

# LEX AFRICA

A Legal Guide to Business and Member Firms

Directory of Members

August 2005



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# LEX AFRICA – THE LAW FIRM NETWORK FOR AFRICA

Doors in the business and commercial world have opened all over Africa. Understandably, businesspeople want a strong legal base before venturing forth. Lex Africa, Africa's first true network of leading law firms, grew from the need for law firms in member countries to be in a position to provide their clients, both local and international, with legal and business advice in whichever jurisdiction they may find themselves, and particularly in relation to expanding Africa-to-Africa business.

There has been increasing interaction between business entities and professional organisations in different African countries, and a consequent increase in client requirements that their needs for professional advice at the highest level be reliably available wherever they may trade or carry on business in Africa. A recent development has also been the new role, which South Africa is playing in the economic interaction between various African countries.

Dealing with legal or commercial matters in many African countries requires an intimate knowledge of local custom, practice and language. It is also vital to have necessary contacts in key positions in government or quasi-government institutions. Not only can Lex Africa members refer clients to respected, competent firms across their borders, they can also access that expertise on client's behalf. No matter where in Africa business may take clients, reliable legal service will always be at hand through the network.

Firms have been carefully chosen on the basis of their proven track record to provide immediate advice on international commercial transactions, litigation and other related matters within Africa. Clients who are referred to another Lex Africa member can be confident in the knowledge that the attorney who will assist them is probably personally known to the referring attorney, who will also have a very good idea of the capabilities of the other law firm.

The network operates on a non-exclusive basis so that members are free, where client requirements make this appropriate, to use firms other than member firms in a particular country. In other words, where a member firm is not deemed to have the necessary expertise or specialist skills to deal with a particular transaction, the referring firm is free to choose any firm or entity, which can provide these to best serve the needs of the client. In this way, client needs and interests will always come first.

# ANGOLA

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## MAIN AREAS OF PRACTICE

FBSL is a Law Firm with many years of experience of providing legal advice. Our team is made of partners and assistant lawyers with varying degrees of experience and interest in various fields of law. In this way we can ensure that our client's work is allocated appropriately. Appropriate partner support is provided at all stages of a case.

FBSL aims to provide legal services efficiently and to a high standard and with a very competitive pricing structure.

Commercial, Corporate and business law of all kinds, mainly constitution of domestic and foreign companies, foreign investment, international contracts. Mining and oil law, negotiations and contracts and provide legal opinions. Financial, Banks, Insurance, Taxation and Customs. Trade marks and Industrial property, patents, copyright, franchising and other intellectual property. Maritime Law.

Privatisation, governmental and parastatal contracts and equipment leasing. Labour and immigration law. Litigation in the Supreme Court, Administrative, Civil, Penal, Family and Labour Courts and Arbitration. Economic, Social and Environmental assessment.

## DOING BUSINESS IN ANGOLA

### Type of Government

Multi – party democracy

### Forms of Business Organisation

- Private or public limited liability company
- Joint Ventures
- External Companies (i.e. a branch of a foreign company or new companies with foreign partners)
- Partnership/limited partnership
- Sole trader

### Formation of a Business

#### For nationals

Registration of a trade name  
Public deed of Articles of Incorporation  
Publication in the official gazette  
Commercial, fiscal and statistical registration  
Trade Licences are required for most activities  
Import/Export license

Some business such as banks, insurance, real estate companies, telecommunications, oil, diamonds or in general mines have special regimes therefore require special licences.

#### Foreign Investment

Most business activities are open to foreign investors, who need to get previous authorization from the National Agency for Private Investment (ANIP – Agência Nacional para o Investimento Privado) or Council of Ministers. Some activities (on fisheries and other services) are reserved for Angolan Companies or individuals that can associate with foreign partners.

Oil, gas and mining have special regimes.

There are exchange control restrictions. Basically any movement of capital, as payments of dividends, capital and interest on loans are subject to a previous approval from Central Bank (BNA – Banco Nacional de Angola), which is the Exchange Authority. Foreign exchange

for eligible transactions, as travels, studies, pensions to relatives that live abroad and imports, is purchased from commercial banks.

Residents (individuals or companies) may hold foreign currency accounts.

Oil industry has a special regime.

## **Taxation**

Companies are subject to a corporate tax. The ordinary tax rate is 35%, except for agriculture and forest, whose tax rate is 20%. Even companies not based in Angola, but contracted by Angolan entities, have to pay corporate tax.

Companies may carry forward tax losses for three years. No carry back is allowed.

## **Incentives**

Investors can benefit from huge tax incentives, ranging from exemption or reduction from payment of custom duties for several years; exception or reduction of the payment of industrial tax (corporate tax) for several years; and exemption of real estate tax in land and buildings acquisition.

## **Intellectual Property**

Protection is provided by law. Angola is a signatory of the Paris and Berne Convention, the TRIPS Agreement, the ARIPO (Harare) Protocol and the Madrid Agreement and Protocol.

## **Membership of International and Regional Organizations**

Angola is a member the Southern African Development Countries (SADC), the African Union, the United Nations Organization and the Portuguese Speaking Countries Community (CPLP).

## **Settlement of Disputes**

The Angolan Supreme Court before their enforcement must revise foreign judgments and arbitration awards. Although Angola does not adhere to the 1958 New York convention as well as the 1995 Arbitration Act, most of UNCITRAL rules are currently included in contracts entered into by parties in Angola.

# BOTSWANA

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## MAIN AREAS OF PRACTICE

Company formations, trade and manufacturing licences, ancillary permits; joint venture shareholders, management, technical service, know-how related and technological transfer agreements; licence, franchise, and distributorship agreements; corporate and trade finance, capital raising, financial and lending instruments, public offers and private placements of securities offerings listings, floatations, rights issues, schemes of arrangement, marketable and investment instruments, stock exchange, securities and bonds; privatisations; income tax (corporate and personal), advices and negotiation; insolvencies, judicial management, compromises and arrangements; financial restructures; property, conveyancing, sectional titles formulation and registration of securities; insurance general and long term; local and international arbitrations, mediation and settlement of disputes; High Court, Court of Appeal and Industrial Court litigation; industrial relations employment and labour law; civil aviation; medicine; large amount debt collections; intellectual property i.e. patents, designs and trade marks.

## INVESTING AND DOING BUSINESS IN BOTSWANA

### Geography

Botswana covers 582 000 sq km. Population of 1.68 million of which 52% live in urban areas.

### Type of Government

Multi party democracy.

### 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 being associations of persons

A new Companies Act is likely to be promulgated during the year 2004/2005 providing for an updated and simplified framework for the incorporation of companies and other legal entities. The new Companies Act (in its current format) provides for, inter alia, formations and registration of Close Corporations and an easier and simpler method for the formation of companies. In addition, the proposed Companies Act imposes stricter obligations on corporate governance.

### Investment Climate

- Botswana is a stable democracy with an open economy.
- Botswana is a member of the Southern African Customs Union (SACU). A new Agreement among the members has now been signed by the Member States. The main provisions of the new Agreement include a representative institutional structure for administration of the Agreement, an equitable revenue-sharing formula and the development of common policies to address unfair trade practices among members. The new Agreement offers enhanced opportunities to increase trade within the common customs area.
- The majority of Member States of the Southern African Development Community (SADC), gave begun the implementation of the SADC Trade Protocol. This Protocol is expected to result in a SADC free trade area, with zero tariffs on over 85% of trade by the year 2008, increasing to all trade by the year 2012. This will certainly encourage increased trade within the region and thus be a bonus for investment.
- The policy framework of Government is designed to provide a stable business environment where the private sector is free to pursue profitable business opportunities.
- Government realises that achievable and sustainable development is necessary and is focusing on creating an enabling environment for economic diversification.
- The Government realises that beyond 2004/2005 growth will depend largely on the country's success in enhancing the performance of the non mining sectors,

key to diversification of the economy. Prudent fiscal and monetary policies, coupled with efficient enhancement in the economy, gives rise to an expectation of real growth in the non-mining sector.

- Government realises that an essential part of development is investment and that investment should be of technical skills and resources as opposed to money – Botswana has substantial funds ready for mobilisation in investment.
- Government realises that to achieve sustainable employment creation:
- local and foreign investment is necessary
- foreign investment promotion should concentrate on Southern Africa
- development and investment in key niche areas where Botswana has a natural advantage is necessary
- development of the tourism industry is essential
- productivity and innovation should be enhanced.
- Government seeks to create a favourable climate for encouraging private investment and economic diversification.
- Government is committed to privatisation and the Privatisation Policy adopted in 2002 has been reinforced by the approval of a Privatisation Master Plan.

### Government's Efforts

- Government undertook a study in 2003 of the administrative barriers to investment in Botswana, having already embarked upon the formulation of investment and export promotion initiatives on a programme with the UNDP.
- Government realises development of industries utilising Botswana's natural resources where Botswana may have a national competitive edge is likely to succeed.
- Tourism is one of the industries where Botswana is able to compete both regionally and internationally and a range of strategic marketing initiatives are being undertaken to strengthen awareness of the country's industry in the European, American and South East Asian markets.
- Government seeks to develop tourism in Botswana, and to shift the mix of tourists from casual campers to those who occupy permanent accommodation, by targeted marketing and raising of fees for use of public facilities.
- Government encourages the involvement of Botswana citizens in the tourism sector, and promotes joint ventures between citizens and foreign investors.
- Botswana's Industrial Development Policy aims to:
- promote highly productive and efficient export industries integrated with foreign markets and technology by way of support programmes of the Ministry of Commerce, and use of international data banks to locate competitive inputs, identify export opportunities and make such information available to the private sector
- develop competitive manufacturing and service sectors able to compete internationally
- grow supporting service and component manufacturers

- create links between small and medium enterprises with foreign firms;
- develop of small and medium enterprises for the domestic market.
- Botswana's Privatisation Policy has as its overriding goal the enhancement of public enterprises, recognising that the public sector has become too large and cumbersome to manage effectively and seeks:
  - to improve efficiency in delivery of services;
  - to raise Botswana's growth potential,
  - to promote competition, and
  - to increase citizen participation and grow the citizen business sector to stimulate entrepreneurship and broaden the capital market.
- The Government's privatisation agency, Public Enterprise Evaluation and Privatisation Agency (PEEPA), has prepared a data base of privatisation activities and opportunities and deemed the most efficient modalities of privatisation to be used in respect of particular enterprises and in 2005 has tendered a consultancy for the development of a strategic implementation for Public Private Partnerships.

### World Perception

Botswana obtained its first international credit rating in early 2001. It was awarded ratings of "A2" and "Single A" by Moodys and Standard and Poor's respectively. Both awards were maintained throughout 2002, 2003 and 2004. These ratings are the highest awarded to any country in Africa.

The 2004 World Competitiveness Report rated Botswana as the most competitive country in Africa and the most recent Report released at the recent World Economic Forum (May 2004) ranked Botswana the most competitive in Africa and the 26th most competitive country in the world.

The 2002 International Corruption Perception Index ranked Botswana as the least corrupt country in Africa and 24th least corrupt country in the world.

### Economic Indicators

#### GDP

Botswana registered a real growth rate of 5.7% in 2003/2004 compared to 7.8% in 2002/2003. Mining output growth decreased by 3.4%, to 6.9%; non mining sector registered a growth rate of 5.1% compared to 6.4% in the previous period. Government recognises this is inadequate to meet Vision 2016 goals for growth.

#### Interest Rates

Interest rates are high. The bank rate was cut to 14% with the prime rate dropping from 15.75% to 15.50%.

## Inflation

Inflation averaged 9.2% in 2003 and 7% in 2004. The overall inflation rate dropped to 6.5% in March 2005.

Real interest rates remain high, with the Bank rate at 14.25% against the inflation average of 7%.

## Exchange Rates and the Balance of Payments

The Pula was devalued in February 2004 by 7.5%. Foreign Exchange Reserves During 2004 the Pula appreciated by 12.8% against the USD. Over the same period the Pula depreciated by 4% against the SAR. Higher inflation in Botswana (in comparison with the trading partner countries) resulted at the real effective exchange rate of the Pula appreciated by about 6% during 2004.

## Foreign Exchange Reserves

At the end of December 2004 the foreign exchange reserves stood at P24.26 billion (US\$5.68 billion), which provided 22 months of import cover.

## Budgets

The budget outturn for the 2003/2004 financial year was a nearly balanced budget, with small deficit of P73 million. The revised budget for 2004/2005 forecasts a deficit of P1.43 million.

Estimates for 2005/2006 project total revenues and grants at P20,57 billion and a total expenditure and net earnings of P20,45 billion, surplus of P112 million.

## Industrial Relations

Botswana has a reputation for stability on all levels, including industrial relations.

The Government has a low level of ratification of ILO treaties. That indicates a reluctance by Government to commit to or adopt a pro labour movement agenda.

Government emphasises productivity, wage increase restraint, the concept of reward for productivity and the need for harmonious industrial relations and the role trade unions can play in this.

It appears that workers in Botswana have realised that militancy and conflict when faced with the alternative of unemployment can be self-defeating.

In the recent past, while the number of trade disputes has risen, the disruption to the economy has been limited.

Government promotes and emphasises direct effective and constructive bargaining.

To be fair, industrial relations in Botswana is in its infancy and the unions suffer from a lack of technical expertise.

## Financial Services

Legislation has been introduced which renders the writing of cheques against insufficient funds as offence punishable by law.

Arrangements have been made, linking all ATM's in the country via the VISA switching network.

The effect of the above reforms is to make Botswana's payments system as risk-free as possible and compatible with international best practices.

Anti Money Laundering Legislation was adopted in 2003. Under that legislation every financial organisation is required to put in place anti-money laundering measures and adopt such practices as are necessary for the deterrents and prevention of money laundering.

In 2004 the Pension Industry held assets under management valued at P14.5 billion.

The Government seeks to review the legislation in the financial services sector and introduce overarching legislation to provide for best practice within the industry as regards competency, transparency, disclosure, accountability and self regulation.

## Treasury Stock

Following its favourable credit rating, Government, in 2003, issued three Bonds:

- the first, redeemable 1 June 2005 with a coupon of 10.25% (payable 31 May and 30 September each year) was issued at a yield to maturity of 11.5%;
- the second, redeemable 1 March 2008 with a coupon of 10.25% (payable 31 May and 30 September each year), was issued at a yield to maturity of 12.65% and
- the third redeemable 31 October 2015 with a coupon of 10.25% (payable 31 May and 30 November each year).

The Government yield curve is currently inverted, with individuals and banks investing in fixed income securities, on expectations of interest rate cuts.

## Exchange Control

Botswana has abolished all exchange control regulations:

- foreign investment is welcomed
- dividends and capital gains on equity investment received from a foreign source are, subject to tax being paid, freely remittable out of Botswana in foreign currency
- interest on and capital of foreign loans are freely remittable in foreign currency
- upon disinvestment, a non-resident may remit capital in foreign currency immediately.
- non-residents may borrow Pula.

## Credit

Banks and other credit institutions may provide credit and loan facilities to non-residents and non-resident controlled companies. There is excess liquidity in the banking system. The commercial banks are actively looking for good projects to which to lend.

March 2004 credit growth figures showed a 10.3% annualised growth below the Central Bank target of 12 – 15%.

Households and businesses represent 58.4% and 41.6% of credit respectively.

## Trade and Industry

Retail operations are required to be licensed. The licence regime has as its base a liberalised trade system and promotion of competition in the market place.

Manufacturing enterprises require licence under the Industrial Development Act.

## Utilities

The Government seeks to make the price payable for utilities in Botswana regional competitive.

The power supplier Botswana Power Corporation (BPC) is well aware of the need to deliver electricity at regionally competitive rates. BPC has sought to make use of less expensive energy available by way of access to the South African Power Pool which makes available surplus electricity.

The fixed line service provided is Botswana Telecommunications Corporation. BTC is pursuing an international connectivity project accessing submarine fibre systems and building national transmission rings to facilitate the promotion of Botswana as a telecommunications hub in the region to satisfy demands in respect of information based services, web hosting, data centres, call centres, global financial services and software research and development.

There are two providers providing mobile telephony Mascom and Orange.

The Botswana Telecommunications Authority (BTA) oversees the introduction of competition into this industry. During the year, the BTA adopted a very liberal licensing strategy, which ensures a competitive telecommunications market. The following segments of the telecommunications market have since been opened up to competition: mobile telephony, data communications, satellites services such as Very Small Aperture Terminals (VSAT), internet services, payphones and the sale of telecommunications terminal equipment. BTC has established cable links with South Africa, and Zimbabwe with links to Namibia and Angola planned.

## Water

While water has constantly met WHO and BOBS quality Standards, it is an expensive resource. Water as a scarce resource will remain expensive. A recent severe drought has severely exacerbated the scarcity of water resources in Southern Botswana. Water restrictions prevail in Gaborone.

## Road and Transport Infrastructure

Government has recognised the necessity of reliable and efficient road infrastructure to socio-economic and private sector growth Botswana has, and continues to make significant investments in the development of the road network (recently and quite significantly, with the Trans-Kgalagadi Highway to Namibia)

Major road projects are being proceeded with on an ongoing basis.

Government has signed a bilateral Road Transport Agreement with Zimbabwe, in line with its policy of diversification of road transport routes.

A Corridor Planning Committee involving Botswana, Namibia and South Africa promotes the utilisation of the Trans-Kalahari Highway and the Walvis Bay port.

## Information and Communication Technology

Government seeks to promote Botswana as an Information and Communication Technology hub in the Southern African region and seeks to attract foreign direct investment in technology in this sector.

## Taxation

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

- the company tax rate is 25% which comprises 15% company tax and an additional company tax of 10%
- the top marginal rate of individual tax is 25%.

In the event a business falls within the definition of “Manufacturing” (the subjection of raw materials to a process or processes that will result in the product having new and distinctive characteristics from the raw material from which it is made, excluding packaging and bottling, diluting, mixing or blending, printing, marketing and labelling, washing, painting, dyeing, bleaching or mercerising, etching decorating calibration, polishing, cutting up reinforcing, simple assembly, milling, baking, brick making, and simple operations consisting of removal of dust, sifting screening, sorting, grading, classifying or matching) and is approved by the Minister of Finance, it is entitled to additional tax relief, which is a reduction in corporate tax to 15%, i.e. 5% company tax and 10%

additional company tax. In considering the application the Minister will have regard to:

- the number of citizens employed
- the training of citizens
- the replacement of non-resident employees with skilled citizens
- citizen management participation
- the level of citizen investment or opportunity therefore.

### Withholding Tax

There is a 15% withholding tax on all dividends paid. The aggregate of the tax so withheld is available for and capable of set off/credit against the 10% additional company tax.

There is a 15% withholding tax on interest payable on offshore foreign loans.

### Capital Gains Tax

There is income tax payable on capital gains at the income tax rate of the particular tax payer in respect of:

- immovable property as to 100% of the gain, which is calculated by deducting from the sale price the cost of acquisition and the cost of any improvements and a prescribed escalator factor applied to such costs
- other movable property, including shares in a company, as to 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 of a public company as defined in the Income Tax Act.

### DTAs

Botswana has double taxation agreements with South Africa, United Kingdom, Sweden, Mauritius, France and Russia.

### Botswana Stock Exchange (BSE)

The BSE opened in June 1989 with five companies listed and capitalised at P120 million. Since then, the number of domestic companies listed has increased to 18, with a current market capitalisation of P10.7 billion pula (US\$2.3 billion).

There are 6 foreign companies with a primary listing on other bourses, and secondary listing on the BSE, with a current market capitalisation of P162 billion (US\$34 billion).

The BSE has been one of the best performing markets in the world. The market has been supported by continued economic growth, strong corporate profitability, especially

in the banking sectors, and inflows of investment funds from the Botswana Public Officers' Pension Fund.

There have been 16 corporate bonds listed with a market capitalisation of P1,7 bn (face value) (US\$630 billion). These bonds have maturities ranging from 1 to 21 years.

During 2004, the BSE Domestic Companies Index (equity listings of Botswana based companies) rose to a high of 2863 in June 2004, recording growth of 6% in the last quarter.

### Botswana Development Corporation ("BDC")

A government funded corporation, BDC encourages investment and industry in Botswana in several spheres, including manufacturing, agriculture and tourism. BDC gives assistance to viable projects in loans, equity, accommodation etc. It has set out as some of its major objectives, the economic diversification of the country's economy and employment creation.

### Export Incentives/Support

Support to encourage production for the export market takes the form of:

- duty draw back facility
- no surcharge on importation of machinery and equipment
- Botswana Bureau of Standards (BoBs)
- Botswana Export Credit Guarantee Company (Beci)
- Government maintenance of wage rates and competitive real exchange

### IFSC

To exploit Botswana's stability open economy lack of exchange controls and low tax rate, the Government has established in Botswana an International Financial Services Centre (IFSC).

The IFSC concentrates on the following core activities:

- banking and financing operations transacted in foreign currency
- the broking and trading of securities denominated in foreign currency
- investment advice
- management and custodial functions
- insurance and related activities (captive insurance and administration thereof) – with a proposed amendment to the act to allow for reinsurance services
- register and transfer agency services
- exploitation of intellectual property
- cross border leasing
- capital raising

The development of the IFSC is an effort to seek an alternative engine for growth and employment creation. In order to be certified as an IFSC Company in the IFSC, a company must show employment of creation in its development.

