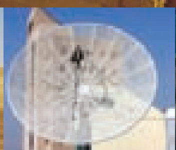

South Africa

Investor's Handbook 2009

the dti

Department:
Trade and Industry
REPUBLIC OF SOUTH AFRICA

South Africa

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Preface

The *South Africa: Investor's Handbook* outlines the country's progressive trade and investment policies, which seek to enable investors to engage in fair, equitable global trade across all sectors of the economy. It also serves to illustrate how the costs of doing business in South Africa compare favourably to those in other emerging world markets. For example, the country boasts the lowest electricity prices in the world, its labour costs are significantly lower than those of other key emerging markets, and it has a favourable corporate tax rate.

The *South Africa: Investor's Handbook* also provides practical guidelines on how the South African government seeks to support prospective investors. It includes detailed information on economic sectors in South Africa for potential investment, as well as lists of institutions that offer finance to explore investment opportunities in the country. Besides providing information, the government has also established agencies to facilitate your company's investment, assist you in gaining access to incentives for your investment, and render ongoing contact and problem-solving services, after your company has invested in our wonderful country.

Trade and Investment South Africa,
Department of Trade and Industry

The Southern African Region

Contents

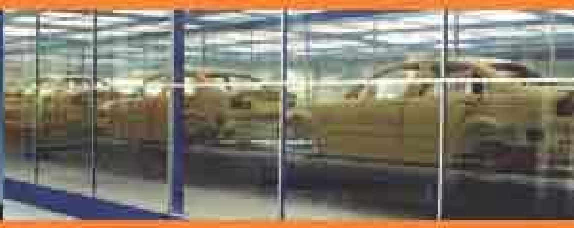
Abbreviations and Acronyms

Absa	Amalgamated Banks of South Africa
ACSA	Airports Company of South Africa
ADSL	asymmetric digital subscriber line
AGOA	African Growth and Opportunity Act
ATMs	automatic teller machines
AU	African Union
B-BBEE	Broad-Based Black Economic Empowerment
B-BSEE	Broad-Based Socio-Economic Empowerment
BBSP	Black Business Supplier Programme
BCEA	Basic Conditions of Employment Act
BCI	Business Confidence Index
BEE	Black Economic Empowerment
BESA	Bond Exchange of South Africa
BPO	Business Process Outsourcing
BTT	Board of Tariffs and Trade
CBPWP	Community-Based Public Works Programme
CCMA	Commission for Conciliation, Mediation and Arbitration
CIPRO	Companies and Intellectual Property Registration Office
CMA	Common Monetary Area
CPIX	consumer price index excluding mortgage costs
CSA	Customs Secured Area
CSIR	Council for Scientific and Industrial Research
DBSA	Development Bank of Southern Africa
EFTA	European Free Trade Association
EIAs	environmental impact assessments

EIP	Enterprise Investment Programme
EM	environmental management
EU	European Union
FDI	foreign direct investment
FFC	Financial and Fiscal Commission
FIG	Foreign Investment Grant
FM	Frequency Modulation
FNB	First National Bank
FSB	Financial Services Board
FTA	Free Trade Agreement
GCIS	Government Communication and Information System
GDP	gross domestic product
GDPR	gross domestic product per region
GGP	gross geographical product
GPT	General Preferential Tariff
HEI	Higher Education Institution
ICASA	Independent Communications Authority of South Africa
IDC	Industrial Development Corporation
IDZ	Industrial Development Zone
ITAC	International Trade Administration Commission
JAGs	Joint Action Groups
JSE	Johannesburg Securities Exchange
Mercosur	Southern Common Market/*Mercado Común del Sur*
MIP	Manufacturing Investment Programme
Naamsa	National Association of Automobile Manufacturers of South Africa
NEMA	National Environmental Management Act

