of outsourcing and telecoms services. The government of Mauritius has set the building blocks to position Mauritius as a global centre for data hosting, disaster recovery, shared, cloud computing services and other high value added services.

Mauritius is building on existing infrastructure (such as the Ebene Cyber City and the Informatics parks) and also investing in the creation of state of the art IT/BPO poles namely, the Rose Belle Business Park and the forthcoming Eco Park which will enable data centre infrastructure projects. Additionally the creation of an ICT academy will cater for training needs of the workforce for international standard service delivery in the IT/BPO sector. The ICT sector will be characterised by the delivery of complex services with higher value and higher margins. New segments such as online gaming and online media will also be explored.

To boost this sector, a second undersea fibre optic cable, LION 2 has been operational in Mauritius since March 2012, thus ensuring continuity of service at all times and the Government endeavours to provide work and residency permits (occupation permits) to workers in the ICT/BPO earning a minimum salary.

## FREEPORT

The Mauritius Freeport is a sector that offers enormous potential with a 2.5% growth rate and a connection to more than 400 million consumers in the Common Market for Eastern

and Southern Africa (COMESA) and the Southern African Development Community (SADC). It contributes 9% of GDP. In 2008/09 a further 25 freeport projects were approved by the Mauritian Board of Investment with a total investment value exceeding MUR 700 Million.

A tax holiday for freeport operators which was due to end in 2013 will now continue indefinitely and a zero per cent corporate tax rate from 1 July 2013 will provide more certainty to freeport operators and enhance Mauritius as a regional trade, marketing and distribution platform. This measure will give a strong boost to the sector and help to further increase cross-border trade.

## RENEWABLE ENERGY AND THE ENVIRONMENT

The 'Maurice Ile Durable' project (MID) is central to the development of Mauritius and is intended to become a leader in renewable energy and sustainable development in the region.

## HEALTHCARE

Mauritius has a fast growing healthcare and life sciences industry and is set to become a major healthcare, wellness and medical outsourcing hub, supported by strong pharmaceutical, biotech and medical devices industries, driven by high-end biomedical research and innovation. Mauritius is a leading destination for medical travel with an increase from 1500 foreign patients in 2007 to nearly 10 000 in 2012. In 2014 approximately 15,000 foreign visitors came for treatment in Mauritian private clinics.

## INFRASTRUCTURE

Mauritius has a well-developed network of internal and external communications, an extensive and well-maintained road infrastructure, a modern and efficient port capable of berthing vessels up to 100 metres, a web of sea links and direct air connections with several cities around the world, high band fibre cable connectivity, a reliable fixed and mobile telephone network, express courier service providers and freight forwarders, fully serviced business and industrial parks and a free port.

## WATER

The Central Water Authority (CWA) is responsible for the control, development and conservation of water resources and the treatment and distribution of water for domestic, industrial and commercial purposes throughout Mauritius. The CWA operates under the Ministry of Public Utilities. Potable water supplied by the CWA is treated to meet norms met by the World Health Organisation (WHO) for drinkable water. The Ministry of Health and Quality of Life conducts independent tests to ensure CWA's compliance with the norms set by both the WHO and the Ministry of Environment. Water is maintained and supplied via reservoirs, dams, springs, rivers and groundwater abstraction. Mauritius has abundant rain water.



## ENERGY

The Central Electricity Board (CEB) is a parastatal body wholly owned by the government. It reports to the Ministry of Renewable Energy and Public Utilities. The CEB's business is to "prepare and carry out development schemes with the general object of promoting, coordinating and improving the generation, transmission, distribution and sale of electricity" in Mauritius. The CEB produces around 40% of the country's total power requirements from its 4 thermal power stations and 8 hydroelectric plants. The remaining 60% is purchased from Independent Power Producers. Currently, the CEB is the sole organisation responsible for the transmission, distribution and supply of electricity to the population. The supply of electricity in Mauritius is stable.

## TELECOMMUNICATIONS

An excellent telecommunication network and a good pool of IT specialists enables the use of the latest software products. Some leading companies such as Microsoft and Hewlett Packard have opened branches in Mauritius. Growth and employment in the IT sector is expected. Mauritius Telecom (MT) has announced the commercial launch of its fibre-to-the-home and business high speed internet networks, offering connectivity at up to 100 Mbps in selected areas.

## TOURISM

Tourism contributes significantly to economic growth and has been a key factor in the overall development of Mauritius. The sector contributes approximately 18% to the country's GDP. In the past two decades tourist arrivals increased at an average annual rate of 9% with a corresponding increase of about 21% in tourism receipts.

## MANUFACTURING SECTOR

Since the establishment of the Export Processing Zone (EPZ) the manufacturing sector has attracted substantial foreign direct investment (FDI) from various parts of the world including Europe, USA, India, Hong Kong, Taiwan, China, Japan, Australia and South Africa. More than 800 manufacturing companies, of which some 500 are export-oriented, produce a wide variety of quality products such as textiles and apparel, light engineering products, precision plastics, electronics and electrical components, jewellery and horology items, printed materials, toys, and miniature ship models, amongst others. Manufacturing is one of the main pillars of the economy and remains a major foreign exchange earner for Mauritius. The manufacturing sector is now moving up the value chain with new players, both local and foreign, in new activities, with more job opportunities for graduates and skilled labour. Activities requiring specialised skills are developing in Mauritius, such activities include high precision engineering and production processes on CNC machines.

## TEXTILES

The textile industry, forming a substantial part of the manufacturing sector, is one of the main pillars of the Mauritian economy. It has undergone many changes in its almost thirty

years of existence. Equipped with a highly skilled labour force and efficient management practices Mauritius manufactures products of excellence like Boss and Ralph Lauren for export to the European Union and the United States. Great emphasis is laid on quality control. To face the present economic situation, investments are being made in new technology with the aim of making Mauritius a centre for capital-intensive activities such as spinning, weaving, design, marketing and logistics.

## FINANCIAL SECTOR

The Mauritian financial sector has become, over recent years, a major contributor to the Mauritian economy with financial intermediation accounting for around 10% of GDP in 2010. As an International Financial Centre (IFC) Mauritius is committed to compliance with internationally agreed norms and has ensured over the years that it was and is seen to be a reputable IFC. The Mauritian IFC has gained international recognition as a safe and trusted jurisdiction by the Organisation for Economic Co-operation and Development (OECD), Financial Action Task Force (FATF), International Organisation of Securities Commission (IOSCO), International Association of Insurance Supervisors (IAIS) and IFSB amongst others. The country is ranked 28th globally and first in Africa in the 2015 World Bank Doing Business Report. The IMF & the World Bank favourably assessed the Financial Sector of Mauritius under the Financial Sector Assessment Programme. Mauritius also offers international businesses a high-quality financial environment with sophisticated products.

## FAMILY OFFICE

A "family office" covers all forms of organisations and services involved in managing large private fortunes. These can be organised either as family-owned companies, in which the family wealth is pooled, or as companies or bank departments that provide financial services for these clients, while the family retains decision-making powers. There is no set model for organising a family office and every model is devised and organised on a case-by-case basis.

The Family Office is analysed as a family governance mechanism. For families to propose the creation of a Family Office as a structure for their wealth management, that wealth has to be sizeable in order to justify the costs and the direct management involved. Owners of a Family Office are members of a family whose wealth is the result of business success and who have decided to manage their patrimony and take part in joint activities. Innovation in Family Office management has meant that these structures, although not new in themselves, have become professional organisations. There has been a trend in recent years among ultra-high-net-worth individuals (UHNWI) to resort to multiple service providers rather than one individual private banking firm. The setting up of a Family Office, therefore, is not just a response to current conditions but is, rather, a growing phenomenon as many UHNWI are members of entrepreneurial families that fit the profile used to describe possible Family Office creators.



As a well-regarded International Financial Centre, Mauritius has endorsed numerous international good governance conventions. Many legal professionals are trained in the UK and France with internationally recognized professional affiliations. The court structure of Mauritius along with numerous fiscal benefits such as no Capital Gains Tax and the capacity for treaty-based tax organization through its web of Double Taxation Avoidance Treaties enjoyed by Mauritius internationally makes the country a domicile of choice for the setting up of a Family Offices. It offers interesting structuring opportunities for family offices which may be set-up as a company, trust or private foundation. The peculiarity of Mauritius is that it enjoys a reputable status in the leisure and tourism industry, as well as a successful Integrated Resort Scheme (IRS), boasting luxury real estate.

The 2016-2017 Budget of the Government paves the way for the advancement of Mauritius into its next phase of development. A plethora of measures have been announced to re-invigorate the vital sectors of the Mauritian economy, including the financial services sector.

The measures announced in the financial services sphere set the tone for the graduation of the Mauritius International Financial Centre (IFC) towards greater sophistication, higher value addition, and competitive offering.

The budgetary measure with respect to Family Offices include:

#### Wealth Management

##### Budget Measures:

- Companies holding an 'Overseas Family Corporation' licence delivered by the FSC will be provided with a 5-year tax holiday
- Foreign Ultra High Net Worth Individuals investing a minimum of USD 25 million in Mauritius will be provided with a 5-year tax holiday.

Through the introduction of the Overseas Family Corporations (OFCs) licence, international High Net Worth families will be able to manage their wealth from Mauritius by setting up their family offices in the Mauritius IFC. The new family office regime will equally allow the Mauritius IFC to tap into the growing regional and global movement of wealth and capital in search of a stable and secure wealth management centre.

#### Headquatering and Treasury Management

##### Budget Measures:

- Companies holding a 'Global Headquarters Administration Licence' issued by the FSC will be granted an 8-year tax holiday
- Companies holding a 'Treasury Management Centre Licence' delivered by the FSC will be provided with a 5-year tax holiday.

The Global Headquarters Administration Licence and the Treasury Management Centre Licence enhance Mauritius' position as a regional financial and business hub. MNCs would therefore be able to set up their regional administration, procurement and accounting offices, as well as conduct treasury management activities in the Mauritius IFC.

## CAPTIVE INSURANCE

In Mauritius insurance legislation is regulated by the Insurance Act 2005 and the Insurance (Amendment) Act 2007. The Financial Services Commission of Mauritius is the supervisory body for all non-banking financial services business and is also responsible for licensing, under the Insurance Act 2005,

The Captive Insurance Act 2015 was recently passed before the National Assembly with the aim of making Mauritius an attractive destination for captive insurers. The construction of the act applies solely to "pure captives." The term pure captive also referred to as single-parent captives, is generally used to describe captives insuring the risks of parent and affiliated corporations only. A "pure" captive, is capitalised and domiciled in a jurisdiction with captive-enabling legislation which allows the captive to operate as a licensed insurer. The parent company identifies the risks of its subsidiaries that it wants the captive to underwrite. The captive evaluates the risks, writes policies, sets premium levels and accepts premium payments. The subsidiaries then pay the captive premium payments and the captive, like any insurer, invests the premium payments for future claim pay-outs. In Mauritius, Captive insurers can be licensed as Global Business Companies Category I and will operate under the aegis of the Financial Services Commission which will act as regulator. The Financial Services Commission has recently released the Captive Insurance (Pure Captive Insurance Business) Rules 2016.

The Captive Insurance Act 2015 amends the Income Tax Act to the effect that, "income derived by a person licensed under the Captive Insurance Act 2015 during a period not exceeding 10 years from the coming into operation of the Act or such other period as may be prescribed." Captive Insurers will also benefit from numerous Double Taxation Agreements (DTAs) and the Investment Protection and Promotion Agreements (IPPAs) signed by Mauritius.

Licensing Procedures for Captive Insurance business in Mauritius. A Captive Insurer will be licensed under the Financial Services Act 2007 to hold a Category 1 Global Business Licence ("GBL1") and issued with an "External Insurance Business" licence under The Insurance Act 2005. In addition to complying with the requirements for the incorporation of a GBL1, an application for a captive insurance business licence shall be made to the Financial Services Commission and shall be accompanied by –

- A business plan, including in respect of the proposed captive insurance business along with a description in terms of intended classes of business and cover, limits of liability, details of reliance placed on reinsurers, outline of investment and dividend strategies; the amount and liquidity of its assets relative to the risks to be assumed; the overall soundness of its plan of operation; and a projected balance sheet, profit forecast and statement of cash flows
- The investment policy of the captive insurance business



- Information on the adequacy of the expertise, experience and character of the persons who will manage the captive insurance business
- Information on the adequacy of the loss prevention programmes of the policyholders of the applicant
- A certified copy of the incorporation documents of the applicant
- Particulars of any substantial shareholder, director, captive insurance agent or of any person being proposed to act as an officer of the captive insurer
- A non-refundable prescribed fee
- The Commission may require an applicant to retain, at his own cost, external and independent legal, financial or examination services to review the qualifications of the applicant or of his captive insurance agent and make recommendations to the Commission
- A captive insurer shall pay such annual fee as may be prescribed in the FSC Rules.

## LABOUR RELATIONS

Labour relations in Mauritius is governed by the Employment Relations Act which amends and consolidates the law relating to trade unions, fundamental rights of workers and employers, collective bargaining, labour disputes and related matters. Strike action which was almost impossible under the earlier Act is now allowed. New bodies and institutions (the Employment Relations Tribunal, the Commission for Conciliation and Mediation and the National Remuneration Board) have been created to settle labour disputes. The use of arbitration, mediation and conciliation for the efficient resolution of labour disputes is promoted.





# MOZAMBIQUE

## COUTO, GRAÇA & ASSOCIADOS, LDA



### FIRM INFORMATION

**Website address:** [www.cga.co.mz](http://www.cga.co.mz)  
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### COUNTRY INFORMATION

Mozambique has a 2 470 kilometre coastline and a total land area of 801 590 square kilometres. It is a tropical country with effectively two seasons, a hot and wet season from October to March, and a dry season from April to September. The country's official language is Portuguese. It has an estimated population of about 27.1 million with a growth rate of 3%. The official currency is the Metical. The use of the US Dollar, the South African Rand and the Euro in business transactions is facing restrictions from January 2016.

### POLITICAL SYSTEM

Multiparty Democracy.

### LATEST GDP FIGURES

Growth in Mozambique has eroded in 2016, with the latest forecast for real GDP growth downgraded to 3.7%. In 2018 it is expected to be between 5,5%. Once offshore gas projects start generating export revenues in the early 2020s, the economy is expected to significantly expand, potentially yielding some of the highest rates of real GDP growth in Sub-Saharan Africa. Growth could reach double digits after 2022, assuming gas projects become operational in 2023.

### INFLATION RATE

In November 2017 the inflation rate was 7,5% (against 2016 inflation rate of 27%). The metical has depreciated by approximately 70% against the US Dollar during 2016, the currency having already depreciated by 36% in 2015. The Bank of Mozambique's attempts to provide sufficient foreign exchange resources for the economy to continue functioning were not enough to limit inflationary pressure and volatility.

### INVESTMENT CLIMATE

Mozambique strongly encourages foreign direct investment and has enormous investment opportunities in sectors such as agriculture, fisheries and aquaculture, industry, tourism, public infrastructure, mineral resources and energy.

In recent years there has been an influx of foreign investment in the areas of public infrastructure, natural resources and energy, particularly in relation to the construction of bridges and roads and power generation facilities and the development of Mozambique's extensive coal and natural gas resources.

The Constitution of the Republic of Mozambique guarantees foreign investment undertaken in terms of its economic policy. Foreign investment is allowed in all economic sectors. The State guarantees the right to property. Expropriation may only occur if in the public interest and if fair compensation is paid.

The investment law, its regulations and the Code of Fiscal Benefits constitute the general regulatory framework for national and foreign investments that are eligible for government guarantees and financial incentives. The guarantees comprise:

- Legal protection of private property and rights, including intellectual property rights
- The right to transfer dividends and funds out of Mozambique which are connected with: (i) profits from investments eligible for export in terms of the Investment Laws; (ii) royalties or other remuneration for indirect investment relating to the transfer of technology; (iii) amortization of loans and payment of interest on loans granted in the international financial market for investment projects in the country; (iv) any compensation paid by the government; and (v) invested and re-exportable foreign capital
- Dispute resolution by the international Centre for the Settlement of Investment Disputes (ICSID) or the International Chamber of Commerce (ICC)
- Investment risk insurance from the World Bank's Multilateral Investment Guarantee Agency (MIGA) and the Overseas Private Investment Corporation (OPIC) (an independent agent of the United States' Government).

Investment projects approved under the legislation applicable to investment in Mozambique, are eligible for the following benefits, based on their location and/or activity: (i) guarantee of protection of ownership rights; (ii) guarantee of the transfer of funds (profits or dividends, *royalties*, amortizations and interest





from loans and foreign capital invested and re-exportable) abroad; (iii) grant of tax benefits.

Tax benefits include: (i) exemption from custom duties and Value Added Tax on the import of capital goods in class “K” of the Custom Tariff; (ii) tax credit for investment; (iii) accelerated depreciation and amortization; (iv) deductions from taxable income for investments in modernization and launching of new technology; and (v) deductions from taxable income for investments in vocational training.

Tax benefits are categorized as generic or specific. Most investments fall under the generic category.

The following are subject to specific tax benefits: (i) the creation of basic infrastructures; (ii) commerce and industry in rural areas; (iii) manufacturing and assembly industries; (iv) agriculture and fisheries; (v) hotel and tourism activity; (vi) science and technological parks; (vii) large-scale projects (representing an investment of more than 12 500 000 000 Meticals); (viii) projects carried out in Rapid Development Zones; (ix) projects carried out in Industrial Free Zones; and (x) projects carried out in Special Economic Zones.

Other reforms include the revision of labour laws and the Commercial Code, comprehensive judicial reform and the creation of a commercial court to facilitate the settlement of commercial disputes, the liberalization of the financial sector (including the creation of an independent central bank, the Bank of Mozambique), civil service reform and improved Government budget making and auditing.

Although most sectors of Mozambique’s economy are open to foreign investment, and foreign investors generally receive the same treatment as domestic investors, some restrictions remain.

The private ownership of land is restricted and mining and management contracts are subject to specific performance requirements. Foreign ownership or control of companies is however not restricted.

The Government has created the Agency for Investment and Export Promotion (Apiex) from the merger of three institutions promoting trade and exports, (namely CPI (Investment Promotion Centre), GAZEDA (Office for Economic Accelerated Development Zones) and IPEX (Export Promotion Institute). The new Agency is a public institution whose purpose is the promotion and facilitation of public and private investment and exports (including assisting investors to obtain governmental approvals), the optimisation of resources and the creation of greater synergies in the country’s economy. The APIEX Law and Regulation Law as well as the new Code of Fiscal Benefits haven’t been published yet, and the provisions of the previous Investment Law, Regulation Law and Code of Benefits is still in force.

It should be noted that the mining and oil & gas sectors are each subject to a specific investment regime which allows for tax benefits.

It is also important to note that undertakings covered by the Mega-Project Law (public-private partnerships, large scale projects and business concessions) are subject to specific investment, operating and financial requirements.

## FORMS OF BUSINESS

- Private limited liability company
- Public limited liability company
- Unincorporated joint venture
- State owned companies
- Individual trader
- Foreign company by means of a foreign commercial branch or representative office of a foreign company.

## INCORPORATION OF A COMPANY

Companies must:

- Reserve the company’s name at the Legal Entities Registrar Offices
- Prepare a standard draft of the articles of association of the company
- Request for prior authorization for importation of funds before the Mozambique Central Bank
- Open a bank account with a local bank to deposit the share capital
- Execute a public deed or a private deed of incorporation of the company
- Formalize the company registration at the Legal Entities Registrar Offices
- Publish the incorporation of the company and its articles of association on the Official Gazette
- Register the company with the relevant Tax Department to obtain a taxpayer number (NUIT)
- Obtain licenses from the relevant authorities for the intended area of business activity;
- Present the declaration of beginning of business before the relevant Tax Department.

## INCORPORATION PROCEDURES OF FOREIGN COMPANIES IN MOZAMBIQUE (BRANCH)

- Tax Registration before the relevant Tax Department
- Request for an opinion from the entity/authority that supervises the activity to be carried out<sup>1</sup>
- Submission of an application addressed to the Minister of Industry and Trade, for the licensing and inspection of the branch
- Inspection
- Issuance of the License
- Registration of the branch at the Legal Entities Registrar
- If applicable, obtain the competent license by the entity that supervises the activity<sup>2</sup>
- Declaration of beginning of activity before the relevant Tax Department



## EXCHANGE CONTROLS

On 15 August 2017, Mozambique's Council of Ministers approved new regulations under the Exchange Control Law and revoked the existing regulations. Through the Central Bank Notice number 20/GBM/2017 of 27 December 2017, the Central Bank established new rules and procedures to be followed under the Exchange Control Law. The main purpose of the new regulations is to allow the Central Bank to exercise the powers of the "Exchange Control Authority by the Mozambique Central Bank" as set forth under the Constitution.

With the revocation of the current exchange control regulations and allocation of regulatory competence to the Central Bank, the terms and conditions applicable to exchange control transactions will be subject to subsequent regulation by the Central Bank. It is expected that the Central Bank will be more flexible and that the rules will be adjusted from time to time according to market requirements.

The key changes include:

- Pre approval by the Central Bank is required for a list of transactions.
- The inflow and outflow of foreign currency will be subject to conditions and restrictions to be determined by the Central Bank.
- Remittance of export earnings from goods and services and investment income generated or held abroad will be subject to terms and conditions to be determined by the Central Bank.
- All legislation contrary to the new decree is revoked.

Most other forms of importation or exportation of capital, as well as other transactions between residents and non-residents, or between non-residents, regarding assets located in Mozambique require the prior authorization from the Bank of Mozambique and must also be registered.

Failure to comply with the exchange control provisions and regulations will prevent any outflow of funds from Mozambique and may result in penalties and fines varying from ten thousand Meticaís to one million Meticaís as well as forfeiture of the assets or values involved in the illegal transaction.

The import and export of goods and services, and certain foreign payments are permitted provided that payments are not deferred for more than two years and that the transaction is registered.

## TAXATION

Corporate income tax (CIT) is a direct tax levied on income obtained by legal persons during the relevant tax period (usually the calendar year) over the global annual value of the income (if the taxpayer is resident) or income derived from activities in

Mozambique (if the taxpayer is non-resident). The basic test of residence is whether the taxpayer has headquarters or effective management in Mozambican territory. Commercial companies with a head office or effective management in Mozambique are subject to a general CIT rate of 32%. However, for agricultural and farming activities this was reduced to 10% for a period ending on 31 December 2015. Non-residents earning income in Mozambique, or related to activities in Mozambique may be subject to CIT. This tax is collected by withholding it at source at the flat rate of 20% of the income, or 10% in the following cases:

- Income from telecommunications and international transport, as well as income arising from the assembly and installation of equipment;
- Income from the construction and regeneration of infrastructures for the production, transport and distribution of electricity in rural areas in connection with public projects of rural electricity supply;
- Income from the chartering of seagoing vessels for fishing or cabotage purposes
- Income from securities listed on the Mozambican Stock Exchange.

Value Added Tax is levied at a fixed rate of 17% on the sale of goods and services in Mozambique, and on imported goods. Exports are VAT exempt.

Specific taxation regimes apply to certain economic sectors such as mining and oil and gas.

Laws governing the oil and gas and mining sectors provide for capital gains tax to be paid on the transfer of oil and mining participating interests and other assets by non-residents, at a rate of 32%.

Specific rules were set out in relation to the calculation of gains, taxable income, deductible costs and amortization. Income from the provision of services rendered by non-resident entities to Mozambique oil and mining companies is subject to withholding tax at the rate of 10% of the gross amount paid.