As at date hereof there are now 23 companies accredited within the IFSC, with some 15 applications pending.

The incentives for a company to establish in the IFSC are:

- a corporate tax rate of 15% until June 2020;
- exemption from the obligation to withhold taxes on dividends declared;
- exemption from tax on dividends received from a company which is not resident in Botswana, where the International Financial Services Centre Company controls either directly or indirectly, alone or with connected persons, 25% or more of the share capital or 25% or more of the voting rights of a non resident company are exempted from the growth income of the IFSC Company;
- specified foreign exchange losses debited in the profit and loss account of the IFSC Company under commercially recognised system of accounting of tax are deductible;
- interest paid on a foreign debt of an International Financial Services Centre Company is tax deductible (provided that if at any time during the course of the tax year the foreign debt of the International Financial Services Centre Company exceeds its foreign equity product then a portion of the foreign debt interest will not be allowed);
- where a portion of the total growth income of an International Financial Services Centre Company is from a source outside Botswana, a credit can be claimed for the tax suffered in the foreign country against the Botswana tax on such income, in accordance with a prescribed formula;
- exemption from the obligation to withhold tax from payments in respect of interest, commercial royalty, management or consultancy fees to non-residents.

In considering an application for a certificate, as a Company in the IFSC the Committee, which makes recommendations to the Minister for finance, who issues the certificate, has regard to:

- the number of Botswana citizens who will be employed in relation to the approved operation and the capacities in which they will be employed;
- facilities proposed for the training and imparting of skills to citizens;
- provisions made for the eventual replacement of non-resident employees by Botswana citizens;
- provision made for the participation by Botswana citizens in the management of the business.

## **BEDIA**

The Botswana Export Development and Investment Authority (BEDIA) was established to operate a one-stop

Investor Service centre to assist investors with permits, licences, utilities connections, land and provide assistance with other regulatory issues. BEDIA has undertaken outward investment missions to India, South Africa, Malaysia, Mauritius, Malawi, Mozambique, Namibia, UK, USA, France, Ireland, Belgium and Zambia.

BEDIA continues to seek export markets for locally produced goods and to promote investment opportunities in Botswana. BEDIA has now selected niche industries, such as manufacturing of textiles and garments, jewellery, tannery and leather products, glass and IT products, as these can be undertaken using locally available raw materials. BEDIA procures factory shells and land to accommodate investors in such industries.

There is currently a major initiative underway to identify the obstacles to foreign director investment in the form of technical expertise and ways to attract same to Botswana.

## **VAT**

Value Added Tax (VAT) became effective from July 2002, in order to broaden the revenue base of the economy. VAT has been introduced at a uniform rate of 10% applied to a wide range of goods and services, with few exemptions. All businesses with an annual turnover of more than P250 000-00 are now required to register for VAT.

## **Regulatory Environment**

Of recent years Government appears to have moved away from using restrictive trade policies or protectionism as a tool to develop and support local industry.

Government has relied on tax-based incentives to promote economic development. But that cannot stand on its own. There has to be a complementary environment.

There is open and healthy criticism of an inefficient and intrusive bureaucracy.

A new Companies Act, embodying international company law principles, has been enacted and waits commencement.

A Competition Bill is in draft stage and should be enacted shortly.

In order to be globally competitive, it is also crucial that any goods produced in Botswana are of a world class quality and conform to international standards. In that regard, the Botswana Bureau of Standards (BOBS) is developing standards and in order to expedite such development, is considering the introduction of internationally recognised fast track procedures.

The implementation of various international conventions regarding the protection of intellectual property, improve the country's access to global markets and international competitiveness.

## Other Advantages

### Access to Regional European and US Markets

Botswana is a signatory to the Lome Convention which accords it duty free preferential access to the European Community Market with no quota restrictions.

Botswana has preferential access to the US market under the General System of Preferences according it duty free or preferential access with no quota restrictions.

Also, 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 bi-lateral agreements with China and regional countries allowing preferential or limited duty free trade.

Membership of the World Trade Organisation (WTO) also improves the country's access to global markets and its competitiveness.

### Investment Guarantees

Botswana is a signatory to MIGA the Multi Lateral Investment Guarantee Authority which protects investments from nationalisation or expropriation.

### Formation of a Company

- Non-residents may hold shares in a Botswana company
- It is not necessary that a citizen or resident hold any shares
- Two shareholders are required; one may be a nominee for the other
- One resident director is required for a private company, two resident directors are required for a public company
- Professional fees payable for the registration of a company are ± P4 500
- Duty is payable on the authorised share capital, based on a sliding scale starting at P200 for up to P3 000 capital with an additional P8 for every P1 000 or part thereof, i.e. P976 for P100 000
- The registered office is to be in Botswana
- Auditors are required, these are to be certified public accountants practising in Botswana
- Company secretarial duties are performed by secretarial services companies, most of which are attached to accountant firms
- Fees for the usual annual secretarial duties are ± P2 000 per annum
- Companies are usually registered within 4 weeks.

## Government Assistance

The Minister of Finance & Development Planning may issue Development Approval Order where he is satisfied that the project would be beneficial to the development of the economy of Botswana or to the economic advancement of its citizens. The order would include the types and rates of additional tax relief which may be granted in respect of any such development products.

The order would follow a detailed evaluation of the application focusing on the following criteria:

- the number of Botswana citizens who will be employed and the capacities in which they will be employed;
- any facilities proposed for the training and imparting of skills to Botswana citizens;
- any provision made for the eventual replacement of non-citizen employees by Botswana citizens;
- any provision made for the participation by Botswana citizens in management;
- the degree of investment in of capital owned by Botswana citizens;
- the area in which the proposed development will be carried on;
- any effect which the project might be expected to have on stimulating the development of other economic, industrial or commercial activities in Botswana and reducing the price of consumer goods or services in Botswana.

### Mining

Botswana is renowned for its diamonds (which contribute over a third of Botswana's GDP and about 5% of its tax revenues) and also has deposits of copper, nickel, cobalt, gold and soda ash which are currently being mined or developed.

The right of ownership in minerals in Botswana is vested in the Republic of Botswana and all mineral concessions acquired by any person can only be done in accordance with the Mines and Minerals Act which was passed in July 1999 to introduce a new licence regime for the granting of mineral concessions in Botswana.

There are three main mineral concessions that may be issued in terms of the Act i.e. prospecting licences, retention licences and mining licences.

Prospecting licences entitle the holder to conduct exploration activity and allow for an initial period of three years at the end of which at least 50% of the ground must be relinquished and a further two years applied for for the remaining ground, in which to continue prospecting. At the end of the second period, once again 50% of the remaining ground must be relinquished and a final two year tenure may be granted on application. At all times quarterly and annual reports are mandated. The retention licence is intended to preserve a prospecting area for holders who make discovery who may not be in a

position to apply for a mining licence immediately. They are therefore entitled to defer development for two successive three year periods.

Mining licences (except in respect of diamonds) are granted for periods up to 25 years. Government of Botswana has the right to acquire up to 15% equity interest in a company that applies for a mining licence by reimbursing the project developer the equivalent share of quarter expended in the process. This does not apply to licences for the mining of diamonds where negotiations are entered into with the Government to settle all aspects of the licence terms and conditions.

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

## **Trade**

In order to conduct trade or business (except manufacturing industries) licences in terms of the Trade & Liquor Act are required. A new Trade Act has been proposed but is still to come into force to improve the effectiveness of the licencing regime.

Applications for trade licences are made to licensing authorities which are constituted by members of each Town/District Council and may be granted upon satisfaction of prescribed requirements and payment of prescribed nominal fees.

Non-citizens are entitled to obtain trade licences in Botswana save for those which are designated in the Government Gazette as being reserved for citizens. Those include small scale such as butcheries, bakeries. These licences are normally granted within 6 weeks of application for one year, renewable annually.

## **Manufacturing Industry**

Manufacturing industries are viewed in terms of the Industrial Development Act. Persons including non citizens may make application, in the prescribed fee and/or pay manufacturing licence. A licence may be granted to the applicant upon payment of a prescribed nominal fee by the Industrial Licensing Authority. However the following terms of manufacturing enterprises are reserved for Botswana citizens or companies wholly owned by citizens either manufacture of school uniforms, school furniture, burglar bars, protective clothing, sorghum fermented.

# BURKINA FASO

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## MAIN AREAS OF PRACTICE

General Administrative and corporate practice, with emphasis on banking, commercial lending workouts and restructurings, bankruptcy, corporate governance and reorganisation, public contracts, insurance and re-insurance, international trade and transactions, joint venture agreements, mergers and acquisitions.

The firm advises/consults for domestic, foreign and multinational companies, state-owned enterprises, and regional/international organisations on the legal, regulatory and administrative environments appertaining to foreign investment, privatisation, corporate and employment matters;

The lawyers possess a solid experience in general commercial and corporate practice for public and private entities in a number of sectors including natural resources and mining, banking, manufacturing, insurance and privatisation.

## DOING BUSINESS IN BURKINA FASO

### Geography

Burkina Faso is a landlocked country located in the middle of West Africa's "hump." It is geographically in the Sahel – the agricultural region between the Sahara Desert and the coastal rain forests. Most of central Burkina Faso lies on a savannah plateau, 200 metres – 300 metres (650 ft.–1,000 ft.) above sea level, with

fields, brush, and scattered trees. The largest river is the Mouhoun (Black Volta), which is partially navigable by small craft. Burkina Faso has West Africa's largest elephant population. Game preserves also are home to lions, hippos, monkeys, warthogs, and antelope. Infrastructure and tourism are, however, not well developed. Annual average rainfall varies from about 100 centimetres (40 in.) in the south to less than 25 centimetres (10 in.) in the north and northeast, where hot desert winds accentuate the dryness of the region. The cooler season, November to February, is pleasantly warm and dry (but dusty), with cool evenings. March-June can be very hot. In July–September, the rains bring a 3-month cooler and greener humid season.

### People

Burkina Faso's 12 million people belong to two major West African cultural groups – the Voltaic and the Mande (whose common language is Dioula). The Voltaic Mossi makes up about one-half of the population. The Mossi claim descent from warriors who migrated to present-day Burkina Faso from Ghana and established an empire that lasted more than 800 years. Predominantly farmers, the Mossi kingdom is still led by the Mogho Naba, whose court is in Ouagadougou.

Burkina Faso is an ethnically integrated, secular state. Most of Burkina's people are concentrated in the south and center of the country, sometimes exceeding 48 per square kilometre (125/sq. mi.). This population density, high for Africa, causes migrations of hundreds of thousands of Burkinabe to Cote d'Ivoire and Ghana, many for seasonal agricultural work. These flows of workers are obviously affected by external events; the September 2002 coup attempt in Cote d'Ivoire and the ensuing fighting there have meant that hundreds of thousands of Burkinabe returned to Burkina Faso. A plurality of Burkinabe are Muslim, but most also adhere to traditional African religions. The Mossi rulers initially resisted the introduction of Islam to Burkina Faso. Christians, both Roman Catholics and Protestants, comprise about 25% of the population, with their largest concentration in urban areas.

Female genital mutilation, child labour, child trafficking, and social exclusion of accused sorcerers remain serious problems, although the government has taken steps in recent years to combat these phenomena. Workers and civil servants generally have the right to organize unions, engage in collective bargaining, and strike for better pay and working conditions. Few Burkinabe have had formal education. Schooling is in theory free and compulsory until the age of 16, but only about 44% of Burkina's primary school-age children are enrolled in primary school due to actual costs of school supplies and school fees and to opportunity costs of sending a child who could earn money for the family to school. The University

of Ouagadougou, founded in 1974, was the country's first institution of higher education. The Polytechnical University in Bobo-Dioulasso was opened in 1995.

## History

Until the end of the 19th century, the history of Burkina Faso was dominated by the empire-building Mossi. The French arrived and claimed the area in 1896, but Mossi resistance ended only with the capture of their capital Ouagadougou in 1901. The colony of Upper Volta was established in 1919, but it was dismembered and reconstituted several times until the present borders were recognized in 1947.

The French administered the area indirectly through Mossi authorities until independence was achieved on August 5, 1960. The first President, Maurice Yameogo, amended the constitution soon after taking office to ban opposition political parties. His government lasted until 1966, when the first of several military coups placed Lt. Col. Sangoule Lamizana at the head of a government of senior army officers. Lamizana remained in power throughout the 1970s, as President of military and then elected governments.

With the support of unions and civil groups, Col. Saye Zerbo overthrew President Lamizana in 1980. Colonel Zerbo also encountered resistance from trade unions and was overthrown two years later by Maj. Dr. Jean-Baptiste Ouedraogo and the Council of Popular Salvation (CSP). Factional infighting developed between moderates in the CSP and radicals led by Capt. Thomas Sankara, who was appointed Prime Minister in January 1983, but was subsequently arrested. Efforts to bring about his release, directed by Capt. Blaise Compaore, resulted in yet another military coup d'état, led by Sankara and Compaore on August 4, 1983.

Sankara established the National Revolutionary Committee with himself as President and vowed to "mobilize the masses." But the committee's membership remained secret and was dominated by Marxist-Leninist military officers. In 1984, Upper Volta changed its name to Burkina Faso, meaning "the country of honorable people." But many of the strict security and austerity measures taken by Sankara provoked resistance. Despite his initial popularity and personal charisma, Sankara was assassinated in a coup, which brought Capt. Blaise Compaore to power in October 1987.

Compaore pledged to pursue the goals of the revolution but to "rectify" Sankara's "deviations" from the original aims. In fact, Compaore reversed most of Sankara's policies and combined the leftist party he headed with more centrist parties after the 1989 arrest and execution of two colonels who had supported Compaore and governed with him up to that point.

## Government and Political Conditions

With Compaore alone at the helm, a democratic constitution was approved by referendum in 1991. In December 1991, Compaore was elected President, running unopposed after the opposition boycotted the election. The opposition did participate in the following year's legislative elections, in which the ruling party won a majority of seats.

The government of the Fourth Republic includes a strong presidency, a prime minister, a Council of Ministers presided over by the president, a unicameral National Assembly, and the judiciary. The legislature and judiciary are nominally independent but remain susceptible to executive influence.

Burkina held multiparty municipal elections in 1995 and 2000 and legislative elections in 1997 and 2002. Balloting was considered largely free and fair in all elections. The Congress for Democracy and Progress (CDP), the governing party, won overwhelming majorities in all the elections until the 2002 legislative election, where the CDP won with a small majority of the 111 seats. The opposition made large gains in the 2002 elections.

Compaore won the November 1998 presidential election for a second 7-year term against two minor-party candidates. But within weeks of Compaore's victory the domestic opposition took to the streets to protest the December 13, 1998 murder of leading independent journalist Norbert Zongo, whose investigations of the death of the President's brother's chauffeur suggested involvement of the Compaore family.

The opposition Collective Against Impunity--led by human rights activist Halidou Ouedraogo and including opposition political parties of Prof. Joseph Ki-Zerbo and (for a while) Hermann Yameogo, son of the first President -- challenged Compaore and his government to bring Zongo's murderers to justice and make political reforms. The Zongo killings still resonate in Burkina politics, though not as strongly as in the past. There has been no significant progress on the investigation of the case.

The current cabinet is dominated by Compaore and the CDP. Given the fragile roots of democratic institutions, constitutional checks and balances are seldom effective in practice. The constitution was amended in 2000 to limit the president to a 5-year term, renewable once, beginning with the next presidential election in 2005. The amendment is controversial because it did not make any mention of retroactivity, meaning that President Compaore's eligibility to present himself for the 2005 presidential election is still a matter of debate. Most observers believe that the 2005 election will be a test of Burkina Faso's commitment to democracy, but the traditionally divided opposition also will have to come together and present a united front if it hopes to present a challenge to the ruling party.

## Economy

Burkina Faso is one of the poorest countries in the world, with a per capita gross national product (GNP) of \$300. More than 80% of the population relies on subsistence agriculture, with only a small fraction directly involved in industry and services. Drought, poor soil, lack of adequate communications and other infrastructure, a low literacy rate, and an economy vulnerable to external shocks are all longstanding problems. The export economy also remains subject to fluctuations in world prices.

Burkina remains committed to the structural adjustment program it launched in 1991, and it has been one of the first beneficiaries of the World Bank/International Monetary Fund (IMF) debt-relief and poverty reduction programs for highly indebted poor countries. At least 20% of the government budget is financed from international aid, and the majority of infrastructure investments are externally financed. Growth rates have been more than 5% from the late 1990s through 2003.

Many Burkinabe migrate to neighbouring countries for work, and their remittances provide a contribution to the economy's balance of payments that is second only to cotton as a source of foreign exchange earnings. Political and economic problems in Cote d'Ivoire have had a direct impact on this source of revenue for millions of Burkina households. The military crisis in neighbouring Cote d'Ivoire negatively affected trade between the two countries, due to the year-long closure of the border between Burkina Faso and Cote d'Ivoire from September 2002 to September 2003. Goods and services, as well as remittances, continue to flow from Burkinabe living in Cote d'Ivoire, but they have been rerouted through other countries in the region, such as Togo, Ghana, and Benin. Commercial and personal traffic across the border is slowly rebuilding steam.

Burkina is attempting to improve the economy by developing its mineral resources, improving its infrastructure, making its agricultural and livestock sectors more productive and competitive, and stabilizing the supplies and prices of food grains. Staple crops are millet, sorghum, maize, and rice. The cash crops are cotton, groundnuts, karite (shea nuts), and sesame. Livestock, once a major export, has declined.

Manufacturing is limited to cotton and food processing (mainly in Bobo-Dioulasso) and import substitution heavily protected by tariffs. Some factories are privately owned, and others are set to be privatized. Burkina's exploitable natural resources are limited, although deposits of manganese, zinc, and gold have attracted the interest of international mining firms.

A railway connects Burkina with the port of Abidjan, Cote d'Ivoire, 1,150 kilometres (712 mi.) away. Due to the closure of the border with Cote d'Ivoire, this railway was not operational between September 2002 and September 2003, but cargo and limited passenger service are now offered. Primary roads between main towns in Burkina Faso are paved. Domestic air service and flights within

Africa are limited. Phones and Internet service providers are relatively reliable, but the cost of utilities is very high.

## Investment Climate

### Openness to Foreign Investment

Foreign investment is welcome in Burkina Faso. Investment and mining codes permit full repatriation of profits, 100% ownership of companies, and many tax exemptions. Investors have shown most interest in the mining industry (particularly the gold sector) since Burkina lies between the gold-rich countries of Mali and Ghana.

The government is seeking direct foreign investment and private sector development. It is privatizing most of the former parastatal companies and receives proposals from various foreign and national buyers, which are examined without discrimination. The government does not have specific laws/rules (with the exception of the Investment Code and French business law principles applicable to Burkina) affecting foreign investment through acquisitions, mergers, takeovers, and greenfield investments. The government does not practice investment screening except for the fact that, in order to be eligible for code incentives, the investment must be linked to the national interest.

### The Investment Code

The Investment Code guarantees equal treatment of both foreign and domestic investors seeking the investment privileges described below. The Ministry of Industry, Commerce, and Crafts approves all new investments, both foreign and domestic, based upon recommendations by the National Investment Commission.

The 1992 Investment Code was substantially revised in 1995 and 1997 to make it more attractive. It now establishes six incentive schedules:

**Schedule A** applies to investments of less than 20 million CFAF made by companies producing, preserving, or processing goods that generate at least three permanent jobs. It exempts a company from customs fees (and from internal fiscal taxes if the equipment is locally made) that are normally due on the equipment and first set of spare parts that a company imports at the outset of the investment. During the production phase, it provides for a five-year total exemption from the commercial and industrial profits tax (IBIC) and the forfeit tax (IMFPIC). It also provides for a two-year total exemption from the licensing tax (Patente) and for a two-year 50% licensing tax exemption after the period of total exemption.

**Schedule B** applies to investments of at least 20 million CFAF made by companies that produce, preserve, or process goods that create at least seven permanent jobs. It provides the same incentives as listed above at the outset of the investment. During the production phase, it provides for a five-year exemption from commercial

and industrial profits tax, licensing tax, stock and shares income tax, apprenticeship tax, transfer tax, forfeit tax, as well as for a three-year 50% reduction of the above taxes after the period of total exemption.

**Schedule C** applies to investments of at least 500 million CFAF that create at least 50 permanent jobs. It provides for the same incentives as in Schedule A and B at the outset of the investment. During the production phase, it provides for a six-year total exemption from the commercial and industrial profit tax, licensing tax, stock and shares income tax, apprenticeship tax, transfer tax, forfeit tax, as well as for a three-year 50% reduction of the above taxes after the period of total exemption. In addition, companies that obtain Schedule C benefit from a stabilized fiscal regime. This means that if tax modification occurs, it does not apply to these companies if it increases the rates during the concerned period.

**Schedule D** applies to companies that provide services requiring a minimum investment of 10 million CFAF and that create at least seven permanent jobs. It provides the same incentive as Schedule A, B, and C at the outset of the investment. During the production phase, it provides for a five-year total exemption from the commercial and industrial profit tax, licensing tax, stock and shares income tax, apprenticeship tax, transfer tax, and forfeit tax.

**Schedule E** applies to companies providing services that require a minimum investment of 500 million CFAF and that generate at least 30 permanent jobs. At the outset of the investment, it has the same incentives as the above schedules. During the production phase, it provides for a six-year total exemption from the commercial and industrial profit tax, licensing tax, stock and shares income tax, transfer tax, forfeit tax, and apprenticeship tax.