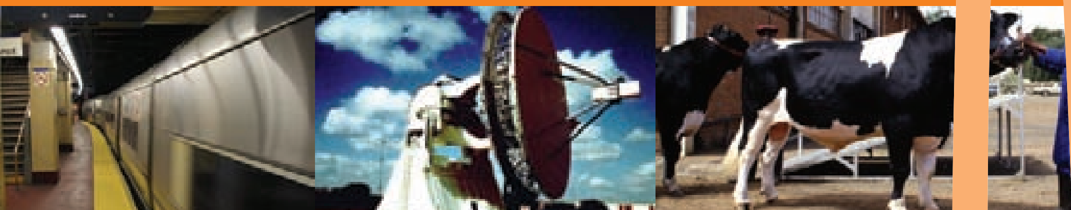
NEPAD	New Partnership for Africa's Development
NIPF	National Industrial Policy Framework
NRF	National Research Foundation
NTTC	National Technology Transfer Centre
PABX	private automatic branch exchange
PCT	Patent Co-operation Treaty
PDI	Previously Disadvantaged Individual
PetroSA	Petroleum, Gas and Oil Corporation of South Africa
PPP	Private public partnership
R&D	Research and Development
SACU	Southern African Customs Union
SADC	Southern African Development Community
SAPOA	South African Property Owners Association
SARB	South African Reserve Bank
SARS	South African Revenue Service
SDF	Spatial Development Framework
SDI	Spatial Development Initiative
SDL	skills development levy
seda	Small Enterprise Development Agency
SET	science, engineering and technology
SETI	Science, Engineering and Technology Institution
SITE	Standard Income Tax on Employees
SMMEs	Small, Medium and Micro Enterprises
SPII	Support Programme for Industrial Innovation
StatsSA	Statistics South Africa
STC	secondary tax on companies

TAC	Technology Advisory Centre
TDCA	Trade, Development and Co-operation Agreement
THRIP	Technology and Human Resources for Industry Programme
TISA	Trade and Investment South Africa
TSP	Tourism Support Programme
TWIB	Technology for Women in Business
UNCTAD	United Nations Conference on Trade and Development
UST	Uncertified Securities Trust
VAT	value-added tax
VHF	very-high-frequency
WTTC	World Travel and Tourism Council



SECTION 1:

GENERAL INFORMATION ABOUT SOUTH AFRICA



1. Geography

South Africa occupies the southern-most tip of the African continent, covering an area of 1,219,090km^2. It is equivalent in size to Germany, France, Italy, Belgium and the Netherlands combined. The country shares boundaries with Namibia, Botswana, Zimbabwe, Mozambique, Swaziland and Lesotho.

The country is divided into nine provinces, the Western Cape, Eastern Cape, KwaZulu-Natal, Northern Cape, Free State, North-West, Gauteng, Mpumalanga and Limpopo. Each province has distinctive landscapes, vegetation and climates.

South Africa's coastline is regarded as one of the most diverse marine environments on earth. Stretching over a distance of 3 000km, the coastline surrounds the western, southern and eastern parts of the country. The west coast is the centre of the nation's fishing industry, while many of South Africa's harbours and ports are situated on the lush eastern coastline and the scenic southern coast.

South Africa, famous for its sunshine, is a relatively dry country. The mean temperatures recorded in South Africa are moderate to temperate. The country has an average annual rainfall of 450mm, compared with a world average of 860mm. Sixty-five percent (65%) of the country records an annual rainfall of less than 500mm, which is generally accepted as the minimum amount required for successful dry-land farming.

Twenty-one percent (21%) of the country, mainly the arid west, receives less than 200mm per year.

2. Demography

South Africa's population of approximately 48 million (m) people is made up of four racial groups, namely Africans, Whites, Coloureds, and Asians/Indians. There are 11 official languages in South Africa, which enjoy equal status in terms of the Constitution of the Republic of South Africa. These are Afrikaans, English, isiNdebele, isiXhosa, isiZulu, Sesotho sa Leboa, Sesotho, Setswana, siSwati, Tshivenda and Xitsonga. Nevertheless, English is the most widely understood language in the country and is generally regarded as the official language for conducting business.

According to *Mid-Year Population Estimates, South Africa: 2008*, published by Statistics South Africa (StatsSA), of the approximately 48,69m (medium variant) inhabitants of South Africa, 38,57m (79,22%) were Africans; 4,50m (9,24%) comprised Whites; 4,38m (9%) were Coloureds; and 1,24m (2,55%) were Asians/Indians.