The oil and gas tax regime provides tax stability for a period of up to 10 years, from the date of production or approval of a development plan (without affecting the assumptions of feasibility and profitability) and may be extended up to the termination of the primary concession, subject to the additional payment of 2% of the Production Tax.

The Corporate Income Tax liability of companies holding concession contracts is calculated separately for each



<sup>1</sup>In case the activity that will be carried out is not under the scope of the Ministry of Industry and Trade, it should be requested an opinion before the entity that supervises such activity in order to support the licensing application.

<sup>2</sup>The scope of activity of the branch is supervised by entities other than the Ministry of Industry and Trade, the competent license in order to carry out such activity must be obtained.

<sup>3</sup>Although the CIT rate for agriculture and farming activities has been reduced to 10% for the period ending 31 December 2015, in practice the reduced rate still applies.

concession contract. This means that a separate tax return must be submitted for each concession (oil and mining activities are subject to a ring-fencing principle).

Exemptions from custom duties are granted for a period of five fiscal years for the import of equipment and goods for oil and mining operations (to the extent that they are not precluded on the local market). Value Added Tax exemptions are not granted anymore on the import of equipment and goods.

Mining companies are obliged to have their accounts audited by independent auditors.

The Mining Law expressly provides that indirect transfers of participating interests, titles and/or mining rights, by way of change of control of any license holder, are considered as a transfer of rights and obligations under a mining license and, therefore require prior governmental approval. Non-compliance with any transfer requirements will result in any such transfers being void.

Under the Corporate Income Tax Code, transactions between non-residents regarding shareholding interests or rights concerning assets in Mozambique are taxable if such transactions relate directly to Mozambique companies irrespective of where the transaction occurred.

### COMPETITION LAW – MERGER CONTROL LEGAL FRAMEWORK

The Competition Law is applicable to all economic activities (in both private and public sectors) in or which have an effect in Mozambique. The law focuses primarily on regulated prohibited conduct, anti-competitive practices as well as enterprise concentrations in order to avoid distortions or restrictions of healthy and fair competition.

Under the Competition Law, all transactions that result in concentrations of enterprises are subject to control by the Competition Regulatory Entity (the “ARC”). Filing with the ARC is mandatory for those transactions that exceed a certain market share, business volume (based on global turnover) or annual turnover. Such filing must be made within seven working days after the conclusion of the transaction agreement or the project that gives rise to the concentration. The thresholds for market shares are:

- As the execution of such transaction results in a share equal to more than 50% being acquired, created or reinforced in the national market for certain goods or services, or a substantial part of it;
- The execution of such transaction results in a share equal to or more than 30% but less than 50% being acquired, created or reinforced in the national market for certain goods or services, or a substantial part thereof, as long as the business volume individually made in Mozambique by at least 2 of the enterprises participating in the transaction is more than 100 million Meticaïs, net of taxes directly related with such business; and
- The companies participating in the concentration transaction have jointly made in Mozambique, a volume of

business of approximately 900 million Meticaïs, net of taxes directly related to such business.

The filing of foreign mergers is mandatory to the extent that they have an effect in Mozambique and exceed the above thresholds even if none of the enterprises involved in the transaction are established in Mozambique.

### MONETARY POLICY

The main objective of monetary policy in Mozambique is to reduce inflation. Since 2004 the Bank of Mozambique has implemented reforms to strengthen monetary management through daily liquidity forecasting and the use of foreign exchange and Treasury bill sales. The government’s tight control of spending and the money supply combined with financial sector reform successfully reduced inflation from 70% in 1994 to 4.21% in 2009.

### LEGAL SYSTEM

Mozambique’s legal system is based on Roman-Germanic law (ie a civil law system).

There are two main regulatory bodies: the Parliament (which approves the laws) and the Council of Ministers (which approves decrees).

The courts have exclusive jurisdiction to settle disputes by judicial means unless the parties have agreed to submit a dispute to arbitration. The courts operate according to the principle of separation of powers and are classified as sovereign bodies under the Constitution of the Republic. The law differentiates between judicial courts, administrative courts and other special courts like the customs court and tax court.

The courts include the Supreme Court, The Supreme Appeal Courts, the Provincial Courts and the Districts Courts. The administrative court has special jurisdiction to hear disputes in legal administrative relationships, litigation appeals lodged against the decisions of state bodies and agents and appeals lodged against tax and customs’ court decisions.

The Arbitration Law expressly provides that arbitral awards rendered in Mozambique pursuant to the Arbitration Law should be treated and enforced in the same manner as a judgement of the Mozambican courts. In cases of non compliance with any arbitral award, enforcement proceedings must be commenced in the Mozambican courts.

Mozambique ratified the New York Convention on 11 June 1998 (subject to reciprocity) and this entered into force on 9 September 1998. The Mozambican courts are prima facie required to give effect to an arbitration agreement and recognize and enforce arbitral awards made in other New York Convention States against the assets of a party located in Mozambique. The enforcement of foreign arbitral awards in



Mozambique is subject to consideration and recognition by the Mozambican Supreme Court.

## INTELLECTUAL PROPERTY

Protection of Intellectual Property is guaranteed by law. Mozambique employs an IP strategy known as “Estratégia da Propriedade Intelectual-2008-2018” enacted at the XXIII Meeting of the Ministries Council on 28 August 2007. It identifies the international Conventions and Treaties which Mozambique has ratified or acceded to as follows:

- Copyright
- Berne Convention for the Protection of Literary and Artistic Works (1886)
- Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) (1994)
- SADC Protocol on IP.

## INDUSTRIAL PROPERTY

- Harare Protocol on Patents and Industrial Designs within the framework of the African Regional Intellectual Property Organization (ARIPO)
- Madrid Agreement (1891) and Protocol (1989) concerning the International Registration of Marks
- Nice Agreement on the International Classification of Goods and Services for the Purposes of the Registration of Marks (1957)
- Paris Convention for the Protection of Industrial Property (1883)
- Patent Cooperation Treaty - PCT (1970) for the international registration of patents and utility models
- Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) (1994).

## MEMBERSHIP OF INTERNATIONAL IP ORGANIZATIONS

- World Trade Organization
- World Intellectual Property Organization (WIPO)
- African Regional Intellectual Property Organization (ARIPO).

## TREATIES AND BILATERAL AGREEMENTS

Mozambique has signed investment promotion and reciprocal protection agreements with Algeria, Belgium, China, Cuba, Denmark, Egypt, Finland, France, Germany, India, Indonesia, Italy, Mauritius, Netherlands, Portugal, South Africa, Spain, Sweden, Switzerland, United Kingdom, USA, Vietnam and Japan. Mozambique has also signed bilateral treaties to prevent double taxation and tax evasion on income tax with Portugal, Mauritius, United Arab Emirates, Macau, Italy, Botswana, India, Vietnam and South Africa.

On 10 June 1998 Mozambique became a signatory to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

## MEMBERSHIP OF INTERNATIONAL AND REGIONAL ORGANIZATIONS

Mozambique is a member of the Southern African Development Community (SADC), African Union (AU), United Nations (UN), Community of Portuguese Language Countries (CPLP), British Commonwealth, African Countries of Portuguese Official Language (PALOP), International Monetary Fund (IMF), World Bank, Food and Agriculture Organisation (FAO), World Trade Organisation (WTO), World Tourism Organisation and the International Labour Organisation (ILO).

## ENERGY

Mozambique's vast energy resources have the capacity to satisfy most of its domestic energy needs. They include hydropower (the Cahora Bassa Dam), natural gas, coal, biomass, solar and wind power. The country has considerable hydropower potential (especially in the Zambezi River basin at sites such as Cahora Bassa and Mphanda Nkuwa) with an estimated capacity of 12 500 MW with an annual energy generation potential of 60 000 GWh.

The country has expanded its energy generation capacity to more than 16 000 MW. This is a result of the commercial extraction of natural gas (the Pande gas fields), the rehabilitation and construction of new hydroelectric dams and the exploitation of alternative and renewable energies such as solar, oleic and biofuels (bioethanol, biodiesel and biogas).

According to information with the information provided by the APIEX, previously the Investment Promotion Center (CPI), foreign investments in the energy sector amounted to 45.6% of all foreign investments in 2014.

Mozambique is a key player in the development of regional energy infrastructure. Mozambique's Southern African Power Pool (SAPP) interconnections offer opportunities for trading electricity regionally.

There is an urgent need on a short, medium and long-term basis to promote the construction of additional and alternative sources of energy and the creation of transmission infrastructures to deliver power to load centers with cost effective rates.

It should be noted that under electricity legislation, the production, transport, distribution, sale, import and export of electricity, as well as the construction, operation and management of electrical facilities by individuals or by private and public entities require, as a rule, the grant of a concession by the Government. Moreover, power projects must be undertaken under a Public-Private Partnership regime.



## MINING, OIL AND GAS

Mozambique has significant investment opportunities for the exploration, extraction, processing and utilisation of natural gas, coal, gold, titanium, ilmenite, zircon, rutile, tantalite, marble, graphite and precious stones.

The Strategic Plan for the Concession of Areas for Petroleum Operations published on 8 June 2009 states that the sedimentary basins of Mozambique have great potential for oil. The Mozambique Basin, which has an area of 300,000km<sup>2</sup>, has a density of about one well per 8,000km<sup>2</sup> onshore and one well per 17,000km<sup>2</sup> offshore, while the Rovuma Basin, which has an area of 60,000km<sup>2</sup>, has a density of one well per 17,000km<sup>2</sup> onshore and none offshore. In 2012, Mozambique emerged as a new giant in natural gas with discoveries of more than 100 trillion cubic feet in Areas 1 and 4 of the offshore Rovuma Basin.

Under the Mining Law, a prospective investor may obtain Exploration Licenses (*licença de prospecção e pesquisa*), Mining Concessions (*concessão mineira*) and Mining Products commercialization Licenses (*licença de comercialização de produtos minerais*).

Exploration Licenses govern any exploration and prospecting activities and will be valid for:

- 2 Years for mineral resources being supplied for the construction industry, renewable once for the same period; or
- 5 Years for other mineral resources, including mineral water, and may be renewed once for an additional 3 year period.

Mining Concessions grant the concessionaire (which must be incorporated and registered under Mozambican laws the right to extract, develop and process mineral resources discovered under an Exploration License. Mining Concessions will be valid for 25 years and may be extended by another 25 years.

Mining Products Commercialization Licenses govern the sale and purchase of mineral products sourced from outside Mozambique. Mining Products Commercialization Licenses may be awarded to Mozambican nationals in addition to legal entities.

All concession contracts for oil and gas exploration and production activities must be granted by way of public tender, while concession contracts for other petroleum activities (e.g. infrastructure concession contract) may result from public tender or direct negotiation.

The four types of concession contracts prescribed in the new Petroleum Law are:

- Reconnaissance concession contracts,
- Prospection and production concession contracts;
- Oil or gas pipeline system concession contracts;
- Infrastructure concession contracts.

The new Petroleum Law also contains a new provision in respect of gas liquefaction, providing that the Government

may authorise concessionaires who have discovered deposits of oil and non-associated gas to develop onshore or offshore projects for the design, construction, installation, ownership, financing, operation, maintenance, use of wells, installations and ancillary equipment for the production processing, liquefaction, delivery and sale of gas in the domestic or foreign markets. It is therefore now clear that liquefaction activities, either onshore or offshore, can be undertaken under EPCC's, subject to Government approval but without the need for a separate agreement. The Government reserves the right to participate in petroleum operations in which any legal entity is involved. The Government may also decide to participate in any project at any stage under terms which will be established by contract between the Government and the holder of the rights.

## TELECOMMUNICATIONS

Although the State owned TDM (Telecommunication de Mozambique) still enjoys a monopoly, the telecommunications sector was liberalised in 2004 and the mobile sub-sector has experienced significant growth.

The new Telecommunications Law passed by the Parliament (Law nr. 4/2016, of 3 June) entered into force on 3 August 2016 and repealed the old Telecommunications Law nr. 8/2004, of 21 July. This law applies to natural and legal persons licensed for the establishment, management and operation of telecommunications networks and services.

The new law introduces an innovation by setting out the conditions under which diplomatic missions may set up and operate private telecommunications networks and radio equipment. Another new concept was introduced under which licensees, whenever requested by the Regulatory Authority, shall cooperate and provide all information related to their activities (including financial and regarding future developments in their networks and services). The telecommunications operators should classify information they consider confidential and the Communications Regulatory Authority / (INCM) is prohibited from disclosing such confidential information.

The new law allows the owner of a private network to resell the existing available capacity of its facilities and to assign, transfer or dispose of the rights to use such facilities in favor of a telecommunications operator. The new law also states that the setting, management and operation of networks and provision of telecommunications services is subject to the allocation of a unified license or a license by class and that the use of radio frequency spectrum is subject to a license. The licensing process has become more complex. The award of telecommunications or radio communications licenses involving the use of radio frequencies, numbering or other scarce resources, is subject to a public tender process or auction on terms to be set out by the Government.

The sharing of telecommunications infrastructures between operators is mandatory. This is aimed at fostering competition and decreasing the investment required for the building and





maintenance of networks, in contrast with the previous law which only required that operators should allow access to their infrastructure.

Operators of networks or public telecommunications service providers should connect with each other. Connection is defined as the physical connection of telecommunications networks used by the same or different operators in order to allow access and communications between different consumers of the services provided.

The new law also imposes new obligations on telecommunications operators which offer roaming services and international roaming, to inform customers of the applicable prices and tariffs, to provide voice, data and special message tariffs for roaming and international roaming services, to inform customers about roaming and international roaming services through free messages, and to provide detailed billing for roaming and international roaming services whenever requested by the customer.

The new law provides that every telecommunications operator must have an operational and efficient system for the legal interception of communications for the purposes of criminal investigations. However, interceptions may only be authorised by a criminal court judge.

Lastly, the new law provides for a gateway system (a system or network intermediate node used to convert information flows from different telecommunications networks) so that operators can carry out the setting up, the establishment and operation of networks for their domestic and international telecommunications services and the Government may use telecommunications traffic control devices.

## AGRICULTURE

Agriculture is one of the sectors that could easily be developed in Mozambique as the country has much potentially usable arable land along with access to river water for irrigation in many areas, particularly in central and northern Mozambique. Agribusiness is accordingly an important potential investment opportunity in Mozambique.

Mozambique exports baby-corn, flowers, citrus, cashew nuts, various fruits, pepper and paprika. There are also opportunities for the production of cereals, fruit, flowers and vegetables for the local and export market.

## LABOUR RELATIONS

There are laws which regulate employment relations and the employment of foreign workers. The 2007 labour law instituted significant reforms, although some difficulties still exist especially in relation to dismissal procedures. The registration of employees and their employers with the National Security

System is mandatory. Contributions to social security must be deducted by the employer from the employees' remuneration. The employee pays 3% and the employer 4% of the social security contributions. Foreign workers may be exempted from making Mozambican social security payments provided that they can prove they make social security payments in their home country.

Newly approved regulations on the employment of foreign workers have recently come into force (Decree 37/2016 of 31 August). These regulations provide that, as a general rule, foreign workers shall have the right to the same treatment as Mozambican workers. However, there are certain quotas applicable to the number of foreign workers that a company (whether Mozambican or foreign) can employ in Mozambique:

- Large enterprises employing more than 100 employees, the maximum percentage for foreign workers is 5%;
- Medium enterprises, the maximum percentage for foreign workers is 8%; and
- Small enterprises, the maximum percentage for foreign workers is 10%.





# NAMIBIA

## KOEP & PARTNERS



### FIRM INFORMATION

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### COUNTRY INFORMATION

Namibia is a vast but sparsely populated country with a total population of about 2.2 million spread over an area of approximately 824 292 square kilometres. Most of the population resides in the central and northern regions of the country which are cradled by the Namib Desert stretching along the cold Atlantic Ocean in the west and the Kalahari semi-desert along the eastern border with Botswana. The southern areas bordering on South Africa are also arid. The capital city is Windhoek which has an estimated population of about 300 000.

### POLITICAL SYSTEM

Multiparty democracy.

### LATEST GDP FIGURES

GDP: USD25.34 billion  
 GDP real growth rate: 4.5 %  
 GDP per capita (PPP): USD11 400.

### INFLATION RATE

3.5% (February 2018).

### INVESTMENT CLIMATE

The Government has stakes (sometimes 100% ownership) in companies in the following sectors: telecommunications (fixed and mobile voice and data services), energy, water, transport (air, rail and road), postal services, fishing, mining, petroleum and tourism.

Namibia welcomes foreign investment and virtually all business activities are open to foreign investors. Namibia introduced the Foreign Investment Act in 1990 which affords protection to foreign investment and introduced an Investment Centre within the Ministry of Trade and Industry to streamline and encourage foreign investment. Foreign nationals are protected by this legislation which guarantees the repatriation of funds and interest invested in Namibia. This Act is, however, repealed by the Namibia Investment Promotion Act 9 of 2016 which

is however not in force yet and will attempt to impose strict regulations on investment in Namibia.

New enterprises that export to countries outside the Southern African Customs Union (SACU) can apply for Export Processing Zone (EPZ) status. The benefits of an EPZ enterprise are:

- Relief from corporate income tax, import duties, VAT and stamp duties (but not on tax on employees' income and withholding tax on dividends)
- Training grants of 75% of training costs
- Foreign currency bank accounts free of exchange controls
- Relief from certain Labour Act provisions.

Foreign ownership of agricultural land is regulated. The Government's land reform policy is shaped by two key pieces of legislation: the Agricultural (Commercial) Land Reform Act 6 and the Communal Land Reform Act 5. Recently a Land Bill was published which attempts to consolidate the two existing Acts. The Land Bill (when passed as legislation) will have a major effect on foreigners investing in agricultural land in Namibia.

There is currently no legislation on Black Economic Empowerment (BEE) in Namibia. In July 2004 the Office of the Prime Minister announced that it was consulting on the content of a BEE policy and its legislative framework for the country. It was stated that once consultations had been finalised the draft policy document would be presented to the Cabinet for approval and thereafter a Bill would be presented to Parliament. A Transformational Economic and Social Empowerment Framework (TESEF) was prepared in May 2006. The goals of the TESEF were aimed at empowering previously disadvantaged Namibians and "Namibianising" the economy. The TESEF however never came into operation. In 2011 Cabinet adopted the New Equitable Economic Empowerment Framework ("NEEEF") to replace TESEF. The objectives of NEEEF are aimed at redressing past inequalities and providing measures for empowerment. Empowerment in terms of NEEEF revolves around five pillars of empowerment which is measured using a scorecard-approach. These are ownership, management control and employment equity,



human resources and skills development, entrepreneurship development and community investment. NEEEF also deals with financing mechanisms. These mechanisms are aimed at finding solutions to address developmental challenges and to broaden entrepreneurship in Namibia. The proposed options are grants and incentives, state-facilitated lending, project financing, venture capital and targeted investment. In light of the policy framework set out by NEEEF, the Office of the Prime Minister prepared a New Equitable Economic Empowerment Bill (“NEEEB”), which was circulated during 2016 for public comment. The NEEEB, once it is promulgated as an Act of Parliament, will set out the general empowerment regulatory framework for Namibia. To date (March 2018) the latest version has not been circulated.

The Development Bank of Namibia (DBN) provides finance for private sector start-ups and expansions, equity deals, bridging finance, enterprise development finance, trade finance, small and medium enterprises, public private partnerships, public sector infrastructure, local authorities, and bulk finance to responsible micro-finance providers. The DBN only finances Namibian participation in projects.

## FORMS OF BUSINESS

- Private or public limited liability company
- Close corporation
- External company (branch of foreign company)
- Partnership
- Trading trust
- Sole trading
- Co-operatives.

## FORMATION OF A COMPANY

Companies, close corporations and external companies (branches of foreign companies) must be registered with the Registrar of Companies in Windhoek. Trustees of business trusts do not need any authorisation before they can commence their duties. The regulation of trusts is minimal. A trust deed must however be approved by the Master of the High Court who must also approve the trustees. A business generally has to register for various tax purposes such as Value Added Tax (VAT), import VAT, Pay as You Earn (PAYE), workmen's compensation as well as with the Social Security Commission. Trading licences are not required.

## EXCHANGE CONTROLS

After independence Namibia remained part of the South African Rand Common Monetary Area which includes South Africa, Lesotho and Swaziland. Although the Namibian Dollar was introduced as the country's official currency in 1993, the South African Rand remains legal tender for an indefinite period. The two currencies are also freely exchangeable on a one for one basis in Namibia. For as long as Namibia remains part of the Common Monetary Area its foreign exchange transactions must be conducted in accordance with South African exchange control policies and regulations. If Namibia withdraws from the Common Monetary Area it is likely that exchange control provisions similar to those in South Africa will be introduced.

Exchange control in Namibia is administered by the Bank of Namibia (the central bank of Namibia) in conjunction with the South African Reserve Bank and through authorised dealers, commercial and merchant banks.

Exchange control approval is required for all transactions by Namibian residents (whether natural or juristic persons) which involve the transfer of assets to countries outside the Common Monetary Area. Residents are not allowed to transact business in foreign currencies. Transactions may be invoiced in foreign currencies but payments must be made in local currency. There are also certain limitations on the amount of local currency available for residents each year in respect of foreign travel and study.

With regard to non-residents:

- No restrictions apply when foreign funds are introduced into Namibia as share capital
- Share certificates must be endorsed “Non-Resident”
- Companies owned by non-residents should observe a ratio of share capital to fixed assets of 1:1
- The introduction of loan funds from abroad is subject to specific exchange approval.

## TAXATION

Normal tax is levied on the taxable income accruing to companies, trusts and individuals from sources within or deemed to be within Namibia. The standard corporate tax rate is a flat rate of 32%. Individuals are taxed on a sliding scale. The maximum tax rate for individuals is 37%. Insurance companies are effectively taxed at 12.8% of investment income and mining companies at 37.5% (although diamond mines are effectively taxed at 55%). There is no capital gains tax or estate duty. There is no taxation on local dividends from companies and distributions from close corporations paid to residents but dividends accruing to foreign residents are subject to a non-resident shareholders' tax. The rate of this tax is 10% if the beneficial owner of the shares is a company which holds directly or indirectly at least 25% of the capital of the company paying the dividends. In all other cases the rate is 20%. Royalties paid to non-residents are subject to a 10.5% withholding tax. The Income Tax Third Amendment Act 15 of 2011 came into force on 30 December 2011. It introduced a 10% withholding tax on interest earned by foreigners at Namibian Banks or Unit Trust schemes and the new section 35A introduces a 10% withholding tax on certain services, management and consultancy fees rendered by foreigners.

Double tax agreements may override Namibian withholding taxes as well as taxation of deemed source income. Namibia has double tax treaties with Botswana, France, Germany, India, Malaysia, Mauritius, Romania, Russia, South Africa, Sweden and the UK. Namibia is currently negotiating treaties with Belgium, the Seychelles, Singapore, Zambia and Zimbabwe.



VAT is charged at an effective rate of 15%. The import of goods or services is subject to VAT at 15% unless the goods or services are exempt. Imports by areas declared as Export Processing Zones are exempt from VAT. The export of goods is not subject to VAT. Customs duty is also payable.

## LEGAL SYSTEM

Namibian law is based on Roman and Roman-Dutch law and is, because of the country's history, influenced by South African law and to a certain extent by German and English law. Because the Namibian legal system shares its roots with the South African legal system and has developed in close connection to the South African legal system much use is made of South African case law and authorities when interpreting and applying Namibian law. Namibia adheres to the principles of rule of law, the supremacy of the Constitution and the independence of the judiciary.