**(N.B. Exemptions provided for in Schedules A, B, C, D, and E do not include taxes on services, office furniture, computer hardware, air-conditioning equipment, and gasoline.)**

There is a special schedule for companies whose only activity is exporting, as described below:

When an exporting company is formed, the Code provides a 50% reduction in registration fees. At the outset of the investment, it provides for total exemption from customs taxes on imported construction materials, production equipment, and specific vehicles and materials related to the production process or those which have been recognized as such by the National Investment Commission.

During the production phase, it provides for:

- a permanent total tax exemption on raw materials and supplies directly used in production or as non-recyclable packaging;
- a total and permanent exemption from the licensing tax, stock and shares income tax, apprenticeship tax, transfer tax, and forfeit tax;

- a 50% permanent reduction from the commercial and industrial profit tax. (This rate increases to 75% if at least 80% of the total raw materials used during processing consists of local raw materials.)

A communal investment code is envisioned as part of the regional integration program being undertaken by the UEMOA.

## The Mining Code

The 1997 Mining Investment Code was replaced in May 2003 by a code with more incentives. The 2003 Code establishes two mining rights: the exploration license and the exploitation license. It provides special customs and fiscal privileges for each license as described below:

An exploration license grants an exclusive right to explore for specific mineral substances within an allocated area. However, the holder of an exploration license can request the right to apply it to other minerals. This license is valid for three years and is automatically renewable for two three-year periods. It covers a maximum area of 250 square kilometres, which is reduced by 25% at the second renewed three-year period. The remaining area is to be determined by the holder. A mining convention can be held in addition to the exploration license. In such a case, the mining convention cannot supersede the license rules. It has a validity of 20 years and is renewable by 10-year periods.

An exploration license grants the following fiscal and customs benefits to the holder:

- Within the framework of its operations, exemption from the value-added tax (TVA), commercial and industrial profit tax (IBIC), licensing tax (Patente et licenses), forfeit tax (IMFPIC), apprenticeship tax (TPA), registration tax (Droit d'enregistrement et du timbre), and stock and shares income tax (IRVM). These exemptions do not exonerate the holder from declarative obligations stipulated in the Fiscal Code (Articles 16, 17, and 251).
- Exemption from customs fees on professional equipment and raw materials imported to help in the exploration process and taxes on services received. This exemption covers spare parts whose value does not exceed 30% of the CIF value of imported machinery and equipment. It also covers gasoline and lubricants for production machinery as well as field vehicles, except for tourist vehicles. A list of equipment benefiting from the exemption is normally attached to the exploration license when it is issued. If the list does not cover all needed items, the Ministry of Mines and Ministry of Finance issues an additional list.

Geoservice companies, including drilling companies and laboratories that analyze mineral samples, benefit from the customs exemption if they operate as sub-contractors.

An exploitation license grants the holder the right to establish and exploit a mine according to rules of the Mining Code. An exploitation license is given for a period of 20 years and is renewable for five years until the deposit is exhausted. Granting an exploration license gives the government 10% of the shares of the mining company that will be formed.

An exploitation license grants fiscal and customs privileges as follows:

A seven-year exemption from the forfeit, licensing, apprenticeship, and transfer taxes; the staggering of the registration tax over a five-year period with a total exemption if the company increases its capital; and exemption on the value-added tax from exports. The holder will have to pay a 35% tax on commercial and industrial profits, and a 12.5% stock and shares income tax.

The holder of an exploitation license must pay a combined custom tax of 11% during the mining exploitation period on imports of raw materials, equipment, materials, gasoline, and lubricants to be used in the exploitation. Notwithstanding this special custom tariff, the holder of an exploitation license can ask for temporary admission benefits. Conditions for obtaining and executing the temporary admission are set by the rules in effect. The holder of an exploitation license is authorized to constitute what is called "provision for the deposit reconstitution." The commercial and industrial profit tax does not apply to this provision. The holder of an exploitation license can request and obtain a stabilized fiscal and custom tariff.

In case of litigation, depending on the nature of the problem, mining authorities and the holder may designate one or several experts to proceed to arbitration. They can also refer the case to Burkinabe courts or an international arbitration court if prescribed by a mining convention.

The overall investment in the mining sector in 1996 amounted to USD 38 billion, with about 140 companies maintaining exploration licenses and authorizations.

### **Conversion and Transfer Policies**

Burkina Faso is a member of the West African Monetary and Economic Union (UEMOA) and uses the CFAF. The CFAF is freely convertible into French francs (FF) at a fixed rate of 100 CFAF to 1 FF. Investors should consider advantages offered by the UEMOA, which includes Senegal, Togo, Côte d'Ivoire, Benin, Niger, Mali, and Guinea-Bissau. The CFAF may be freely used between member countries.

In December 1998 and February 1999, the UEMOA issued regulations that define the financial relations of its member countries with foreigners. These regulations principally outline the conditions in which a UEMOA bank can easily access hard currency (couverture de change)

directly from a partner/correspondent foreign bank without the intervention of the Central Bank.

Burkina Faso's Investment Code guarantees foreign investors the right to transfer abroad any funds associated with an investment, including dividends, receipts from liquidation, assets, and salaries. Such transfers are authorized in the original currency of the investment.

Transfer is made directly by Burkinabe banks once the interested party presents all relevant documents to the bank. Transfers and repatriation of funds are not limited, and there is no waiting period. Wire transfers to an American correspondent bank take three days and up to a week to a non-correspondent bank.

Burkinabe policies facilitate the free flow of financial resources and support the flow of resources in the product and factor markets.

Credit, when available, is allocated on market terms. Legal, regulatory, and accounting systems are consistent with international norms. The government uses a French system of public accounting. Within the framework of the UEMOA, rules are taken to progressively harmonize the public accounting systems of members. Since January 1998, a common commercial accounting system (SYSCOA) instituted by the UEMOA is in effect in member countries. It conforms to world norms. Burkina Faso does not have a stock exchange, but it does have regulations that guarantee and facilitate portfolio investment. Also, as member of the UEMOA, Burkina participates in the regional stock exchange market headquartered in Abidjan (Bourse Régionale des Valeurs Mobilières -BRVM-) and with a local representation in Ouagadougou. Three to five Burkinabe companies are preparing to capitalize in the BRVM.

### **Expropriation and Compensation**

The Burkinabe constitution guarantees basic property rights. Such rights cannot be infringed upon except in the case of public necessity, as defined by the government. Just compensation must be paid in cases where property is expropriated. Such compensation must be paid in advance of the expropriation, except in the event of emergency. Since 1960, three instances of expropriation have occurred. In 1968, the electric company (then called SAFELEC) was nationalized by the government in conformity with Burkinabe law. In 1970, Comacico-Benin and Secma, filmmaking and distribution companies were nationalized. In 1980, a manufacturer of ammunition, Carvolt, was nationalized for reasons of national defense.

### **Dispute Settlement**

If an amicable settlement of a dispute between the government and an investor proves impossible, the Investment Code requires that arbitration procedures be submitted to international arbitration under the rules outlined by the IBRD's March 1965 Convention. In cases where an enter-

prise owned by a national does not meet the nationality conditions stipulated by Article 25 of the convention, the Code specifies that the dispute be resolved in accordance with the dispositions of the supplementary mechanisms approved on September 27, 1978 by the International Court for Settlement of Investment Disputes.

## Performance Requirements and Incentives

There are no specific performance incentives other than a general exhortation that companies foster recruitment of national employees. There are no requirements that investors purchase from local sources. Given the government's stated desire to increase foreign investment, an increase in performance requirements is not anticipated.

## Right to Private Ownership and Establishment

The rights of foreign and private domestic entities to establish and own businesses and engage in all forms of remunerative activity are guaranteed by the constitution and the Investment Code. Businesses can be freely established, subject to the screening process discussed above, and sold. Most public enterprises have enjoyed a monopoly in their markets. With implementation of the reforms most monopolies are being eliminated. Foreign investors are encouraged to participate in the privatization of state-run enterprises.

## Protection of Property Rights

Burkina Faso has a legal system that protects and facilitates acquisition and disposition of all property rights, including intellectual property. Burkina is a member of the World Intellectual Property Organization (WIPO). The Investment Code guarantees foreign investors the same rights and protection as Burkinabe enterprises regarding trademarks, patent rights, labels, copyrights, and licenses. Divulging commercial secrets is a criminal offence in Burkina Faso.

## Regulatory System: Laws and Procedures pertaining to Investments

The government is in the process of adopting more refined and transparent laws to foster competition. For example, price controls have been lifted, and the Labour Code revised. Burkina Faso's regulations governing the establishment of businesses include most forms of companies admissible under French business law. These include public corporations, limited liability companies, limited share partnerships, subsidiaries and affiliates of foreign enterprises, and sole proprietorships.

Burkina's tax schedule has been revised. Depending on the nature of activity, legal form of the business, and

turnover, three fiscal schedules are applied: the "Contribution du Secteur Informel (CSI)," the "Régime du Réel Simplifié (RRSI)," and the "Régime du Réel Normal (RRN)."

Individual enterprises and companies are subject to a complex set of taxes. These include an annual tax on commercial and industrial profits (IBIC), which has been lowered from 45% to 40%, and a forfeit tax (IMFPIC) paid in advance each year. There is also a 25% tax on debt income (the IRC) and a 12.5% tax on stock and shares income (IRVM). Businesses must also pay an apprenticeship tax (TPA) on the salaries of all national and foreign employees (4% and 6% respectively), and a licensing tax that has two components: a fixed amount based on gross revenues and an 8% tax based on the rental value of company buildings and the value of production equipment. Upon incorporation, companies must pay a registration tax equal to 3% of the company's capital. Since 1996, businesses are required to apply a 18% value-added tax on the product.

Non-IBIC profits are taxed between 5% and 35%. Private sector employees and civil servants pay a tax (IUTS) on salaries and tips, usually by payroll deduction.

## Corruption

Burkina Faso does not experience systematic or "institutional" corruption. However, corruption exists and has been increasing over the past several years.

Burkina Faso has laws and penalties to combat corruption. Articles 156 through 159 of the Penal Code deal with corruption and influence trafficking practiced in the public sector. The penalties are one to five years imprisonment plus fines, and in some cases the removal of civic rights.

Burkina Faso has recently agreed to permit Ren-Lac, an anti-corruption NGO to open an office in Ouagadougou. Ren-Lac is working to sensitize public opinion about corruption. In the future, it may investigate and denounce corruption cases.

## Bilateral Investment Agreements

Burkina signed a cooperation treaty with France on April 24, 1961 that allows funds to be transferred freely between the two countries.

A trade, investment protection, and technical cooperation agreement was signed between Burkina and Switzerland on May 6, 1969. This agreement provides for free transfer of corporate earnings, interests, dividends, etc., between the two countries.

Various multilateral investment agreements have been signed by Burkina within the framework of international or regional organizations, including the Lome Convention, the West African Economic and Monetary Union (UEMOA), and the Council of the Entente (Fegece

Convention). These treaties guarantee the free movement of investment capital among member states.

## **Labour**

Burkina has a revised labour code that guarantees many rights to workers and is effectively enforced by a labour court. Unions are well organized and defend employee interests in industrial disputes. Workers know their rights and do not hesitate to seek redress of grievances.

The modern sector represents approximately 10% of the work force, with nearly 40,000 civil servants. Labour unions claim the allegiance of 60% of government workers and 50% of the private sector employees in urban areas. Trade unions are legal in Burkina Faso.

The Collective Agreement for the Commercial Sectors of February 1, 1982 divides employees (laborers, craftsmen, senior staff) into eight categories. The minimum basic pay rate (SMIG) is set at 25,000 CFAF (about USD 50) per month. Conditions for the employment of workers by enterprises are provided in Decree No. 98 of February 15, 1967. An employer should ask job applicants for their job-seeker registration card issued by the Office of Employment and Promotion, which is part of the Ministry of Employment, Work, and Social Security.

It is Burkinabe policy to increase employment opportunities for national workers. Therefore, no job-seeker card will be issued to non-nationals in those professions having a large number of registered unemployed Burkinabe. When non-nationals are hired, the Director of Labour will authorize their employment contract. A statement must be made to the Regional Inspector of Work and Social Rules before start-up of any new enterprise, according to a decree of February 15, 1967.

In the event of a reduction in personnel, the Labour Code requires that the employer first dismiss employees with the least training and seniority. The employer must advise employees of termination at least 30 days in advance. Workers terminated in a general reduction have reemployment priority over other applicants during a two-year period. Employees terminated for reasons other than theft or flagrant neglect of duty have the right to termination benefits.

Though there is a scarcity of skilled workers, mainly in management, engineering, and electrical trades, Burkinabe workers have a reputation as hardworking and dedicated employees.

# CÔTE D'IVOIRE

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Partners Karim Fadika  
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## MAIN AREAS OF PRACTICE

Banking & exchange market; public tenders; public contracts; public service concessions and state controlled agreements; privatization and restructuring of economic sectors of corporate entities; legal management; commercial & corporate law, international transactions and trade; exchange control; mergers, acquisitions; mining, energy and resources; arbitration; labour law; insurance and re-insurance. Fadika-Chauveau-Kacoutié is also involved in the preparation and negotiation of loan agreements for projects or for structural or sectorial adjustments with the World Bank, European Investment Bank (EIB), African Development Bank (ADB), and the West African Development Bank (WADB).

## DOING BUSINESS IN CÔTE D'IVOIRE

### Type of Government

Presidential and multi party system

### Forms of Business Organisation

- Private or public liability company
- Close corporation
- Semi-public company

- External company (i.e. a branch of a foreign company)
- Partnership
- Joint Venture
- Sole trader (This list is not exhaustive)

### Formation of Business

The CEPICI centralises all administrative and tax formalities. Business licences may be required for certain activities such as banking, insurance, the exportation of gold and precious stones and the sale of specific products such as pesticides.

### Taxation

The following taxes are payable:

- companies pay a tax on Industrial and Commercial benefits" (BIC) at a rate of 35%;
- tax on benefits or on incomes received or realised by non-residents in Côte d'Ivoire;
- double tax treaties exist with various countries including Belgium, France, Germany, Italy, Norway, the United Kingdom, Canada, Benin, Burkina-Faso, Central African Republic, Congo, Gabon, Mauritius, Mali, Mauritania, Niger, Rwanda, Senegal and Togo.
- the following taxes have recently been reduced as an incentive to investment :
  - a "tax on stock and shares incomes" of 6% or 12% in respect of debenture loans;
  - registration fees of 0,6% or 0,2% on share capital introduced by a partner (financial or real estate investment);
  - a fixed annual franchise tax calculated upon the value of office rent, and the means of production;
  - immovable property taxes;
  - VAT at a rate of 20%;
  - a number of other specific taxes including salary taxes;

### Foreign Investments

Côte d'Ivoire generally welcomes foreign investments, and almost all business activities are open to foreign investors. Exchange control exists. Côte d'Ivoire belongs to the Franc Zone, and there is no exchange control between the following states:

- France, Monaco and all the states of the West Africa Economic and Monetary Union (WEAEMU): Benin, Burkina-Faso, Côte d'Ivoire, Equatorial Guinea, Mali, Niger, Senegal and Togo.
- the following members of the Central African Economic and Union (CAEU): Cameroon, Central African Republic, Congo, Gabon and Chad.

Transfers out of WEAENU are subject to a transfer tax of 0,25%. Loans by a non Franc Zone resident, to an Ivorian resident, investments by non Franc Zone residents and generally, payments by transfer of funds of any nature to foreign countries, in favour of non residents, are subject to exchange control approval, which is generally easily obtained.

Banks are generally authorised to transfer normal and current payments necessary for the execution of limited commercial operations such as:

- delivery of merchandise;
- commissions, broking advertising fees;
- insurances and reinsurances;
- transportation fees for merchandise or persons;
- wages and salaries, fees, insurance premiums;
- payments relating to patents, trademarks, licences, copyrights;
- interests, dividends, rent.

## Regulatory Environment

Except for essential products, there is no restraint on trade.

The Competition Board exists to prevent:

- monopolies and collusive agreements between companies;
- certain practices such as discriminatory conditions of selling and of provision of services, and sales at a loss.

No entity regulates acquisitions and takeovers even where a change of control occurs.

The Abidjan Stock Exchange has regulations governing securities listed on it.

The OHADA treaty (Organization for the Harmonization of Commercial Law) that came into effect on 1 January 1998 harmonizes, modernizes and promotes the integration of Commercial laws in sub-Saharan French speaking Africa. The sixteen (16) member countries are: Benin, Burkina Faso, Cameroon, Central African Republic, Chad, the Comoro Islands, Congo Brazzaville, Cote d'Ivoire, Gabon, Guinea, Conakry, Guinea Bissau, Equatorial Guinea, Mali, Niger, Senegal and Togo.

The treaty generally provides for the creation of a common area of jurisdiction, the implementation of a system of legal and judicial security for economic operators and adopts uniform laws adapted to the realities of the business environment. The treaty establishes a Common Court of Justice and Arbitration (CCJA), which is the highest authority in matters of commercial law in member countries. The decisions of the court are binding and in matters of arbitration, it functions like the CCI in Paris, the governing arbitration rules being based on the 1958 New York Convention.

The following areas of law have been harmonized:

- general commercial laws dealing inter alia with the status of traders and their obligations;
- company law and commercial interest groupings (GIE) dealing with the rights of associates and third parties in certain businesses;
- laws dealing with personal sureties, the determination of surety value and the order of priority for repayment under sureties.

Further integration is planned in the areas of company law, the legal status of traders; credit recovery; enforcement of rights and judgments; security, sale of goods; transportation; restructuring and liquidation of companies; labour laws; accounting laws; and the laws of arbitration.

## Intellectual Property

Patents, trademarks, commercial marks, design or patterns are protected by statute. Côte d'Ivoire is a member of the African Organisation for Industrial Property (OAPI). Registrations must be made in Yaoundé (Cameroon) at the OAPI.

## Tariffs

Import tariffs, customs duties and direct controls are subject to the Lome Convention. A common market, the West African Economic and Monetary Union (WAEMU) exists with a common external tariff and commercial policy between member states. The weighted custom average tax has been reduced from 55% to 33%. Côte d'Ivoire is a member of GATT.

## Incentives

In addition to the tax reductions above, the "new" 1995 Investment Code adopted, further promotes investment. Two categories of incentives exist:

- the "declaration" regime that allows any investment, whatever the sum involved, to be declared eligible within 48 hours, for the advantages provided by the new code; and
- the "approval" regime for investments involving sums exceeding 500 million CFA Francs (US\$ 25 million).

Under the new Code the following automatically apply to almost all activities:

- exemption from tax on industrial and commercial or non commercial benefits for a 5 year period in the department of Abidjan and 8 years in all other areas;
- exemption from franchise tax for the same period.

The new Code also provides for:

- exemption from VAT on equipment, materials and the first set of spare parts for a 2 billion CFA Francs investment;
- exemption from property tax;

- application of a unique 5% tax for equipment, materials and the first set of spare parts when the sum of investment is 2 billion CFA Francs; (US\$ 25 Million to US\$ 100 million);
- exemption from immovable property tax when the real estate represents an investment of more than 2 billion CFA Francs (US\$ 100 million);
- the free transfer, out of Côte d'Ivoire, of revenues of any nature generated by an investment;
- and authorises any judicial, arbitral or administrative action that the investor should take for the settlement of disputes arising out of the enforcement of the new Code.

### **Other measures**

In addition to the new Code, other incentives are provided in the General Tax Code, the Mining Code, (providing for special incentives in the mining field) and conventions between Côte d'Ivoire and other countries.

### **Membership of International & Regional Organisations**

World Bank, International Monetary Fund, Organisation of African Unity, United Nations Organisation and African Development Bank.

# REPUBLIQUE DEMOCRATIQUE DU CONGO “DRC”

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- Branch of foreign company

## Taxation

The general system of taxation in the DRC is based on the principle of territoriality which means that the tax is levied on income that is derived from DRC.

- corporate tax rate is 40%;
- corporate tax rate of mining company is 30%;
- withholding tax on income from movable is 20% for mining activity 10%;
- personal income tax rate is based on sliding scale with a maximum of 30%;
- property tax is from 0.30 US\$ up to 1.50 US\$ per square meter of the property built;
- tax on rental income is 35%;
- domestic turnover tax for constructions, services is 18%, local sale of local manufactured products between 35 up to 25%, domestic airline tickets 6%, international airline tickets 25%.

## Foreign Investments

DRC welcomes all foreign investments. The Exchange control regulations currently in effect are so liberal that commercial banks are authorized, subject to relevant tax being paid, to freely transfer dividends, capital gains and interest and capital on foreign loans out of the country. Upon closing of their investments, investors may freely remit capital without any restriction. Residents of DRC are authorized to hold foreign currency accounts with local commercial banks.

## Intellectual Property

Patents, trademarks, designs, 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. DRC is member of the World Intellectual Property Organization.

## Incentives

DRC has promulgated a new Investment Code on February 21, 2002. The basic objective of the Investment Code is to encourage the investment of local and foreign capital in activities which by their nature contribute to the economic and social development of the country. The

## MAIN AREAS OF PRACTICE

Banking law, Commercial transactions, Corporate law, Exchange controls, Financing structuring, Joint-ventures, Investment negotiations, International transactions, Energy, Mining law, labour, Trademarks, Litigation, Real estate and property, Privatization of public entities, Environmental and forestry law, Technical assistance and consulting for multilateral organizations.