According to StatsSA’s estimates for 2008, Gauteng is the most populous province in the country, being home to about 10,5m people, while the Northern Cape is the least populated province (1,1m people). KwaZulu-Natal has the second-biggest population, with 10,1m inhabitants.

Fifty-two percent (52%) of the South African population, totalling approximately 25,2m people, is female. Almost one-third (32%) of the population is below the age of 15, with 7% (3,5m) being over the age of 60. The estimated life expectancy for women is longer than that for men, estimated at being 53,9 and 50,3 years respectively.

Population estimates (in millions) for the 2008 mid-year for the low, medium and high variants by population group

Population Group	High Variant	Medium Variant	Low Variant
African	38,73	38,57	38,12
Coloured	4,44	4,38	4,35
Indian/Asian	1,27	1,24	1,23
White	4,58	4,50	4,14
Total	**49,03**	**48,69**	**47,84**

Source: Statistics South Africa, Mid-Year Population Estimates, South Africa: 2008, www.statssa.gov.za/publications/P0302/P03022008.pdf

3. Economy

South Africa is the economic powerhouse of the African continent, with a gross domestic product (GDP) of R2,3 trillion (US$277bn) in 2008 – four times that of its Southern African neighbours and 30% of the entire GDP of Africa. According to the *Global Competitiveness Report 2008/9*, published by the World Economic Forum, South Africa ranks 45 out of the 134 countries surveyed. South Africa is one of the highest-ranking developing economies and surpasses countries such as Hungary, Italy, Brazil and Thailand. The country leads the continent in industrial output (40% of Africa's total output) and mineral production (45% of total mineral production) and generates most of Africa's electricity (over 50%).

South Africa has achieved a level of macro-economic stability not seen in the country for many years. Such advances create opportunities for real increases in expenditure on social services and reduce the costs and risks for all investors, laying the foundation for increased investment and growth. By 2007, the economy was stronger than at any time in the past 20 years. However, growth has declined since 2008 due to the global financial crisis.

South Africa's economy is managed within a stable political environment. The per capita income of R46 507 per annum (2008) places the country in the middle-income bracket for developing countries. The economy includes modern financial and industrial sectors, supported by an established and continuously upgraded infrastructure. This modern aspect of the economy stands in contrast with a sizeable informal subsistence sector.

The financial and industrial sectors, which are concentrated in the Gauteng province, account for almost 34% of the country's GDP. The financial services and business sector enjoyed massive growth in the 1990s, increasing its contribution from around 12% to over 20%, and even further growth is expected in this sector. The manufacturing sector, which annually accounts for more than 18% of the GDP, is also growing rapidly. The agricultural sector contributes less than 5% of the GDP, while the mining sector, which played an important role in the development of the economy, now contributes less than 10% to the GDP.

The country's bustling informal economy, largely unmeasured and unregulated, has developed alongside its sophisticated industrial economy and represents untapped potential for the country's future economic development. South Africa offers a policy of openness, which promotes foreign direct investment (FDI).

South Africa's major strengths include its physical and economic infrastructures, natural mineral and metal resources, growing manufacturing and services sector and potential to develop a strong tourism industry. Trade with and investment in other African states have increased substantially since the birth of the democratic era in 1994. Government has set itself an objective to grow the economy at an average rate of 4,5% up to 2009 and 6% and more from 2010 onwards. This has become impossible, however, due to the current economic recession. Inflation was expected to decline, but external factors such as rising oil and fuel prices have prevented the South African Reserve Bank from meeting its inflation target of between 3% and 6% for consumer price inflation. The consumer price index (CPI) averaged 12,1% for the year 2008.

4. Employment

South Africa's official unemployment rate fell in the fourth quarter of 2008, mainly due to the construction industry adding jobs, StatisticsSA states in its latest *Labour Force Survey*. Another contributing factor was that 97 000 people, who were without work, gave up looking for positions. StatisticsSA confirmed that the unemployment rate fell to 21,9% of the labour force in the fourth quarter of 2008 from 23,2% in the third quarter.