## INTELLECTUAL PROPERTY

Rights to intellectual property are protected under Namibian law largely by statute but also at common law. Some of the statutes overlap with the common law and with each other. Patents and designs are governed by an old South African Act, the Patents Designs, Trade Marks and Copyright Act 9 of 1916. New legislation (the Industrial Property Act 1 of 2012) has been passed but is not yet in force.

Trademarks are governed by the Trademarks Act 48 of 1973. Regulations specify the procedures to be followed by applicants and protection is afforded from the date of filing if the application is granted. The common law recognises that an unregistered mark used by a trader which distinguishes such trader's goods or services from those of others is of a proprietary nature and deserves protection. The Trademarks Act recognises such common-law rights by preserving the right to bring an action for passing off of the unregistered mark.

Any of the works listed in the Copyright and Neighbouring Rights Protection Act 6 of 1994 are eligible for copyright protection. Copyright comes into existence without registration and the Act prohibits the unauthorised reproduction, publication, broadcast, performance, transmission or adaptation of a literary, dramatic or musical work. Special provision is made for the protection of artistic works and of sound recordings, cinematograph films, television and sound broadcasts, published editions of works and computer programs.

## FINANCIAL SERVICES/INSURANCE

Namibia has a well-established insurance industry which is to a great extent inherited from and interlinked with the South African insurance industry. Insurance is divided into long-term insurance (pertaining to life insurance, health, disability, funeral or sinking fund policies) and short-term insurance (relating to fire, marine, aviation, vehicles, guarantee and personal accident, sickness, general liability, damage to property, goods in transit, credit, railway rolling stock, legal expenses and expropriation and confiscation of property, personal and co-insurance business). Long-term and short-term insurance

and the registration, cancellation and carrying on of business in relation thereto are regulated by the Long-Term Insurance Act and Short-Term Insurance Act. Most types of risk can be insured in Namibia and the reinsurance business has gained ground in the country in recent years, in particular since the introduction of the State owned National Re-Insurance Company and the Namibia Financial Institutions Supervisory Authority (NAMFISA).

## TREATIES AND BILATERAL AGREEMENTS

Namibia has ratified, acceded to, or is a member of various treaties and international agreements. In terms of article 144 of the Constitution of the Republic of Namibia, an international agreement binding upon Namibia forms part of Namibian law.

## MEMBERSHIP OF INTERNATIONAL AND REGIONAL ORGANISATIONS

Namibia is a full member of a number of international and regional organisations including: United Nations (UN) and its agencies, International Monetary Fund (IMF), World Bank, World Trade Organisation (WTO), African Union (AU), The Southern African Development Community (SADC), Southern African Customs Union (SACU), British Commonwealth of Nations and the Lomé Convention.

## ROAD AND TRANSPORT

Namibia has modern civil aviation facilities, an extensive well-maintained land transportation network and an important seaport at Walvis Bay. Construction continues to expand two major road arteries, the Trans-Caprivi and Trans-Kalahari Highways which will further open up the region's access to Walvis Bay.

## WATER

Article 100 of the Namibian Constitution vests all natural resources including water in the State. The control, conservation and use of water for domestic, agricultural, urban and industrial purposes are regulated by statute. The Namibia Water Corporation Limited (NamWater) is a State-owned company dealing with bulk water supply and providing water-related services and facilities.

## ENERGY

During the pre-independence period large areas of Namibia, including offshore, were leased for oil prospecting. Natural gas was discovered in 1974 in the Kudu Field off the mouth of the Orange River. The field is thought to contain reserves of over 1.3 trillion cubic feet of gas. In 2009 the government announced changes to the ownership structure of the Kudu project. Tullow Oil Plc which owned 70% of the Kudu gas field saw its stake drop to 31%. Japanese firm ITOCHU Corporation which owned 20% of the project now owns 15%. The Namibian government through state petroleum firm the



National Petroleum Corporation of Namibia (NAMCOR) has a stake in Kudu, together with Tullow Oil Plc and Itochu. Plans are also underway to build the country's first combined cycle power station near Oranjemund. With power shortages facing the Southern African region the government has stated its commitment to develop the Kudu gas field. However, the supply of electricity in the short to medium term remains a challenge.

Namibia has a well-developed legislative framework governing the upstream and downstream oil business. Currently there are thirteen companies exploring for oil and gas.

Namibia's electricity grid currently supplies only about 40% of its population. Electricity in Namibia is generated mainly by thermal and hydroelectric power plants. A number of new licences have been issued in respect of renewable energy generation, particularly photovoltaic power generation. Fourteen of these licences have been issued under the Renewable Energy Feed-in Tariff project of the Electricity Control Board.

## TELECOMMUNICATIONS

The telecommunications industry in Namibia is regulated by the Ministry of Works, Transport and Telecommunication. Overall Namibia has a good telephone and radio frequency system and makes use of local broadcasting channels and wired and wireless internet connections. Telecom Namibia Limited is the national telecommunications operator established in August 1992 and wholly owned by the government but functioning as a commercialised company.

## TOURISM

Namibia generally attracts eco-tourists with the majority visiting the Caprivi Strip, Fish River Canyon, Sossusvlei, the Skeleton Coast Park, Sesriem, Etosha Pan and the coastal towns of Swakopmund, Walvis Bay and Lüderitz. There are many lodges and reserves to accommodate eco-tourists.

## MINING

Mining accounts for 8% of the GDP but provides more than 50% of foreign exchange earnings. Rich alluvial diamond deposits make Namibia a primary source for gem-quality diamonds. Namibia is the fourth-largest exporter of nonfuel minerals in Africa, is one of the world's largest uranium producers and the producer of large quantities of lead, zinc, tin, silver, and tungsten. The mining sector employs only about 3% of the population.

## AGRICULTURE

Although Namibian agriculture (excluding fishing) contributed between 5% and 6% of Namibia's GDP for the past five years about 35-40% of the population depends on subsistence agriculture for its livelihood. Animal products, live animals and crop exports constitute about 10.7% of total Namibian exports. The Government encourages local sourcing of agriculture products. Retailers of fruits, vegetables, and other crop products must purchase 27.5% of their stock from local farmers.

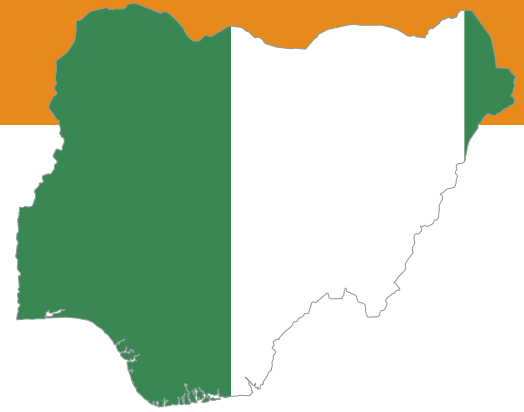
## LABOUR RELATIONS

Employment relationships are regulated by the Labour Act (which applies to all employees, including foreign employees). Namibia has subscribed to various International Labour Organisation (ILO) conventions. In terms of the Namibian Constitution all persons have the right of freedom of association, which includes the freedom to form and join associations or unions. No employee may be dismissed without a valid and fair reason and without following a fair procedure. It is unfair to dismiss an employee because of the employee's sex, race, colour, ethnic origin, religion, creed or social or economic status, political opinion or marital status. Foreign employees require a work visa if they intend to stay for a short while in Namibia (about three to six months). It is usually valid for three months and can be renewed a maximum of three times.



# NIGERIA

## GIWA-OSAGIE & COMPANY



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### COUNTRY INFORMATION

Nigeria covers 923 768 square kilometres. It has Africa's largest population of over 182 million with a growth rate of 3.5% per annum<sup>1</sup>.

### POLITICAL SYSTEM

The 1999 Constitution provides for a multi-party democracy and a presidential system of government which includes the Executive, Legislature and Judiciary.

The Executive branch is headed by the President and is divided into Federal Ministries each headed by a Minister appointed by the President and confirmed by the Senate.

The Legislative arm consists of the Senate and the House of Representatives while the judicial arm consists mainly of the Supreme Court of Nigeria, the Court of Appeal, the High Courts and other trial courts. Each arm acts as a check and balance on the powers of the other arms.

The Constitution provides for the operation of three tiers of government at the Federal, State and Local levels. Each State has its own Executive, Legislature and Judiciary. The State Government makes Laws in accordance with the powers vested on it by the Constitution.

### LATEST GDP FIGURES (2016 ESTIMATES)<sup>2</sup>

Gross Domestic Product (GDP) grew in Q3 2017 by 1.40% (year-on-year) in real terms, the second consecutive positive growth since the emergence of the economy from recession in Q2 2017. This growth is 3.74% points higher than the rate recorded in the corresponding quarter of 2016 (-2.34%) and higher by 0.68% points from the rate recorded in the preceding quarter.

Quarter on quarter, real GDP growth was 8.97% Year to date Real GDP growth stands at 0.43% In the quarter under review, aggregate GDP stood at 29 451 303.99 million Naira in nominal terms higher when compared to 26 537 651.01 million Naira in Q3 2016, resulting in a nominal GDP growth of 10.98%. This growth is higher relative to growth recorded in Q3 2016 of 9.15%<sup>3</sup>.

### INFLATION RATE

The Consumer Price Index (CPI) which measures inflation increased by 15.91 percent (year-on-year) in October 2017. This was 0.07 percent points lower than the rate recorded in September (15.98) percent making it the ninth consecutive decrease in headline year on year inflation since January 2017<sup>4</sup>.

### INVESTMENT CLIMATE IN NIGERIA

Nigeria has attracted both local and foreign investors<sup>5</sup>. The total amount of FDI during Q3 2017 was recorded at USD117.6 million, which declined by 57.14% compared to the previous quarter and 65.48% compared to Q3 2016 due to the fall in both equity and other capital investment. This was a surprising decrease as both portfolio investments and other investment grew strongly over the third quarter. Capital imports in the form of equity was USD117.5 million and remained the majority of total FDI in the third quarter of 2017 while other capital investments fell from 0.3 to 0.13 million dollars from the second to the third quarter<sup>6</sup>.

The minimum share capital for foreign companies is 10 000 000 Naira. The investment may be in the form of working capital or equipment which it has procured for its operations in Nigeria. The company may also obtain a loan from its parent company to boost its working capital.



<sup>1</sup>National Population Commission [www.population.gov.ng](http://www.population.gov.ng)

<sup>2</sup>National Bureau of Statistics: Nigerian Gross Domestic Product Report, Quarter Three 2016, Issue 11. Release date November 21, 2016

<sup>3</sup>National Bureau of Statistics: Nigerian Gross Domestic Product Report, Quarter Three 2017, Release date November 20, 2017.

<sup>4</sup>National Bureau of Statistics: Consumer Price Index, October 2017.

<sup>5</sup>"You can do business in Nigeria" by Mrs. Elvira Salleras published in the L'orbite d'Information Franco-Nigerian Chamber of Commerce and Industry inaugural edition.

<sup>6</sup>Nigerian Capital Information Report Quarter 3 2017 prepared by the National Bureau of Statistics, November 2017.



In recent times, Nigeria is returning to be a safe haven for investment. It enjoys a stable political and macro-economic environment. The Government is making progress in resolving the security issues in the North East and the Niger Delta regions of the country.

Despite the global fall in oil prices, investment opportunities abound. There are untapped investment opportunities in the non-oil sectors. The Government is committed to implementing an appropriate policy frame work to enhance investment in the non-oil sectors of the economy.

Nigeria has significant deposits of natural resources including gold, zinc, limestone, salt, cassiterite, uranium, marble and tantalite, bitumen, coal, columbite, granite, cotton, clay, glass-sand, iron-ore, gypsum and kaolin. The Nigerian market is huge due to its large population with a high percentage of young persons with untapped skills. The large population of Nigeria creates a huge opportunity for investors to market their goods and services and use skilled local labour for the purpose of their investment. Other attractive factors exist to making the environment viable for business. These include a free market, tax incentives, favourable monetary policies, the rule of law and a stable legal and regulatory framework for conducting business. Foreign investors are allowed to own 100% of their investment, except in some restricted areas where indigenous participation is encouraged. Repatriation of capital and profits is allowed and the process is easy.

Nigeria has a growing and stable financial sector and a strong private sector. Policies and regulations in operation are favourable to ensure protection of investments in the country.

## FORMS OF BUSINESS

### Joint ventures

A joint venture is formed in terms of an agreement concluded between two or more parties for the purpose of executing a particular business undertaking. All parties agree to share in the profits and losses of the enterprise.

### Partnerships

A partnership is usually established between joint owners of a business who are personally liable for the obligations and debts of the partnership.

### Incorporated companies

A company may be incorporated with unlimited liability, limited by shares or limited by guarantee. Where it is limited by shares, it may be a private or a public limited company. Foreign companies intending to do business in Nigeria must incorporate a local entity. The time frame for incorporating a company is approximately one week from the date of the submission of all the required documents and payment of all fees. The filing fees for the registration of companies are not material and are based on the proposed share capital of the company. The higher the

share capital, the lower the percentage charged as filing fees. As part of recent reforms, the registration of businesses and incorporation of companies is now carried out online. This, among other things, has greatly improved Nigeria's ranking on the ease of doing business rankings prepared by the World Bank<sup>7</sup>.

Registration with other bodies (i.e. regulators and government agencies) may be required depending on the area of business of the foreign investor.

Non-governmental organizations (NGOs) may be registered as a company limited by guarantee or as incorporated trustees (whereby trustees of the NGO, rather than the NGO itself, obtain the status of a body corporate). A company limited by guarantee cannot have a share capital and cannot have the objective of carrying on business for the purpose of making profits for distribution to members. The memorandum of a company limited by guarantee cannot be registered without the authority of the Attorney General of the Federation.

## EXCHANGE CONTROLS

There are comprehensive exchange control measures in place to guarantee a parallel market/internal balance for foreign exchange. Exchange control regulations however have been liberalised to ensure the free flow of international finance. There is now unrestricted movement of investment capital. Under the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act an individual or corporate body wishing to invest in any Nigerian enterprise with capital imported into Nigeria is required to do so through an authorised dealer.

Subject to the prior submission of prescribed documentation, the authorised bank issues a "Certificate of Capital Importation" (CCI) within 24 hours of receipt of the funds of a foreign investor. This certificate enables foreign companies to transfer dividends and profits from investments out of Nigeria. It also enables the settlement of foreign loan obligations and in the event of a sale or liquidation of the company it allows the investor to transfer the proceeds of the sale/liquidation out of Nigeria.

## REGISTRATION WITH THE NIGERIAN INVESTMENT PROMOTION COMMISSION (NIPC)

The NIPC is an agency of the Federal Government set up primarily to promote and encourage foreign investments in Nigeria. It serves as a regulatory agency for foreign investors operating in Nigeria and requires that all foreign investors register with it before commencing business operations.



<sup>7</sup><https://www.proshareng.com/news/Doing%20Business%20in%20Nigeria/Ease-of-Doing-Business-Report--Nigeria%E2%80%99s-Policy-Reforms-Bearing-Fruit/37113>



## BUSINESS PERMITS

The consent of the Minister of Interior is required for any company to employ a foreigner or for a foreigner to establish or take over any trade or business. Such consent takes the form of a "Business Permit".

## EXPATRIATE QUOTA POSITIONS

Any company wishing to employ an expatriate in Nigeria is required to apply to the Federal Ministry of Interior for "Expatriate Quota" positions. This is an official permit authorising the employment of individual expatriates in specifically approved job designations. An application for an expatriate quota must be accompanied by evidence that the expertise required is not available in Nigeria. Expatriate Quota positions are usually granted for 2-3 years and subject to renewal.

## COMBINED EXPATRIATE RESIDENCE PERMIT AND ALIEN'S CARD (CERPAC)

CERPAC is required for all foreigners' residents in Nigeria. The Federal Ministry of Interior issues the card on application. The card permits foreigners to reside in and move within Nigeria unhindered.

## TAXATION

The Federal Government is responsible for the collection of companies' income tax, withholding tax, Value Added Tax, education tax, capital gains tax and stamp duties from corporate bodies and personal income tax from individuals resident in the Federal Capital Territory and persons resident outside Nigeria who derive income from Nigeria.

All companies in Nigeria are required to pay companies' income tax on all profits accruing in, derived from, brought into or received in Nigeria. The rate of company income tax in Nigeria is 30% of the assessable profit. A 30% advance Corporate Income Tax on interim dividend was newly introduced.

Education tax is also charged (but only on Nigerian companies) at the rate of 2%.

Stamp duty is charged on written agreements and other relevant documents to which a company is party, may be fixed or based on the nature and the value of the transaction.

Value Added Tax is payable on the supply of all taxable goods and services at a flat rate of 5%.

Withholding tax is deductible at a rate between 5% and 10% (depending on the nature of services rendered or transaction carried out) from payments due to a taxable person/entity.

Capital gains tax is payable at the rate of 10% on gains accruing from the disposal of assets.

Companies engaged in petroleum operations are subject to petroleum profits tax at the rate of 85% of their assessable income.

There are also taxes at the State/local government levels such as stamp duties, development levies, land charges, tenement rates and shops and kiosks' rates.

There is a comprehensive package of tax incentives to attract investment. This includes a 3 to 5 year tax holiday for companies that fall within sectors defined as priority areas/pioneer industries by the Government. The Federal Government has recently introduced a list of 44 industries and products eligible for pioneer status. Other incentives are available in the mining sector, liquefied natural gas projects and export oriented enterprises.

Nigeria has double taxation agreements with the United Kingdom, France, Belgium, Pakistan, Canada, Romania, Netherlands, Czech Republic, Slovakia, Poland, Philippines, Japan, China, South Africa, United Arab Emirates and Italy (shipping and air transportation only). In 2015, Nigeria ratified the OECD Convention on Mutual Administrative Assistance in Tax matters. This will facilitate administrative co-operation between countries in the assessment and collection of taxes. It will also help combat tax avoidance and evasion particularly with multinationals operating in Nigeria<sup>8</sup>. Nigeria and Singapore have signed a treaty for the avoidance of double taxation on income and capital gains tax between the two countries. However, this is yet to be domesticated by the National Assembly<sup>9</sup>. Furthermore, through the reforms of the Presidential Enabling Business Environment Council (PEBEC), payment of taxes is now done online as well, which has also contributed to Nigeria's rise in the ease of doing business rankings<sup>10</sup>.

Withholding tax for rents, dividends, commissions, directors' salaries, rates or any other income derived by a company (which is normally calculated at the rate of 10%) may be reduced to 7.5% in terms of an applicable double taxation treaty. The double taxation agreements generally cover personal income tax, companies' income tax, petroleum profits tax and capital gains tax.

## THE NIGERIAN LEGAL SYSTEM

Nigeria is made up of 36 states and a Federal Capital Territory (FCT), located in Abuja. These states are as a matter of convenience generally grouped into 6 geopolitical zones of North East, North West, North Central, South East, South West, and South-South.



<sup>8</sup>The Guardian Newspaper, Monday January 11, 2016. A Review of the major tax and fiscal policy events in the past year. Taiwo Oyedele

<sup>9</sup>[http://pwnigeria.typepad.com/tax\\_matters\\_nigeria/2017/08/nigeria-signs-double-taxation-agreement-with-singapore.html](http://pwnigeria.typepad.com/tax_matters_nigeria/2017/08/nigeria-signs-double-taxation-agreement-with-singapore.html) Taiwo Oyedele.

<sup>10</sup><https://www.proshareng.com/news/Doing%20Business%20in%20Nigeria/Ease-of-Doing-Business-Report--Nigeria%E2%80%99s-Policy-Reforms-Bearing-Fruit/37113>

The Nigerian legal system is based on the English common law and legal tradition. English law has a strong influence and forms a substantial part of Nigerian law.

## THE CONSTITUTION

The Nigerian Constitution is a federal one which provides for the division of powers between the constituents of the Federal Government. It is the supreme law and is binding on all authorities and persons throughout the country.

## LEGISLATION

The Constitution regulates the distribution of legislative powers between the National Assembly (which has power to make laws for the Federation) and the House of Assembly of each State of the Federation.

## JUDICIAL PRECEDENT

The doctrine of judicial precedent is founded on the principle of law that like cases be decided alike and its operation is tied to the hierarchy of the courts. A court is bound by the decisions of any court above it in the hierarchy and (usually) by a court of co-ordinate or equivalent jurisdiction.

## CUSTOMARY LAW

Customary law can apply but is disallowed when its effect or its content is repugnant to the principles of natural justice, equity and good conscience.

## SHARIA LAW

The Koran is the principal source of Sharia law and in Nigeria, Sharia has been instituted as a main body of civil and criminal law in 12 Muslim-majority areas and in some parts of Muslim-plurality states.

## ENGLISH LAW

This consists of English common law, the doctrine of equity, statutes of general application in force in England on 1 January 1900 and Statutes and subsidiary legislation on specified matters, and English statutes made before 1 October 1960 and extending to Nigeria which have not been repealed. Laws made by the local colonial legislature are treated as part of Nigerian legislation.

## INTERNATIONAL LAW

Nigeria is a member of the United Nations, the Commonwealth of Nations, African Union and many other international organizations. Although Nigeria is a signatory to various international conventions and treaties, they are not enforceable in Nigeria unless they are enacted into law by the National Assembly.

## THE NIGERIAN COURT SYSTEM

The Nigerian court system consists of the Supreme Court, the Court of Appeal, the Federal High Court, the State High Courts, the Magistrate Courts and the Customary Courts. There is also the National Industrial Court which has original jurisdiction in civil labour matters, as well as jurisdiction to determine appeals from decisions of arbitral tribunals. Appeals also lie from this Court to the Court of Appeal. The Magistrate Courts are essentially courts of summary judgment having original jurisdiction in both civil and criminal matters.

The State High Courts have jurisdiction in both civil and criminal proceedings and hear appeals from the Magistrate Courts. The Federal High Court has co-ordinate jurisdiction with the State High Courts but is only bound by the decisions of the Supreme Court and the Court of Appeal. The Supreme Court is the highest court in the Nigerian judicial system.

Disputes between corporate bodies are usually heard by the civil courts. The Federal High Court however has jurisdiction over revenue matters, banking, fiscal matters, aviation matters, admiralty, foreign exchange and matters involving the Federal Government or its agencies.

## INTELLECTUAL PROPERTY IN NIGERIA

Nigerian intellectual property law provides ample protection for the intellectual property rights of both Nigerians and foreigners. This includes copyright, patents and industrial and design rights. The law prevents others from copying or taking unfair advantage of the work or reputation of another and provides remedies where this arises.

## FINANCIAL SERVICES IN NIGERIA<sup>11</sup>

The Central Bank of Nigeria (CBN) is responsible for amongst others, ensuring monetary and price stability and promoting a sound financial system in Nigeria

The CBN recently introduced a 'Cashless Policy' as a means of addressing the currency management challenges in Nigeria. Due to the heavy presence of cash in the economy, the operational cost of the Banking sector was high which in turn was being passed on to customers in form of higher service charges and lending rates. It is also expected that the cashless policy will ensure that a larger proportion of the currency in circulation is contained within the Banking system. This will help to enhance the effectiveness of monetary policy operations and economic stabilization measures. The cashless policy will also help to curb corrupt practices such as money laundering and robbery.