## DOING BUSINESS IN THE REPUBLIQUE DEMOCRATIQUE DU CONGO

### Type of Government

Multi party transitional government

### Forms of Business Organisation

- Private limited liability company
- Public limited liability company
- Limited partnership
- General partnership
- Co-operative society

Code provides for one general regime under which Investment Code benefits may be granted.

For a project to benefit from the provisions of the Investment Code, the investment must be at least US\$ ten thousand for small and medium business and two hundred thousand for other enterprises. The Investment Code provides the following concessions and incentives:

- Importation free of duty of all new plant machinery and equipment associated with the project as well as spare parts up to 10% of the CIF value of the referred equipment;
- Free export of local semi-finished or finished products;
- Exemption of corporate tax and tax on shares capital;
- Exemption from real estate or property taxes; and
- Exemption of domestic turnover tax on local sales and services.

The duration of the above-referred exemptions depend upon the location of the investment and may varies from three to five years.

### **Membership of International and Regional Organizations**

DRC is member of the International Monetary Funds, World Bank, United Nations Organization, African Union and African Development Bank.

# EGYPT

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## MAIN AREAS OF PRACTICE

Litigation, corporate law, construction, real estate, taxation, labor law, international contracts, dispute resolution, Arbitration, banking law, foreign investments, intellectual property, maritime law, family law and bankruptcy.

## DOING BUSINESS IN EGYPT

### Type of Government

Multi party democracy.

### Business forms and structures

#### Companies Law

- Joint stock companies
- Limited liability companies
- Merger and acquisition
- Companies liquidation
- Sole proprietorship
- Branch of foreign corporation and representative office.
- Investors interested in establishing business in Egypt are subject to four laws:

- Corporate Law No. 159 of 1981;
- Investment Law No. 8 of 1997;
- New Communities Law No 59 of 1979; and the
- Desert Land Law No 143 of 1981.

All companies established in Egypt are governed by Corporate Law No.159 of 1981, the Investment Law No. 8 of 1997 and the Commercial Law No. 17 of 1999. Foreign companies may receive incentives and guarantees granted by other laws provided that they will be working in one of the fields prescribed therein.

The principal forms of companies under the corporate law No. 159 of 1981 are:

- The joint stock company,
- The partnership Limited by shares and the limited liability company. These three forms of companies are the preferred forms of corporation for foreign investors.

## The Companies Law No. 159 of 1981

### Joint Stock Company

#### Formation

The Joint Stock Company is a Company the Capital of which is divided into shares of equal value, the liability of the shareholder is confined to the value of the shares which he subscribes to and he is not liable for the debts of the Company except within the limit of the shares he subscribes to.

The Joint Stock Company must have at least three founders "Art.8". The founders are jointly responsible for the obligations they undertake.

#### The Capital

The Capital is divided into nominal shares of equal values "Art.3".

Companies which put its shares to public subscription, the issued capital shall not be less than 500 000 L.E.

The founders cannot subscribe in the issued capital in less than 250000 L.E. or, 10% from the Authorized Capital whichever is the highest amount.

Companies which do not put its shares to public subscription, the issued capital shall not be less than 250 000 L.E.

## Types of the Shares

The Shares in the joint Stock Company are characterized as follows:

- Negotiable shares and shares in kind
- Negotiable shares constitute the negotiable portions in the capital, a quarter of its nominal value must be paid within the foundation time and the remaining nominal value must be paid within 10 years “Art.32”.

Shares in kind constitute a kind portion in the capital. They are subjected to the rules of the negotiable shares except:

- Its value is to be paid in full.
- It has to be evaluated correctly before granting the nominal shares.
- Negotiation of the shares in kind is not allowed before two years from the foundation date elapse.

## The Capital Shares and the enjoyment Shares

The Enjoyment Shares are to which its value consumed. The Capital Shares are to which its value did not consume.

## Common Shares and the Preference Shares

Common Shares grants the same privileges to each shareholder.

Preference shares grants the shareholder the priority for the profits.

The multiple votes shares grants the shareholder more than one vote in the general assembly

## The feature of the Joint Stock Company

The most distinctive feature of the Joint Stock Company formed under the Companies Law is that worker must participate in the management of the company. This is done by three methods:

The workers can be on the board of directors, with such participation not to exceed a third of the members of the board.

A distribution of participation shares that allow workers to elect, through a special assembly, representatives to the Board of Directors and the general meeting of shareholders through a support administrative committee whose chairman attends meetings of Board of Directors.

## Partnership limited by Shares Company

### Definition

The partnership limited by Shares Company is a company of a capital which consists of one or more joint portions belonging to one or more partners, and of shares of equal

value subscribed to by one or more joint partners, and are negotiable in the manner prescribed by the law.

The partner, or joint partners, has unlimited responsibility of the liability of the company, while the shareholder partner is only responsible to the extent of the value of the shares he subscribed to.

### Foundation

The number of founding partners should not be less than two. “Article No. 8 of the law No. 159 of 1981.

The approval for the foundation of companies whose shares or bonds are to be placed for public subscription will not be final except after their sanction by the relevant minister, after consulting the capital market authority “19”.

The issued capital should not be less than the limit determine by the executive regulations “Art.32”. The limit mentioned, is to be 250000 L.E.

### Prohibition

Partnerships limited by Shares Companies are not allowed to undertake insurance business, banking or saving operations, or receive deposits, or invest funds on behalf of other parties “Art.5”.

### Distributions of profits

Workers must receive 10% of the profits, distributed through dividends; this amount must not exceed their total annual income “Art.110”.

## Limited Liability Company

### Definition

The Limited Liability Company is a company in which the number of partners does not exceed fifty. Each of them is only responsible within the limit of his portion.

The company may adopt a particular name, which may be derived from its purpose, and its name may include the name of one or more of its partners “Art. 4”.

### Features

- The limited liability of each partner
- Two Partners at least
- Prohibition of the public subscription, issuance of negotiable shares or bonds
- Restrictions for the assignment of the partners’ portions
- Transfer of the portions due to the death
- The choice for adoption either a particular name which may be derived from its purpose or its name may include the name of one or more of its partners.

## The Capital

The capital of the company may not be less than 50 000 L.E. "Art .116 executive regulations".

The capital is divided into equal shares of not less than 100 L.E. each, to be paid in full. There is no maximum for the portion's value although there is for the shares' value.

### Features of the portions

- The shares are indivisible
- Representation of the shares by negotiable bonds are not allowed
- A register comprising all the data on the partners.

Every share will have a vote even if it is prescribed differently in the By-Laws.

## Banking

There are over 100 banks in Egypt, including thirty-eight commercial banks that are controlled by four government owned banks (Banque Misr, National Bank of Egypt, Bank of Alexandria and Banque du Caire) and numerous joint ventures and specializes Banks. These four government-owned Banks hold two-thirds of the banking community's assets. There are also twenty-one foreign Banks with branches in Egypt, which, since early 1993, have been permitted by law to deal in Egyptian pounds as well as in foreign currency.

Actually, some major International Investment Banking Institutions are entering the Egyptian market, including HSBC Investment Banking, American Express Bank, Credit Suisse, Morgan Stanley and Barclays.

The Egyptian Government has revised many of the banking laws and practices. Egypt's Banks have benefited from the Government's reforms of the exchange rate and interest rate systems, and many have made substantial gains by investing in Government bills and bonds. Nonetheless, Banks still suffer from low capitalization and heavy debt burden from the former socialist period.

Generally, Egyptian banks are considered overly conservative. They often demand a counter guarantee equal to the amount borrowed as a condition to granting a loan. Short-term lending makes up about 80 percent of the major banks' portfolios.

## Taxation

Taxes in Egypt may be divided into two categories. The first one concerns direct taxation of individuals and legal entities on their income or profit. The second involves indirect taxation of goods, services and events. The Egyptian taxation framework is statutory based. Tax administrators are given, under the relevant legislation, few discretionary powers. Courts are primarily responsible for the interpretation of statutes. The nature of the

Civil Law system operating in Egypt allows precedent to have an influential but not necessarily a binding effect.

Over the last several years, Egypt has made many changes in its tax system.

Given this trend, it is advisable to seek up-to-date advice on recent and future changes to the tax law before pursuing commercial plans in Egypt.

## Income Tax

Law No. 187 of 1993, also known as the unified tax law, abolished the general income tax previously levied on individuals pursuant to tax law No. 157 of 1981. Under the new unified tax law, individuals, including partners in partnerships, are subject to tax at various rates on income from five sources:

- Income from movable capital.
- Income from immovable capital.
- Commercial and industrial profits.
- Professional fees
- Salaries

## Real Property Tax

Real Estate taxes are levied on the assessed annual rental value of improved and agricultural property at rates ranging 10 % to 40 %. Rates are highest in Cairo and Alexandria, the two largest population centers.

## Withholding taxes

There are no withholding taxes in Egypt, apart from scheduled income taxes, which are withheld at source in many cases. Dividends distributed by an Egyptian company are not subject to withholding tax. The main instances where taxes are withheld are summarized below.

Tax on income derived from moveable capital is withheld in many cases, including payments to a foreign company that has no branch in Egypt and payments to non-resident individuals. Royalties and technical assistance fees paid to a foreign company with no branch in Egypt are normally subject to the 40 percent corporate income tax rate. The tax is imposed on the net amount after an arbitrary deduction for expenses. Amounts are also withheld on account of taxes due at 10 to 15 percent on the amount payable for professional services, at 3 percent on commercial services and at 10 percent on commissions paid to commercial agents. Lastly, employers must withhold the scheduled tax on salaries and wages from their employee's payment.

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## Foreign Investment

The Egyptian government is generally positive to foreign investment; one of the government's objectives is to expand private sector investment.

The government is most interested in foreign investment for projects relating to reclamation and cultivation for desert lands. Industry, tourism, housing and reconstruction, and other projects that require modern technologies, increase export, decrease imports, or labor incentive.

## Intellectual Property

The legal regime regarding patents and trademarks is similar to that of England, and registered owners of intellectual property are provided with adequate protection. Egypt is a signatory to the Paris Convention of the Protection of Intellectual Property and the Madrid Agreement regarding International registration of trademarks. Furthermore, Egypt is a member of the World Intellectual Property Organization.

## International Financial Center

Egypt does not offer any facilities as an International Financial Center.

## Economy

Economic stabilization in Egypt has been achieved for the most part, with some important steps made in structural economic reforms. At the same time, internal security problems have adversely affected the tourism industry and have had a negative impact on general business confidence. Muslim extremists, however, are unlikely to destabilize the governing regime.

Furthermore, government promotional efforts have brought increases in tourism related revenues.

As part of the Camp David accords, Egypt receives more than US\$ 2 billion per year in US-based economic and military aid. Foreign reserves are estimated at over US\$ 18 billion and rising, exceptionally high for an economy engaged in many of the liberal economic reforms that Egypt has undertaken.

Because Egypt served as a lynch pin in the 1990-91 Gulf War, it has benefited from a US\$ 10 billion write-off in debt relief.

## Labor Relations

### Availability of Labor

Egypt has a pool of inexpensive labor. Labor costs a fraction of the costs in such industrialized countries as the United States, Japan and countries in Western Europe.

## Employer-employee relations

Employer-employee relations are governed by the labor law No. 12 of 2003.

# GHANA

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## MAIN AREAS OF PRACTICE

Corporate law, banking, investment, immigration, commercial, securities, trade law, real estate and property, building and construction law, industrial relations and labour laws, mining law, international business transactions, mercantile and shipping law, intellectual property law, litigation, matrimonial causes and family law and environmental law.

## DOING BUSINESS IN GHANA

### Type of Government

Constitutional government under a multi-party democracy.

### Forms of Business Organisations

- Private or public limited liability company
- Unlimited liability company
- Company limited by guarantee
- External company (branch or subsidiary of foreign company)
- Partnership
- Sole proprietorship
- Joint venture

### Formation of a Business

Both local and external companies must be registered with the Registrar of Companies and comply with the requisite applicable regulations. Business or trade approvals, licences, or permits may be required for certain activities.

### Taxation

Income Tax in Ghana is source based. For non-residents, tax is levied on income accruing in or derived from Ghana.

Taxation in Ghana is currently regulated by the Internal Revenue Act, 2000 (Act 592). This legislation amends and consolidates previous laws relating to Income Tax, Capital Gains Tax and Gift Tax.

Corporate tax which was initially levied at 32.5% under Act 592 has been reduced to 28% following the reading of the Budget for the year 2005 except that:

- income of companies engaged in the export of non-traditional goods (e.g. horticultural products, processed and raw agricultural products grown in Ghana other than cocoa beans, handicrafts locally manufactured goods, wood products other than lumber and logs) is taxed at the rate of 8%;
- companies principally engaged in the hotel industry at 25%;
- companies listed on the Ghana Stock Exchange are taxed at a rate of 28% whilst those listing on the Ghana Stock Exchange for the first time enjoy a reduced tax rate of 25%;
- companies taxed under the Petroleum Income Tax Law at 50%;
- manufacturing companies located in regional capitals (excluding Accra and Tema) of Ghana at 75% of the rate of income tax determined under the Act;
- all other manufacturing companies located elsewhere at 50% of the rate of income tax determined under the Act.

A branch of a foreign company is taxed at the same corporate tax rates as above. The Commissioner of Internal Revenue has discretionary powers to assess the branch by reference to the consolidated profits of the whole group of companies (both resident and non-resident) of which the branch is a part. However, where the Commission is satisfied with the results of the branch operating in Ghana, the chargeable income of the branch is computed without reference to such consolidated profits.

A Branch Profits tax is imposed upon a non-resident person or company carrying on business in Ghana

through a permanent establishment, which has repatriated profits for a basis period ending with the year. The tax rate is 10%.

Capital Gains Tax is levied on capital gains derived by a person or company whether resident or not, from the realisation of the following chargeable assets:

- buildings of a permanent or temporary nature, situated in Ghana;
- land situated in Ghana;
- shares of a resident company;
- business and business assets including goodwill of a permanent establishment situated in Ghana;
- part of or any right in, to or over any of the chargeable assets referred to above.

Chargeable assets do not include the following:

- securities of a company listed on the Ghana Stock Exchange (GSE) in the first fifteen (15) years after the establishment of the Ghana Stock Exchange (The GSE was established during November 1990);
- agricultural land situated in Ghana;
- trading stock.

Capital Gains Tax is payable by a person at the rate of ten per cent (10%) of capital gains accruing to or derived by that person from the realisation of a chargeable asset.

Exemptions exist for capital gains arising from:

- a merger, amalgamation, or re-organisation of companies, where there is continuity of underlying ownership in the asset of at least twenty-five percent (25%);
- capital gains where the amount received on realisation is, within one year of realisation, used to acquire a chargeable asset of the same nature.

There is a withholding tax of:

- 15% on non-residents in respect of royalties, natural resource payments and rents;
- 10% on dividends and interest earned by residents and non-residents alike;
- 20% in the case of management and technical service fees.

However, the withholding tax rate on the supply of goods and services has been reduced from 7.5% to 5%.

Double taxation treaties exist between Ghana and the United Kingdom, Sweden, Gambia, Sierra Leone, France, Nigeria and Malaysia.

## Foreign Investment

Ghana is open to foreign investment and has taken positive steps geared towards promoting and boosting investments. Non-Ghanaians may invest, own shares and participate in the operation of any enterprise in Ghana

except for the following enterprises which are reserved for Ghanaians:

- minor trading operations in markets, kiosks and petty trading;
- the operation of taxi and car hire services unless a non-Ghanaian has a minimum fleet of ten new vehicles;
- all aspects of pool betting businesses and lotteries, except football pools;
- the operation of beauty salons and barbershops.

Non-Ghanaians may operate in other areas in the following cases:

- joint enterprise with a Ghanaian partner, the non-Ghanaian invests foreign capital of not less than US \$10 000 or its equivalent in capital goods, by way of equity participation; or
- wholly owned non-Ghanaian enterprise where there is an investment of foreign capital of not less than US \$50 000 or its equivalent in capital goods, by way of equity participation.
- Either wholly or partly owned non-Ghanaian trading enterprise involving only the purchasing and selling of goods, foreign capital or its equivalent in capital goods worth at least US \$300,000 by way of equity participation.

Except for portfolio investments and an enterprise set up solely for export trading, (where there is no minimum capital requirement) the minimum foreign capital requirement outlined above ought to be complied with.

The Ghanaian Government has signaled strong support for the private sector and with the promulgation of the Ghana Investment Promotions Centre (GIPC) Act, there has been an improvement in the investment climate. A key feature of this Act is the elimination of the need for formal governmental approval of investments. As long as the investment satisfies the conditions in this Act, the investor can register with the Registrar of Companies and with the GIPC and commence business.

Discretionary and non-uniform incentives and benefits have also been clearly specified thereby contributing to greater transparency.

## Exchange Control

Ghana operates a floating exchange rate system. The existence of public banks and privately owned forex bureaux allows easy conversion. The present financial regime is relatively flexible and (subject to exchange control approval in specified circumstances), allows the easy transfer of foreign currency in and out of Ghana. A foreign investor may, subject to approval, operate a foreign currency account with banks in Ghana. Investments to which the GIPC Act applies are assured of unconditional transferability through authorised dealer banks in freely convertible currency of the following:

- dividends or net profits attributable to their investment;

- payments in respect of loan servicing where foreign loans have been obtained;
- fees and charges in respect of any technology transfer agreements registered under the GIPC Act;
- remittance of proceeds (net of all taxes and other obligations) in the event of the sale or liquidation of the enterprise or any interest attributable to the investment.

## Regulatory Framework

The trade regime is fairly liberalised. The GIPC governs almost all investments within the country except for mining and petroleum enterprises.

The Mineral and Mining Law regulates the mining industry. Under this law:

- where a mineral right is granted for reconnaissance, prospecting or mining a mineral, the Government will acquire a 10% interest in the rights and obligations of the mineral operations;
- no financial contribution will be paid by the Government;
- the Government will have the option to acquire (on such terms as shall be agreed upon between the holder of the right and the Government) a further 20% of the rights and obligations in any mining operations where any mineral is discovered in commercial quantities provided that where the operations are for the mining of salt, the Government will have the option to acquire a further 45% interest in the operations;
- any further Governmental participation will be on such terms as the parties may agree.

The Insurance and re-insurance industry is regulated by the Insurance Law, 1989 (PNDC L 227) as variously amended.

The banking industry is principally regulated by the Banking Act, 2004 (Act 673) and such Notices as may be issued by the Bank of Ghana from time to time.

The GSE was established in 1990 for trading in corporate equities and bonds, and government securities.

The Free Zone Act, 1995 (Act 504) regulates and promotes economic development of activities within the free zones.

The Government has accepted the obligations imposed under Article VIII of the International Monetary Fund's articles of Agreement. These stipulate that the Government will seek to achieve its balance of payments objectives through appropriate financial and exchange rate policies rather than through qualitative controls on its current account.

## Tariffs

Except where exempted, import and export duty are imposed on goods and services. The previously 4-tiered

import tariff was simplified to a 3-tiered structure of 25%, 10% and 0% in 1993 depending on the type of product imported.

## Intellectual Property

Protection is provided for by statute. Trademarks, designs and patents may be registered with the appropriate authorities.

## Incentives & Benefits

With the Government's promotion of investment, several incentives have been implemented including:

- that companies established as developers in the free zone are exempt from the payment of income tax on profits for the first ten years from the date of commencement of operations. After expiry of such ten year period, the rate of tax will not exceed a maximum of 8%;
- an investment allowance of 5% initially allowed in the year of investment in the mining sector (as a separate category of allowances), has been consolidated into the depreciation or capital allowances provided for. Various classes of depreciable assets have been created. Plants and machinery used in mining operations (which fall in Class 3) are entitled to be depreciated at 80% of the cost base of assets added to the pool during the basis period and thereafter, at 50% of the balance of the pool, if any.

Business losses in any particular year may be carried forward and offset against taxable income of the following year provided however that such loss may not exceed the allowable capital allowance for the year in question. All expenditure incurred during the prospecting and development phase (and even reconnaissance where is occurred) may be capitalised and deducted:

- tax holidays (from start of operations) of up to ten years in certain sectors such as rural banks, tree crops (e.g. cocoa, oil, palm, shea butter, rubber) and cattle ranching;
- firms may seek external guarantees such as those provided by the Multilateral Investment Guarantee Agency (MIGA);
- the freedom to repatriate profits in any currency;
- the legal protection of investments for example through a guarantee against expropriation;
- with regard to the procurement of visas and immigrant quota. The GIPC recommends to the Immigration Service, the grant of an initial automatic maximum immigrant quota for enterprises as follows –
- where the paid up capital is US\$10 000 but less than US\$100 000 or its equivalent in Cedis (quota 1) – maximum of 1 person;
- US\$100 000 but less than US\$500 000 or its equivalent in Cedis (quota 2) – maximum 2 persons;
- US\$500 000 or more or its equivalent in Cedis (quota 4) – maximum 4 persons.

The investor has the first choice as to the method of settlement of a dispute with the Government.

## Membership of Regional International Organisation

Economic Community of West African States, Organisation of African Unity, World Bank, International Monetary Fund, United Nations Organisation, World Trade Organisation and the British Commonwealth.