Towards the end of 2008, the number of unemployed people totalled 3 873m. The total number of employed people increased by 189 000 to 13 844m.
Source: www.southafrica.info/news/business/227129.htm

5. Quality of Life

South Africa offers diverse and abundant natural splendour and a year-round temperate climate. Foreign visitors and residents are able to purchase fully serviced properties at a significantly lower cost compared to similar properties in both developed and developing countries.

Investors can look forward to maintaining a lifestyle comparable to that offered by cities across the world, characterised by:

- Sophisticated cosmopolitan cities, e.g. Johannesburg, Pretoria, Durban and Cape Town;
- Excellent living standards and medical services;
- The common usage of English;
- International schools;
- Superb recreational and cultural activities; and
- Various tourist attractions.

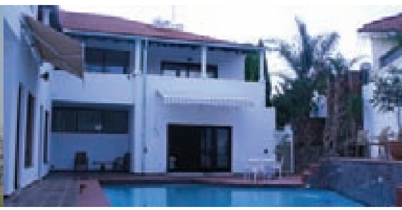
6. Cost of Living

South Africa represents excellent value for money. The low cost of living and the availability of first-world health care, education, sporting and recreation facilities and other modern conveniences and luxuries make the South African lifestyle one of the most attractive in the world.

South Africa offers first-world luxury and amenities at a fraction of their cost in other parts of the world. Johannesburg, the financial hub of the continent and the largest city in the country, is one of the cheapest places to live, especially when compared to cities like Moscow, New York, Tokyo and Sydney.

People who live in Johannesburg get the best value for money in terms of food prices, transport costs, school fees, property rental and ownership costs, and alcohol and cigarettes, compared to other major cities world-wide. Besides living in a thriving metropolis, people who live in other cities like Cape Town and Durban can also look forward to a better quality of life because of these cities' proximity to the sea.

Source: *Cost of Living Survey*, 2006, Mercer Consulting.



Cost of Living Around the World

Top 5 Cities – Asia Pacific	Top 5 Cities – Americas	Top 5 Cities – Europe, Middle East and Africa
• Tokyo, Japan (2nd) • Seoul, South Korea (5th) • Hong Kong, China (6th) • Osaka, Japan (11th) • Singapore (13th)	• New York City, US (22nd) • São Paulo, Brazil (25th) • Rio de Janeiro, Brazil (31st) • Toronto, Canada (54th) • Los Angeles, US (55th)	• Moscow, Russia (1st) • London, UK (3rd) • Oslo, Norway (4th) • Copenhagen, Denmark (7th) • Geneva, Switzerland (8th)
The lowest-ranking city in Asia was Karachi, Pakistan (141st)	The lowest-ranking city in the Americas was Asunción, Paraguay (143rd)	The lowest-ranking city from Europe, the Middle East and Africa was **Johannesburg, South Africa (140th)**

Source: Mercer's 2008 Cost of Living Survey Highlights, www.mercer.com/costofliving*#Key features and benefits of Mercer's Cost of Living survey reports.*

7. Key Drivers of the South African Economy

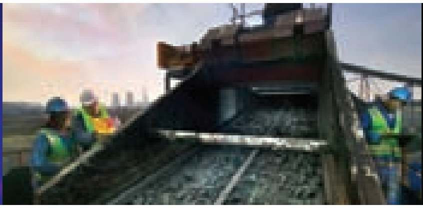
7.1 Mining and Minerals

South Africa produces 14% of the world's gold and has 41% of the world's known reserves thereof. It is estimated that 21 000 tonnes of undeveloped resources – about one-fifth of the world's unmined gold – still remain. These ores are increasingly difficult to exploit due to the great depths, at which they are situated and their relatively low-grade quality.

Over the past few years, South African mining houses have transformed themselves into large focused mining companies that include Anglo Platinum, Anglo Gold, De Beers, Implats and Iscor. South Africa is the world's second-largest producer of gold and the largest producer of platinum. The country is also one of the leading producers of base metals and coal, accounting for a significant proportion of both world production and reserves. Its diamond industry is the fifth-largest in the world, ahead of Botswana, Canada and Russia.

Source: South Africa Yearbook 2007/08, www.gcis.gov.za/docs/publications/yearbook/2008/chapter15

South Africa is a leading world supplier of a range of minerals and mineral products of consistently high quality. In 2007, some 53 different minerals were produced from 1 414 mines and quarries, of which 50 produced gold, 31 produced platinum-group minerals, 96 produced coal and 344 produced diamonds, all as primary commodities.