<sup>11</sup> Vanguard News. [www.vanguardngr.com/2015/06/emifiele-one-year-in-the-CBN/](http://www.vanguardngr.com/2015/06/emifiele-one-year-in-the-CBN/); The African Economy. [www.derlimited.com](http://www.derlimited.com)

The CBN also embarked on the regulation of the operations of Bureaux De Change in order to check activities such as rent seeking among operators, depletion of the nation's foreign reserves, unauthorised financial transactions and dollarization of the economy. The CBN also took measures to strengthen the foreign exchange market by closing the rDAS/wDAS foreign exchange window. This step helped to check further pressure on the country's dwindling foreign exchange; avert the emergence of multiple exchange rate regimes and to preserve Nigeria's foreign exchange reserves.

The CBN has also introduced the Development Bank of Nigeria, in partnership with the Federal Government in order to address the issue of high interest and long term funding for Micro Small and Medium Enterprises in Nigeria. In 2014, the CBN commenced the disbursement of funds under the Micro, Small and Medium Enterprises Development. So far about N 43.57 Billion has been disbursed.

The CBN also embarked on the introduction of additional development financing initiatives and the review of existing ones. For example, the N 300 Billion Real Sector Support Fund was established to help unlock the potential of the real sector as well as create more job opportunities as a means of reducing the high unemployment rate; N 213 Billion Nigerian Electricity Market Stabilisation Facility aimed at settling outstanding debts in the Nigerian Electricity Supply industry among others. In addition, the existing Commercial Agricultural Credit Scheme Guidelines were reviewed to enable Deposit Money Banks access the fund at 2 percent from CBN and lend at an all-inclusive interest rate of 9 percent, with a spread of 7 percent.

Due to the activities of the CBN, the Banks have mandatorily been mandated to adopt best practices in Corporate Governance and risk management. The CBN focused on creating an environment of transparency and accountability.

In January, 2015, the CBN conducted a risk asset examination on 24 Banks, a continuation of its efforts at ensuring proper supervision of the Banking industry. It also commenced the implementation of BASEL II ACCORD with the aim of promoting financial stability by ensuring that Banks are adequately capitalized and enhancing its risk management system.

Charges on Bank deposits were also removed and a customer protection scheme introduced geared towards resolution of consumers' complaints. The CBN set up a Consumer Complaint Management System with all Banks having a presence on this platform. About N 4.01 Billion was refunded to Banks customers as at 2015.

The CBN is focused on creating a safe and stable financial system in Nigeria as well as ensuring that Nigerian banks are fit to compete in the international financial market. Nigerian Banks are currently key players in the global financial markets with a number of the Banks ranking within the top 20 Banks in Africa and among the top 1000 in the world.

## INSURANCE

The insurance industry in Nigeria is governed by the Insurance Act 2003 with the National Insurance Commission (NAICOM) as its regulatory body. The Insurance Act complies significantly with the International Association of Insurance Supervisors' (IAIS) core principles.

Government reforms in the insurance industry, through the process of recapitalisation and consolidation, are aimed at restoring public confidence in the market and enhancing international competitiveness of local operators.

To this end NAICOM introduced the Market Development and Restructuring Initiative (MDRI), a medium term reform plan targeted at enhancing industry capacity, market efficiency and consumer protection in the Nigerian insurance market. The MDRI focuses on the enforcement of compulsory insurance in six areas including group life insurance, employers' liability insurance, buildings under construction, occupiers' liability insurance, motor third party insurance and healthcare professional and indemnity insurance. It also focuses on the enforcement of compulsory insurance products in Nigeria, the modernisation of the insurance agency system, removing fraudulent insurance institutions and the introduction of risk-based supervision.

The entrance of banks into the insurance industry under the now abolished Universal Banking System helped to boost the growth of the sector.

## STRATEGIC GROWTH INITIATIVES BY GOVERNMENT/ PRIVATE SECTOR

The country has a dynamic private sector. The new Government is committed to improving the country's economy and its long term strategy is to build a stable economy led by a strong and responsible private sector<sup>12</sup>. The Government has recognised the strong need to reduce the poverty rate in Nigeria and is willing to provide the necessary infrastructures as well as introduce new policies to boost its economic growth. Considering the recent decline in oil prices, the main focus of the Nigerian Government, is to diversify the nation's economy, as an alternative to its revenue from oil.

## MEMBERSHIP OF INTERNATIONAL AND REGIONAL ORGANISATIONS

Nigeria is a member of the African Union (AU), United Nations (UN), Organisation of Petroleum Exporting Countries (OPEC), British Commonwealth, Economic Community of West African States (ECOWAS), the New Partnership for Africa's Development (NEPAD), World Bank, International Monetary



<sup>12</sup> Vanguard News. August 25, 2015. [www.vanguardngr.com](http://www.vanguardngr.com)

Fund (IMF), World Trade Organisation (WTO), International Labour Organisation (ILO), African Development Bank Group (AfDB), International Bank for Reconstruction and Development (IBRD), International Chamber of Commerce (ICC), International Criminal Court (ICC), International Criminal Police Organisation (Interpol), International Development Association (IDA), International Finance Corporation (IFC), International Maritime Organisation (IMO), International Mobile Satellite Organisation (IMSO), International Olympic Committee (IOC), International Organisation for Migration (IOM), International Organisation for Standardisation (ISO), Islamic Development Bank (IDB), Organisation of Islamic Cooperation (OIC), Organisation for the Prohibition of Chemical Weapons (OPCW), United Nations Conference on Trade and Development (UNCTAD), United Nations Educational, Scientific, and Cultural Organisation (UNESCO) and World Health Organisation (WHO) amongst many others.

## KEY INDUSTRY SECTORS

Nigeria's key investment sectors are agriculture, banking and finance, power generation, oil and gas, information and communications technology, telecommunications, mining, trade and investment and real estate.

## OIL AND GAS

The oil and gas sector in Nigeria has attracted the most interest for investors in the Nigerian economy. Foreign companies are involved in the oil and gas sector, but mostly as contractors to the Nigerian Government. Major oil companies are active in the up-stream sectors of the oil industry. Apart from investing directly in the up-stream sector of the oil industry, foreign investors can invest in lucrative down-stream industries like crude oil refining, transportation and storage and the production of liquefied natural gas.

## POWER GENERATION

In 2005 the Federal Government embarked on an Electric Power Sector Reform Program. One of the key aspects of the program was the unbundling of the Power Holding Company of Nigeria (PHCN). This has led to the establishment of eighteen successor companies, including eleven distribution companies and six generation companies. Fifteen of these small successor companies have been handed over to new owners.

This sector provides investment opportunities for foreign investors in the generation, transmission and distribution of electricity. This also includes the local manufacture of cables, transformers and other electricity equipment, appliances and component parts.

A new Minister has been appointed to oversee the Power sector and the said Minister recently released a 13 point agenda towards reviving the power sector. Top on the agenda are public engagement on collection of tariffs, debts, power generation, maintenance, ancillary services, dispatch orders and discipline.

Other areas are gas requirement and constraints, transmission constraints, 33KV loads offtake overload, safety, service quality, new captive and embedded generation, franchising and other issues relevant to the growth of the sector.

## BANKING AND FINANCE

The country has a highly developed financial services sector with a mix of local and international banks, asset management companies, brokerage houses, insurance companies and brokers, private equity funds and investment banks.

## REAL ESTATE

Like other emerging markets, the rapid growth of the Nigerian economy has led to rapid growth in the demand for real estate with positive trends in investment in the sector.

## INFORMATION AND COMMUNICATION TECHNOLOGY

Nigeria has one of the largest and fastest growing telecommunications markets in the world, with this sector being one of the most attractive for investors. The Nigerian telecommunication industry has grown tremendously with the entry of several operators into the market. According to the Nigerian Communication Commission, Nigeria's teledensity is the highest ranked in Africa<sup>13</sup>.

## MINING

The Nigerian Government's policy focus on the mining sector is based on the need to develop a private sector led mining industry, with Government restricting its role to that of a regulator. Nigeria is blessed with 34 different types of minerals but the Government has prioritised the development of this industry to only 7 minerals, namely coal, bitumen, limestone, iron ore, baryte, gold and lead-zinc. This reflects their strategic importance to the country's economy and their availability in quantities which can sustain mining operations for many years.

In a bid to diversify the country's economic base, the Government has introduced a regulatory framework for the exploration and exploitation of mineral resources by the enactment of the Nigerian Minerals and Mining Act, 2007. Opportunities now exist for the exploitation and export of natural gas, bitumen, limestone, coal, tin, columbite, gold, silver, lead-zinc, gypsum, glass sands, clays, asbestos, graphite and iron ore.

## AGRICULTURE

The discovery of crude oil in the late 1960s and early 1970s led to the abandonment of food exports as a Government priority. The country now depends largely on food imports. However the Government has made efforts to rejuvenate



<sup>13</sup> Summary Report on Telecommunication for National and international regions : 201 (National Bureau of Statistics)

the agricultural sector and has created several incentives to encourage private investment in this sector. As Nigeria's economy contracted in 2016, the country's agricultural sector took on even more importance. Long touted as a remedy to the Nation's dependence on oil, agriculture is now seen as a potential economic saviour<sup>14</sup>.

## TRADE AND INVESTMENT

The Nigerian economy is dominated by crude oil exports which account for about 90% of its foreign exchange earnings and 65% of its budgetary revenues. Other exports are cocoa, palm oil, groundnuts, cotton, timber and rubber. Major import commodities include machinery, chemicals, transport, equipment, manufactured goods and live animals.

## THE NIGERIAN LABOUR MARKET

With a labour force of about 55 million people, skilled and unskilled labour is available in Nigeria at a relatively cheap rate, compared to other parts of the world. The country has several labour laws that govern the labour market such as the Factory Act, Labour Act and Trade Dispute Act. The National Industrial Court has exclusive jurisdiction in civil causes and matters relating to or connected with any labour or employment matter, trade unions, industrial relations and other matters arising in the workplace and the conditions of service, including health, safety, welfare and other related matters.



<sup>14</sup> <https://oxfordbusinessgroup.com/nigeria-2017/agriculture-0>



# SENEGAL

## MAME ADAMA GUEYE & ASSOCIÉS

### FIRM INFORMATION

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### POLITICAL SYSTEM

Multiparty democracy.

### FORMS OF BUSINESS

- Sole trader
- Limited liability company
- Public limited company
- Economic interest groups
- Branches of foreign companies
- Joint venture.
- Simplified joint stock company
- Representative office.

### INVESTMENT CLIMATE

Laws have been passed to facilitate local and foreign investment in Senegal. The Investment Law gives tax relief and permits profits to be remitted abroad. The Statute of Free Tax Exportation provides certain advantages and incentives to investors.

### TAXATION COMPANIES

The following taxes are levied in Senegal (the minimum tax rate varies depending on the turnover of the company):

- Tax on companies and other body corporates is 30%
- Value Added Tax (VAT) is 18% for all products and services
- There is a fixed tax of 3% of the payroll
- Trading tax.

### TAXATION OF INDIVIDUALS

Individuals are subject to income tax on revenues from real estate and properties, movables, commercial and industrial profits.

### DOUBLE TAX TREATIES

Senegal has signed double taxation agreements with France, Belgium, Canada, Norway, Cameroon, Spain, Portugal, Italy, Tunisia, Central African Republic, Cote d'Ivoire, Benin, Gabon, Burkina Faso, Madagascar, Mauritius, Niger, Rwanda, Togo, Mauritania, Mali, Chad, Congo the Democratic Republic of Congo and Luxembourg.

### EXCHANGE CONTROLS AND REGIONAL ORGANISATION

Senegal is a member of the West African Economic and Monetary Union (WAEMU/UEMOA) and belongs to the CFA Franc zone in which the transfer of funds is unrestricted. The CFA Franc is the currency of the Union and is linked to the Euro at a fixed rate of 655. 957 CFA to 1 Euro. There are no exchange controls between Senegal and the other countries which belong to the CFA Franc zone, namely Benin, Burkina Faso, Ivory Coast, Equatorial Guinea, Mali, Niger, Togo, Cameroon, Central African Republic, Congo Brazzaville, Gabon and Chad.

In general, the transfer of funds for commercial operations is allowed but there may be exchange control restrictions with regard to funds transferred outside the CFA zone and the conversion of currency. If a bank account is opened in the name of a foreign entity and funds are received in foreign currency in that account, then transfers can also be made in that foreign currency without any restriction. This may generally be done by the relevant commercial bank. However depending on the currency of the bank account and whether the account holder is a resident or non-resident, the ability to convert currency may vary.

Senegal is a signatory to the Organization for Harmonization of Business Law in Africa (OHADA) Treaty that came into effect on 1 January 1998. The treaty standardises business law in the seventeen signatory states and establishes a Common Court of Justice and Arbitration. The OHADA signatory states are Benin, Burkina Faso, Cameroon, Central African Republic, Comoros, Congo Brazzaville, RD Congo, Ivory Coast, Gabon, Equatorial Guinea, Mali, Niger, Senegal, Chad, Togo, Guinea Bissau and Guinea Conakry.

### INTELLECTUAL PROPERTY

Senegal is a member of the African Intellectual Property Organisation for promotion of Industrial Property (OAPI). The other members of this organisation are Benin, Burkina Faso, Cameroon, Central African Republic, Comoros, Congo, Ivory Coast, Gabon, Guinea Conakry, Niger, Mali, Mauritania, Senegal, Chad, Togo, Equatorial Guinea and Guinea Bissau.



# SOUTH AFRICA

## WERKSMANS ATTORNEYS

### FIRM INFORMATION

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### COUNTRY INFORMATION

South Africa is the second largest economy in Africa (after Nigeria) and contributes about 25% of African gross domestic product (GDP), 40% of its industrial output and 50% of its electricity supply. It has sophisticated banking, financial services, mining, telecommunications, agricultural, IT, commercial and industrial sectors and a developed road, rail, airport and port infrastructure. It is ranked as an upper-middle income economy by the World Bank. Its population is about 52 million (although it is estimated that there could be several million legal and illegal immigrants) and comprises a rich diversity of cultures and religions (including Christian, Hindu, Islam, Judaism and African customary). It has 11 official languages including English, Afrikaans and nine African languages. Its area is about 1 219 090 square kilometres and it is divided into nine provinces with three capital cities, Pretoria (administrative capital), Cape Town (legislative capital) and Bloemfontein (judicial capital). Poverty, crime and unemployment (officially about 27%) remain major problems.

### POLITICAL SYSTEM

Multiparty democracy. The Constitution is one of the most progressive in the world and entrenches a bill of rights which guarantees property rights, equality, socioeconomic rights, individual freedoms, an independent judiciary and a free press. The President is limited to two five year terms of office.

### INVESTMENT CLIMATE

South Africa generally welcomes foreign investment and virtually all business activities are open to foreign investors. However foreigners may not directly or indirectly control or have a greater than 20% interest in a commercial broadcasting licensee and foreign residents may not hold more than 25% of the voting rights in an air services licensee (although the Minister of Transport may grant an exemption in this regard). The establishment of branches of foreign banks requires the consent of the Registrar of Banks (several foreign banks operate in South Africa including Citibank, China Construction Bank, Standard Chartered Bank, Bank of China, JP Morgan, State Bank of India, Deutsche Bank and Royal Bank of Scotland).

There has been policy uncertainty especially in the mining sector but in 2018 steps have been taken by the Government to resolve this. Controversial proposed legislative changes (including the proposed introduction of export controls on certain minerals and the obligatory beneficiation of minerals) have been withdrawn and a new Mining Charter for certain black economic empowerment ("BEE") targets for mining companies has been finalised with the mining industry. Labour unrest, costs and productivity issues in the mining sector remain of concern for investors. The Government has proposed a ban on the foreign ownership of agricultural land and restrictions on land holdings to a maximum 12 000 hectares. A law requiring 51% local ownership of private security firms has been passed by Parliament and is awaiting the President's signature. The ruling African National Congress (ANC) party has called for a constitutional amendment to allow the expropriation of land without compensation. This as well as serious corruption scandals, mismanagement and indebtedness of State owned enterprises, downgrades by international rating agencies and under 1% annual growth rates has caused investor concern although the replacement of former President Zuma by President Ramaphosa in March 2018 has been welcomed. An election is due by May 2019.

Foreign investors are generally afforded the same treatment as local investors with some exceptions (for example only residents are subject to the South African exchange control regime below). During 2013, the Government decided to unilaterally terminate South Africa's Bilateral Investment Treaties ("BITS") with Belgium, Luxembourg, Spain, the Netherlands, Germany and Switzerland and announced that all other existing BITS would be phased out and replaced by the new Protection of Investment Act. The Act provides protections for foreign investment (for example investors have a right to fair administrative treatment, a right to property in terms of the Constitution and a right not to be treated less favourably than locals. The Act however reserves the sovereign rights of the South African Government to legislate in the "public interest" and restricts foreign investors' recourse to international arbitration (as provided in most BITS). Compensation for expropriation will be "just and equitable" as required by the Constitution (ie unlike most BITS, it is not



guaranteed that the compensation will be fair market value). However most BITS (including those already terminated by the Government) contain survival provisions for periods of 10 years or more post termination and investors from those countries will continue to be able to rely on the protections in the BITS (including recourse to international arbitration and fair market value compensation for expropriation) for such survival period.

South Africa is often described as a "Gateway to Africa" and many foreign companies have based their sub Saharan operations in South Africa due to its advanced infrastructure and economy (especially compared to other African countries), political stability and strong South African business and Government ties to the rest of the continent. Other advantages are South Africa's network of double tax treaties (see under taxation below) and investment protection agreements as well as a favourable "headquarter company regime" (see under investment incentives below). The Department of Trade and Industry has a Manufacturing Competitive Enhancement Programme (MCEP) which provides various incentives for the manufacturing sector. The MCEP is a reimbursive incentive and provides for grants of up to R50 000 000.

The Government has developed industrial development zones in East London and Coega near Port Elizabeth (both ports in the Eastern Cape Province), the Saldanha Bay port in the Western Cape, the Dube Trade Port in Durban and the port of Richards Bay in KwaZulu Natal. Special economic zones have been established at Maluti A Photung in the Free State Province, OR Tambo International Airport in Johannesburg and Musina/Makhado in the Northern Limpopo Province.

An electricity supply crisis in 2008 caused widespread blackouts and economic dislocation (including in the mining industry). In 2014 and 2018, blackouts occurred again due to a failure to maintain electricity infrastructure and concerns remain about a secure supply of electricity. The Government is constructing new coal based electricity plants to increase capacity but these projects have experienced repeated delays and cost overruns. The Government has an existing nuclear energy program based at Koeberg near Cape Town but plans to expand the program have been shelved. Solar, wind and other alternative renewable energy projects are being developed in terms of a very successful public private partnership initiative with the Government.

The Government has announced a plan to expand and rehabilitate the country's infrastructure in an amount of about USD110 billion but implementation has been slow. The Infrastructure Development Act was passed in 2014 and is intended to fast track and facilitate Government infrastructure projects. The Government owns approximately 25% of the land area of the country and, through various State owned enterprises, owns airports, ports, the national airline (South African Airways), oil pipelines, railways, electricity generation and distribution facilities (including a nuclear energy plant at Koeberg near Cape Town in the Western Cape Province) and interests in oil and gas exploration and the defence industry. The formation of a State owned mining company has been announced in addition to an existing State owned company, Alexkor, which is involved in diamond mining. Several state owned enterprises (for example

electricity parastatal Eskom, the Post Office, Petrosa, the South African Broadcasting Corporation and South African Airways) have severe funding problems.

Financing for various projects may be provided through the State owned Industrial Development Corporation (IDC), the Development Bank of Southern Africa (DBSA) and, for small and medium sized businesses, from Khula Enterprise Finance and the Small Enterprise Development Agency. The National Empowerment Fund has been set up to fund Black Economic Empowerment transactions but currently requires recapitalisation.

Monetary policy is determined by the South African Reserve Bank which is independent of Government and follows a generally conservative monetary policy involving inflation targeting. Unlike several other African countries, South Africa's growth rates have been sluggish since 2008. GDP growth of under 1% is expected in 2018. Inflation is about 5%.

A land claims process (allowing restitution or granting compensation to black South Africans deprived of land as a result of apartheid policies) has not yet been finalised.

## BLACK ECONOMIC EMPOWERMENT

The promotion of Broad Based Black Economic Empowerment ("BBBEE") is one of the key Government policies to address the racial and gender inequalities of the country's apartheid legacy (which restricted and excluded non-white South Africans from participating in the economy). BBBEE is regulated by the Broad Based Black Economic Empowerment Act and "generic" Codes of Good Practice that have been issued by the Government. BBBEE transformation charters and Codes have been developed for certain sectors of the economy including mining, financial services and construction. It must be noted that there is (other than in certain sectors like mining where licence conditions include BBBEE ownership requirements) no general legal requirement that a firm must have a BBBEE shareholder but a firm's BBBEE rating will be negatively affected if it earns no BBBEE ownership points. Government policy has generally been based on the principle that the manner in which a firm applies BBBEE is to be decided by the individual firm and the BBBEE framework simply provides a methodology for measuring the BBBEE rating of the firm.

However Government, regulatory bodies, parastatals and other public entities are obliged to take BBBEE into account in granting tenders and licences (eg mining and gambling licences) and in practice firms with low BBBEE ratings are unlikely to be granted such tenders and licences. Government and parastatal procurement is regulated by the Preferential Procurement Policy Framework Act which gives BBBEE a 10% and 20% weighting depending on the size of the tender. Private sector firms may also try to increase their BBBEE procurement scores by procuring from other private sector firms with good BBBEE ratings. There is a special dispensation allowing multinationals



to remain 100% foreign owned and still earn BBBEE ownership points by means of so called “equity equivalent” programs.

The BBBEE Act was amended in 2014 to inter alia criminalise “fronting” (effectively misrepresenting BBBEE status or conduct that undermines or frustrates the achievement of the objectives of the Act). Contraventions may result in fines (in the case of enterprises, fines of up to 10% of its annual turnover) and/or imprisonment for up to 10 years. In addition, the guilty person will be prohibited from contracting or transacting any business with any organ of State and/or public entity and will be entered into the National Treasury’s register of tender defaulters. Any contract or authorisation awarded due to false information on BBBEE status may be cancelled by an organ of state or public entity. A BBBEE Commission has been established with wide powers to investigate complaints relating to BBBEE and “fronting”.

The so called “generic” Codes (which apply to firms in sectors not covered by sector specific Codes) set out BBBEE targets and quite complex methods of measuring a firm’s BBBEE status (level 1 is the top score). Significant amendments to the “generic” Codes took effect from 1 May 2015. The amendments include reducing the previous seven BBBEE elements to five (namely ownership, management control, skills development, enterprise and supplier development and socio economic development) and changing certain methods for calculating BBBEE scores (including that the number of BBBEE points required to achieve a particular BBBEE rating have been increased). Stricter BBBEE measurement criteria apply under the amendments and the implications for business are serious as many firms will lose their current BBBEE rating unless they take steps to comply with the amended targets and methodology in the Codes. Three “priority sectors” have been identified, namely ownership, skills development and the enterprise and supplier development elements. Failure to meet certain minimum requirements for these “priority sectors” will result in the automatic downgrading of the firm’s BBBEE rating by one level.

An Exempt Micro Enterprise is a firm with a total annual turnover under R10 million and Qualifying Small Enterprises are firms with total annual turnover of between R10 million and R50 million. Exempt Micro Enterprises are deemed to have a Level four BBBEE status. Exempt Micro Enterprises and Qualifying Small Enterprises that are 100% black owned are deemed to have a level one BBBEE rating (the highest possible rating) and those that are 51% black owned are deemed to have a level two BBBEE rating.