## Financial Indicators

During 2004, interest rates generally declined and stabilized with the benchmark 91-day Treasury bill rate falling slightly from 18.7% at the end of 2003 to about 17%. As at January 2005, official rates notified by the Bank of Ghana were as follows:

- Treasury Bills: 17.8%
- Bank of Ghana Prime Rate: 18.5%
- Base rate of commercial banks ranged between 24–26%
- Actual interest rates charged ranged between 31–36%.

On the whole increases in the process of goods and services and the cost of foreign exchange has remained stable.

## Medium-Term Prospects

The Ghana Government accessed the Highly Indebted Poor Countries (HIPC) Initiative (in 2002) and though internationally driven, the process is controlled internally with local priorities driving the disbursement and use of funds. The aim among others is to use the relief to reduce domestic debt and fund local government projects like schools, provision of potable water and health centres.

Under the conviction that the economy of Ghana needs to be managed effectively to enable wealth creation for the benefit of all Ghanaians, the Ghana Poverty Reduction Strategy (GPRS) has been adopted for the country. The policies and strategies are aimed at supporting growth and reducing poverty within a period of three years from 2003 to 2005. The Government has since sharpened its focus by the adoption of a three-pronged strategy namely, Human Resource Development, Private Sector Development and Good Governance to accelerate economic growth, enhance wealth creation and sustained poverty reduction.

Key economic indicators show that the economy remained resilient in 2004. For example:

- Real GDP grew at 5.8%, exceeding the projected growth of 5.2%. A real GDP growth rate of at least 5.8% has been projected for the year 2005;

- Year-on-year inflation declined to 11.8% at end December, 2004, marginally over the target but well below the 23.6% at end December 2003
- Average inflation declined from 26.7% in 2003 to 12.6% in 2004. It is expected to increase to about 14% by the end of 2005.

Mining (especially in gold) and the Quarrying sub-sector is projected to grow at 4.9%, manufacturing at 5.5% and water and electricity at 4.5%. Growth in the construction sector is projected to be robust at 7% in 2005 in view of the several construction projects being undertaken in the energy and road sectors including the West African Gas Pipeline project.

## Privatisation

The government's support for private sector activity has manifested itself in an accelerated privatisation programme, improved dialogue with the private sector, further liberalisation of the regulatory framework and the growth of the GSE.

The disposal of Government's minority share holdings in seven companies listed on the GSE to international fund managers and the listing of Ashanti Goldfields Corporation (AGC) on the GSE improved Ghana's image among foreign investors and boosted market capitalisation to US\$ 2.1 billion by the end of May 1994 (equivalent to 34% of GDP).

In 2004, the GSE performed remarkably well reflecting the improved macro-economic environment. The GSE ALL SHARE INDEX which is the main measure of market performance appreciated by 91.3% year-on-year. Although lower than in 2003, the index gained enough points to end the year as the best performing stock exchange in Africa and the GSE was among the best performing markets in the world.

Market Capitalization went up by 673.6 percent (boosted by the floating of shares of Anglogold-Ashanti) and was higher than the 2003 figure of 104.0 percent. The total volume of 104.4 million shares valued at 655.9 billion traded on the floor of the Exchange also exceeded the previous year's volume of trade of 96.3 million shares, valued at ₵389.3 billion. Prices of all listed companies appreciated on the Exchange except three, which did not register any movement at all.

## Petroleum Deregulation and Mitigating Measures

The Government of Ghana has taken the decision to deregulate the petroleum sector to free budgetary resources and allow it to cut down on borrowing and increase allocations to vital social services. Deregulation will allow the private sector to assume the role of service provider within a well-regulated environment. As part of the process, Government has had to align petroleum

prices with effect from February 2005. To mitigate the likely hardships that may arise due to the increases in prices of petroleum products and the full implementation of the deregulation policy, Government intends to introduce mitigating measures including the implementation of targeted social protection programmes.

# KENYA

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## MAIN AREAS OF PRACTICE

Corporate, commercial and business law of all kinds. In particular foreign investments, joint ventures, takeovers, mergers and reconstructions, banking and other securities. Taxation. Patents, trade marks, copyright, franchising and other intellectual property. Capital markets work including public issues of corporate debt and equity securities, privatisation, governmental and parastatal contracts, trade finance, and equipment leasing, mining and prospecting law. Labour and immigration law. Litigation in the High Court and Court of Appeal, arbitration and mediation, particularly insurance, construction and civil engineering. Conveyancing and property law including transfers, mortgages, sectional title properties and development leases. Private client tax and estate planning including wills, settlements and estate administration. Pension, provident fund schemes and retirement and employee benefits.

## DOING BUSINESS IN KENYA

### Type of Government

Multi-party democracy.

### Forms of Business Organisation

- Private or public limited liability company
- Joint Venture
- External Company (i.e. a branch of a foreign company)
- Partnership/limited partnership
- Sole trader

### Formation of a Business

Companies and external companies (branches) must be registered with the authorities in Nairobi.

A business has to register for various tax purposes, National Social Security Fund and National Hospital Insurance Fund. Business permits and trade licences are required for most activities. Some businesses such as banks, telecommunications and insurance companies require special licences.

### Taxation

Tax is levied on income of any person, whether resident or not, which is deemed to have accrued in or was derived from Kenya. From January 2002, tax credits are available to Kenyan citizens whose income was partly accrued or derived from another country. The top tax bracket is at 30%. The resident corporate tax rate is also at 30%. In addition, there is a resident withholding tax of 5% of the amount of qualifying dividend payable. The non-resident withholding tax rate on dividends is 10% of the amount payable and is 15% in respect of interest (except bearer instruments). The non-resident corporate tax rate is 37.5%. There are no withholding taxes on remittance of branch profits.

- Capital gains tax has been suspended. There is, however, a dividend compensating tax which is required to be paid by a corporate body which pays dividends out of untaxed profits.
- Valued added tax is charged at 16% on taxable supplies of goods and services.
- Kenya has double tax agreements with Sweden, Denmark, United Kingdom, Norway, Zambia, Germany, Canada and India.

## Foreign Investment and Exchange Control

Kenya welcomes foreign investment. All business activities are open to foreign investors. Only the insurance and telecommunications industries require any Kenyan co-ownership. Foreign investors may hold up to 75% of the shares of a company listed on the Nairobi Stock Exchange. Specific controls exist in order to regulate the ownership of agricultural land by non-citizens. There are no exchange control restrictions. The Central Bank is responsible for supervision of the currency. Residents may hold foreign currency accounts. Foreign exchange for eligible transactions is purchased from the commercial banks without any control. Eligible transactions include payments in respect of dividends, capital and interest on loans, current account transactions and proceeds on disposal of investments.

## Regulatory Environment

There is an active Capital Markets Authority.

The Monopolies Commission regulates the creation or strengthening of monopolies including acquisitions and takeovers of businesses where a change in control occurs between independent persons engaged in similar activities. There are statutory Capital Markets Authority and Nairobi Stock Exchange regulations governing issues and dealings in securities listed on the Nairobi Stock Exchange.

The Communications Commission of Kenya regulates the newly liberalised telecommunications sector.

## Intellectual Property

Protection is provided for by statute. Kenya is a signatory of the Paris and Berne Conventions, the TRIPS Agreement, the ARIPO (Harare) Protocol and the Madrid Agreement and Protocol.

## Registries

There are public registries for lands, companies, trade and service marks, designs and patents.

## Incentives

Other than tax incentives with regard to companies established as developers or operators in export processing zones, there are no special tax incentives granted to foreign investors.

## Membership of International and Regional Organisations

Kenya is a member of the East African Community (with Uganda and Tanzania), the Common Market for East and

Southern Africa (COMESA), the African Union, United Nations Organisation and the British Commonwealth.

## Settlement of Disputes

There is provision for enforcement in Kenya of certain foreign judgments and arbitration awards. Kenya is a signatory 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 1995 is now operative and embodies most of the provisions of the UNICITRAL model law.

# LESOTHO

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## MAIN AREAS OF PRACTICE

Commercial, corporate and business law, including company and business formations, contracts, building and engineering, insurance generally and third party insurance, intellectual property, business, liquor and other licences, investment and disinvestment, exchange control, financial planning, taxation, labour law and industrial relations, employment law. Conveyancing and property

law, including transfers, mortgages, property development, town planning, leases, servitudes, mining and building law. Private and family law, including wills, trusts and estates administration, estate planning and citizenship. Litigation, including appeal court, high court, subordinate court, administrative and other courts, arbitration and mediation, insurance, matrimonial, liquidations, insolvency and human rights.

## DOING BUSINESS IN LESOTHO

### Forms of business organisations

- Private or public limited liability companies
- External companies (being branches of foreign corporate bodies)
- Partnerships (which include consortiums and joint ventures)
- Sole proprietorships.

### Formation of a business

#### Companies

The private limited company is the most common entity used in practice:

- the minimum authorised and issued share capital is M1,000 (One Thousand Maloti);
- there must be a minimum of 2 shareholders (and a maximum of 50) with a minimum of 1 director;
- at least 51% of the share holding in the company must be held by Lesotho citizens in situations where specific 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 Public Officer must be resident in Lesotho unless there is a special dispensation;
- the financial accounts of the company must preferably be audited by an auditor registered to practice in Lesotho, though the Income Tax Department accepts without query financial statements from external auditors;
- the company registration process should not take longer than one month at a cost of approximately M3,500.00 (three thousand five hundred Maloti) which includes all fees payable to the Registrar of Companies but which does not cover licensing and related procedures;

## External Companies

A foreign company may register as an external company in terms of the Companies Act of 1967, and must do so within six months of opening a place of business. It will require the nomination of a chief agent, being a person who is either resident or maintains a full-time office within Lesotho, upon whom notices and processes can be served and further the nomination of the principal place of business of the company in Lesotho.

## Partnerships

Partnership agreements must be reduced to writing and signed by all the partners before a Notary Public, who shall attest same accordingly. These agreements are registrable in the Deeds Registry under the Partnerships Proclamation of 1957. A Partnership Agreement must likewise be cancelled in writing. Partnerships are restricted to twenty persons. The Proclamation essentially records the common law as applicable to Partnerships.

## Banks

The issue of banking licences is governed by the provisions of the Financial Institutions Act 6 of 1999. A minimum paid up capital of not less than M10,000,000.00 is required.

## Insurance Companies

Their establishment and operation is governed by the provisions of the Insurance Act, 1976, and regulations promulgated there under. A minimum issued share capital of M65,000.00 is required. There are also conditions laid down regarding the amounts of working capital required as well as the margins of solvency.

## Taxation

The Income Tax Act 1993, as amended, together with the Regulations promulgated there under apply –

### Tax rates

- Residents: First M30,000.00 at 25% .Thereafter at 35%;
- Non-Residents: 25%;
- withholding tax must be deducted at source at the standard rate on dividends, interest, royalties, natural resource payments, or management charge, being for a management or administrative service, and at 10% on the gross amount of any payment under a Lesotho-source services contract paid to a non-resident;
- capital gains tax does apply in Lesotho subject to certain exemptions;
- value added tax is payable on most goods sold and services rendered at the rate of 14%. Basic foodstuffs

are zero-rated. The registration threshold is turnover in excess of M500,000.00 per year.

## Exchange Control and Customs Union

Lesotho forms part of the Rand Common Monetary Area. Exchange control applies and is subject to the provisions of the Exchange Control Order and Exchange Control Regulations falling under 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 up to certain limits. It is also a member of the Preferential Trade Area and Southern African Development Community.

## Trading Licences

“The issue of licences is governed by the Trading Enterprises Order, 1993 and the Trading Enterprises Regulations 1999. Certain licences are restricted to local citizens or companies controlled by local citizens”.

## Intellectual Property

Protection is provided by statute (and there is a public Registry at Maseru) for patents, trade marks and designs. Protection is also provided by statute for copyright.

# MADAGASCAR

## MADAGASCAR CONSULTING INTERNATIONAL (“MCI”)

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## MAIN AREAS OF PRACTICE

Corporate, commercial and business law, especially foreign investments. In particular, MCI specialises in the following areas: minerals and mining; natural resources (including petroleum); infrastructure; industrial development (including free zone manufacturing); banking and finance law; maritime and international trade; non- and limited- recourse lending (“project finance”); public-private partnership (“PPP”) transactions; privatisation and restructuring; commercial real estate; construction and development; the taking and giving of security; employment law and industrial relations matters generally; taxation and revenue matters; pension schemes; environmental law; commercial litigation and arbitration.

## DOING BUSINESS IN MADAGASCAR

### Type of Government

Multi-party democracy. The President is head of state who appoints a Prime Minister as the head of the government. The legislature is divided into Parliament, comprised of Deputies, who are directly elected, and the Senate, whose Senators are appointed.

### Forms of Business

The corporate structures most relevant to the foreign investor in Madagascar are;

- Société à responsabilité limitée (SARL) – The equivalent of an English limited company
- Société anonyme (SA) – similar to an English public limited company
- Branch of a foreign company

The law governing the creation of an SA or an SARL was updated in 2003. Both SAs and SARLs must have a locally resident company officer, who may be a foreign national. Companies may be 100% foreign owned and dividends may be repatriated subject to payment of withholding tax.

Under the new law, there is no minimum number of shareholders for either an SA or an SARL. The minimum capital for an SA is FMg100,000,000 (approx US\$10,000) and FMg50,000,000 (approx US\$5,000) for an SARL.

A new “one stop shop” has recently been set up by the government to speed up the company incorporation process for foreign investors.

### Taxation

Income tax is deemed to be payable on all income earned and paid in Madagascar. The marginal rate is 40% which applies on all earnings over FMg1,500,000 per month. Employers are required to deduct this at source.

Employers are also required to make deductions to be paid into the state social fund.

Value added tax is charged at 20% on all goods and services, including rental agreements. This can be offset against VAT charged on taxable supplies.

A tax of 20% is payable on distribution of dividends. A withholding tax of 15% is charged on repatriation of dividends overseas.

Madagascar has double taxation treaties with France and Mauritius.

### Investment Incentives

Madagascar is trying to create a favourable environment for foreign investment and there are no significant barriers to entry. Two areas of investment are especially worthy of note:

#### Export Processing Zones (zones franches)

Operators in the textile, garments and apparel sector will find several incentives to locate in Madagascar, including:

- Duty and tax free import of all equipment and material;
- No withholding tax on repatriation of dividends;
- Listing as a preferential country under the US AGOA Act; and
- Exemption from certain provisions of the Employment Code, giving increased flexibility to respond to demand changes.

### **Mining**

Madagascar has vast mineral wealth, ranging from precious and semi-precious stones, gold and platinum to base metals such as nickel, copper and titanium.

Operators in the mining sector are governed by the Mining Code of 1999. Investments over US\$120 million receive the additional comfort contained in the Law on Large Mining Investments of 2002. This offers investors several advantages including:

- A simplified and reduced fiscal framework;
- A reduction in the royalty payable on added value operations;
- A simplified import regime for all equipment and materials for the project;
- Free movement of foreign currency in offshore accounts;
- Priority for external, hard currency debt repayments; and
- Government investment guarantees.

### **Real Estate**

Foreigners can now buy property in Madagascar. This law, published in 2003, sets out certain conditions, including certain specified categories for investment (eg tourism, mining, etc) a minimum investment of US\$500,000 and a maximum size of 3 hectares. These, and other conditions, can be waived in certain circumstances by ministerial decree.

In addition, foreigners can still obtain a 99 year lease should they not wish or qualify to purchase. The rent is usually either paid up front as a quasi-purchase, or in five yearly instalments. Leases of this kind represent real property rights and can (subject to their terms) be assigned, mortgaged, pledged or sold.

Land is a complex issue in Madagascar and any acquisition merits significant due diligence.

### **Intellectual Property**

Protection is provided by statute. There is a registry of trademarks operated by OMAPI, the Madagascar Bureau of Intellectual Property. OMAPI is responsible for registration and enforcement.

### **Employees and Labour Law**

Unemployment is high in Madagascar and labour is inexpensive and plentiful. However, companies may find that technical skills are harder to come by than in more developed countries. An increasing number of people speak English.

Labour law generally favours the employee. Although Malagasy labour law is not as sophisticated as more developed jurisdictions in respecting employees rights, some elements such as termination can become very costly.

### **Environmental Law**

Madagascar has a unique environment and the government is working hard to ensure that this legacy survives for future generations. The most important law for foreign investors is known as the Décret Mécier, which was updated in 2004. This law sets out how any investment must attempt to align itself with the environmental priorities of the country. The law is not intended to stifle development or investment, but to act as a guideline for best practice.

### **International Treaties**

Madagascar has acceded to the New York convention on the enforcement of foreign arbitral awards; the Berne convention and the TRIPS agreement on Intellectual Property; the UN convention on the law of the sea; the CITES convention on trade in endangered species; and the UNFCCC and Kyoto Protocol on climate change, amongst others.

### **Membership of International Organisations**

Madagascar is a member of the Bretton Woods organisations, the WTO, the African Union and COMESA. It has recently become an observer member of SADC.

# MALAWI

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## MAIN AREAS OF PRACTICE

Corporate, commercial and business law of all kinds in particular privatisation, foreign investments, joint ventures, takeovers, mergers and reconstruction, banking and other securities, corporate finance, international finance, patents, intellectual property, insurance, exchange control, labour law and industrial relations, property law, mining, building law, private and family law, including wills, trusts and estate administration, planning, citizenship and immigration, litigation, Revenue, constitutional and criminal law.

## DOING BUSINESS IN MALAWI

### Type of Government

A Multi party democracy since 1994.

### Investment

The Government of Malawi is anxious to attract foreign investment in both public as well as private sectors in Malawi and is seeking to encourage the private sector to assume the leading role in developing the national economy. Malawi has opened up and liberalised its economy and is continuously reviewing the investment environment and policies to make the investment climate regionally competitive and conducive. Malawi has set up EPZ's.

The Government of Malawi is pursuing stable macro-economic policies by exercising fiscal and monetary

discipline in terms of its international obligations and maintaining a realistic rate of Malawi Kwacha, the country's currency and high interest rates. Specific measures to deregulate the public and private sector and create new investment opportunities and environment have already been enacted. A number of public companies have been privatised. Many public companies are to be privatised.

### Forms of Business Organisation

- Private or Public limited liability company
- External company (i.e. a branch of a foreign company)
- Partnership Trading Trust
- Sole Trader

### Formation of a Business

Companies, both local and external must be registered. Local company must have a registered office in Malawi and an external company a documentary agent. For companies there must be a majority of at least 3 local directors on the Board unless exempted. Businesses not operating as incorporated companies or trusts are required to have their business names and the name(s) of the proprietor(s) of the business registered. Licences are required for certain types of business and other information is required for various purposes such as income tax, service and other taxes.

### Repatriation of Foreign Investment

Exchange control still exists in Malawi and is managed by the Reserve Bank of Malawi. For data collection purposes, foreign investment capital whether in the form of equity or loan needs to be registered with the Reserve Bank of Malawi. 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 and management and Consultancy contracts with non-residents, licensing and royalty arrangements and similarly technology transfers require prior permission of RBM. These approvals are granted in respect of transactions concluded on internationally prevailing terms, conditions and standards.

### Taxation

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

- 30% for companies and trading Trusts (35% for branch companies) and 21% for life assurance businesses;

- 25% for Ecclesiastical, Charitable or Educational Institutions of a public character or Trust;
- graduated rates from 0% up to 30% (based on annual income) for individuals and partnerships;
- 0% for approved companies operating in export processing zone;
- 0% for 10 years or 15% for companies operating in priority industries.

Almost all taxpayers operating businesses are required to pay estimated advance tax on a quarterly basis.

Although operating losses can be carried forward indefinitely, minimum tax based on turnover is payable for persons carrying on businesses. Malawi is putting together a programme for Indirect Taxation (VAT) on sale of goods.

There are other taxes including, amongst others:

- Duty – charged on imports of goods other than these originating from the Comesa Group of countries;
- Surtax – charged on imports, services and locally manufactured goods, Capital Gains Tax – any gain from sale or voluntary disposition of a capital is to be included in assessable income;
- Rates – Taxes on land and buildings based on valuation is payable to local authorities;
- Mineral Rights Duty – payable for an exclusive prospecting licence;
- Stamp Duty – Advalorem duty is payable on transfer of land and buildings, leases, securities (not capable of trading in the capital market);
- Fringe Benefits Tax – tax on perks;
- Training Fund Tax – 2% on basic payroll of employees.

When making certain payments such as rental, royalties, fees and commission, bank interest and others, persons are required to withhold tax in accordance with the rates specified and remit to the Malawi Revenue Authority.

The Government of Malawi is harmonizing the duty, surtax and excise over a period of time in accordance with its regional obligations with COMESA and SADC Trade Protocols with a view to reducing taxes payable by the year 2008 in respect of goods originating from COMESA and SADC Group of Countries.

Malawi has entered into double tax treaties with various countries.

## Investment Incentives

There are other allowances and incentives given/allowed to businesses including, amongst others:

- Capital allowances – in respect of capital expenditures e.g. 40% investment allowance in the 1st year in respect of new buildings/plant machinery to a manufacturer;
- Mining allowances;
- Bad and doubtful debts;

- Rental paid in respect of property used in the production of income;
- Interest incurred in respect of property used in the production of income;
- Operating losses subjected to a minimum tax;
- Export allowances for non-traditional export and deduction for international transport costs;
- Training allowances of extra 50% for training Malawians for approved courses;
- Malawi is reviewing investment incentives to foreign and local investors. These are to be published shortly.