The Department of Minerals and Energy (DME) recorded a significant increase in the number of operating mines and quarries from 2006. This can be attributed to an improvement in the quality of data, and expansions in the mining industry, the latter encouraged by the provisions of the Mineral and Petroleum Resources Development Act of 2002.

Source: Department of Minerals and Energy, Directorate: Mineral Economics, South Africa's Mineral Industry (SAMI) 2007/2008.

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

South Africa has a high level of technical and production expertise, as well as comprehensive research and development activities. The country also boasts world-class primary processing facilities for gold, platinum, carbon steel, stainless steel and aluminium.

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

7.2 ICT and Electronics

The information, communication and technology (ICT) sector, with its key sub-sectors of electronics, electrical engineering, information technology and telecommunications, is an important global sector. The sector has an important role to play in the South African economy because of its direct contribution to high-value production and highly skilled employment, as well as its contribution to increasing the competitiveness and value-add of related sectors such as the automotive, defence, power generation and distribution, and aerospace sectors.

South Africa, the leader of ICT development in Africa, is the twentieth-largest consumer of IT products and services in the world. As an increasingly important contributor to South Africa's GDP, the country's ICT and electronics sector is both sophisticated and developing. South Africa's IT industry is characterised by technology leadership, particularly in the field of electronic banking services.

South African companies are world leaders in pre-payment, revenue management and fraud prevention systems, and the manufacture of set-top boxes, all of which are exported successfully to the rest of the world.

Several international corporates, recognised as leaders in the IT sector, operate subsidiaries from South Africa, including IBM, Unisys, Microsoft, Intel, Systems Application Protocol (SAP), Dell, Novell and Compaq.

The total size of the IT market is expected to increase from US$8,5bn in 2008 to around US$13,5bn in 2013, with growth easing in 2009 before recovering strongly in 2010 and 2011.

Sources: MBI, EITO, World Bank, ITU, EU, IDC, Gartner, Government sources, ISI.

There were approximately 9,5m Internet users in South Africa at the end of 2008. This number was expected to grow to 22% in 2009. Slightly slower growth in the future is forecast; however, by 2013, it is predicted that just over 30% of South Africans will be regular Internet users.

Sources: International Telecommunications Union (ITU), BMI.

With a network that is 99,9% digital and includes the latest in wireless and satellite communication, the country has the most developed telecommunication network in Africa. The South African telecommunications market is the largest in Africa in terms of both customers and revenues. The market is growing consistently and substantially. The estimated revenue generated in the telecommunications sector during 2008 stood at US$28,8bn (R230bn).

Sources: International Telecommunication Union (ITU), BMI.

The mobile telecommunications market is dominated by two operators, MTN and Vodacom, which collectively control in excess of 85% of the market. Fixed-line penetration was estimated at 9,3% in 2008, while mobile penetration was significantly higher at around 103%. South Africa is the fourth-fastest-growing mobile communications market in the world. In 2008, the country recorded more than 49,9m subscribers. South Africa also has the largest Internet market in Africa, with an estimated 9,5m Internet users in 2008, i.e. about 20% of the population.

Sources: Operator Results, BMI.

By the end of 2008, Telkom reported having 4,5m fixed lines in service. Electronics industry revenues in South Africa are growing at levels well above the overall GDP growth rate. Key players in industrial, power, defence and telecommunication electronics include Siemens, Alcatel, Ericsson, Altech, Grintek, Spescom, Tellumat and Marconi. A highly competitive electronics consumer market, producing electronic products with a high value-add, also plays an important role.