Codes for specific sectors of the economy (and not the “generic” Codes) must be used for firms in a sector covered by a sector code. Sector codes have been issued in the tourism, construction, marketing/advertising, forestry, transport, defence, property, information and communication technology (ICT), agricultural and financial sectors.

The amendments to the BBBEE Act and “generic” Codes indicate a tougher Government policy to promoting BBBEE.

## FORMS OF BUSINESS

- Private or public limited liability profit company
- Close corporation (a separate “member managed” legal entity with no board of directors which was intended to facilitate small/medium sized businesses)
- External company (a branch of a foreign company conducting business or non-profit activities in South Africa)
- Partnership (including a limited partnership)
- Trading trust
- Sole trader
- Co-operatives.

Pursuant to the Companies Act, no new close corporations may be formed. Close corporations existing before the Act came into effect on 1 May 2011 are however permitted to continue to exist and conduct business and may be converted into companies.

## FORMATION OF A COMPANY

Companies, close corporations and external companies must be registered with the Companies and Intellectual Property Commission (CIPC) in Pretoria. Foreign incorporated (so called “external”) companies must be registered within 20 business days of commencing business or non-profit activities in South Africa.

It is common to acquire a “shelf company” (ie an already incorporated company which has never traded and has no assets or liabilities) as an alternative to incorporating a new company with CIPC. The incorporation process involves reserving the company’s name with CIPC, submitting certain prescribed forms and documents and paying certain prescribed fees to CIPC. Directors need not be South African residents and there are no minimum share capital requirements. The public officer of the company (the contact person for the tax authorities) must be a South African resident. CIPC has been experiencing serious delays (in some cases up to several months) and inefficiencies in incorporating new companies and updating its records of existing companies. It is however taking steps to resolve these problems.

A business generally has to register for various tax purposes (including Value Added Tax and as a taxpayer), for the purposes of the skills development levy and with the Unemployment Insurance Fund. Business licences are required for certain activities (for example liquor sales).

## EXCHANGE CONTROLS

The exchange control regime is administered by the Financial Surveillance Department of the South African Reserve Bank (SARB) and various “authorised dealers” appointed by SARB (which include the main commercial banks).



There are no exchange control restrictions on non-residents who may freely transfer capital in and out of South Africa. However certain exchange controls exist for South African residents, some of which may impact on non-residents (see below). South African subsidiaries and external companies (branch offices of foreign companies) are treated as residents and are accordingly subject to the exchange control regulations. Non-resident shareholders in a resident company should have their share certificates endorsed "non-resident". Endorsement is however generally a formality (proof of payment of the purchase or subscription price into South Africa is required) and facilitates dividend payments by the resident company, as well as the remittance of sale proceeds, to the non-resident shareholder.

South Africa, Lesotho, Namibia and Swaziland have no exchange control restrictions between them by virtue of their membership of the Common Monetary Area.

All payments by residents to non-residents involve exchange control procedures and/or approvals. Payments for imported goods do not generally raise any issues. Resident companies (including external companies) may generally freely remit dividends and branch profits to non-residents provided that they are made out of trading profits and available funds. Auditors' certificates and other documents may have to be submitted. The acquisition by residents of assets outside the Common Monetary Area is also regulated to a greater or lesser degree.

Exchange control approval (some of which may be given by an authorised dealer rather than an application having to be made to SARB) is required for:

- A loan by a non-resident to a south african resident. SARB will generally not permit an interest rate exceeding the local prime bank overdraft rate for loans by non-resident shareholders to their local subsidiaries but may allow an interest rate of up to 3% above the prime rate for loans by other non-residents
- Payment of management, services and other fees by a resident to a non-resident. The criterion used to assess these payments is whether they are "arm's length"
- Payment of royalties, licence and similar fees to non-residents for the right to use know-how, patents, trademarks, copyright or other intellectual property. Approval will generally be given for royalties of 2% to 4% of turnover for manufactured goods and 2% to 6% of turnover for capital goods
- The sale of South African intellectual property to a non-resident.

## TAXATION

Income tax (including capital gains tax) is levied on the worldwide income of South African residents subject to certain exemptions. Non-residents are however only taxed on their South African sourced income. There is no provision for group taxation.

The standard corporate tax rate is 28% for resident companies, close corporations and external companies. As dividends are subject to a withholding tax on dividends at the rate of 20% (reduced where appropriate by a double tax agreement), foreign investors may prefer operating through external companies. Special rules apply for gold mining companies, long-term insurance companies, small business corporations and micro businesses. Individuals pay tax on a sliding scale with a maximum rate of 45%. Trusts pay tax at 45% of income retained and not awarded to beneficiaries.

Foreign dividends paid to residents may be subject to income tax at a maximum effective rate of 20%.

There is a withholding tax of 15% of gross royalty payments to non-residents although double tax treaties may provide relief in appropriate cases.

There is a 15% withholding tax on interest paid to non-residents, subject to certain exemptions (including Government debt and listed debt interests) and relief under a relevant double tax agreement.

There is no tax levied on service fees paid to non-residents. However where the fee exceeds or is expected to exceed R10 million and representatives of the foreign service provider will be present in South Africa, the client is required to report the arrangement to the South African Revenue Service in the prescribed format.

Value added tax is levied at 15% (certain exemptions and zero ratings apply).

Capital gains tax is levied at an effective rate of 22.4% for all companies. Non-residents are usually not liable for this tax.

There are a number of other specific taxes and duties including donations tax (20/25%), estate duty (20/25%), transfer duty on the transfer of immovable property (unless subject to VAT), securities transfer tax and a skills development levy.

There are various capital allowances and deductions as well as rules regulating transfer pricing and thin capitalisation.

South Africa has double taxation agreements with more than 80 countries including the Netherlands, Canada, India, Indonesia, Iran, Italy, Japan, Kenya, Malawi, the Peoples Republic of China, Singapore, Taiwan, Tunisia, Uganda, Zambia, Ireland, Pakistan, Russia, Sweden, Norway, United Kingdom, Germany, USA, Korea, Israel, France, Lesotho, Botswana, Mauritius, Namibia, and Zimbabwe. There are also nineteen tax information and exchange agreements in force, with possibly more to follow, especially with low-tax or no-tax jurisdictions. South Africa is also a signatory to the Multilateral Convention on Mutual Assistance on Tax Matters and FATCA as well as





to the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (the so-called Multilateral Instrument or MLI).

## REGULATORY ENVIRONMENT

The Competition Commission, Competition Tribunal and Competition Appeal Court deal with merger control, restrictive business practices and abuses and price discrimination by dominant firms. Several cartels have been successfully prosecuted by the Competition Commission with the imposition of severe financial penalties. The Commission has a cartel leniency policy and has published penalty guidelines for public comment. The criminalisation of cartel conduct took effect from 1 May 2016.

The Takeover Regulation Panel regulates acquisitions and takeovers of all public companies, state owned companies and certain private companies. The Companies Act sets out the fiduciary duties of directors, corporate governance rules, mergers, amalgamations, public offers, schemes of arrangement, significant protections for minority shareholders and “business rescue” (similar to the USA’s Chapter 11).

The JSE Limited is the largest securities exchange in Africa and has regulations governing companies listed on it. The Financial Services Board supervises the activities of financial institutions and financial service providers. Banks are regulated by the Registrar of Banks. Telecommunications, broadcasting, medical schemes, short and long term insurance, pension funds, medicines and pharmaceuticals, gambling and lotteries are regulated under separate legislation and regulators. There is also environmental legislation which imposes personal liability on directors of contravening firms in certain circumstances.

The Consumer Protection Act and National Consumer Commission provides significant protection for consumers (defined as individuals and entities with turnover or assets under R2 million) and franchisees. The National Credit Act also protects consumers by regulating the extension of credit and enforcement of debts in certain circumstances. The Promotion of Access to Information Act allows access to Government and private firm information in certain circumstances. Personal data protection legislation is currently before Parliament.

There are strict anti-corruption laws as well as “know your client” information gathering requirements under the Financial Intelligence Centre Act which established the Financial Intelligence Centre to help combat money-laundering.

## INTELLECTUAL PROPERTY

Protection is provided by statute and common law for patents, trademarks, copyright, designs and other intellectual property. There are public registries for trademarks, designs and patents and South Africa is a signatory to the Berne and Paris Conventions and the Patent Cooperation Treaty and is a member of the World Intellectual Property Organisation (WIPO). The Department of Trade and Industry issued a draft national policy on intellectual property for public comment in September 2013 which includes suggestions for strengthening

patentability criteria, allowing patents to be opposed before they are granted and recommending a patent examination system. The Government has also proposed changes to protect South Africa’s traditional and indigenous knowledge.

## TARIFFS AND TRADE

Exports mainly comprise gold, diamonds, platinum, other metals and minerals, machinery and equipment and certain agricultural products. Imports mainly comprise machinery and equipment, chemicals, petroleum products, scientific instruments and certain foodstuffs. China is currently South Africa’s largest individual trading partner (for both imports and exports) although the member states of the European Union together are a larger trading partner than China. Other major export partners are Japan, Germany, UK, USA and the Netherlands. Other major import partners are Germany, USA, UK, Japan and Saudi Arabia (oil).

Import tariffs and direct controls such as import permits exist. There is free and virtually unimpeded exchange of goods between member states of the Southern African Customs Union (Botswana, Lesotho, Namibia, South Africa and Swaziland).

South Africa has concluded a trade agreement with the European Union (EU) for a Free Trade Area (FTA) between South Africa and the EU. The EU concluded negotiations on an Economic Partnership Agreement (EPA) on 15 July 2014 with the Southern African Development Community (SADC) EPA Group comprising Botswana, Lesotho, Mozambique, Namibia, South Africa and Swaziland.

A tripartite FTA between SADC, the East African Community and the Common Market for Eastern and Southern African (COMESA) has been launched to lower trade barriers and establish a FTA which would stretch from South Africa to Egypt.

South Africa has benefited from the USA’s African Growth and Opportunity Act (AGOA) which allows certain South African products to enter the USA duty free. An agreement has been concluded between the members of the SADC (South Africa, Angola, Democratic Republic of Congo, Lesotho, Malawi, Mauritius, Mozambique, Namibia, Seychelles, Swaziland, Tanzania, Zambia and Zimbabwe) providing for the liberalisation of trade and lowering of tariff barriers with the ultimate establishment of a FTA.

## INVESTMENT INCENTIVES

There are Government programs to support research and development, black owned and small/medium sized businesses, export market research, trade missions and other export marketing initiatives, feasibility studies, manufacturing projects and certain industry specific incentives (eg in the motor manufacturing, tourism and film industries).



South Africa has implemented a “headquarter company” regime to incentivise firms to use South Africa to hold investments in other African countries (or elsewhere). There are certain relatively complicated requirements to qualify including:

- The company must be incorporated or have its place of effective management in South Africa in each year
- Each shareholder must hold 10% or more of the equity shares and voting rights in the company (ie the maximum number of shareholders is 10)
- In each year 80% or more of the cost of the total assets of the company must be attributable to an interest in equity and/or a loan to a foreign company in which the headquarter company has at least 10% of the equity and voting rights and/or intellectual property that is licensed to such a foreign company
- In any year and if the gross income exceeds R5 million, at least 50% of the gross income of the company must comprise rental, dividends, interest, royalty or a service fee payable by such foreign company or comprise the proceeds from a disposal of an interest therein.

The headquarter company will be subject to tax on its worldwide income (like other South African residents) but its shareholders will not be subject to dividends tax on any dividend declared by it. Dividends paid by the company to its shareholders will be exempt from income tax in their hands. Similarly dividends received by the headquarter company are exempt from tax where it holds at least 10% of the equity and voting rights in the foreign company. The withholding tax on interest, which applies from 1 July 2013, will also not apply to interest paid by a headquarter company to a non-resident lender.

Transfer pricing and thin capitalisation rules do not apply to:

- Loans by the headquarter company to investees (if it holds at least 10% of the equity and voting rights in the investee)
- Loans from non-residents that are on-lent by the headquarter company to such investees
- Intellectual property licensed to the headquarter company and licensed by it to such investees
- Interest on loans and royalties on intellectual property licensed from a non-resident may be deducted by the headquarter company to the extent that it earns interest and royalties respectively from a non-resident company in which it has at least a 10% shareholding/voting rights

Other benefits include an exemption from capital gains tax on sales of shares held by the headquarter company, as well as shares in the headquarter company.

If a South African incorporated company is used as a headquarter company, the company may also be registered with the exchange control authorities as a headquarter company under the exchange control rules (which are very similar to the tax rules) and such registration will result in exemption of the headquarter company from the exchange control rules.

The headquarter company will have to make an annual election to be a headquarter company for tax purposes and must also submit an annual report (which will not be onerous or lengthy) to the Treasury.

Industrial Development Zones have been established at the ports of East London and Coega (near Port Elizabeth) in the Eastern Cape Province, Saldanha Bay in the Western Cape, Dube Trade Port near Durban airport and Richards Bay in KwaZulu Natal. Special economic zones with various incentives for firms have been established at Maluti A Phofung in the Free State Province, OR Tambo International Airport in Johannesburg and Musina/Makhado in the Northern Limpopo Province near the border with Zimbabwe.

Financing at reduced interest rates may be obtained from the State owned Industrial Development Corporation (IDC). Financing and other assistance is also available to small and medium sized businesses from the State owned Khula Enterprise Finance and Small Enterprise Development Agency. South Africa has been admitted to the European Community Investment Partner program. Projects may also obtain financing from the Development Bank of Southern Africa. Various foreign funders and donors including the World Bank, International Finance Corporation (IFC), Commonwealth Development Corporation and USAID have a presence in South Africa.

## LEGAL SYSTEM

The legal system is based on Roman Dutch common law with important influences from English law. The Constitution is the supreme law and entrenches basic freedoms, human rights and the independence of the judiciary. The court system comprises lower Magistrates Courts and the High Courts. Administrative decisions may be reviewed by the courts. Constitutional matters are dealt with by the Constitutional Court which is empowered to strike down legislation which conflicts with the Constitution. Appeals on non-constitutional matters are heard by the Supreme Court of Appeal in Bloemfontein. Foreign judgements and arbitral awards may be enforced in South Africa.

South Africa has signed the New York Convention and (although its 1965 Arbitration Act needs reform) arbitration has become popular especially for commercial disputes. A local independent body, the Arbitration Foundation of Southern Africa (AFSA), has established a good reputation and track record. AFSA has also been involved in the establishment of Africa ADR, an alternative dispute resolution body for African commercial disputes which provides a cheaper local alternative to arbitrations outside Africa under for example the rules of the International Chamber of Commerce (ICC) and London Court of International Arbitration (LCIA). A new International Arbitration Act is pending which is intended to establish South Africa as an African dispute resolution forum. An arbitration centre for the resolution of African disputes involving Chinese investors has been established in Johannesburg.



## MEMBERSHIP OF INTERNATIONAL AND REGIONAL ORGANISATIONS

South Africa is a member of the Southern African Customs Union (SACU), Common Monetary Area (CMA), Southern African Development Community (SADC), World Bank, International Monetary Fund (IMF), African Union (AU) and its New Partnership for African Development (NEPAD) program, the United Nations and its agencies, the World Trade Organisation (WTO), the British Commonwealth, the G20, IBSA (India, Brazil and South Africa) and BRICS (Brazil, Russia, India, China and South Africa).

## LABOUR RELATIONS

There are several statutes regulating labour relations, basic conditions of employment and occupational health and safety and protecting the rights of employees. The Employment Equity Act promotes affirmative action for black people, women of all races and people with disabilities. Employers pay skills levies (equal to a percentage of the value of their payrolls) under the Skills Development Levies Act. A Commission for Conciliation, Mediation and Arbitration (CCMA), Labour Court and Labour Appeal Court deals with labour disputes. Expatriates require work permits.



# SWAZILAND

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### COUNTRY INFORMATION

Swaziland, now referred to as the Kingdom of Eswatini, is a small landlocked country located between the Republic of South Africa and Mozambique. It has sophisticated banking and financial services as well as telecommunications, agricultural, information technology, commercial and industrial sectors. The Kingdom is proud of its quality road and rail infrastructure network which has been consistently well ranked by global competitiveness indices. It has a population of about 1.3 million and is ranked 20th among 47 countries in the Sub-Saharan Africa Region. Its overall score is above the regional average but below the world average. Its area is about 17 364 square kilometres divided amongst four Districts with Mbabane as its capital city. It has two constitutionally recognised languages. Unemployment and poverty remain major problems.

### POLITICAL SYSTEM

Swaziland is a constitutional monarchy with the Parliament and Senate partly elected through a constituency election process and partly appointed by the King. The Constitution has a bill of rights that guarantees property rights, equality, socio-economic rights, individual freedom and the independency of the judiciary and the press. The head of state is the King, currently King Mswati III.

### ECONOMIC OVERVIEW

The Kingdom of Swaziland possess a comparative advantage in the agricultural sector with four agro-ecological zones exhibiting different climates with average annual rainfall of over 1500mm. Manufacturing is one of the major sectors in the economy contributing 40% of GDP and is the second largest employer after the agricultural sector. Main products include food and beverages, textiles, zippers and apparels, timber, engineering and metal products, plastics, chemicals and refrigerators.

Swaziland has over 70% national coverage of electricity and has an installed capacity for power generation of 69.6MW. It also has domestic energy sources which are mainly hydro-power plants and is considering other sustainable energy sources.

Swaziland has mineral resources which include gold, diamonds, coal, iron ore and quarry stone.

Swaziland encourages foreign investment in virtually all business sectors and offer a reduced corporate tax of 10% for 10 years to both local and foreign investment in manufacturing, mining, international services and tourism. A company eligible for this concession may also be provided with an exemption from withholding taxes on dividends during the same 10 year tax period.

### INFLATION RATE

The inflation rate in Swaziland currently stands at 4.90%.

### FORMS OF BUSINESS

- Private or public limited liability profit company
- Close corporations
- External company (i.e. branch of a foreign company)
- Partnership
- Trading trust
- Sole trader.

### FORMATION OF A COMPANY

All the above types of corporate entities must be registered with the Registrar of Companies) in Mbabane. Prior to commencing operations, a trading licence must be obtained from the Ministry of Commerce. The company will then have to register for tax with the Swaziland Revenue Authority and also comply with other statutory requirements such as registering for insurance and with the Swaziland National Provident Fund.

### EXCHANGE CONTROLS

Swaziland is a signatory to the Common Monetary Area (CMA) Agreement and there is an unfettered flow of funds between Swaziland, Lesotho, Namibia and the Republic of South Africa. The four countries form a single exchange control territory. Each however administers exchange control within its borders for transfers with the rest of the world.



Exchange control in Swaziland is regulated by a department within the Central Bank of Swaziland which act in collaboration with so called “authorised dealers” which are mainly commercial banks.

Permanent residents and temporary residents of Swaziland and non-residents of the CMA may open foreign currency accounts with an authorised dealer in Swaziland subject to the account being funded with foreign currency emanating from sources outside the CMA and to any foreign currency accrual being retained in the account for a period not exceeding 90 days from the date on which such accrual was first credited to the foreign currency account. At the end of the 90 day period, any utilisation of foreign currency must be immediately offered for sale to an authorised dealer and converted to local currency.

## TAXATION

Tax is levied on income from actual and deemed Swazi sources. The corporate tax rate is 30%. Withholding tax is 15% of dividend payments to non-resident shareholders. Value added tax (VAT) was 14% but with effect from 1 August 2018, VAT will increase to 15%. There is no capital gains tax or tax on dividends or distributions paid to residents.

## REGULATORY ENVIRONMENT

There are several regulatory bodies like the Financial Services Regulatory Agency (FSRA) (which regulates financial service providers), the Swaziland Public Procurement Regulatory Agency (which regulates procurement and tenders) and the Swaziland Competition Commission (whose main function is to deal with mergers, restrictive business practices and abuses and anti-competitive practices in Swaziland).

## EXPORTS AND IMPORTS

Import and export tariffs are regulated by both the Swaziland Revenue Authority (SRA) and in terms of the Swaziland Customs and Excise Act. The Commissioner General of the SRA is empowered to collect revenue in Swaziland. There is virtually unimpeded exchange of goods between member states of the Southern African Customs Union (SACU). In addition, Swaziland is party to several preferential trade agreements in Africa, Europe and the United States and there are many export incentives available to genuine exporters.

## INTELLECTUAL PROPERTY

Protection is provided by statute and the Constitution. There are public registries for trademarks and patents. There is also an Intellectual Property Office which is entrusted with the responsibility of providing guaranteed appropriate, effective protection and registration of trademarks and service marks. Patents, utility models, industrial designs, copyrights and neighbouring rights are also protected by legislation. The country is also a party to various intellectual property conventions and agreements including the -

- Paris Convention for the Protection of Industrial Property
- Berne Convention for the Protection of literary and artistic works

- Patent Co-Operation Treaty
- Banjul Protocol for the registration of marks
- Harare Protocol on patents and industrial designs
- Madrid agreement for the international registration of marks
- Agreement on trade related aspects of intellectual property rights.

## FINANCIAL SERVICES AND INSURANCE

There are various financial service providers in Swaziland including all the major commercial banks in the Republic of South Africa (such as Standard Bank, Nedbank and First National Bank) and the Swaziland Building Society and the Swaziland Development and Savings Bank (commonly referred to as the Swazi Bank). Besides the commercial banks, there are micro-lenders, co-operatives and mobile companies which offer financial services. There are also insurance providers such as Lidwala Insurance as well as the Swaziland Royal Insurance Corporation.

## KEY STRATEGIC GROWTH INITIATIVES BY GOVERNMENT/PRIVATE SECTOR

There are major drives for growth in the fields of tourism, game parks, gold, coal and diamond mining. The Swaziland Investment Promotion Authority is tasked with promoting investments in Swaziland.

Swaziland is a member of various international and regional organisations such as the Southern African Development Community (SADC), the United Nations (UN), the Common Market for Eastern and Southern Africa (COMESA), the World Bank, the International Finance Corporation (IFC), the International Monetary Fund (IMF) and the African Union (AU).

## ROADS AND TRANSPORTATION

Swaziland has a good road haulage and rail system. Maputo in Mozambique is the closest port. Swaziland Railways specifically deals with improving railroads in Swaziland. The country has two airports servicing commercial and private air-lines.

## LEGAL SYSTEM

Swaziland has a dual legal system. On the one hand, there is Swazi law and custom which is highly regulated and governed through Swazi Courts and tribunals. On the other hand, Roman Dutch common law is applied in the Swaziland civil courts such as the Magistrate's Court, the High Court and the Supreme Court of Appeal. The Constitution is the supreme law of the land and enshrines a Bill of Rights and guarantees the independence of the legal profession. There are various administrative bodies whose decisions are subject to review by the High Court of Swaziland. In dealing with matters of a constitutional nature, three judges of the High Court have jurisdiction to decide Constitutional cases.





## LABOUR RELATIONS

There are several statutes regulating labour relations, conditions of employment and occupational health and safety as well as the protection of wages. These include the Industrial Relations Act of 2000, the Employment Act of 1980, the Wages Act of 1964, the Occupational Health and Safety Act of 2011, and the Workmen's Compensation Act of 1983. There are also labour tribunals such as Conciliation Mediation Arbitration Commission (CMAC) and the Industrial Court.