## Intellectual Property

Protection of patents, certain trademarks, design and copyrights is provided for by Statute.

## Registries

Registries exist for trademarks, designs, patents, companies, business names and ownership of immovable or real property.

## Import Licences

In order to pay for imports prior permission is required from authorised Dealers who process applications expeditiously. Any importation to the value in excess of US\$2000 requires to be inspected by SGS.

## Legal System

Based on English Common Law

## Employees

The local labour force is plentiful in Malawi. Wages in Malawi are low compared with those in other African countries.

## Residence Work Permits

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. Where level of investment is up to US\$100,000 then an investor can obtain employment permits for 2 key positions. In the case of investment in excess of US\$100,000 then the requirements of the investor are considered more seriously.

# MAURITIUS

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## MAIN AREAS OF PRACTICE

General law including corporate and commercial, finance and banking, taxation, shipping, insolvency, building, intellectual property, litigation, insurance, textile, sugar industry, labour law and privatisation.

## FINANCIAL SERVICE CENTER: MAIGROT KOENIG

Partners Sir Henry Garrioch  
Vincent Koenig SA  
Thierry Koenig  
Bernard d'Hotman de Villiers

## MAIN AREAS OF PRACTICE

This firm is an association of the oldest firms of Attorneys and Notaries Public in Mauritius and is the first law firm to have obtained a Certificate in the Financial Services Commission for international legal services. Due to the nature of its Certificate, Maigrot Koenig deals exclusively in the offshore field.

## DOING BUSINESS IN MAURITIUS

### Type of Government

Multi party democracy

### Forms of Business Organisation

- Limited or unlimited liability company
- Private or Public
- Partnership (“Sociétés Civiles” & “Société Commerciale”)
- Foreign Company (branch)
- Company holding a Category 1 Business Licence (private, public, limited life or partnership)
- Company holding a Category 2 Business Licence (private, public, limited life or partnership)
- Protected Cell Company
- Limited Life Company
- Investment Company
- Trusts
- Sole trader

### Taxation

The Mauritian income tax act is based on English income tax law. The income tax year in Mauritius starts on July and ends in June of the following year. Companies are liable to pay income tax on their income at a flat rate of 25%. A company that is incorporated in Mauritius or has its controlling interest in Mauritius, is considered for tax purposes to be a resident company. Various tax incentives are granted to Companies. Companies holding Tax Incentive Certificates are liable to tax at a reduced rate of 15% whilst listed Companies are liable to tax at a rate of 25%.

There are other forms of taxation namely sales tax, registration duty, and land transfer tax, land development tax, campment site tax, national pension fund, capitalisation, capital gains (morcellement) tax and Value Added Tax.

Individuals are taxed on income (after deductions) derived as follows:

Mauritian Rupees (MUR)  
15% on the First 25,000  
25% on the remainder.

### Restrictions on Foreign Investment

Mauritius generally welcomes foreign investment and has abolished exchange control. However, under the Non-Citizen Property Restriction Act, any foreigner must

obtain the Prime Minister's approval before holding or acquiring any immovable property or interest in a corporation holding immovable property in a Mauritian company.

## **Intellectual Property**

Protection is provided by statute.

## **Mauritian Companies holding a Category 1 or 2 Global Business Licence**

The Financial Service Commission (FSC) is the body through which applications to set up Companies holding a Category 1 or 2 Global Business Licence is channeled. The FSC provides that only those statutorily approved business activities may be carried out by such companies. These included inter alia, banking, insurance, funds management, investment and funds.

## **Incentives for Companies holding a Category 1 Global Business Licence**

There is no withholding tax on dividends paid from income derived from a Company holding a Category 1 Global Business Licence (GBL1) activity. A company deriving income from its GBL1 activities is liable to tax at a rate of 15% but benefits from a deemed tax credit of 80% of the tax payable. Expatriate staff of GBL1 companies are granted a reduction of 50% on the income tax payable on emoluments derived by them from the company. GBL1 companies are exempt from paying duties, levies or fees in terms of the Land Act, Licensing Act, Local Government Act, Registration Duty Act, Stamp Duty Act and Transcription and Mortgage Act.

## **Foreign Company**

A foreign company incorporated under the laws of any country other than Mauritius may, where it is authorised by the laws of that country, apply to the Registrar of Companies to be incorporated as a foreign company in Mauritius. Various documents need to be lodged in order to be incorporated as a foreign company.

## **Double Taxation Treaties**

Mauritius has double taxation agreements with various countries including France, United Kingdom, Malaysia, South Africa, Germany, Zimbabwe, Sweden, India, China, Pakistan, Namibia, Swaziland, Italy, Madagascar, Singapore, Botswana, Luxembourg, Sri Lanka, Indonesia, Thailand, Oman, Kuwait, Belgium, Mozambique, Nepal and Cyprus. Double taxation treaties have been negotiated by Mauritius with various other countries and are awaiting ratification. In order to benefit from the treaties,

the Companies holding a Category 1 Global Business Licence must obtain a Tax Residence Certificate. Certain requirements need to be fulfilled before such certificate is granted such as the need to have at least a quorate number of Directors resident in Mauritius, local secretary and auditor.

## **Companies holding a Category 2 Global Business Licence**

The Global Business Companies Category 2 has a simplified company structure which allows, inter alia, for one-man Company, dispensation of audit, secretary and directors. The Company must have a Registered Agent at all times and a registered office in Mauritius. These Companies are not liable to income tax and there is no withholding tax on dividends paid by the Companies. Being tax exempt these Companies cannot benefit from double taxation relief under the tax treaties.

## **Trusts**

Trust Act 2001 provides for various types of Trusts which may be set up by residents and non-residents such as charitable, discretionary, purpose and trading trusts. Flexibility is provided under the Trust Act in determining the applicable governing law. A Trust may carry on a Qualified Global Business once a Category 1 Global Business Licence has been obtained. No express provision is made under the law for registration of a Trust.

## **Open Ship Registry**

The Merchant Shipping Act was amended in 1992, so that shipping could also benefit fully from the advantages offered to offshore businesses. The main feature of the new legislation was the introduction of an open registry, the parallel registration of ships and bare boat chartering, and the regulation of mortgages of ships.

# MOROCCO

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## MAIN AREAS OF PRACTICE

Corporate law, banking law, insurance law, civil law, intellectual property law, labour law, maritime law, stock exchange law, telecommunications law.

## DOING BUSINESS IN MOROCCO

### Political System

Constitutional Monarchy. There is a division of powers each independent from the other.

The legal system is based primarily on codes and statutes that are intended to constitute the totality of the law. The Commercial and Civil Code are to some extent based on the French system as a result of colonial ties. Personal issues such as marriage, divorce and inheritance are governed by the Shari'a which is derived from the Islamic religion.

### Investment Climate

The Moroccan government generally welcomes foreign investment and the various investment codes are designed to stimulate such investments. Because of its insistence on Moroccan shareholding and control, the Moroccanization law of 1973 tended to discourage some potential investors. The decree promulgated for the application of the Moroccanization law has, however, been repealed with effect from January 1, 1990.

Consequently, there are no longer activities for which foreign investment is prohibited or restricted. Foreigners can now invest in any sector available to Moroccans. Incentives granted by the investment codes are available in most cases to 100 percent foreign owned business.

The opportunities for foreigners to invest in Morocco are particularly good in sectors where the foreign investor can contribute specialized techniques or skills or provide employment for a significant number of local workers, thereby helping to reduce unemployment while benefiting from the relatively low labour costs in Morocco.

### Possible Business Structure

All types of business structures are available. The most commonly used ones are the joint stock company (société anonyme) necessitating a minimum capital of 300.000 dirhams and 5 shareholders or the limited liability company (société à responsabilité limitée) requiring a minimum capital of 100.000 dirhams and at least one shareholder.

Companies can be owned 100% by foreigners who can be individuals or companies without an obligation to have a local partner.

### Prior Approval or Registration

There is no specific procedure for the registration or approval of foreign investment.

However, the Exchange Control Office should be notified with the inward investment within 6 months of the said investment so the investor benefits from the repatriation of capital and earnings.

### Tax system

The principal taxes are as follows:

#### Income taxes:

- Corporate and personal income tax
- Capital gains tax

#### Transaction taxes:

- Value added tax
- Customs duties
- Stamp taxes
- Registration taxes

**Property taxes:**

- City tax
- Business tax

**Free trade zones**

There is a free trade zone at Tangier (called Tangier Free Zone or TFZ) into which merchandise may be imported duty free and company can be incorporated. Several foreign companies have already invested in TFZ.

**Recent laws**

- Commercial Code, Joint Stock Companies and Limited Liability Companies law have recently been amended into more complete up to date laws;
- Industrial Property law is not yet in force but is more in accordance with the WTO rules;
- Competition law has been recently enacted and encompasses the creation of a Competition Council in charge of control of fair competition market rules;
- Telecommunication law has opened competition in the field and created the ANRT which is the controlling body of good practice in the telecommunication activity.

The state owned company of Itissalat Al Maghrib ( IAM) has no monopoly anymore over GSM lines. A second line GSM has been granted to a consortium composed of Portugal Telecom, Telefonica and local institutional investors.

VSAT licences were granted last year and 35% of IAM capital has been privatised and bought by French group Vivendi.

**Conclusion**

Morocco offers good investment opportunities and a structured legal system enabling a foreign person (whether individual or entity) to invest without being concerned by the necessity to have a local partner, to not be able to invest in any kind of activity, to not be able to repatriate its capital or earning.

Most importantly, further to a recent speech of the King, there will soon be one administration where all the formalities relating to foreign investment will be concentrated to avoid confusion and waste of time and energy for the foreign investor.

This certainly explains why a number of South African investors have already invested in Morocco and our team provides them with legal assistance.

# MOZAMBIQUE

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### MAIN AREAS OF PRACTICE

**General Corporate and Commercial Law** – Incorporations, reorganization and restructuring; Relationship with competitors, suppliers and customers; Contract law; Foreign investment projects; Liquidation and dissolution of companies; Privatisations.

**Mergers and Acquisitions** – Acquisition and sale of companies; Take-Over; Mergers and off-spins; Joint venture and strategic alliances; Management buy-outs; Due diligence and legal audit reports.

**Banking and finance law** – Banking and finance products and services; Equity and equity-linked issues; Asset finance; Project finance; Corporate finance; Lease finance; Investment funds; Cross border transactions; Investment banking.

**Real Estate** – Purchase, sale and development of real estate; Construction law; Development of real estate projects; Real estate financing structures; Leases; Real estate funds; Urban planning.

**Bankruptcy** – Moratorium, bankruptcy and insolvency proceedings; Debt restructuring.

**Intellectual Property** – Trademark, patent and copyright protection, Intellectual property contract; Register arrangements; Litigation on infringement; Brand infringement and product imitation.

**Tax Law** – International tax planning; Tax planning; General tax advice; Taxation on real estate investment; Taxation on financial instruments.

**Litigation** – National and international arbitration; Company and commercial litigation; Environmental, telecommunications litigation; Tax litigation.

**Insurance** – Regulatory insurance issues; Insurance products and services; Incorporation and restructuring; Cross-border insurance services.

**Capital Markets** – Initial public offering (IPO); Public offerings; Private and public placements; Capital market and security regulations; Stock market flotation; Underwriting and listings; Derivatives.

**Labour and Employment** – Senior management contracts; Collective dismissal; Pension schemes; Negotiations with unions; Restructuring of work force; Social security; Labour audits; Pension funds.

**Public Law and Regulatory Compliance** – Constitutional and administrative law; Environmental law; Energy; Pharmaceutical law; State subsidies; Procurement law.

**Aviation and Maritime Law** – Contractual and financing arrangements; Purchase, sale and lease; Regulatory matters and licensing; Arbitration.

**Information Technology** – Telecommunications law; Media law; Computer and software law; Licensing and regulatory issues; Contracts and joint venture; Data protection.

### The International Connection

Our firm is a result of the association between the Mozambican lawyers H. Gamito and Pedro Couto and the Portuguese Law firm Gonçalves Pereira, Castelo Branco & Associados and though the Portuguese firm is part of the international law firm that was created on September 22, by the integration of the law firms Cuatrecasas from Spain and Gonçalves Pereira, Castelo Branco from Portugal.

The combined resources of the integrated law firms are more than 500 lawyers and 16 offices in 5 different countries (Mozambique, Portugal, Spain, the United States and Belgium).

In addition both law firms are members of an Alliance of firms, including “Machado Meyer, Sendacz e Opice” from Brazil and “Pérez Alati, Grondona, Benites, Arntsen & Martinez de Hoz” from Argentina.

## DOING BUSINESS IN MOZAMBIQUE

### Basic information

Name	Republic of Mozambique
Political System	Multi party
Population	19,420.036
Language	Portuguese
Natural resources	Hydroelectric energy, natural gas, coal, minerals, wood and fishery.
Main Exports	Prawns; Cotton; Caju; Sugar; Tea;
Currency	Metical (MT)
GDP Growth	7% (2003)
Inflation	14% (2003)

### Preferential trade access

Mozambique is eligible for duty-free export quotas to EU markets (under the Lome Convention) and also the US and other developed economies under the GPS.

### Treaties and bilateral agreements

- New York Convention on Recognition and Enforcement of Foreign Arbitrage Awards;
- Lomé IV;
- Investment Protection Conventions with: Argelia, Egypt, Italy, Indonesia, Mauritius, Portugal, South Africa and Zimbabwe;
- Double Taxation Treaties with: Portugal and Mauritius.

Mozambique is a codified legal system based on the principles of the Roman Dutch Law.

In Mozambique there are two normative bodies par excellence, which are:

- The Parliament (Laws); and
- The Council of Ministries (Decrees).

The hierarchy of the laws in Mozambique is:

- Constitution; Laws; Decree; Ministerial Diplomas.

In a conflict of Laws the following applies:

- The laws of a superior hierarchy prevail over the laws of a inferior hierarchy (“lex superior derogat legi inferiori”);
- If the laws are of the same hierarchy the most recent one prevails over the oldest one (“lex posteriori derogat legi priori”);
- But in any case a special law (that specifically applies to a special situation) prevails over a general law (“lex specialis derogat legi generali”).

### Forms of business organisations

- Private limited liabilities companies (Closed Corporation and Joint Stock Corporation)
- Government owned companies
- Individual trader
- External companies (branch or representation of foreign companies)

### Investment in Mozambique

The following guarantees or benefits are offered to investors:

- Freedom to import equity or borrow to carry out investment;
- Remittance of funds abroad;
- Tax incentives and benefits;
- Repatriation of capital invested upon liquidation or sale, total or partial, of goods or rights of an investment undertaking;
- Just and equitable compensation in event of expropriation based on national interest;
- Recourse to international arbitration of the ICC or the ICSID.

### Membership of International and Regional Organisations

ACP, AFDB, AU, C, FAO, G-77, IBRD, ICAO, ICCt (signatory), ICFTU, ICRM, IDA, IDB, IFAD, IFC, IFRC, IHO, ILO, IMF, IMO, Interpol, IOC, IOM (observer), ISO (correspondent), ITU, MIGA, MONUC, NAM, OIC, ONUB, OPCW, SADC, UN, UNCTAD, UNESCO, UNHCR, UNIDO, UNMISSET, UPU, WCO, WFTU, WHO, WIPO, WMO, WtoO, WTO.

# NAMIBIA

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## MAIN AREAS OF PRACTICE

Mergers and acquisitions, banking and finance, insurance, intellectual property, litigation and arbitration, energy law, corporate law, property law and conveyancing, employment and labour law, mining law, company formations, registration of trusts, trademarks and patents, family law and debt collections, law of the sea.

## DOING BUSINESS IN NAMIBIA

### Types of Government

Multi party democracy.

### 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 Business

Companies, close corporations as well as external companies (branches thereof) must be registered with the Registrar of Companies in Windhoek. The trustees

of business trusts do not need any authorisation by the authorities before they can commence their duties and the regulation of trusts is minimal.

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.

### 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 tax rate of 35%. Individuals are taxed on a sliding scale. The maximum tax rate for individuals is 36%. Insurance companies are effectively taxed at 14% of investment income, Mining companies tax rate is 37.5%, while diamond mines are effectively taxed at 55%. 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 of 10%. There is no capital gains tax payable, no estate duty is payable.

Non-resident shareholder's tax of 10% is deducted from dividends received by non-resident shareholders that do not carry on business in Namibia. Royalties paid to non-residents are subject to a 10.5% withholding tax.

- 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;
- Introduction of loan funds from abroad is subject to specific exchange approval.

Double tax agreements may override these withholding taxes as well as taxation of deemed source income. There are double tax agreements with France, Germany, India, Mauritius, South Africa, Romania, Russia, Sweden and United Kingdom.

VAT is charged as an effective rate of 15%.

### Foreign Investment

Namibia welcomes foreign investment and virtually all business activities are open to foreign investors, for Namibian citizens certain exchange controls exist by virtue of Namibia's membership of the Common Monetary Area, which includes South Africa, Lesotho and Swaziland. Foreign ownership of agricultural land is however regulated.

Namibia has introduced the Foreign Investment Act (Act 27 of 1990), which affords protection to foreign investment in Namibia and introduces an Investment Centre within the Ministry of Trade and Industry in order to streamline and encourage foreign investment into Namibia. Foreign nationals are awarded protection by this legislation by among other matters being guaranteed the repatriation of funds and interest invested in Namibia.

New enterprises that export to countries outside the South African Customs Union (SACU) can apply for EPZ status. The benefits of an EPZ enterprise are:

- Relief from Corporate Income Tax, Import duties, VAT, Stamp duties, but excluding tax on employees' income and withholding tax on dividends;
- Training grants of 75% of training costs;
- Foreign currency bank accounts free of exchange control;
- Relief from certain Labour Act provisions.

### **Regulatory Environment**

A Competitions Bill has been published for comment and is expected to become law later in the year. The Bill once promulgated will seek to prevent restrictive business practices and creation of monopolies. There is no other legislation regulating acquisitions and takeovers, other than that provided by the Companies Act, which is based on the South African Companies Act.

### **Intellectual Property**

Protection is provided by statutes for Patents, Trademarks, Copyrights and Designs.

### **Registries**

There are public registries for Trademarks, Designs and Patents. All transactions concerning immovable property, concerning the transfer and/or mortgage of immovable property is registered with the Registrar of Deeds in Windhoek.

### **Tariffs and Trade**

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).

Namibia has been designated as a country eligible to receive the benefits under the US Government African Growth and Opportunity Act, this makes it possible for certain items manufactured in Namibia to receive duty free treatment for export into United States of America.

An agreement has been concluded between the Members of the Southern African Development Community (SADC) (South Africa, Swaziland, Lesotho, Botswana, Namibia, Zimbabwe, Mozambique, Angola, Zambia, Malawi, Tanzania, Mauritius, Democratic Republic of Congo and Seychelles) providing for the mobilisation of trade and establishment of a free trade area.

### **Incentives**

Various incentives have been created in Namibia, specifically in the manufacturing industry, also making possible Export Processing Zone incentives.

### **Membership of International and Regional Organisations**

Namibia is a member of the Southern African Customs Union, The Common Monetary Union, SADC, World Bank, International Monetary Fund, Organisation of African Unity, United Nations Organisation, The World Trading Organisation and The British Commonwealth.

# NIGERIA

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## MAIN AREAS OF PRACTICE

Corporate law, corporate restructuring (including privatisation transactions), custodial services, stock issues, foreign investment laws, mergers and acquisitions, taxation law, aviation law, telecommunication law, private and family law (including matrimonial law, wills, trusts, probate and estates administration), mineral law, labour law, industrial relations, oil and gas law, maritime law, environmental law, insurance law, civil litigation, intellectual property, assets and project finance, property law, building and construction.

Telecommunication, Broadcast and Media Law:

- Review of existing Telecommunications Laws and Nigerian Communications Commissions Act, 2003;
- Assisting in securing type approval licences from Nigerian Communications Commission;
- Review of contracts for the operations and maintenance of Private Telecommunications Network;
- Review of financial agreements used in the telecommunications industry;
- Advice on regulatory matters, review of co-location or infrastructural sharing agreement;
- Review of licensing conditions and commercial agreements; and
- Commercial litigation.

## DOING BUSINESS IN NIGERIA

### Type of Government

Presidential Multi-party Democracy

Nigeria is a federation of 36 states with a federal capital territory in Abuja. It is governed by a federal constitution which came into force on May 29, 1999. The country is a republic and operates a presidential system of government. The 1999 constitution recognises three arms of government – the Executive, Legislature and the Judiciary.

The Federal Government is headed by an elected President who governs through a cabinet comprised of the Vice-President, his ministers in Government and other public officers of the Federation. The States are headed by Governors who also govern through the cabinet comprising the Deputy Governor, the State Commissioners and public officers. The local government is the third tier of government which administers the affairs of government at the local level.

The Legislative arm is bicameral and consists of the Senate and the House of Representatives. The States have their Houses of Assembly which have powers to make laws.

There is an independent Judiciary which ensures that the rights framed in the constitution are upheld and enforced.