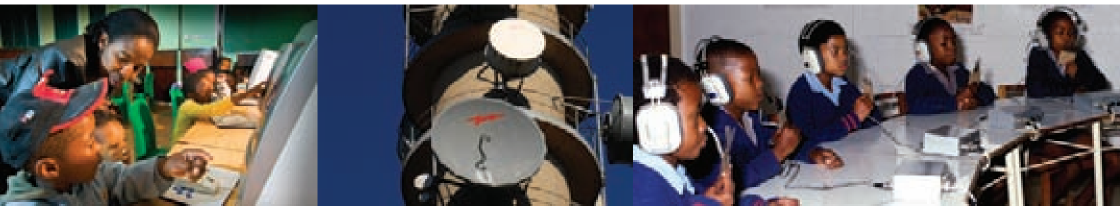
Competitive Advantages

South Africa's ICT and electronics sector is expected to continue showing strong growth in the future, due to key competitive advantages specific to the country and the continent.

Testing and piloting of systems and applications is a growing business in South Africa, with the diversity of the local market, first-world know-how in business and a developing-country environment making the country an ideal testing ground for new innovations.

The international research group Gartner rates South Africa as one of its top 30 software development outsourcing destinations, with 2007 research putting it on a par with Israel in the Europe, Middle East and Africa region, and Australia and India globally.

South Africa's ICT products and services industry is also penetrating the fast-growing African market. South African companies and locally based subsidiaries of international companies have supplied most of the new fixed and wireless telecommunication networks that have been established across the continent in recent years.



A significant retarding factor has been the high cost of bandwidth in South Africa. However, the government has committed itself to addressing this, and major projects are under way to lay submarine fibre-optic cables along both the east and the west coasts of Africa to improve the continent's connection with the rest of the world.

7.3 South Africa's Financial Sector

In terms of global financial market sophistication, South Africa ranks 12th, after Switzerland, Hong Kong, the US, Luxembourg, Sweden, Canada, Australia, the Netherlands, the UK, Singapore and Denmark, scoring 6,3 out of 7 in excellence by international standards. South Africa is also perceived to have strong investor protection mechanisms, ranking 9th in the world.

The country also ranks well in terms of local equity financing, access to loans, venture capital availability, investor protection, the soundness of banks and the regulation of its securities exchange. South Africa's financial services sector, backed by a sound regulatory and legal framework, boasts dozens of domestic and foreign institutions that provide a full range of services, from commercial, retail and merchant banking to mortgage lending, insurance and investment services.

Source: www.weforum.org/documents/GCR0809/index.html, The Global Competitiveness Report 2008/09, World Economic Forum, 'Financial Market Sophistication'.

The South African banking system is well developed, internationally recognised and effectively regulated. It comprises a central bank, a few large, financially strong retail banks and investment institutions, and smaller retail banks.

South African banks are regarded as being sound and generally healthy, ranking 15th in the world, while the Johannesburg Securities Exchange (JSE) is ranked

5^{th} in terms of regulation. Investment and merchant banking is competitive. The country's 'big four' banks – Amalgamated Banks of South Africa (Absa), First National Bank (FNB), Standard Bank and Nedbank – dominate the retail market.

South Africa's banking sector compares favourably with that of industrialised countries. Many foreign banks and investment institutions have set up operations in South Africa over the past decade. Electronic banking facilities are extensive, with a nation-wide network of automatic teller machines (ATMs) and Internet banking facilities being available.

Amendments to exchange controls and financial market legislation have made South Africa an attractive investment prospect, having brought its regulatory environment in line with international best practice.

These amendments include:

- The National Payment System Act of 1998, which confers greater powers and duties on the South African Reserve Bank to provide clearing and settlement facilities, bringing the South African financial settlement system in line with international best practice on settlement systems and systematic risk management procedures.
- The introduction of payment clearing house agreements; agreements pertaining to settlement; clearing and netting agreements; and rules to create certainty, and reduce systemic and other risks in inter-bank settlement.

7.4 Agriculture

South Africa's dual agricultural economy comprises a well developed commercial sector and a predominantly subsistence-oriented sector in the rural areas. About 12% of South Africa's surface area can be used for crop production. High-potential arable land comprises only 22% of total arable land. Some 1,3m hectares are under irrigation. This amounts to about 1,5% of South Africa's agricultural land. The most important factor limiting agricultural production is the availability of water. Rainfall is distributed unevenly across the country.