# TANZANIA

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### COUNTRY INFORMATION

The United Republic of Tanzania, the largest country in East Africa was formed in April 1964 from the Union of Tanganyika and Zanzibar, which were granted independence in 1961 and 1963, respectively. The country has an area of over 945,200 km<sup>2</sup> and a population of approximately 45 million drawn from a wide diversity of tribal groups. The Tanzanian mainland covers 945 087 km<sup>2</sup> and Zanzibar 1 658 km<sup>2</sup>. According to the 2012 Population and Housing Census for the United Republic of Tanzania (2012 Tanzania Population and Housing Census, National Bureau of Statistics) the official population of Tanzania is 44 928 923 of which 43 625 354 reside on the Tanzanian mainland and 1303 569 in Zanzibar. The capital city is Dodoma (legislative) while Dar es Salaam is the major commercial city. Other Metropolitan centers are Arusha, Mwanza, Mbeya, Mtwara and Kilimanjaro. Over the past year, and upon the orders of the President, the Prime Minister, Ministers and senior government officials have relocated to Dodoma.

### POLITICAL SYSTEM

The country is a unitary republic of two states based on a multiparty parliamentary democracy. The two states are the Republic of Tanzania and the Revolutionary Republic of Zanzibar (together forming the United Republic of Tanzania). All state authority in Tanzania is exercised and controlled by the Government of the United Republic of Tanzania and the Revolutionary Government of Zanzibar.

### LATEST GDP FIGURES

In October 2014 the Government released revised estimates of Tanzania's Gross Domestic Product (GDP) for the base year 2007. The revision was aimed at enhancing the quality of National Accounts estimates to better portray the economic activities in the country and ensure international comparability by using concepts, definitions and methods described in the UN System of National Accounts 1993 (SNA 1993) and (partly) the 2008 SNA. The revised GDP at market price is estimated at 70 Trillion Tanzanian Shillings for 2013 (after revision) with a growth rate of 6.9 % for the second quarter in 2014. The contributions of various sectors to GDP include agriculture 31.7%, Wholesale and Trade 10.6%, Construction 9.3%,

Manufacturing 6.9%, Mining 4.3%, Transport 4.0% and Hotels and Restaurants 1.3%.

### INFLATION RATE

The annual inflation rate accelerated to 6.6% in November of 2015 from 6.3% in the previous month it is the highest figure since September 2015. The inflation rate averaged 7.48% from 1999 until 2015, reaching an all time high of 19.80% in December 2011 and a record low of 3.40% in January of 2003.

### INVESTMENT CLIMATE

The Government has a favorable policy towards foreign direct investment (FDI) and has made significant efforts to encourage FDI although the number of tax incentives that were being granted has declined, and are only applicable to strategic large scale projects. Generally, foreign investors receive the same treatment as local investors.

The Tanzania Investment Act No 26 of 1997 (the TIC Act) makes provisions for a few favourable conditions for investors. The TIC Act establishes the Tanzania Investment Centre (TIC) as the Government agency with the objectives of promoting and facilitating investment. Benefits available under the TIC Act include the guaranteed repatriation of profits and proceeds of sale of investment, a guarantee against expropriation, guaranteed minimum quotas of up to five expatriate employees and certain tax benefits (which have been decreased from what was previously available). The TIC Act applies to all businesses other than mining and oil exploration and exploitation. However, the benefits in relation to the guaranteed repatriation of dividends and capital and the guarantee against expropriation available under the TIC Act are also extended to investors in mining and oil exploration and exploitation. In addition, The Constitution of the United Republic of Tanzania guarantees the right to private ownership of property and State protection of that property and forbids the nationalisation of private property without due process that guarantees fair and speedy compensation. Similar incentives are offered to investors in Zanzibar through the Zanzibar Investment Promotion Agency (ZIPA).



All land in Tanzania is public land vested in the President who grants rights of occupancy on leasehold (not freehold) basis for specific periods of 33 years, 66 years and 99 years. There is a Central Land Registry in which all land titles are registered. One copy of the title deed is kept at the Land Registry, the other copy being in the possession of the owner. Any mortgages, charges or similar third party rights against the property or the transfer of the right of occupancy are endorsed on the two copies of the title deeds as proof of their existence. There are Zonal Land Registries which are administratively answerable to the Central Land Registry. The Commissioner for Lands is the principal administrative officer and advisor to the Government with respect to land matters and he/she is a Presidential appointee.

Investments on the Dar es Salaam Stock Exchange (the DSE) are open to foreign investors but the injection of foreign capital is capped at 60% of the listed shares. However, in the case of a public issue and with prior written approval of the Capital Markets and Securities Authority, an issuer may allot securities in excess of the prescribed limit to residents of the East African Community and foreign investors, in that order of priority, if Tanzanians do not take up the securities.

## FORMS OF BUSINESS

Principal forms of business organisation are a sole proprietor, partnership, company and registered branch of a foreign company.

## FORMATION OF COMPANIES

Limited liability companies and branches must be registered with the Business Registration and Licensing Agency (BRELA). Partnerships and sole traders (if trading in names other than their own) have to be registered with BRELA.

A foreign investor can set up a place of business in Tanzania by either registering a branch of a foreign company or by incorporating a local company. A company can be incorporated as an independent entity or a subsidiary of a parent company which is incorporated in a foreign jurisdiction. Companies require a minimum two shareholders but may be 100 percent foreign owned except in certain sectors such as shipping agencies, insurance, telecommunications, TV and radio stations and certain small scale mining licenses which are restricted to citizens of Tanzania or require a specified percentage of local participation.

Business licenses must be obtained for all forms of business undertaken for gain. Certain businesses like banks, insurance companies, contractors, tour operators, hotels, mining, oil and gas and professionals must have specific sector licenses issued by the respective regulatory authorities in addition to business licenses.

## EXCHANGE CONTROLS

Tanzania enjoys a liberal foreign exchange control regime where residents can establish and maintain foreign currency bank accounts with local banks with limited regulation of

international transfers. Transfer of funds overseas requires proof of the reason for the remittance and, at times, proof that relevant taxes on the funds have been paid. The Bank of Tanzania regulates the establishment of foreign currency accounts abroad and dealings relating to gold.

## TAXATION

The Income Tax Act 2004 regulates the assessment and collection of revenues. Other tax statutes include the Value Added Tax Act 2014, the East African Community Customs Management Act, 2004 and the Stamp Duty Act, Revised Edition 2006. The main taxes are:

- Corporate income tax - 30% (25% for newly listed companies for three years)
- Individual income tax - maximum rate of 30%
- VAT - 18%
- Tax on the disposal of an investment by an individual resident - 10% on local assets and 30% on overseas assets
- Tax on the disposal of an investment by an individual non-resident — 20% on local assets and 30% on overseas assets
- Tax on the disposal of an investment by corporates (both resident and non-resident) - 30%
- Stamp duty on conveyancing - 1%.

There are various capital deductions on buildings, plant and machinery, agriculture or livestock farming, manufacturing and tourism, mining prospecting as well as oil and gas exploration.

Tanzania has double taxation treaties currently in force with Canada, Denmark, Finland, Italy, Norway, South Africa, Sweden and Zambia. Agreements with Kenya and Uganda are signed but awaiting ratification.

## MONETARY POLICY

Tanzania's monetary policy is formulated by the Bank of Tanzania using instruments such as the Refinancing Policy, Minimum Reserve Policy, Open Market Policy, foreign exchange interventions and others. The attainment of monetary policy objectives is facilitated by a continued application of market oriented policies in the financial sector, the public sector, the industrial sector, the agricultural sector and the external payments regulatory regime.

## LEGAL SYSTEM

Tanzania's legal system is sourced from English common law, statutes, case law, Islamic law and customary law. English common law applies only in the absence of statutory law and where commercial law has been enacted, the common law does not apply. Islamic law is applied only in matters of marriage and succession to Tanzanians of Islamic faith while customary law applies generally to matters of ancestral land ownership and inheritance.



The judicial system is made up of the Court of Appeal of Tanzania which extends to Zanzibar, the High Court of Tanzania, Courts of Resident Magistrates, District Courts, Primary Courts and special tribunals. Zanzibar has its own High Court and subordinate courts. A Commercial Court was established as a division of the High Court of Tanzania in 1999 to quickly decide commercial disputes. This Court has had reasonable success in expeditiously resolving commercial disputes.

Tanzania has supportive business and commercial laws, such as the law guaranteeing private property rights (which is also enshrined in the constitution), laws authorising business enterprises (the Companies Act, 2002 and the Business Names Registration Act), laws governing contracts, the sale of goods, leases, payment and credit instruments, secured transactions, bankruptcy and unfair trade practices, among others.

### INTELLECTUAL PROPERTY

The Copyright and Neighboring Rights Act No. 7 of 1999 provides for the protection of copyright and other rights in literary, artistic works, folklore and other related matters.

The Trade and Service Marks Act No. 12 of 1986 provides for the registration and protection of trade and service marks and related matters.

The Patent (Registration) Act No. 1 of 1987 provides for the protection of inventions and innovation for the facilitation of the acquisition of technology on fair terms through the grant and regulation of patents, utility certificates and innovation certificates.

### BANKING

The Bank of Tanzania is responsible for establishing conducive monetary policies to ensure low and stable inflation. The Banking and Financial Institutions Act No.5 of 2006 (BFIA) consolidates the law relating to banking and aims to harmonize the operations of all financial institutions in Tanzania, to foster sound banking activities, regulate credit operations and provide for other matters incidental to or connected with those purposes.

### INSURANCE

The Insurance Act No.10 of 2009 came into force on 1 July 2009 and established the Tanzania Insurance Regulatory Authority (TIRA) which is vested with the powers to regulate the insurance market in Tanzania and promote and maintain an efficient, fair, safe and stable insurance market for the benefit and protection of insurance policyholders.

### KEY STRATEGIC GROWTH INITIATIVES BY GOVERNMENT/PRIVATE SECTOR

The National Strategy for Growth and Poverty Reduction (NSGRP) has identified Private Sector Development (PSD) as an important source of Tanzania's economic growth. The strategy stipulates that domestic firms including Small and Medium sized Enterprises (SMEs) will be supported and encouraged to

be innovative, pay attention to product development, quality and superior marketing strategies that make them competitive and capable of responding to global market conditions.

### PUBLIC PRIVATE PARTNERSHIPS

The Public Private Partnership Act No. 19 of 2010 (PPP Act) has been amended by the Public Private Partnership (Amendment Act) 2014. The main purpose of the PPP Act is to promote private sector participation in the provision of public services through public private partnership projects involving investment capital, managerial skills and technology. The Amendment went further to require that all Public Private Partnership projects (both solicited and unsolicited) must be procured through an open and competitive bidding process.

### ECONOMIC EMPOWERMENT

The Government of Tanzania has implemented the National Economic Empowerment Policy of 2004 by providing (through various funds and programs) soft loans and advice on forming cooperatives (SACCOS) and Village Community Banks (VICOBA) in order to promote income generation, employment and poverty reduction.

The Government continues to promote the National Economic Empowerment Policy to citizens to enable them to understand it and participate effectively in its implementation. It provides training to entrepreneurs, advice on savings and investments and conducts studies aimed at developing entrepreneurship skills as well as initiating and improving economic activities. In addition, the Government will also continue to promote the participation of people in development activities through the Tanzania Social Action Fund (TASAF).

In line with the National Economic Empowerment Policy, the National Economic Empowerment Act No. 16 of 2004 has been enacted in order to establish the National Economic Empowerment Council for the promotion and facilitation of ownership of income generating activities and assets by Tanzanians, to provide a legal and Institutional framework for the Council, to establish the national Economic Empowerment Fund and to provide for the control of the financial affairs of the Council and the Fund and other incidental matters.

### TREATIES AND BILATERAL AGREEMENTS

Tanzania has entered into bilateral treaties for the promotion and protection of Foreign Direct Investment (FDI) with Denmark, Finland, Germany, India, Italy, Netherlands, Norway, Sweden, Switzerland, United Kingdom and Zambia.

Tanzania is a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, the Centre for Settlement of Investment Disputes (ICSID) and Multilateral Investment Guarantee Agency (MIGA). In addition, Tanzanian courts will uphold the judgments of foreign courts



or foreign arbitral awards on a reciprocal basis. Tanzania has reciprocal enforcement of judgments agreements with the United Kingdom, Swaziland, Zimbabwe, Somalia, Seychelles, Zambia, New South Wales, Mauritius, Sri Lanka, Botswana and Lesotho.

## MEMBERSHIP OF INTERNATIONAL AND REGIONAL ORGANISATIONS

Tanzania is a member of the United Nations Organisation, the African Union, the East African Community (EAC) and the Southern African Development Community (SADC).

## ROAD AND TRANSPORT

Transport in Tanzania is mainly by road supplemented by a series of railway networks. Tanzania's road network is currently of better quality with tarred roads connecting all major regions across the country.

Tanzania has an abundance of coastal and lake waterways around its borders. The active ports are Dar es Salaam, Tanga, and Mtwara. There are also the minor ports of Kilwa, Lindi and Mafia on the Indian Ocean.

## WATER

Tanzania has sufficient water resources to meet most of its present needs. They include surface and underground sources.

## ENERGY AND GAS

Electricity generation, transmission and distribution in Tanzania are provided through the Tanzania Electric Supply Company (TANESCO). Although electricity generation and distribution has been liberalised, TANESCO (a 100% Government owned entity) is responsible for 90% of the electricity supply. Biomass-based fuels particularly fuel-wood (charcoal and firewood) accounts for more than 90% of the primary energy supply. Commercial energy sources i.e., petroleum and electricity, account for about 8% and 1.2% respectively of the primary energy used. Coal, solar and wind account for less than 1% of energy used.

## TELECOMMUNICATIONS

Tanzania has the second largest telecommunications market in East Africa after Kenya. Tele-density has risen from 1% in 2001 to 61% in September 2013 representing a subscriber base of 27 395 650 million mobile subscribers.

The Electronic and Postal Communications Act No. 3 of 2010 came into force on 20 March 2010. It sets out the procedure for regulating the communications industry and requires the registration of all detachable SIM cards and built-in SIM card mobile telephones. The objective is to enhance national security, to protect consumers from misuse of communication services and to enable consumers to be identified when they use value-added services such as mobile money transfers (another mobile service which is growing steadily). The Act also requires existing licensees of network facilities, network services, application services or content services to offer their

shares to the public and subsequently list on the Dar es Salaam stock exchange within three years from the commencement of the statute. The listing of such shares must however comply with the listing requirements of the Capital Markets and Securities Authority. Regulations governing the listing of mobile company operators have not yet been issued.

From July 2016 all mobile operators (including amongst others telecommunication companies and suppliers) must float to local Tanzanians 25% of their paid up share capital on the Dar es Salaam Stock Exchange (DSE).

## AGRICULTURE

Agriculture is the most important sector of the economy, accounting for over 20% of the Gross Domestic Product (GDP). Coffee, tea, sisal, cotton and tobacco are the principal exports accounting for as much as 50% of total exports. Mining, tourism, transportation, manufacturing and fishing are playing an increasingly important role in the economy. Agriculture is still dominated by subsistence farming. Food crops make up about 85% of the sector with livestock accounting for 3%. Major food crops include cassava, millet, maize, sorghum, rice, wheat, pulses (mainly beans) potatoes, bananas and plantains. Tanzania has good arable land and the production of more food than required in 2014 is partly responsible for the low inflation figure of 6.8% by the end of December 2014.

## TOURISM

There has been a significant increase in tourism with arrival numbers exceeding one million tourists per year. Popular tourist destinations include the Ngorongoro Carter, the popular Kilimanjaro, Serengeti and Lake Manyara national parks and Zanzibar. Southern tourist destinations are also becoming popular including the Selous Game Reserve and the Ruaha and Katavi national parks. Smaller national parks include Mikumi, Gombe and Tarangire. Tanzania's national parks and reserves constitute about 25% of Tanzania's land area.

## MINING

Mining is an important sector of the economy. Tanzania is Africa's third largest gold producer after South Africa and Ghana and is estimated to have gold reserves of more than 1000 tones. Until 2012, mining constituted up to 60% of Tanzania's export revenue of which about 47% came from gold alone. Tanzania boasts a variety of other minerals including tanzanite, silver, copper, diamonds, rubies, sapphires, base metals, platinum, coal, uranium, agro-minerals, chemicals, graphite and other industrial minerals including soda ash, kaolin, granites, marble and quartzite. Salt is found along the coast and inland lakes, along with vermiculites, limestone, silica sands, phosphate, gypsum and mica.

On 23 April 2010 the Mining Act No.14 of 2010 came into force and made substantial amendments to the laws relating to prospecting, mining, processing and dealing in minerals,





the grant, renewal and termination of mineral rights and the payment of royalties, fees and other charges. The Mining Act 2010 increased the tenure of a prospecting licence from 7 to 9 years.

In February 2017, the Government promulgated regulations under the Mining Act requiring that all mining companies who are holders of Special Mining Licences must float to local Tanzanians 30% of their paid up share capital on the Dar es Salaam Stock Exchange (DSE).

The Mining Act was amended in July 2017 and now provides that for any mining operations under a mining licence (ML) or a special mining licence (SML), the Government shall have not less than a 16% nondilutable free carried interest shares in the capital of a mining company depending on the type of minerals and the level of investment. Additionally, the Mining (Local Content) Regulations require that an indigenous Tanzanian company should have at least 5% equity participation in a foreign company for such foreign company to qualify for grant of a mining licence (ML).

## OIL AND GAS

Tanzania has increasingly drawn attention as a leading destination in terms of oil and natural gas exploration in East Africa. The recently passed Petroleum Act 2015 provides for the regulation of upstream, midstream and downstream petroleum activities, the establishment of the Petroleum Upstream Regulatory Authority and a National Oil Company and securing the accountability of petroleum entities.

In 2012 and 2013 Tanzania led the region in new discoveries of natural gas with 43.1 trillion cubic feet of proven natural gas reserves in August 2013. Following these discoveries there is increased expectation of an oil find but the Government is currently focused on natural gas and its exploitation. Commercial opportunities in exploration include bidding for blocs advertised by the Ministry of Energy and Minerals from time to time, the direct application for blocks, farming into existing

Production and Sharing Agreements (PSAs), power generation and upstream services as well as material and services suppliers to this growing sector. There are active downstream activities in relation to natural gas and oil. Open areas being promoted by the Tanzania Petroleum Development Corporation (TPDC) include the Rufiji basin, inland rift basins of Lake Tanganyika, Lake Rukwa, Lake Nyasa and the Ruhuhu Karoo basin.

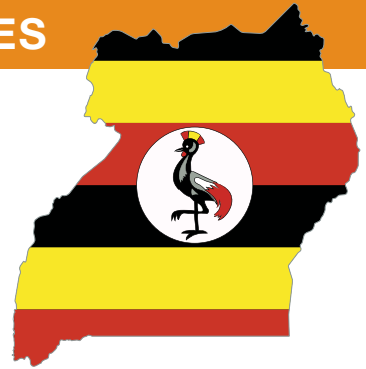
A major natural gas pipeline from the natural gas fields in Mtwara to Dar es Salaam (the main commercial capital) has been constructed by the Government. This will increase access to natural gas by industries, offices and homes.

A Petroleum export pipeline of over 1400km is also currently being considered from Kabaale, Uganda to Tanga, Tanzania. This would be one of the largest projects in the country involving the Government of Uganda and the private sector.



## UGANDA

## KATENDE, SSEMPEBWA &amp; COMPANY ADVOCATES



## FIRM INFORMATION

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## COUNTRY INFORMATION

The total area of Uganda is about 241 000 square kilometres of which about 44 000 are covered by fresh water bodies. Its population is approximately 37.58 million. The official language is English. Swahili and Luganda are also spoken. The capital city and seat of government is Kampala. Other major towns include Entebbe and Jinja, the second industrial town of Uganda and the source of the river Nile.

## POLITICAL SYSTEM

A multiparty democracy since 2006.

## LATEST GDP FIGURES

USD 21.49 billion.

## INFLATION RATE

5.7%.

## INVESTMENT CLIMATE

Uganda strongly encourages private investment, both foreign and domestic. The government has pursued a steady policy of improving the investment climate by reducing bureaucracy, streamlining the legal framework, fighting corruption and stabilising the economy. The last point in particular has become a trademark for Uganda. Few Sub-Saharan economies have come close to Uganda's success in stabilising their economies and stimulating growth. Although the country remains poor, foreign investors are unlikely to find a more dynamic economic environment in Africa. Although small, the Ugandan market is growing.

The government's strategy with respect to macroeconomic policy is to modernise the economy by relying on markets and the efforts of private entrepreneurs, while the government provides the necessary legal, policy and physical infrastructure for private investments to flourish. This strategy has been endorsed by donors and is already showing positive results. The central objective is to provide sustainable, rapid and broad-based growth by guaranteeing security, the rule of law and structural reform.

Uganda's fiscal incentive package provides for generous capital recovery terms, particularly for investors whose projects entail significant investment in plant and machinery and whose investments are medium/long term.

In addition, Uganda offers a zero rate of import duty on plant and machinery as well as a uniform corporate tax of 30%. Provisions allow for assessed losses arising out of company operations (including the loss from the investment allowance) to be carried forward. Such losses are allowed as a deduction in determining the tax payer's chargeable income in the following year of income. Uganda also has a fully liberalised foreign exchange regime with no restrictions on the movement of capital in and out of the country.

With the discovery of oil there are many opportunities in industries related to oil in the upstream, midstream and downstream markets.

## FORMS OF BUSINESS

- Private or public limited liability company
- Foreign company (i.e. a branch of a foreign company)
- Partnership (limited)
- Trusts
- Sole trader.

## FORMATION OF A COMPANY

Companies, both local and foreign, must be registered. A local company is one which is incorporated and registered in Uganda or a company whose major shareholding is held by Ugandans and the majority of its business is conducted in Uganda. Foreign companies and branch offices are required to register as foreign companies.

## REQUIREMENTS FOR INCORPORATION OF A LOCAL COMPANY

A local company is one that is incorporated and registered in Uganda. The information required for the incorporation of a local company is as follows:



- The proposed name of the company's business and the proposed principal place of business. For new companies that do not have a registered office, the offices of their advocates can act as the initial offices of the company
- The full names, address, age, nationality, position and other occupations of all members. The statutory minimum number of members required for a limited liability company is one
- The primary or principal objectives of the company. This is a requirement because legally a company cannot engage in any business that is outside the scope of its Memorandum of Association. This requirement is however going to change with the commencement of the new Companies Act
- The share capital of the company and the capital contribution of each member to the company. The official stamp duty is set at 0.5% of the nominal share capital. Normally we recommend that the initial share capital is only one million Uganda Shillings (Ushs) (about USD 600) as this significantly reduces the cost of incorporation by minimising stamp duty. The share capital can be increased as and when the requirement arises
- The name of at least two directors of the company. Other directors can be appointed in due course by company resolutions.

## REGISTRATION OF A FOREIGN COMPANY

Foreign companies establishing a place of business in Uganda are required to register as foreign companies in terms of the Uganda Companies Act. The information required for registering a foreign company is as follows:

- Several certified copies of the company's Memorandum and Articles of Association
- A complete list of all the directors and the secretary of the company, their names, postal addresses, nationalities and business occupations
- A statement of all subsisting charges created by the company
- A list of the shareholders of the company
- A letter from the Registrar of Companies in the company's home country confirming that the company is registered in the home country
- The name and postal address of someone resident in Uganda authorised to accept on behalf of the company service of court process and any notices required to be served on the company
- The full address of the principal/registered office of the company
- Official registration and processing fees.

## VISA REQUIREMENTS

Under Ugandan immigration regulations, the requirement to obtain a visa to visit Uganda varies according to the visitor's country of origin. Ugandan visa policy is based on the principle of reciprocity i.e all countries that require visas for Ugandans are also subject to visa requirements in Uganda.