### Forms of Business Organisation

- Private limited liability company and public liability company
- Company limited by guarantee
- Unlimited liability company
- Sole proprietorship
- Foreign companies
- Partnership

### Formation of Business

Local and foreign companies must be registered by the Corporate Affairs Commission (CAC) whose headquarters is located at the Federal Capital Territory, Abuja. A foreign company must register a subsidiary company in Nigeria and until this requirement is met such a company cannot do business in Nigeria.

All new companies with foreign participation are also required to register with the Nigerian Investment Promotion Council (NIPC) before commencing business. The Immigration Act, 1963 also requires foreign investors to obtain Business Permit and Expatriate Quota Positions

from the Federal Ministry of Internal Affairs. Registered companies and business enterprises are regulated by the provisions of the Companies and Allied Matters Act, 1990.

## Taxation

Taxes are levied upon the profits from trade or business of a company. The corporate tax rate is 30% but for small companies, i.e. with turnover of N1m or less, the tax rate is 20% for the first five years of business (effective from January 1, 1998).

Any dividend made by a Nigerian company (except for small manufacturing companies) is subject to withholding tax of 10% but any dividend paid in form of scrip/bonus shares is not taxable. A tax clearance certificate for three years preceding the current year is essential for business with government agencies and parastatals.

Income earned by expatriates working in Nigeria or by expatriates outside Nigeria for work performed in Nigeria is liable to Personal Income Tax in Nigeria, under the Personal Income Tax Decree No. 104. The Act stipulates that income from paid employment shall be deemed to be derived from and taxable in Nigeria where:

- The employee is in Nigeria for a period or periods amounting to 183 days or more in any 12 month period;
- The employer is in Nigeria and the duties of the employment are wholly performed in Nigeria.

Recently, the Internal Revenue authorities in various states, as part of their increased revenue generation efforts, have been negotiating "deemed salary" figures for expatriates working in the country with their respective employers.

The negotiated salary differs among expatriates depending on their nationality, job classification and nature of work performed. The salary ranges between N3.5million and N8.0million per annum. These amounts form the basis of taxing the expatriates, irrespective of the actual salaries of the expatriates. Tax payers are also subject to capital tax gains of 10% on the disposal of assets, including assets outside Nigeria. With effect from January 1, 1998, capital gains arising from the sale of stocks and shares is exempted from payment of capital gains tax.

The value-added tax (VAT) was introduced in 1994 and it is a tax of 5% on all taxable goods and services. Goods exempted include newspapers and magazines, baby products and basic food items.

An education tax of 2% of assessable profits is imposed on all companies incorporated in Nigeria. Petroleum profits tax is payable at the tax rate of 85% for all companies engaged in upstream petroleum operations in Nigeria.

Property tax is also paid on real property which is assessed by the respective state governments.

Nigeria also has double taxation agreements with Great Britain, Romania, Canada, France, Netherlands, Belgium and Pakistan.

## Foreign Investment

Foreign investors are welcome in Nigeria and with the new dawn of democracy, the number of investors in Nigeria has increased.

The introduction of the NIPC (Nigerian Investment Promotion Commission) Act No. 16 of 1995 welcomed and encouraged foreigners to invest in Nigerian enterprises.

Foreigners may have majority shareholding in Nigerian enterprises but are exempted from the following businesses:

- Production of arms and ammunition etc
- Production and dealing in narcotic drugs and psychotropic substances
- Production of military and paramilitary wears

Foreign investors are guaranteed unconditional transferability of their dividends, profits and loan repayments. The Law gives protection against nationalisation and expropriation of business interests except where this is carried out in the national interest or for a public purpose. If this happens, then fair and adequate compensation must be paid. Foreigners who also bring investment capital (cash transfer or fixed assets importation) into Nigeria must obtain "Certificate of Capital Importation" from authorised dealers. Where equipment is brought in a valuation certificate is required from the Federal Ministry of Industries, in order to be entitled to transfer dividends or profits attributable to investment out of the country.

A foreigner wishing to establish a business may also buy shares in a Nigerian company in any convertible currency.

## Exchange Control

The Foreign Exchange (Monitoring and Miscellaneous Provisions) Act No Decree 17 of 1995 (FEMMP) liberalized dealings in foreign exchange which was facilitated by the establishment of the Autonomous Foreign Exchange Market (AFEM) which later metamorphosed into the Inter-Bank Foreign Exchange Market (IFEM).

The FEMMP provides that, except where a transaction is prohibited by law, any transaction adequately supported by appropriate documentation shall be for the purchase of foreign exchange in AFEM/IFEM.

Its major highlights are:

- Retention of foreign currency in domiciliary accounts;
- Permission of payment for foreign equity investment with cash or equipment, machinery, spare parts, raw materials and other business assets;

- Relaxation of control on dividends and capital repatriation;
- Procurement and repayment of foreign loans and interests thereon without prior ministerial approval.

### The Dutch Auction System

The Dutch Auction System (DAS) was re-introduced to replace the IFEM. It is designed to achieve a realistic exchange rate for the Naira, which will stem the excess demand for foreign exchange, conserve the dwindling external reserves and achieve a realistic exchange rate for the Naira.

DAS was conceived as a two-way action system in which both the Central bank of Nigeria and authorized dealers would participate in the foreign exchange market to buy and sell foreign exchange.

### Domiciliary Accounts

Corporate bodies, individuals and firms can maintain and are allowed to operate domiciliary accounts in an internationally convertible currency in any bank in Nigeria. Holders of these accounts are given the discretion to retain foreign currencies in the account or have these funds converted to Naira. However, any cash lodgment in a domiciliary account in excess of US\$10,000 can only be withdrawn from the account in cash.

### Remittance of Profits

The Nigerian Investment Promotion Commission (NIPC) Act guarantees foreign investors the unrestricted transferability of dividends or profits (net of tax) attributable to foreign investment in Nigeria and capital repatriation in the event of liquidation. Expatriates working in Nigeria can remit 100% of their income net of tax as personal home remittance. However, such expatriates are to obtain tax clearance certificates covering the amount to be remitted.

### Regulatory Framework

The Securities and Exchange Commission (SEC) is empowered to regulate the Nigerian capital market and its operators. Every merger, acquisition or business combination must be referred to the SEC for its approval before the scheme can be sanctioned by the court. The Central Bank of Nigeria has authorized all banks in Nigeria to recapitalize their equity to a minimum sum of N25,000,000,000.00 (Twenty five billion Naira) by December, 2005. This will also lead to an increase in shareholders funds. In order to achieve this base, quite a number of banks in the country are either merging or they are to be acquired by stronger banks. This has also led to most banks going to the capital market to sell their shares to increase their capital and also to ensure that they are at a vantage position before merging with other banks.

The main industries in the country have regulations governing their operations e.g. petroleum, telecommunications, power and steel, banking, mortgage and financial institutions among others.”

### Investment Incentives

Nigeria offers many incentives to business entrepreneurs to facilitate investment and attract foreign capital into the country.

They include the following:

- Tax relief granted for a period not more than 5 years for companies classified as pioneer industries. Pioneer industries are those whose industry is essential for economic development of the country.
- Tax incentives for research and development which allow a 20% investment tax credit on their capital expenditure. This encourages companies to invest in research and development activities which boost the economy and enhance development of industrial technology.
- 25% investment tax credit for companies engaged in the manufacture of locally made spare parts, tools and equipment. Taxpayers who purchase locally made tools and equipment are similarly entitled to 15% investment tax credit on such fixed assets.
- Industrial plant and machinery brought in to replace old ones are to enjoy a once and for all 95% capital allowance. The balance of 5% will be retained till the assets are disposed of which ensures such assets will not attract annual allowance.
- Tax holiday for 5 years on the dividends from small manufacturing companies. Small manufacturing companies are those with annual turnover of less than N1million.
- To enhance the country's tourism potential, 25% of the income in convertible currencies derived from tourists by hotels shall be exempted from tax provided such income is put in a reserve fund to be utilised within 5 years for the building or expansion of new hotels, conference centres and new facilities for tourism development.
- In its determination to improve earnings from non-oil exports, 25% Export Expansion Grant (EEG) is allowed on all non-oil exports from the country with effect from January 1, 2001.
- Companies located in the Export Processing Zone (EPZ) are tax exempt and enjoy unrestricted remittance of profits and dividends earned through business activities in these zones.
- Companies engaged in petroleum operations are subject to tax at 85% but 65.75% in the first five years of operations. However, oil companies operating under Production Sharing Contracts are assessed at a 50% PPT (Petroleum Profit Tax) rate and a Petroleum Investment Allowance of 50% on qualifying capital expenditure. For Joint-Venture operators the Petroleum Investment Allowance ranges between 5% – 20%.
- Incentives for gas operations are as follows:

- An initial tax holiday period of 5 years renewable for another 2 years.
- All gas development projects are taxed under the Companies Income Tax Act (CITA) and not the Petroleum Profits Tax Act (PPTA).
- All dividends distributed during the period of tax holiday are tax-free.
- Cost of Capital investment incurred for gas business is recoverable against oil income.
- The Country's Annual budgets contain pronouncements on new fiscal policies and measures introduced by the government for the current fiscal year.

## Privatisation

The Federal government has embarked on a comprehensive privatisation and commercialisation programme.

The first phase of the programme, which commenced in December 1999, involved the successful privatisation of various enterprises such as African Petroleum Plc, Unipetrol Nigeria Plc, FSB International Bank Plc, West African Portland Cement Company Plc, Ashaka Cement Company Plc, NAL Bank Plc, etc.

The second and third phases of the programme include the privatisation of the following enterprises: The Nigerian Telecommunications Plc, National Electric Power Authority, Nigerian Airways, the Port Hart, Kaduna and Warri Refineries, the Ajaokuta Steel Company Limited etc.

The policy thrust behind the privatisation programme is to restructure and rationalise unproductive investments in the sector and also to initiate the process of gradual cession to the private sector or public enterprises, which are better operated by the private sector. It is also expected that the privatisation programme will provide the channel for reintegrating Nigeria back into the global economy as a platform to attract foreign direct investment in an open, fair and transparent manner. Intellectual Property

Full protection is provided by a wide range of intellectual property laws covering copyrights, patents, trademarks and industrial designs.

## Registries

The Trademarks Registry is responsible for the registration of trademarks, patents and designs.

## Settlement of Disputes

The principal legislation governing arbitration in Nigeria is the Arbitration and Conciliation Act Cap19, Laws of the Federation of Nigeria (LFN) 1990 which is based on the UNCITRAL model law. International commercial agreements are subject to arbitration under the Act or any international arbitration rule acceptable to the parties'. Arbitral awards are regarded as binding subject

to the parties' right to refuse enforcement of judgment. Nigeria is a signatory to, and adopts the convention on the Recognition and Enforcement of Arbitral Awards (1958, New York Convention). Foreign judgments from certain countries can be registered in Nigeria by virtue of the Foreign Judgment (Reciprocal Enforcement) Act S.152, LFN, 1990.

## Tariffs

Nigeria is a member of GATT. It has also implemented the ECOWAS Trade Liberalisation Scheme (1990) which has established a common Customs External Tariff to protect goods produced in member states. Goods imported into Nigeria are subject to import taxes and customs duty payable in the local currency (Naira) and at rates stated in the Nigeria Customs Tariff Act, 1995 as amended. The customs duty is assessed on the Cost, Insurance Freight (CIF) value of the imported goods. A 7% surcharge is also calculated on all dutiable goods. Other duties and rates payable include:

- 0.5% Trade Liberalisation Scheme Levy calculated on customs duty (when the goods imported are from countries outside the ECOWAS sub-region);
- 1% CISS (Comprehensive Inspection Supervision Scheme) on the FOB value of goods imported;
- Nigeria is also a signatory to the Lome Convention which provides duty-free entry into the European Economic Community (EEC) for most goods.

## Membership of International and Regional Organisations

Organisation of African Unity, United Nations Organisation, Organisation of Petroleum Exporting Countries, British Commonwealth and Economic Community of West African States.

## General

The legal system is based essentially on the English common law system. The Sharia and customary law systems apply in some parts of the country in various degrees.

# SENEGAL

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## MAIN AREAS OF PRACTICE

Aviation law, banking law, bankruptcy law, business law, civil law, commercial law, competition law, law contentious and non-contentious legal matters, law of contract, debt collection, liability law, management consultancy, labour law, start-up of companies, intellectual property law.

## DOING BUSINESS IN SENEGAL

### Type of Government

Multi-party democracy, presidential system.

### Forms of Business Organisation

- Sole trader
- Liability company
- Public company
- Economical interest groups
- Branches of foreign companies
- Joint venture

## Incitement to investment in Senegal

Senegalese law enables foreigners to obtain real estate and properties.

Some legal instruments have been placed in position in order to facilitate local and foreign investments in Senegal:

- the investment law grants large advantages to the companies in particular tax relief and the liberty to transfer the profits abroad;
- the statute of free tax exportation company provides notable advantages to the investors.

## Taxation on companies

The following taxes are applicable in Senegal:

- the tax on companies and other body corporates is determined at the rate of 35%;
- the Value-Added-Tax (“VAT”) is generated at a rate of 18% for all products and services;
- the tax of equalization at a rate of 2% applied on the local purchases and at a rate of 5% on the importations;
- the tax on banking operations which is fixed at a regular rate of 17% and at a reduced rate of 7%.

## Taxation on individuals

The individuals are submitted to income tax (revenues from real estate and properties, movables, commercial and industrial profits etc.).

## Taxation in general

Senegal has signed double taxation agreements with France, Belgium, Cameroon, Tunisia, Centrafrique, Cote d’Ivoire, Benin, Gabon, Burkina Faso, Madagascar, Ile Maurice, Niger, Rwanda, Togo, Mauritanie, Mali, Chad République Populaire du Congo and République Démocratique du Congo.

## Monetary regulation

Senegal is a country member of the West African Economic and Monetary Union and belongs to the Franc zone in which the transfer of funds is free. The Franc CFA, which is the currency of the above union, is linked to the euro currency at a fixed rate of 655,957cfa for leuro.

There is no exchange control between Senegal and the other countries which belong to the Franc zone, being: France, Monaco, Benin, Burkina Faso, Cote d'Ivoire, Equatorial Guinea, Mali, Niger, Senegal, Togo, Cameroon, Central African, Republic of Congo, Gabon and Chad.

For the other monetary zones, there is an exchange control. Generally, the transfer of funds for commercial operations are authorised.

For that purpose and for current financial operations the banking system is efficient.

## **Juridical Environment**

Senegal is a signatory to the OHADA Treaty that came into effect on 1 January 1998. This treaty makes uniform business law in the sixteen signatory states and establishes a Common Court of Justice of Arbitration.

The signatory states are: Benin, Burkina Faso, Cameroon, Central African, Republique Federale Islamique des Comores, République of Congo, Côte d'Ivoire, Gabon, Equatorial Guinea, Mali, Niger, Senegal, Chad and Togo.

## **Intellectual Property**

Senegal is a member of the African Organisation for Industrial Property (OAPI).

The other members of this organisation are: Benin, Burkina Faso, Cameroon, Central African, Congo, Cote d'Ivoire, Gabon, Guinea, Niger, Mali, Mauritanie, Senegal, Chad and Togo.

# SOUTH AFRICA

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## MAIN AREAS OF PRACTICE

The firm is divided into practice groups concentrating on corporate and commercial law, commercial litigation and commercial property law (including conveyancing). There are also practice groups in constitutional law, mining law, labour law, technology law, environmental law, competition law, telecommunications and media law and alternative dispute resolution (ADR), including arbitration and mediation.

The main areas of practice in which those groups are engaged within their particular spheres of work, are:

Administrative law; African trade and projects; Arbitration mediation and alternative dispute resolution (ADR); Aviation and related insurance; Aviation law and aircraft financing; Aviation litigation; Banking and financial services including regulatory issues, corporate bonds, derivatives and securitisation; BEE (Black economic empowerment transactions); Broadcasting and telecommunications; Building and construction; Collective investment schemes and hedge funds; Companies and close corporations; Competition law; Constitutional law; Conveyancing; Corporate; Corporate finance; Corporate fraud; Cross border disputes/ enforcement of foreign judgments; Corporate governance; Due diligence investigations; Employment law; Environmental law; Estate planning; Exchange control; Expropriation; Family law, matrimonial and divorce law; Gaming law (including lotteries); Health care; Insurance; Intellectual property; International trade including treaties and anti dumping; International trade and finance; International transactions; Labour law; Liquidations, compromises, arrangements and workouts; Listings/ flotations; stock exchange and public documents; Litigation; Media law; Mergers acquisitions and management buy-outs; Mining energy and resources; Notarial bonds & deeds; Offshore structures and financing; Pensions and superannuation; Personal financial planning; Privatisation; Project finance; Property; Public Private Partnerships (PPPs); Restructuring of corporate entities; Sectional title: arbitration and body corporate disputes; Sectional titles and cluster developments; Share incentive schemes; Shipping and related insurance; Small business and franchising; Sports and entertainment; Taxation, local and international; Information technology law; Township and town planning; Trade-marks and copyright; Trade finance including factoring; confirming; import /export transactions; invoice discounting and debtors administration; Wills; trusts and Estate Planning

## DOING BUSINESS IN SOUTH AFRICA

A comprehensive business guide to South Africa is available on the internet at [www.werksmans.co.za/sabus-guide/index.htm](http://www.werksmans.co.za/sabus-guide/index.htm)

### Type of Government

Multi party democracy.

### Forms of Business Organisation

- Private or public limited liability company
- Close corporation
- External company (i.e. a branch of a foreign company)
- Partnership
- Trading trust
- Sole trader
- Co-operatives

### Formation of a Business

Companies, close corporations and external companies (branches) must be registered with the authorities in Pretoria. Trustees of business trusts must be authorised by the Master of the High Court before they can commence their duties.

A business generally has to register for various tax purposes, workmens' compensation and the Unemployment Insurance Fund. Business licences are required for certain activities.

### Taxation

Income tax is levied on South African residents' worldwide income subject to certain exemptions. Non-South African residents are however taxed on their South African sourced income only. Currently tax is levied on income from actual and deemed South African sources. The standard corporate tax rate is 29%. Small business corporations have further adjustments to their preferential rate. There is:

- a secondary tax on companies (but not branches of foreign companies) (STC) of 12.5% in respect of the excess of dividends declared over dividends received by the company;
- a net withholding tax of 12% of gross royalty payments to non residents although Double Tax Treaties
- may provide relief in appropriate cases;
- value added tax at 14%;
- income tax on branches of foreign companies at a rate of 34% (instead of normal corporate tax and STC);
- capital gains tax at an effective rate of 14,5% for all corporates (the rate differs depending on the status of the taxpayer);

- a withholding tax on South African sourced income of foreign entertainers and sports people of 5% for visiting Africans and 15% for other visitors, has been proposed;
- a number of other specific taxes and duties.

There is no tax on local dividends from companies and distributions from close corporations paid to residents but foreign dividends to residents may be subject to income tax.

Remittances of branch profits, dividends and interest payments to non residents are not subject to withholding tax.

South Africa has double taxation agreements with various countries including the Netherlands, Canada, India, Indonesia, Iran, Italy, Japan, Malawi, 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.

### Restrictions on Foreign Investment

South Africa generally welcomes foreign investment and virtually all business activities are open to foreign investors. There are no exchange control restrictions on non residents but certain exchange controls exist for South African residents. South Africa, Lesotho, Namibia and Swaziland have no exchange control restrictions between them by virtue of their membership of the Common Monetary Area.

Revenue can be repatriated by non-residents, but the approval of the exchange control department of the South African Reserve Bank is required for:

- a loan by a non resident to a South African resident;
- remittances of profits or dividends by business entities 75% or more owned or controlled by non residents if local borrowing facilities are available and exceed the limits imposed by the exchange control regulations (see below). Dividend, profit and income distributions by unlisted business entities require the prior approval of an authorized dealer appointed by the South African Reserve Bank (usually one of the commercial banks). Dividends declared by listed companies do not require approval;
- payments of management and service fees by a South African company to a non-resident that are based on a percentage of turnover, income, sales or purchases. Other service and management fees require the approval of an authorized dealer;
- payments to non residents for the right to use know-how, patents, trademarks, copyright or other intellectual property.

Local borrowings by entities 75% or more owned or controlled by non residents, are restricted to a percentage of "effective capital" determined in accordance with a formula.

## 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. The Securities Regulation Panel regulates acquisitions and takeovers of all public companies and large private companies where a change in control occurs. The JSE Securities Exchange South Africa has regulations governing dealings in securities listed on it. Legislation has been passed to promote black economic empowerment and affirmative action. The Financial Services Board supervises the activities of financial institutions and financial service providers. Banks are regulated by the Registrar of Banks and telecommunications and broadcasting by the Independent Communications authority of South Africa. Gambling and lotteries are also regulated by legislation. A Financial Intelligence Centre has been established to combat money-laundering.

## Intellectual Property

Protection is provided by statute for patents, trademarks, copyright and designs.

## Registries

There are public registries for trademarks, designs and patents. South Africa is a signatory of the Berne and Paris Conventions.

## Tariffs & Trade

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 the establishment of a Free Trade Area ("FTA") between South Africa and the EU. Negotiations are underway to establish separate FTAs with the USA, the MERCOSUR countries (Argentina, Brazil, Uruguay and Paraguay), India, Nigeria and China. An agreement has been concluded between the members of the Southern African Development Community (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 the ultimate establishment of a FTA.

## Incentives

Incentive Packages for investors in strategic industrial projects is available entailing tax allowances for approved investments. Industrial Development Zones are being established.

Financing at reduced interest rates may be obtained from the Industrial Development Corporation (IDC). Financing and other assistance is also available to small and medium sized businesses and South Africa has been admitted to the European Community Investment Partner programme. Projects may also obtain financing from the Development Bank of Southern Africa. The World Bank, IFC, Commonwealth Development Corporation and USAID have a presence in South Africa. The Government has indicated that financing for black economic empowerment may be provided through the IDC, the National Empowerment Fund and the certain other government agencies.

Marketing assistance and export credit guarantee schemes are available for exporters.

## Membership of International and Regional Organisations

South Africa is a member of the Southern African Customs Union, Common Monetary Union, Southern African Development Community, World Bank, International Monetary Fund, African Union, New Partnership for African Development, United Nations, WTO and the British Commonwealth.

# SWAZILAND

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## MAIN AREAS OF PRACTICE

Corporate Finance, mergers and acquisitions, company formation stock market listings, banking law and practice, corporate, civil and trade litigation, bankruptcies, conveyancing and property transactions, notarial registrations, industrial law and relations, aviation law, liquor and entertainment law, international mediation and arbitration, the drafting of specialised legislation, intellectual property law, share blocks, international finance, restructuring agreements, insurance, family law, parastatal formation, mining law and energy and resources.

## DOING BUSINESS IN SWAZILAND

### Type of Government

Constitutional monarch with Parliament and Senate partly elected through an intricate process and partly appointed by the monarch.

### Forms of Business Organisation

- Private or public limited liability company

- External company (i.e. a branch of a foreign company)
- Partnership
- Trading trust
- Sole trader

### Formation of a Business

Companies, trusts and external companies must be registered with the authorities in Mbabane. A business generally has to register for various tax purposes, workmens' compensation, graded tax, sales tax (where applicable) and Swaziland National provident Fund. Business licences are required for most activities.

### Taxation

Tax is levied on income from actual and deemed Swaziland sources. The corporate tax rate is 30% In addition there is:

- a withholding tax of 15% of dividend payments to non residents;
- sales tax at 14%.

There is no capital gains tax or tax on dividends from companies and distributions paid to residents but there is a withholding tax of 15% on dividends paid to non-residents.

Swaziland has double tax agreements with various countries in Africa including South Africa.

### Restrictions on Foreign Investment

Swaziland welcomes foreign investment and most business activities are open to foreign investors. Exchange control still exists but South Africa, Lesotho, Namibia and Swaziland have no exchange control restrictions in effect amongst them by virtue of their membership of the Common Monetary Union and the same restrictions apply in respect of customs with Swaziland being a member of the Southern African Customs Union. Revenue and original capital investment can be repatriated subject to the consent of the Central Bank of Swaziland being obtained in terms of which such revenue and capital can be repatriated in the currency in which the original investment was made in Swaziland.

### Regulatory Environment

The Swaziland Stock Exchange has regulations governing dealings in securities listed on it which are in line with those of the Johannesburg Stock Exchange.

## **Intellectual Property**

Protection is provided for by statute.

## **Registries**

There are public registries for trademarks and patents. Swaziland is a signatory to the Berne and Paris Convention.

## **Tariffs**

Import tariffs and direct controls such as import permits exist but are subject to the provisions of GATT. There is a free and virtually unimpeded exchange of goods between member states of the Southern African Customs Union. In addition Swaziland is party to many Preferent Trade Agreements in Africa, Europe and the United States and there are many export incentives available to genuine exporters.

## **Incentives**

The following are the main incentives to investors in Swaziland:

- machinery imported into the country for the purposes of setting up such business are exempt from sales tax;
- the labour market in Swaziland is extremely competitive with other Southern African countries;
- non-Swazi citizens are able to purchase immovable property and investors who purchase property in the Matsapha Industrial Area are exempt from applying for and obtaining the consent of the Land Speculation Control Board; and
- a reliable and efficient communications (both fixed and GMS) network.

## **General**

The Swazi legal system is totally independent and follows the principles of Roman Dutch Law. A well served and efficient banking system is in place. A more than adequate road haulage and transport system including a rail system is in place. The Maputo Harbour is now being utilised extensively for bulk export.

# TANZANIA

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## MAIN AREAS OF PRACTICE

Corporate, commercial and business law generally, including corporate set ups, corporate re-organizations, foreign investment, banking and securities, insolvency law, mining law, taxation, patents and trade marks, franchising, public issues, labour and immigration law, leasing, conveyance, litigation in the High Court and Court of Appeal, and Arbitration.

## DOING BUSINESS IN TANZANIA

### Type of Government

Multi party democracy.

The United Republic of Tanzania is made up of two governments, the Union Government which is also the Tanzania Mainland Government and the Zanzibar Government. Zanzibar retains among other things power to manage its own economy. Zanzibar has its own company's legislation and other commercial laws.

The union constitution lists out matters which are under the Union Government which include, the constitution of the United Republic, foreign affairs, defense and security, police, citizenship, immigration, emergency, external

borrowing and trade, service in the Union Government, taxation, harbors, air transport, posts and telecommunications, currency, industrial licensing, higher education, mineral oil and gas, civil aviation, the court of appeal and registration of political parties.

### Forms of Business

Limited liability company, public corporation (now being largely privatized), partnership, branch of foreign incorporated company and sole trader.

### Formation of Business

Limited liability companies and branches must be registered with the Business Registration and Licencing Agency ("BRELA"). Partnerships and sole traders, if trading in names other than their own, have to be registered with BRELA under the Business Names Registration Ordinance.

Business Licenses must be obtained for all forms of business and a business is obligated to register with the Tax Authority and the National Social Security Fund. Specified businesses like banks, insurance companies, contractors, tour operators, hotel and professionals must have specific licenses in addition to the business licenses. Businesses of a turnover of less than TZS 20 million per year, hospitals and dispensaries or health centers operated by religious organizations not obliged to pay business license fees. During his budget speech the Minister for Finance announced that business licensing would be required only upon registration and not to be re issued yearly as is the case now.

### Taxation

A new Income Tax Act 2003 took effect on July 1, 2004. The new Income Tax Act is expected to facilitate increased revenue collection and to stimulate economic growth.

### Tax Rates

#### Corporate Tax

The corporate tax rate remains at 30% for both residents and non-residents.

Withholding tax rates are as follows:

<b>Withholding tax rates</b>	<b>Resident</b>	<b>Non Resident</b>
Dividend	10%	10%
Dividend (company's listed on DSE)	5%	10%
Interest	10%	10%
Commuted pension	10%	15%
Rent	10%	15%
Royalty	15%	15%
Management or Technical Services	5%	15%
(Mining not applicable to existing Development Agreements)		
Insurance premium	0%	5%

#### **Agricultural**

- Farm building, structures and similar works enjoy capital deductions on a straight line basis at the rate of 20% and certain costs qualify for 100% relief.
- 100% capital deduction on plant and machinery for agriculture in the year the capital is put into operation. This deduction will include irrigation system and machinery for large scale Agriculture and livestock farming.
- Stamp duty in respect of conveyance of agricultural land fixed at TZS 500.
- 100% capital allowance for costs relating to clearing of land, irrigation systems, planting of permanent crops, and environmental preservation or control of land degradation on agricultural land.
- 100% allowance on costs associated with environment preservation on the land used for agriculture, livestock, and fishing or for enriching the soil after degradation will be deducted in the estimation of income as provided in the Income Tax Act.
- 100% allowance on Research and development costs for agricultural farms and livestock will be deducted for the purpose of income tax.
- Irrigation equipment has been accommodated in the same category with the heavy trucks for assessing the maximum capital depreciation rate of 25 percent per annum.
- Tractors and other plants for agriculture, livestock farming and fishing categorized in the same group with the plant and machinery used in manufacturing and enjoys a capital depreciation of 50 percent in the first year, and 25 percent per annum in subsequent years.
- Agricultural businesses pay tax at year's end after harvest.

#### **Stamp Duty**

Stamp Duty on many instruments reduced to Tshs. 500 and on Transfers to 1 percent from previous 4 percent rate.

#### **Value Added Tax**

VAT registration threshold is Tshs. 40 million.

VAT is charged on the supply and import or export of goods and services into and from mainland Tanzania at the rate of 20%.

VAT on capital goods may be differed indefinitely.

No VAT on import or supply of Railway locomotives, rolling stocks and spare parts and Jet-AZ Aviation fuel.

No VAT on fuel used for mining activities.

#### **Customs Duties**

##### **Protocol on the East African Customs Union**

Protocol signed in March 2004 now in effect in all EA countries. It is intended, to eliminate customs tariffs on goods from the partner states on a phased out basis and to introduce new tariff structures for external goods in line with those of partner states as from 1 January, 2005.

##### **Mining Sector**

Special fiscal regime for mining companies with Development Agreements which provides for 100% depreciation allowance on all mining capital expenditure, 100% loss carry forward, maximum 3% withholding tax on management fees up to 2% of operating costs and 20% for excess over 2% of the operating costs. All mining companies may opt to keep their books of Account in the United States Dollar Currency,

##### **Double Taxation Agreement**

Tanzania has double taxation Agreement with Sweden, Denmark, Norway, Zambia, Canada, India, Finland and Italy. Treaties with Kenya, Uganda, South Africa, South Korea and Zimbabwe have been signed but not yet ratified.

#### **Foreign Investments and Incentives**

Tanzania adopted in 1997 an Investment Act under which the Tanzania Investment Centre (TIC) as agency for investment promotion and facilitation was established. Foreign investment is welcome and in order to enjoy certain tax benefits under the Investment Act, the minimum equity contribution whether in kind or in cash must be not less than United States Dollar 300,000.

In 1992 the stringent foreign exchange legislation was repealed and the restriction on foreign commercial banks abolished. Any person whether resident or not may establish foreign currency accounts with any of the commercial banks and transfer foreign currency outside Tanzania without restriction. The Bank of Tanzania regulates commercial banks and approves the establishment of offshore foreign currency accounts by residents. There are no controls on foreign exchange rates or interest rate on loans and overdrafts.

## **Regulatory Environment**

The Fair Trade Practices Act which regulates trade practices is in place. There is a Commissioner for Fair Trade Practices who together with his team of Commissioners adjudicates complaints of unfair trade practices. The legislation also regulates monopolies, acquisitions or take overs of businesses.

There is a statutory Capital Markets Authority regulating issues of securities and the Dar Es Salaam Stock Exchange established under the Companies legislation dealing in securities listed on the Dar Es Salaam Stock Exchange.

## **Intellectual Property**

Protection is provided for by statute. There is a registry for Patents, Trade and Service marks.

## **Registries**

There are several legal registries which are open to the public, including Court Registries, the Land Registries, the Registry of Business Names Registration and Licencing Agency (BRELA) the Mines Registry, Registry of Trade and Service Marks and the Registry for Merchant Ships.

## **Incentives**

Tax incentives are available to investors registered with the Tanzania Investment Centre and holding certificate of incentives. Special tax incentives are also available to mining companies.

## **Membership to International**

### **Regional Organizations**

United Nations, the Commonwealth, the African Unity, the East African Treaty, and the SADC.

## **Settlement of Disputes**

Tanzania has an arbitration legislation which allows settlement of disputes outside the court. Tanzania is a signatory to the Convention on Recognition and Enforcement of Foreign Arbitral Awards (The New York Convention of 1958) and which it ratified on 13th October, 1964. Although Tanzania has not adopted any provisions based on the UNCITRAL model law, the Investment Act allows investors to adopt, among others, the UNCITRAL rules and procedures. There is legislation providing for reciprocal enforcement of foreign judgements.

## **Specialised Courts and Tribunals**

To speed up the disposal of commercial disputes which take rather too long in the conventional judicial system, there have been introduced specialized courts and tribunals in Tanzania with considerable success. There is a Commercial Division of the High Court specialising in commercial disputes, a separate tax adjudication system made up of the Tax Appeals Board and the Tax Appeals Tribunal and a Fair Competition Tribunal to which are referred all disputes on competition, mergers and acquisitions. There is also a Land Court Division of the High Court which became operational early 2004 to adjudicate land disputes, including enforcement of mortgages.

# UGANDA

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## MAIN AREAS OF PRACTICE

Corporate and commercial law, banking and securities, intellectual property, foreign investments, joint ventures, conveyancing, utilities law, construction, corporate and personal tax, wills, settlements and estate administration, insolvency law, labour law, immigration law, insurance, arbitration and litigation in the Courts of Record.

## DOING BUSINESS IN UGANDA

### Type of Government

Movement System, which is, constitutionally, defined as an all-inclusive no party system of governance. However transition to a fully-fledged multi-party democracy appears to be in the offing.

We have a Parliament constituted by directly elected representatives with some special representatives appointed by the President. We also have a fairly independent judiciary.

### Forms of Business

Private or public limited liability companies, partnerships, sole proprietorships.

### Taxation

All income earned in Uganda is subject to tax. The Corporate tax for a resident company is 30% while that for a non-resident company is 35%.

### Foreign Investments and Incentives

All foreign investors are required to register with the Uganda Investment Authority. The Authority facilitates all procurement of other Government licences and permits.

### Exchange Controls

Uganda has a fully liberalised foreign exchange regime. Foreign currency can be freely traded at licensed forex bureau. There is no restriction on repatriation of dividends or entry of capital.

### Intellectual Property

We have a Patents Statute passed in 1996. The Trade-marks Act (Cap 83) is still based on the 1948 English Act but is currently undergoing revision. The same goes for the Copyright Act (Cap 81).

### Registries

There is a Registrar General who handles registration of patents, trademarks, company matters, birth, deaths and civil marriages.

### Incentives

A uniform low corporation tax with generous depreciation provision.

### General

Uganda is a member of the Commonwealth. Its legal system accordingly follows the English Common Law. Much of our statutes were modelled in English Statutes but have seen little amendment over the years

# ZAMBIA

## CORPUS GLOBE

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## MAIN AREAS OF PRACTICE

Corporate and commercial law, mergers and acquisitions, mining law, High Court litigation (civil), patents and trademarks, banking and financial services, probate, conveyancing, labour law and industrial relations.

## DOING BUSINESS IN ZAMBIA

Zambia offers the most liberalised environment for business in Southern Africa. All exchange controls have been abolished and since 1991 an array of liberal laws have been introduced to encourage private sector participation in enterprise.

### Type of Government

Zambia is a unitary state based largely on the Westminster style of democracy. The President is elected by direct adult sufferable although he chooses his cabinet from parliament. Independence from Britain was gained in October 1964 when a new constitutional framework was ushered in. The constitution has since been amended, twice in 1972 and more recently in 1996. The Constitution is the supreme law of the land and recognises the three arms of Government – the Executive, the Legislature and the Judiciary. All laws are subject to the Consti-

tion which contains all the basic freedoms of a modern democracy.

## Natural Resources & Gross

### Domestic Product

Copper constitutes Zambia's most abundant mineral resource but other mineral resources such as diamonds, gold, uranium, tin, lead and zinc as well as marble form the basis of the country's commercial economy. Mineral rights are owned by the State.

## The Legal System

Zambia runs a legal system based almost entirely on English law. Prior to August 17, 1911 the territory presently known as Zambia was under the corporate administration of the British South Africa Company under Royal Charter. On this date, the British Government resumed authority for the territory and all statutes passed prior to this date are still applicable to Zambia. Zambia also applies the principles of common law and equity as applied in England.

## Forms of Business Organisations

Various forms of enterprise can be established under both common law and statute. These are as follows:

### Statute

- company limited by shares
- company limited by guarantee
- unlimited liability company
- associations
- societies

### Common Law

- agencies, licences and distributors
- partnerships
- trusts

## Formation of a Business

Incorporation of a company is effected through the Companies registry using standard forms and the procedure is relatively simple. The operation of certain businesses may require licences from one or more of many licensing authorities depending on the sector. Some examples are:

- telecommunications

- mining
- oil marketing
- professional services (such as accounting, valuation, architecture).

## **Customs & Excise**

Zambia has established an effective tax administration system operated by the Zambia Revenue Authority (“ZRA”). As a member of the Common Market for Eastern and Southern Africa, Zambia has moved ahead of other member states in adopting tariff reductions of up to 80% on most tradeable commodities. Zambia is also a member of the Southern African Development Community (“SADC”) and has recently entered into bilateral trade agreements with South Africa and Zimbabwe.

## **Foreign Investment**

Driven largely by the anticipated privatisation of the country’s copper mines, which are the main earner of Zambia’s foreign exchange, foreign direct investment has seen a significant increase in recent years. A comprehensive sale of nearly all government owned enterprises since 1992 has reduced the State’s control on 80% of economic activity.

## **Intellectual Property**

Intellectual property rights are enshrined in statute. These cover patents, trademarks registered designs merchandise marks, article works and copyrights.

The statutes incorporate the provisions of various relevant international conventions such as the Berne Convention.

# ZIMBABWE

## SCANLEN & HOLDERNESS

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Sternford Moyo  
Joseph Mafusire  
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Godfrey Mamvura  
George Gapu

## MAIN AREAS OF PRACTICE

Commercial, corporate and business law, including company and business formations, contracts, banking and international finance, acquisitions and mergers, restructures, listings and flotations, unit trusts, building and engineering, insurance, intellectual property, business, liquor and other licences, investment and disinvestment, exchange control, financial planning, taxation, labour law and industrial relations, employment law, pension and provident fund schemes, and small business establishment.

Conveyancing and property law, including transfers, mortgages, sectional title, property development, town planning, leases, servitudes, mining, building law, and environmental law.

Private and family law, including wills, trusts, probate and estates administration, estate planning, immigration, emigration and citizenship.

Litigation, including supreme court, high court, magistrate's court, administrative and other courts, arbitration

and mediation, insurance, matrimonial, expropriation, liquidations, insolvency, criminal law, and human rights.

## DOING BUSINESS IN ZIMBABWE

### Type of Government

Multi party democracy

### Forms of Business Organisation

- Public limited liability companies (listed or not listed on the Zimbabwe Stock Exchange)
- Private limited liability companies
- Foreign companies (i.e. subsidiaries or branches of foreign companies)
- Private business corporations (almost identical to the South African Close Corporations)
- Partnerships
- Trusts
- Sole traders

### Formation of a Business

Companies and Private Business Corporations are registered and regulated by the Companies Act. Listed public companies are, in addition, regulated by rules of the Zimbabwe Stock Exchange. There is a central registry of companies in Harare and a branch registry in Bulawayo.

Generally, shop and trading licences are required for most businesses. These are largely dealt with by local authorities. Registration of businesses is required for various purposes, including with the National Social Security Authority, Accident Prevention and Compensation Scheme. There is a compulsory pensions and other benefits scheme and various employment councils.

### Tax

The corporate tax rate is 30% plus 3% aids levy. Individuals earning less than \$2 400 000-00 per annum are not liable to pay income tax and thereafter a sliding scale is applied. No child credits are allowed. A levy at the rate of 5% is imposed on the net financial profits of registered banking institutions. Value Added Tax at the rate of 15% is chargeable 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. Tax concessions are also 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 specified assets which are defined as immovable property, debentures, bonds, stocks and shares. The rate of tax is 20% save for listed securities which are exempt. In assessing the cost of acquisition of the specified asset the actual initial cost is allowed to which is added an appreciating factor at the rate of 50% per annum for the period in which the asset is held before disposal.

Double taxation agreements are in place with Bulgaria, Canada, France, Germany, Malaysia, Mauritius, Netherlands, Norway, Poland, South Africa, Sweden and the United Kingdom.

Agreements awaiting ratification are Botswana, Namibia, Rumania and Yugoslavia.

## Foreign Investment

Foreign investment is encouraged. A government agency "The Zimbabwe Investment Centre" deals with new projects and investments. Staff at the centre are most helpful. Local participation in any investment project is encouraged but certain types of business activity such as primary agriculture, transportation and retailing are reserved for indigenous Zimbabweans.

## Exchange Control

Exchange controls are in force. Dividend remittances in respect of projects approved by the Zimbabwe Investment Centre are allowed at 100% of current after tax revenue profits. Capital is blocked and may be remitted through 20 year 4% government bonds, denominated in Zimbabwe dollars. Capital is paid in 10 equal annual installments at the end of years 11 to 20. Interest is 4% per annum, tax free and payable half yearly.

## Regulatory Environment

The Zimbabwe Stock Exchange has regulations governing dealings in securities listed on it. The Competition Act has been passed by Parliament. This Act governs monopolies.

## Intellectual Property

Protection is provided by the Patents and Trademarks Act. There are public registries for trademarks, designs and patents. Zimbabwe is a signatory of the Berne and Paris Conventions.

## Real Estate

All transfers of land and rights in immovable property are registered in the Deeds Registry. Agreements for the sale of land need not be reduced to writing.

## Tariffs

Import controls exist. Zimbabwe is a member of GATT. There are a limited number of goods on a negative list. Goods on the negative list are clothing, armaments and nuclear materials.

## Membership of International & Regional Organisations

United Nations, the Non-aligned Movement, the Association of Southern African States, Southern African Development Community, World Bank, International Monetary Fund, African Union, Preferential Trade Area and GATT.

## Dispute Resolution

Zimbabwe is a signatory to the Convention on the Recognition and Enforcement of Foreign Awards. The Arbitration Act governs alternative Dispute Resolution and legislation is in place for the Reciprocal Enforcement of foreign judgments.