Visitors from the following countries do not require visas: East African citizens and nationals of COMESA member countries, Angola, Comoros, Eritrea, Kenya, Malawi, Mauritius, Madagascar, Rwanda, Seychelles, Swaziland, Tanzania, Zambia, Zimbabwe, Antigua, Vanuatu, Cyprus, Tonga, St.

Vincent and The Grenadines, Solomon Islands, Singapore, Sierra Leon, Malta, Lesotho, Jamaica, Grenada, Gambia, Fiji, Belize, Barbados, Bahama and Italy (only diplomatic passports).

Visitors from other countries must obtain visas from Uganda's diplomatic and consular missions abroad. Visas can also be obtained on arrival at Entebbe Airport or any other entry point in cases where foreign nationals cannot access a Uganda diplomatic and consular mission abroad, provided one satisfies the entry requirements. It is however advisable to get a visa before embarking on a trip to Uganda to avoid unnecessary paperwork at point of entry.

The following visa fees are charged:

Single entry	USD50
Transit Visa	USD50
Multiple Entry (6-12 months)	USD100
Multiple entry (24 months)	USD150
Multiple entry (36 months)	USD200
Student Visa	USD100
East African Tourist Visa (3 months multiple entry for Kenya, Rwanda and Uganda)	USD100.

## CATEGORIES OF TAXES IN UGANDA

Both direct and indirect taxes apply in Uganda. Direct taxes are levied on individual and corporate income. Indirect taxes are levied on certain transactions such as the sale and purchase of land, goods and services.

## TAXATION OF INDIVIDUALS

Income tax is calculated on the individual's net assessable income after making allowance for deductible expenses. The sources of assessable income for individuals include employment, business and property. The annual income threshold is Ushs 2 820 000 (approx. USD1 000) below which no income tax is chargeable for an individual). Different tax rates apply depending on whether the individual is a resident or non-resident of Uganda for tax purposes.

Income Tax Annual Rates for Residents (Ushs per annum)

- Ushs 0 – 2 820 000 – Nil
- Exceeding Ushs 2 820 000 but not exceeding Ushs 4 020 000 - 10% of the amount by which chargeable income exceeds Ushs 2 820 000
- Exceeding Ushs 4 020 000 but not exceeding Ushs 4 920 000 – Ushs 120 000 plus 20% of the amount by which chargeable income exceeds Ushs 4 020 000
- Over Ushs 4 920 000 – Ushs 300 000 plus 30% of the amount by which chargeable income exceeds Ushs 4 920 000. Where the chargeable income of an individual exceeds Ushs 120 000 000 an additional 10% is charged on the amount by which chargeable income exceeds Ushs 120 000 000.



#### Income Tax Annual Rates for Non-Residents (Ushs per annum)

- Ushs 0–4020 000 - 10%
- Exceeding Ushs 4 020 000 but not exceeding Ushs 4 920 000 - Ushs 402 000 plus 20% of the amount by which chargeable income exceeds Ushs 4 020 000
- Over Ushs 4 920 000 – Ushs 582 000 plus 30% of the amount by which chargeable income exceeds Ushs 4 920 000. Where the chargeable income of an individual exceeds Ushs 120 000 000, an additional 10% is charged on the amount by which chargeable income exceeds Ushs 120 000 000.

#### PAY AS YOU EARN (PAYE) TAX AND TAXATION OF EMPLOYMENT BENEFITS

PAYE is not a separate tax. It is an instalment income tax system under which employers are required to deduct tax instalments from their employees' salary or other employment income. The instalments so deducted are remitted to the Uganda Revenue Authority (URA) and based on the PAYE tax return lodged by the employer. The employer offsets the total amount deducted from the individual employee against the employees' tax liability at the end of the tax year. Every employer must therefore register for PAYE as well as be familiar with the rules relating to filing of PAYE returns and the computation of PAYE.

#### TAXATION OF COMPANIES AND OTHER BUSINESS ENTITIES

A corporate tax is levied on companies, partnerships and sole proprietorships. Any income arising out of any trade, profession, vocation or venture in the nature of trade is taxable under special rules applicable to business entities unless otherwise specified as being exempt under the tax code.

The income of all companies accruing or derived from Uganda is taxable. A company is liable to pay tax separately from its shareholders. The sources of a company's income on which tax can be levied include profits and gains from any business carried on for whatever period of time. Other sources include dividends from shares in other companies and interest from the use of the company's property.

The income tax rates are:

- Resident Companies - 30%
- Branch tax - 15%
- Branch profit Remittance tax - 15%
- Capital Gains tax - 30%
- Mining Companies - 25-45%.
- Non resident Company providing shipping, Air Transport or Telecommunications Services in Uganda - 2%.

#### TAXATION OF PARTNERSHIPS

Income tax assessments for a partnership can be made either in respect of the individual partners or in the partnership's name. The profits of a partnership, including a firm carrying on a trade or profession, are taxable at a rate of 30%.

#### TAXATION OF SOLE PROPRIETORSHIPS

A sole proprietor is taxed in the same way as an individual.

#### TAXATION OF TRUSTS

The income tax rate applicable to trusts is 30% of the chargeable trust income for the relevant year of income. A trust is exempt from income tax where income of the trust is paid directly to the beneficiary without passing through the hands of the trustee or where a trustee relies on the argument that a share or part of the assessable income accrues or arises for the benefit of the beneficiary.

#### VALUE ADDED TAX (VAT)

VAT is a consumer expenditure tax and is payable by individuals, corporate entities and other businesses and enterprises. The business sales turnover threshold for VAT is Ushs 50 000 000 (approximately USD15 000) per year or Ushs 12 500 000 (approximately USD4 000) per three consecutive months. Individuals and firms whose business sales turnover is below the thresholds are not required to register for VAT. Individuals and firms with business sales turnover of above the thresholds must register for VAT. It does not matter whether the business is profitable or not. All VAT registered persons are entitled to an input tax credit i.e. a refund of the VAT spent on all the inputs (raw materials) used to generate income by the business.

#### STAMP DUTY

Stamp duty is a direct tax levied on specified documents and transactions under the Stamps Act. These include legal documents and transfers and specified agreements.

#### TAXATION OF RENTAL INCOME

Rental income of an individual is segregated from other income and is taxed at a rate of 20% of gross rental income in excess of Ushs 2 820 000 per year.

#### WITHHOLDING TAX

Dividends and interest (save for interest on government securities) are subject to a withholding tax of 15% for both residents and non-residents. Interest payments on government securities to a resident person are charged at 20%. Dividend payments from companies listed on the stock exchange to individuals are charged at 10%. However interest paid abroad by a resident in respect of debentures issued by a foreign company for the purposes of raising loan capital to carry out business in Uganda is exempt. A 6% withholding tax is imposed on any payment to a person in Uganda from the government, a government institution, a local authority, any company controlled by the government or any person designated in a notice issued by the Minister of Finance of an amount in aggregate exceeding one million Ushs for the supply of goods or materials of any kind



or any service. The Minister of Finance has powers to exempt companies from paying withholding tax.

In addition non-residents are subject to 15% withholding taxes on royalties, management fees, entertainers and sports personnel income, natural resource payments and equipment leases on income earned from Uganda.

## KEY INDUSTRY SECTORS

The following investment opportunities are available:

- Uganda has a burgeoning oil sector. Uganda has approximately 3.5 Billion barrels of oil and 350 billion cubic feet of gas in the Albertine Grabben region in the western part of the country. There are many opportunities in ancillary industries
- Agriculture is one of the leading sectors. Uganda is one of the leading producers of coffee and bananas and a major producer of cereals, tea, vegetables and fruits
- Uganda's energy consumption is still greater than its production resulting in many areas having insufficient power
- Uganda has many high mineral potential areas which are inadequately explored. Minerals such as limestone for cement, gold, tin, tungsten are available for mining
- Fish farming is one of Uganda's leading foreign exchange earners. Opportunities include the processing of canned fish, aquaculture and fish leather processing
- Building and construction industry. Given the rate at which the Ugandan population is increasing, there is a need for affordable housing. Opportunities include the provision of low cost housing in urban and semi-urban areas, housing and mortgage finance and construction equipment and building materials
- Food and beverages. Opportunities are available mainly in the utilisation of local agricultural raw materials to manufacture agro-processed products with export potential. Additional opportunities exist for support industries to the sector for example in packaging, value added processing and cold storage at export points
- There are opportunities in the information and communication technology (ICT) sector. Uganda has a supportive regulatory framework for developing ict infrastructure
- Opportunities in the tourism sector include tour operations, water sports and related activities, accommodation, conferences and incentives travel, national park concessions, privatisation and joint ventures with existing players
- There is great potential in the following financial services areas: merchant banking, development banking, commercial banking, discount houses, insurance services, leasing, mortgage financing, building societies, micro-financing services and specialised training institutions.

## INTELLECTUAL PROPERTY

Protection of patents, certain trademarks, design and copyrights is provided for by statute.

## TRADEMARK APPLICATION REQUIREMENTS

- A signed power of attorney
- Ten prints of the trademark
- The list of goods to be covered by the application.
- Full name(s), trading style, legal status, description and street address of the applicant.

## PATENT APPLICATION REQUIREMENTS

- A signed power of attorney
- A signed application form
- Specification, claims, abstract and drawings, if any
- A deed of assignment, if the inventor is not the applicant
- The priority document, if priority is to be claimed.

## INTERNATIONAL INTELLECTUAL PROPERTY TREATIES

Uganda subscribes to the Paris Convention for the protection of Industrial Property, the Convention Establishing the World Intellectual Property Organisation (WIPO) and the African Regional Industrial Protection Organisation (ARIPO).

## LEGAL SYSTEM

The Uganda legal system is based on English common law with a written Constitution which guarantees basic human rights. The Supreme Court of Uganda is the highest court. The High Court of Uganda has unlimited original jurisdiction to hear and determine any proceedings under any law.

## INTERNATIONAL ORGANISATIONS AND AGREEMENTS

Membership of international organisations includes the Common Market for Eastern and Southern Africa (COMESA), the Preferential Trade Area, the East African Community and the Commission for East African Co-operation (which comprises Kenya, Uganda and Tanzania).

Uganda has, in addition to double taxation agreements, signed bilateral trade and investment promotion agreements with the United Kingdom, Italy, Kenya, Tanzania, South Africa, Egypt, India, China, Germany and the Netherlands.

## TELECOMMUNICATIONS

There are currently over ten mobile operators in the country including Uganda Telecom Limited (UTL), Mobile Telephone Network Uganda (MTN Uganda), Africell Uganda Limited and Airtel Uganda. Fax and email access is widely available throughout Kampala and other major towns.

## LABOUR RELATIONS

There are several labour laws including the Employment Act and the Workers' Compensation Act. The local labour force is plentiful and trade unions are not yet strong although collective bargaining agreements are in force with some companies.





# ZAMBIA

## CORPUS LEGAL PRACTITIONERS



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### COUNTRY INFORMATION

Zambia has a population of 13.4 million (2012). Lusaka is the capital city. Other major cities include Kitwe, Ndola, Livingstone and Chipata.

### GROSS DOMESTIC PRODUCT (GDP)

GDP projected growth for 2017 has risen to 4% against a budgeted 3.4% with a real GDP growth of 5% targeted for 2018.

### INFLATION RATE

Inflation dropped to 6.6% by September 2017 from 18.9% in September of 2016. The government is targeting to maintain single digit inflation in the range of 6 to 8% in 2018.

### POLITICAL SYSTEM

Zambia has a multiparty democracy. It is a unitary state headed by a President who is elected by universal suffrage for a term of five years. He chooses his cabinet from Parliament. All laws are subject to the Constitution which contains all the fundamental freedoms of a modern democracy.

### INVESTMENT CLIMATE

Zambia has one of the most liberal business environments in Southern Africa and encourages private investment in all major productive sectors including agriculture, mining, manufacturing, tourism and energy. It has introduced new economic policy measures and liberalised trade and investment conditions. Export processing zones have been established and applications for zoning are being encouraged. There are currently no exchange controls. Reforms made in the past decade include the abolition of exchange controls, the deregulation of interest and foreign exchange rates, the removal of price controls and consumer subsidies, the reform of land tenure, the reduction of tariffs, a privatisation programme for many state-owned enterprises and the strengthening of financial markets through merchant banking and the stock exchange. After tax profits, dividends and capital may be repatriated without restriction.

Currently the main drivers of economic growth are mining, construction, wholesale and retail trade, real estate and business services, manufacturing, tourism and agriculture. Investment opportunities exist in various sectors including textile mills, collieries, services, fertiliser and chemicals manufacturing. Zambia also has opportunities for investment in agro-industry and the tourism industry.

Investment incentives are available depending on the category in which the investor falls. Five categories of investors are recognised depending on the size of their investment within a particular industry. The government provides incentives in terms of the Zambia Development Agency Act in the form of allowances, exemptions and concessions aimed at increasing levels of investment and international trade as well as increased domestic trade.

Zambia's active participation in the Southern Africa Development Community (SADC) Trade Protocol (with fourteen African countries) as well as the Common Market for Eastern and Southern Africa (COMESA) with nineteen African member states, offers preferential tariff access to a total market of over 380 million people.

As a member of COMESA, Zambia has moved ahead of other member states in adopting tariff reductions of up to 80% on most trade commodities. Zambia has also entered into bilateral trade agreements with South Africa and Zimbabwe.

Zambia has a stable political climate which promotes security and stability for investors. Having eight neighbouring countries makes it a focal point for the export of manufacturing and agricultural commodities within the region. By virtue of its central location Zambia is a communications hub with road networks that connect it with the surrounding countries and the various ports within the region. The government is also working towards turning Zambia into an information and communication technology (ICT) hub for the region. To achieve this, it has set out various objectives, including a commitment to improving ICT infrastructure through the development of an optic fibre infrastructure backbone to facilitate internet



broadband connectivity through the establishment of community telecenters, particularly in rural areas.

## FORMS OF BUSINESS

The following forms of enterprise may be established under statute and common law.

### Statute

- Company limited by shares
- Company limited by guarantee
- Unlimited liability company
- Statutory corporations
- Societies (being associations of persons)
- Co-operative societies.

### Common Law

- Agencies, licences and distributors
- Partnerships
- Trusts
- Business Names
- Franchises.

## FORMATION OF A COMPANY

The incorporation of a company is effected through the Companies Registry. The operation of certain businesses may require licences from one or more licensing authority depending on the sector including telecommunications, mining, oil marketing and professional services (such as accounting, valuation and architecture). Establishing a business in Zambia involves the following:

- Check name for uniqueness at the Patents and Companies Registration Agency (PACRA)
- Open a bank account
- Register the company at PACRA
- Register with the local Zambia Revenue Authority (ZRA) office (direct tax division) to obtain a tax payer's identification number
- File a VAT registration form with ZRA to obtain a VAT tax number
- Register with the National Pension Scheme Authority for Social Security
- Register the company with the Workers Compensation Control Board
- Register with ZRA for "Pay As You Earn" tax payments on behalf of employees
- Obtain a trading license and a fire certificate from the local council.

## EXCHANGE CONTROLS

The Bank of Zambia does not apply any exchange controls. The exchange rates are determined entirely by market forces of supply and demand for foreign currency and there are no restrictions on externalising profits, dividends or royalties.

## SECURITIES

The Lusaka Stock Exchange (LuSE) was established with preparatory technical assistance from the International Finance

Corporation (IFC) and the World Bank in 1993. LuSE opened on 21 February 1994. The formation of LuSE was part of the government's economic reform program aimed at developing the financial and capital market in order to support and enhance private sector initiatives. It was also expected to attract foreign portfolio investment and recognition of Zambia and the region as an emerging capital market with potentially high investment returns. Another important role of LuSE was to facilitate the divestiture of government ownership in parastatals and create a broad shareholding ownership by the citizenry through a fair and transparent process. The LuSE has made great strides and is now not only a platform for trading shares and bonds but also a means of raising capital. During 2014, trading activity on the LuSE increased, reflecting improved investor sentiment and participation. Market capitalisation closed at ZMW62 350 360 billion by the end of December 2017 while the All-Share index closed at 5 327.57 points by the end of December 2017.

## TAXATION

Residents and non-residents are taxed on income sourced in Zambia as well as certain types of foreign income.

Resident companies pay corporation tax at a rate of 35% but mining companies are subject to a rate of 30% if the income of the mining company does not exceed 8% of the gross sales of the company. If the income of the company exceeds 8% of the gross sales of the company, then the corporate tax will depend on the assessable income. There is a 5% mineral royalty tax on companies mining base metals and industrial minerals. The tax rate is 6% with respect to precious metals and gemstones. Banks pay tax at a rate of 35%. Electronic communication businesses pay tax at 35% for the first 250 thousand Kwacha and 40% above 250 thousand Kwacha.

Generally, dividends are subject to tax at the rate of 15% but the rate is 0% for dividends paid to individuals by a company listed on the Lusaka Stock Exchange. A 15% tax is payable on management or consultancy fees paid to a resident and 20% if paid to a non-resident. The same rates apply to tax payable on royalties.

The standard rate of tax with respect to interest is 15%. The rate is 20% with respect to payments made to a non-resident or haulage contractor.

The standard rate of tax with respect to the payment of royalties is 15% if the recipient is a resident and 20% for a payment to non-residents. The standard rate of tax for rent from a source within Zambia is 10%.

Value Added Tax is payable at a standard rate of 16% (certain supplies are zero rated or exempt).

There are double tax treaties with Denmark, Finland, France, Germany, India, Ireland, Italy, Japan, Kenya, the Netherlands (this treaty is currently under review), Norway, South Africa,



Mauritius, Seychelles, Sweden, Switzerland, Tanzania, Uganda, the United Kingdom, Canada, China, Romania and Botswana.

Following the 2018 budget announcement, the following are some of the main tax changes that came into effect on 1 January 2018:

- Discontinuance of the 5-year tax holidays given under investment licences
- Introduction of an accelerated depreciation on capital expenditure by qualifying investment in priority sectors
- Removal of the allowable deduction for contribution to the national pension scheme authority of ZMW 255 per month
- Introduction of a 5% property transfer tax on transfers of intellectual property
- Introduction of a 5% property transfer tax on the value attributable to a Zambian asset in cases where indirect control or ownership changes outside Zambia
- Introduction of ZMW 2 excise duty on every 50kg bag of cement
- Adjustment of presumptive tax rate by 50%
- Adjustment of the base tax from ZMW 150 to ZMW 365 per year
- A mandate on all businesses to disclose their related parties for purposes of property transfer tax and income tax
- Introduction of a specific import duty on manufactured tobacco
- An increment of 125% duty on all imports of methylated and denatured alcohol and undenatured of heading 2207
- An increment of 25 % from 15 % on all unmanufactured tobacco refuse
- Removal of customs duty on various inputs for the manufacture of stock feed
- Reduction of customs duty on bricks used in the manufacture of furnaces from 15% to 5%
- Removal of insurance premium levy on reinsurance
- Increase of customs duty on electric stoves and geysers from 25% to 40%.
- Removal of customs duty on point of sale machines and sim cards
- Introduction of a ZMW3 150 landing rights for every television channel with less than 35% local content except for educational and scientific channels.

## IMPORT/EXPORT

Zambia's main export commodities include cobalt, compressor lubricants, copper, cotton, fresh flowers, electric appliances and parts, hardwood, lead products, mineral products and lime. Its main imports include capital goods, chemical products, crude oil, fertilisers, petroleum products and raw materials.

## LEGAL SYSTEM

Zambia has a dual legal system. It applies local laws and English common law concurrently. English law (which includes statutes in force in England on 17 August 1911), common law and doctrines of equity are applied as long as there is a "lacuna" in local law. Further, the English law must be in substantive conformity with local laws. Where there is a conflict between local laws and English law, local laws prevail. There are also specific English statutes passed after 17 August 1911 which apply.

International treaties to which Zambia is party do not automatically apply. Parliament has to enact enabling legislation in order for an international treaty to have force in Zambia.

## INTELLECTUAL PROPERTY

Intellectual property rights are protected. Statutes cover patents, trademarks, registered designs, merchandise marks, article works and copyright. The statutes incorporate the provisions of various relevant international conventions such as the Berne Convention.

## FINANCIAL SERVICES / INSURANCE

The Banking and Financial Services Act regulates banking and financial services and provides safeguards for investors and customers. The Central Bank enforces regulatory requirements. The Insurance sector is regulated under the Insurance Act.

## KEY STRATEGIC GROWTH INITIATIVES BY GOVERNMENT/PRIVATE SECTOR

In 2004 the government introduced the Private Sector Growth Initiative to reform and create an appropriate environment for a vibrant private sector. Growth in the private sector has further been enhanced by the government through Public-Private Partnerships (PPP). Most construction, including the rehabilitation and maintenance of infrastructure, is being contracted to the private sector.

## TREATIES AND BILATERAL AGREEMENTS

Zambia has signed bilateral reciprocal promotional and protection of investment protocols with most COMESA and SADC member states. In November 2001 COMESA signed a Trade and Investment Framework Agreement with the United States. On 2 October 2000, Zambia became a beneficiary of the African Growth and Opportunity Act (AGOA). Zambia signed the Eastern and Southern Africa (ESA) interim Economic Partnership Agreement (IEPA) with the European Union on 30 September 2008. The provisions of the trade in goods chapter and related annexes of the ESA IEPA now apply to Zambia.

## MEMBERSHIP OF INTERNATIONAL AND REGIONAL ORGANISATIONS

Zambia is a member of 44 international and regional organizations, including the United Nations, World Trade Organization, African Union, COMESA and SADC.

## ROAD AND TRANSPORT

Zambia's road network consists of about 21000km of main, trunk and district roads, 16000km of urban and feeder roads, and 30000km of ungazetted roads. Roads between the important centres are mostly paved and in good condition. Gravel roads connect smaller towns to the major highways.



Road communications within Zambia and with neighbouring countries to the north, east and south are good.

Recently the government launched a 27 billion Kwacha roads project dubbed the 'Link Zambia-8000' to connect outlying areas of Zambia to all of the ten provinces. The project will be implemented over a five-year period. The government also introduced the Pave Zambia 2000 and Lusaka 400 projects to upgrade urban township roads. The government is also operationalising a road tolling programme as an innovative and self-financing mechanism for sustainable road rehabilitation and maintenance. Currently, there are several toll gates that are operational and these are Kafue toll gate along Kafue road, Kafulafuta and Manyumbi along the Great North road, Chongwe toll gate along Great East Road, Shimabala toll gate along the Kafue road, Levy Mwanawasa toll gate along the Ndola Kitwe road, Mumbwa toll gate along the Lusaka Mumbwa road and Garnerton toll gate along the Kitwe Chingola road.

In an effort to improve the railway network and reduce the heavy load on the roads, the government took over the management of the main railway system in Zambia with the intention of developing and rehabilitating its infrastructure. Progress has been made in rehabilitating four major rail networks and the refurbishing of livestock wagons and passenger coaches. The government has also passed a statutory instrument to compel transporters of heavy cargo to move 30 percent of bulk cargo from road to railway.

The key railway lines run from Livingstone on the border with Zimbabwe through Lusaka and the Copperbelt into the Democratic Republic of the Congo and Angola. The Tanzania-Zambia railway extends from Kapiri Mposhi to Dar es Salaam in Tanzania. The Livingstone route runs through Zimbabwe to the ports of Durban and Cape Town in South Africa. Operations on the Chipata-M'chinji railway line have commenced and will enhance regional trade through the Nacala Corridor to Mozambique.

The country's major international airport is the Kenneth Kaunda International Airport in Lusaka and this is serviced regularly by a number of international airlines. Local airlines service regional routes in central and southern Africa and domestic charter companies support air travel within Zambia.

## ENERGY

Zambia's energy sector is endowed with enormous resources which include coal, hydropower, woodlands and forests as well as other renewable energy forms such as solar and wind. There has been a steady increase of investment in the energy sector especially with respect to power generation. Hydroelectric plants account for 92% of the total installed capacity and 99% of the total electricity generated in the country.

A total of 360 megawatts power has just been brought on stream with the completion of the Kariba North Bank hydro power extension project. Another 120 megawatts at the Itzhi-Tezhi Hydro Power Plant, and 150 megawatts at Kalungwishi are being developed by the private sector and will come on stream to further enhance Zambia's power generation

capacity. Maamba Collieries Limited is also constructing a 300 megawatts thermal power plant in Sinazongwe of which 150 megawatts of thermal power was commissioned in 2016. When fully commissioned, the plant will produce 300 megawatts. The government has pledged to continue the extension and rehabilitation works on transmission and distribution networks under the Power Rehabilitation Project. The 750 megawatts Kafue Gorge Lower Project, including two 330kv transmission lines, is back on course following the strengthening of the governance structure for the project in line with international good practice.

The government through its investment vehicle, the Industrial Development Corporation, and with the support of the World Bank Group's Scaling Solar Program (Scaling Solar) has targeted the development of up to 600 MW of solar photovoltaic (PV) power. Scaling Solar has been designed to enable African governments and utilities to execute quick, simple, professional and competitive tenders to procure high quality, privately designed, built, owned and operated solar PV power plants under long-term contracts at competitive tariffs. At present, the government is undertaking the development of two grid-connected solar photovoltaic electricity generation plants with a capacity of approximately 50 MW each.

The government's policy in the petroleum sector is to ensure a stable supply of fuel in all parts of the country. To this end, the government has embarked on a nationwide program of building provincial fuel depots. Some of the fuel depots were commissioned in 2015 including the Ndola fuel depot which was undergoing rehabilitation, the Solwezi fuel depot and the Mongu fuel depot. The government is identifying additional sites in the remaining provinces. The government is also reviewing the petroleum supply chain and financing options to reduce costs. The government has embarked on discussions at a bilateral level with oil producing countries for the supply of crude and finished products to streamline procurement.

## TELECOMMUNICATIONS

Domestic and international telecommunications infrastructure is well established. Telecommunications are regulated by the Zambia Information and Communication Technology Authority (ZICTA). There are cellular phone services available through ZICTA and a number of other privately-owned companies. A microwave network carries telecommunications from Lusaka to all provincial capitals in the country.

## TRADE AND INDUSTRY

Metals currently dominate Zambia's exports. However, in an effort to diversify the economy away from copper, the government has directed its efforts at increasing non-traditional exports by an annual target rate of 20%. These include horticultural, floricultural and other agricultural products, processed foods, manufactured products, gemstones and processed metal products.



Recognising that small and medium sized enterprises (SMEs) hold the greatest potential for job creation, the government has continued to further enhance medium to long term financing for SMEs by supporting initiatives such as the Alternative Investment Market launched by the Lusaka Stock Exchange. Such initiatives will allow SMEs to raise funds from the stock market at an affordable cost and tap into technical and managerial skills through new equity partners.

The government has also granted a number of tax concessions over the past three years to spur growth in the manufacturing sector. The government remains committed to the growth of the manufacturing sector through the promotion of Multi-Facility Economic Zones (MFEZ) and industrial parks such as those at Chambishi, Lusaka South, Lusaka East, Lumwana, Ndola (sub Saharan gemstone exchange) and Roma. The MFEZs and industrial parks are expected to house heavy and light industries including copper smelting, copper cable and other copper related products, agro processing, the manufacture of household appliances, bars, wires, electric cables, motor parts and explosives, horticulture, fisheries, and processing activities as well as the provision of services such as conference facilities and hotel accommodation. Construction of the MFEZ and industrial parks is expected to be completed by 2017.

#### INFORMATION AND COMMUNICATIONS TECHNOLOGY

Investments in this sector have increased since the government launched its information and communications technology policy in 2007. More investments are expected in the sector when new optic fibre infrastructure is completed.

#### MINING

The Zambian economy has been heavily reliant on the mining of copper and cobalt and despite the positive steps taken to diversify the industrial and manufacturing base, this reliance remains. The other important metals produced have been zinc and lead. Zambia is internationally recognised as a major producer of copper and cobalt. Apart from copper, cobalt, lead and zinc, Zambia is endowed with reserves of gold, uranium, nickel, iron and manganese. Gemstone deposits include emeralds, amethysts, aquamarine, rubies, garnets and diamonds that are still unexploited.

As part of a policy to promote diversification to other minerals such as gemstones, gold, nickel, manganese and iron, the government is promoting the exploration of oil and gas. The entire country will also be mapped to update the geological database to support future investment in the mining sector.

#### AGRICULTURE

While the country's main economic driver continues to be copper, the government has continued to expand the agricultural sector. The government's strategic focus is to achieve food security and promote crop diversification as well as increase productivity and value addition. During the 2016/17 farming season, the country recorded an increase in the harvest from the 2015/16 harvest of 3.5 million metric tonnes of maize to 3.6 million metric tonnes.

Zambia has excellent potential for development in the agricultural sector, being well endowed with good soil (60 million hectares of good arable land, of which only 15% is in use) and underground water. Climatic conditions are suited to a wide variety of crops including wheat, soya, beans, coffee, cotton, tobacco, sugar and paprika. Zambia also has prime livestock breeding areas with about ten million hectares of land available for ranching. It also has rich forestry reserves consisting mainly of pine and eucalyptus. More growth and investment is accordingly expected in the agricultural sector.

Annual national fish consumption currently stands at 130 000 metric tonnes. However, annual national production is 95 000 metric tonnes of which only 20 000 metric tonnes is from aquaculture and 75 000 metric tonnes is from rivers and lakes. The government plans to undertake reforms that will ease the entry of citizens in the private sector into aquaculture production in order to meet the shortfall in the country's requirements and to increase exports.

#### TRADE AND INVESTMENT

The government encourages foreign investment through the Zambia Development Agency (ZDA). The ZDA screens all investments for which incentives are requested and usually makes its decision within 30 days. Zambia also offers a competitive environment for trade by allowing a free market economy.

#### LABOUR RELATIONS

The Constitution, the Industrial and Labour Relations Act, the Employment Act, the Minimum Wages and Conditions of Employment Act, the Employment of Young Persons and Children's Act and the Factories Act govern labour relations in Zambia. The legislative framework provides a guideline on labour related issues in the country, including trade unions and collective bargaining, laws against child labour, discrimination and safe work place practices.





# ZIMBABWE

## SCANLEN AND HOLDERNESS LEGAL PRACTITIONERS



### FIRM INFORMATION

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### COUNTRY INFORMATION

Zimbabwe is a landlocked country spanning 390 757 square kilometres. It has a population of approximately 13 million people. More than 60% of the population is based in rural areas.

### ECONOMIC INDICATORS

The gross domestic product (GDP) for 2017 grew by 3.7% against a target of 1.7% and it is forecast to grow by over 4.5% in 2018.

### INFLATION RATE

The inflation rate averaged 0.91% from 2009 to 2016. In 2017 inflation was 0.8%.

### INVESTMENT CLIMATE

Zimbabwe is actively trying to attract foreign direct investment as it emerges from more than ten years of rapid economic decline. The Government which came into power in November 2017 is targeting a stimulation of economic growth through attracting foreign direct investment. In January 2018 the President launched a policy document called "Investment Guidelines and Opportunities in Zimbabwe." It states that Government is committed to progressive and modern principles which promote investment, respect for Bilateral Investment Protection and Promotion Agreements (BIPPAs), compensating farmers whose land was seized under the land reform programme at the turn of the century and modernisation of the legal framework for investment promotion. The Government has identified priority areas for investment as being mining, agriculture, manufacturing, tourism, ICT and infrastructure development. Investment opportunities are opening up with the privatisation of some state owned enterprises in the iron and steel industry, road and rail transport, communications, agriculture, power supply and other sectors. The country is actively looking for development partners in power generation, water supply and sanitation projects, road construction and railways development. In 2017 the country signed engineering and procurement contracts and concession agreements for the USD984 million dualisation of the Beitbridge-Chirundu highway which cuts across the country from north to south. Work is yet to begin on this project.

The Government has indicated that the Indigenisation law will be amended to allow 100% ownership of businesses by foreign investors except for diamond and platinum mining ventures where the 51/49% ownership structure will remain in place between the investor and Government. This means that foreign investors will no longer be compelled by law to partner with indigenous Zimbabweans when investing in Zimbabwe. Government committed to amending the indigenisation law in 2018.

The Government is planning to operationalise the Zimbabwe Investment Authority (ZIA) as a "one stop shop" for all regulatory licences and permits to avoid bureaucratic delays by different authorities in approving investments. The Government intends to comprehensively revamp the ease of doing business in order to attract investment.

There are many investment opportunities as a result of the country's emergence from years of economic decline, political uncertainty and the near collapse of most industries. For instance, the Government is planning to sell its shareholding in various companies held through the Industrial Development Corporation of Zimbabwe (IDCZ). Investors can also invest in agriculture through contract farming in crops like tobacco and cotton.

Zimbabwe suspended the use of its local currency (the Zimbabwe Dollar) in February 2009 in a bid to restore economic stability and stem rampant inflation. Trade is now being conducted in the currencies of other countries (mainly the United States Dollar and the South African Rand). The move has stabilised the economic environment and reduced inflation to single digit figures. In 2015 the Government demonetised the Zimbabwean dollar and compensated holders of Zimdollar bank balances and cash. The country is however suffering from a liquidity crisis as there is reportedly less than USD200 million cash circulating in the market. Banks are failing to satisfy the cash requirements of their customers. To ease the challenge, the Government has imposed controls on external remittances of cash and promised a crackdown on past illegal externalisations of foreign currency. An amnesty entailing the



repatriation of externalised funds was introduced in December 2017 and the amnesty period ended on 28 February 2018.

There is a priority list which banks are obliged to follow in the allocation of funds for external transfers. Government also introduced a bonus of bond notes to boost exports and help ease the liquidity crisis. The bond notes are pegged at 1:1 with the United States Dollar. Every exporter is entitled to a 5% incentive on all exports made and the incentive is paid using the bond notes. The bond notes are backed by a USD200 million dollar facility from Afreximbank. To ease the crisis caused by the unavailability of cash, the central bank is actively promoting the use of electronic payment systems across all sectors of the economy. 75% of all retail transactions are now being done through electronic payment systems.

The Government has introduced special economic zones to boost export earnings and is seeking partnerships to develop infrastructure in these zones. Incentives in the sector include zero rated corporate tax for the first 5 years and 15% thereafter, duty free importation of capital equipment, exemption from non-residents tax on fees on services that are not locally available, exemption from non-residents tax on dividends, fees and royalties, zero rating for capital gains tax, and inputs not produced in Zimbabwe can be imported duty free. The Government is also encouraging the local beneficiation of extractives.

## FORMS OF BUSINESS

- Private business corporations
- Partnership
- Trading trust
- Co-operatives
- Multinational corporations
- Private limited liability companies
- Public liability companies
- Sole proprietorship
- Company limited by guarantee
- Joint venture.

## FORMATION OF COMPANIES

Companies and Private Business Corporations are registered and regulated by the Companies Act (Chapter 24:03) and the Private Business Corporations Act (Chapter 24: 11). Listed public companies are in addition regulated by the rules of the Zimbabwe Stock Exchange. There is a central registry of companies in Harare and a branch registry in Bulawayo. The registration process is often avoided by buying existing shelf companies from law firms.

## EXCHANGE CONTROLS

Exchange control laws are in force but their implementation is largely suspended because the country is using the currencies of other countries (for example the US Dollar and the South African Rand). Dividend remittances in respect of projects approved by the Zimbabwe Investment Centre are allowed at 100% of current after-tax revenue profits. Capital remittances are blocked but capital may be remitted through 20 year Government bonds in terms of which capital is paid in 10 equal

annual instalments at the end of years 11 to 20 and interest is payable half yearly at 4% per annum, tax free. External loans of up to USD10 million can be approved at bank level without involving the exchange control authority. The permitted participation by foreigners in the domestic bond and money market has been increased to 100%.

## TAXATION

The corporate tax rate is 25% plus a 3% levy. A levy of 5% is imposed on the net financial profits of registered banking institutions. To encourage exports, a staggered lower corporate tax structure for exporting companies (ranging from 15 to 20%) was introduced in 2015.

Value added tax (VAT) of 15% is levied on the sale of goods or services.

Profits earned from new projects by companies or individuals operating in designated growth point areas are taxed at 15% in the first year in which the operations commence and for four years thereafter. Resident shareholders' tax is pegged at 20%. Government has extended a rebate of duty on capital equipment imported by the mining, agriculture, energy and manufacturing sectors for equipment valued at USD1 million and above from 2016.

Tax concessions are applied to export manufacturing businesses established in designated export processing zones. Dividends paid by a Zimbabwean company to another Zimbabwean company are not taxable but dividends earned by non-residents in Zimbabwean companies are subject to a withholding tax of 15% in the case of stock exchange listed companies and 20% in the case of other companies.

Capital gains tax is levied on the sale of immovable property at the rate of 20%. The rate is 5% on immovable property acquired by the seller before February 2009. Capital gains tax on securities is 1%.

Double taxation agreements exist with Bulgaria, Canada, France, Germany, Malaysia, Mauritius, Netherlands, Norway, Poland, South Africa, Sweden and the United Kingdom.

## IMPORT / EXPORT

Import controls exist. In 2016 the Government introduced a law which prohibits commercial imports unless a special licence is granted by the responsible ministry. The law was intended to boost domestic industrial production but was abolished in 2017. The Government has removed the import duty on equipment and raw materials meant for local industry to promote productivity. Duty on imported commercial motor vehicles has also been reduced to boost the transport and business sector. To encourage certain productive sectors of the economy, the Government will suspend duty on various inputs used in these industries.



## LEGAL SYSTEM

The legal system is based on Roman-Dutch common law as modified by statute. Zimbabwe has a new Constitution which came into force in 2013. The highest court in the land is the Constitutional Court followed by the Supreme Court, the High Court and the Magistrate's Court. There are also specialised courts such as the Administrative Court and Labour Court.

## INTELLECTUAL PROPERTY

Protection is provided by the Patents Act and Trademarks Act. There are public registries for trademarks, industrial designs and patents. Zimbabwe is a signatory to the Berne and Paris Conventions.

## FINANCIAL SERVICES/INSURANCE

There are several international and locally owned banks operating in the country. There are also several building societies established to provide mortgage finance. There are many insurance and reinsurance companies operating in Zimbabwe. The Government signed a memorandum of understanding with local banks in February 2013 in terms of which a cap was put on bank charges and interest rates. The maximum charge for cash withdrawals is 0.5% of the sum withdrawn subject to a minimum charge of USD2.50. All term deposits above USD1000 held for at least 30 days attract interest at the rate of at least 4% per annum. Lending rates have fallen from about 35% per annum to 6-18% per annum in line with central bank guidelines. Pensioners above 60 years of age are exempt from bank charges.

## KEY STRATEGIC GROWTH INITIATIVES BY GOVERNMENT/PRIVATE SECTOR

The Government is making significant investments in infrastructural developments in power generation, road infrastructure (entailing the dualisation of major roads) and the construction of bridges. It is also working on upgrading airports and is committing significant funds towards these developments. The Government is actively seeking private partners in these areas. The Government moreover is actively promoting the beneficiation of minerals produced in Zimbabwe and the building of cross linkages in different sectors of the economy in order to promote economic growth and infrastructural development. The Government has introduced several tax incentives and disincentives to promote the local beneficiation of minerals.

## TREATIES AND BILINGUAL AGREEMENTS

Zimbabwe has signed bilateral investment treaties and international agreements whose objective is to guarantee protection to investors. The agreements include the Overseas Private Investments Corporation (OPIC) and Multilateral Investment Guarantee Agency (MIGA), International Convention on Settlement of Disputes (ICSID), the New York Convention on the Enforcement of Arbitral Awards, and the United Nations Convention on International Trade Law (UNCITRAL). Zimbabwe signed a Bilateral Investment Promotion and

Protection Agreement (BIPPA) with South Africa in November 2009 and has signed 54 other BIPPAS with countries like China, Germany, Netherlands, Switzerland, Russia and Yugoslavia. Several other Bilateral Investment Treaties await ratification. Government wants to use the BIPPAS to increase investor confidence in the country. Zimbabwe is a member of the Common Market for Eastern and Southern Africa (COMESA) Customs Union and Southern African Development Community (SADC) agreement on tariffs and trade. Zimbabwe has double tax avoidance treaties with South Africa, Mauritius and Seychelles and wishes to enter into such agreements with other countries to promote the residence basis of taxation agreed amongst SADC countries in terms of the SADC Tax Convention.

## MEMBERSHIP OF INTERNATIONAL AND REGIONAL ORGANISATIONS

Zimbabwe is a member of SADC, COMESA, the African Union, United Nations, World Bank and International Monetary Fund.

## ROAD AND TRANSPORT

The road and rail infrastructure has deteriorated significantly due to lack of investment by the Government. The country is actively working on upgrading the infrastructure by dualising roads and reviving and upgrading the rail network. A dedicated Authority called ZINARA was formed to spearhead the process and private sector partners are being sought by the Government. In 2018 Government proposes to spend over USD386 million on transport infrastructure. A technical partner is being sought for the railways authority to help in reviving the rail network.

## WATER

The Government is investing significant sums to support local authorities in the provision of water supplies and it has decentralised water services to local authorities. Water supplies are erratic in most cities and towns and many people resort to borehole water supply for domestic and commercial purposes. Potable water supply is also a persistent problem in rural areas during the dry seasons. Government is supporting projects to increase water supply and will commit substantial sums to dam construction and the rehabilitation of existing infrastructure in 2018. Government is keen to invest in water harvesting projects to increase irrigation capacity.

## ENERGY

Energy supplies remain critically low and power shortages and cuts are affecting manufacturing industries, agriculture, commerce and domestic consumption. Power supplies are below 50% of the national demand. Private sector partners are being sought for independent power supplies while the Government is actively looking to develop alternative power supply sources. The Government is committing significant



sums to upgrading existing power supply plants and building new ones. In the second half of 2013 the Government introduced the compulsory blending of fuel with ethanol by all petroleum companies. The ethanol is produced locally. With effect from 1 January 2018, power generation projects will be exempt from corporate income tax for the first five years of operation. Thereafter a corporate income tax of 15% will apply.

## TELECOMMUNICATIONS

The Government mobilised USD98 million for the State owned telecommunications corporation (Tel-One) to be used in increasing connectivity for its customers, broadening the core network and upgrading its mobile broadband. Government is also opening up airwaves to new radio and television stations. Mobile telephone companies operating in Zimbabwe have rapidly expanded their ground coverage to virtually the entire country.

## KEY INDUSTRY SECTORS

The main industry sectors are agriculture, mining, telecommunications, and financial services. There are huge opportunities in the manufacturing sector which is operating at less than 30% of its capacity.

## TRADE AND INDUSTRY

Industrial capacity utilisation averaged less than 35% in 2015. In 2016 it rose to 47% spurred in part by the import restrictions introduced by Government. The main trading partner remains South Africa. The industrial sector remains depressed due to a scarcity of capital on the local market, antiquated equipment and the absence of foreign direct investment and lines of credit from external sources. The Government enacted a Joint Ventures Act in 2016 to facilitate joint ventures with the private sector.

## INFORMATION AND COMMUNICATIONS TECHNOLOGY (ICT)

A ministry focusing specifically on ICT has been established. The Government has started investing in the creation of fibre optic networks but the levels of investments remain very low. Private sector players are required to complement the Government efforts. The mobile telephone and data companies in the country are expanding their fibre optic link networks. In 2016 Government committed USD299.2 million towards ICT projects like the introduction of data centres, the completion of Mile Connectivity, the establishment of Community Information Centres and the extension of the E-Government Platform.

## MINING

Mining is becoming the largest contributor to the country's gross domestic product (GDP). In addition to the gold and chrome which the country has traditionally produced, platinum and diamonds are fairly recent discoveries which are dominating the sector. The Government plans to consolidate all diamond mining companies into one entity in which Government will have a controlling interest. A company called

the Zimbabwe Consolidated Diamond Company has been set up and has commenced mining operations. Some diamond companies have resisted the amalgamation and there are disputes pending in the courts. A new Minerals Exploration and Marketing Cooperation Act is being proposed. The Mines and Minerals Act will also be amended to compel holders of mining rights to "use them or lose them". Miners will also be obliged to establish funds to meet the costs of reversing environmental degradation caused by their mining operations. The law will make directors of companies personally liable for criminal acts committed by the company making them susceptible to imprisonment. Government plans to rationalise mining fees in line with regional standards in order to attract FDI into the sector. In 2014 Government introduced a 15% tax on the export of unbeneficiated platinum with the objective of encouraging miners to do value addition before export. The tax was suspended from 2015 to 2017 and Government has deferred its operation to 1 January 2019 as platinum miners are making progress towards meeting the value addition objective. The export tax will also be reduced from 15% to staggered rates depending on the level of beneficiation of the exported material. There will also be an export tax of 5% on unbeneficiated lithium and staggered export tax on unbeneficiated stones with effect from 1 January 2019.

## AGRICULTURE

The country produces grain crops such as maize and wheat as well as cotton, tobacco and sugarcane. Farmers who benefited from the land reform programme at the turn of the century are dependent on Government and lending institutions for financial support and are largely hampered by the lack of collateral. Government is in the process of refining 99 year leases to make them bankable as collateral for loans and to enhance security of tenure. Farmers will pay levies to Government for the land and those who fail to pay the levies will have their land repossessed. The Government devoted considerable resources to the sector in 2016. In 2016 the Government introduced considerable financial support for agriculture through a scheme called "command agriculture" in which inputs will be given to farmers in return for agreed quantities of produce. A new law to make movable property bankable as collateral is also being introduced.

## TOURISM

The Government is actively promoting the sector through the Zimbabwe Tourism Authority. The sector recorded some growth in 2016 and is expected to grow further in 2018. The Government intends to remove barriers to the free movement of tourists and to promote Zimbabwe as a competitive and attractive tourist destination.

## TRADE AND INVESTMENT

The Government has set up several corporations to promote investment in industry. The Small and Medium Enterprises Development Corporation was set up to specifically assist



the establishment of small businesses and a bank to support infrastructural development has been established. A central one-stop investment authority is being established to promote foreign direct investment and remove bottlenecks in the regulatory system.

## LABOUR RELATIONS

Zimbabwe has a huge pool of labour with over 80% of the population unemployed in the formal sector. Labour relations are regulated by a labour law with a dedicated court and other structures set up to deal exclusively with labour issues. The threshold for tax free bonuses is USD400. Tax free income was increased from USD250 to USD300 in 2015. In 2015 Government amended the Labour Act (Chapter 28:01) to fix minimum redundancy packages and ease up retrenchment. The amendment also dealt with the curtailment of the right to terminate on notice and limitations on frequent renewal of fixed term contracts so as to limit the casualisation of labour. Labour relations are generally much regulated. Companies in various sectors fall under National Employment Councils (NECs) where industry specific labour standards are set. The High Court recently outlawed compulsory membership of NECs and the judgment awaits confirmation by the Constitutional Court.