Almost 50% of South Africa's water supply is used for agricultural purposes. The country can be sub-divided into a number of farming regions according to climate, natural vegetation, types of soil and the type of farming practised. Agricultural activities range from intensive crop production and mixed farming in winter-rainfall and high-summer-rainfall areas to cattl ranching in the bushveld and sheep farming in more arid regions. Owing to its geographical location, some parts of South Africa are prone to drought. Primary commercial agriculture contributes about 2,6% to South Africa's GDP and about 8% to formal employment.

There are strong backward and forward linkages into the economy, with the agro-industrial sector estimated to comprise about 15% of GDP. Today, South Africa is not only self-sufficient in virtually all major agricultural products, but in a normal year it is also a net food exporter. Major import products include wheat, rice and vegetable oils.

Despite the farming industry's declining share of GDP, it remains vital to the economy and the development and stability of the southern African region. Over the past five years, agricultural exports have contributed on average about 8% of total South African exports. Normally, South Africa is a net exporter of agricultural products in rand value.

The largest export groups are wine, citrus, sugar, grapes, maize, fruit juice, wool and deciduous fruits such as apples, pears, peaches and apricots. Other important export products are non-alcoholic beverages, food preparations, meat, avocados, pineapples, groundnuts, preserved fruit and nuts, hides and skins, and dairy products.

The regional distribution of major exports is as follows:

- **Field crops** are grown in the northern and north-western parts of the country. Maize is the major field crop, while others include wheat, sugar, barley, soya, canola, sunflower, groundnuts and cotton.
- **Deciduous fruit**, representing about 12% of South Africa's agricultural exports, is grown mainly in the Western and Eastern Cape. Citrus is produced in the northern part of the country and from the southern coastal areas up to the east coast province of KwaZulu-Natal.
- **Wine**, one of South Africa's top agricultural exports, is primarily produced in the Western Cape.
- **Cut flowers** are grown in the Western Cape and Gauteng provinces. The Western Cape boasts a host of indigenous flora and fauna. South Africa's national flower, the protea, hails from this region. The major types of cut flower grown in the Gauteng province are roses, dendranthemas and carnations.

- **Livestock** is the largest agricultural sector in South Africa. Almost two-thirds of the country's land is suitable for natural grazing, and supports cattle, sheep, goats, donkeys and wildlife. Milk is the fourth-largest agricultural industry in value terms.
- **Fish and other catch** are in abundance in South African waters. The country boasts a variety of fish species, including hake, sole, monk, pilchard, anchovy, mackerel, tuna and yellowtail. Among the crustaceans are rock lobsters, prawns and abalone.
- **Aquaculture and marine culture** sectors, located along the coast as well as inland, produce rainbow trout, tilapia, African catfish, abalone and marine finfish.

7.5 Sectors Identified for Further Development

The South African government, through its National Industrial Policy Framework (NIPF), has identified certain sectors of the economy with potential for development. These sectors are receiving specific attention from the government. Among other targets, the NIPF seeks to diversify the economy, move to a knowledge economy and promote labour-intensive industrialisation. The key industrial challenge is to grow and diversify manufacturing exports and tradable services.

There is unexplored high-value potential within the following sectors:

- Agro-processing;
- Forestry, pulp, paper and furniture;
- Biofuels production;
- Capital/transport equipment and metals beneficiation;
- Automotive industry and components;
- Chemicals, plastic fabrication and pharmaceuticals;

- Creative industries, *viz.* craft and film production;
- Textiles and clothing;
- Business Process Outsourcing (BPO) and IT-enabled services; and
- Tourism development.

There is also tremendous potential for exports in the services sector, which comprises industries such as business services, call centre services, banking and telecommunications.

7.6 Infrastructure

2010 FIFA World Cup

The awarding of the 2010 FIFA World Cup to South Africa has provided numerous opportunities in all spheres to fast-track development programmes in the country. The South African government has allocated R17,4bn to capital expenditure on infrastructure to ensure the country is ready for 2010. This includes the building of five new stadia and the upgrading of five existing stadia.

With as many as three million tourists being expected at the 2010 FIFA World Cup, South Africa's airports have embarked on a number of multi-billion rand projects to increase their capacity and efficiency ahead of the event. The Airports Company South Africa (Acsa) has allocated R19,3bn for infrastructure development at the Johannesburg, Cape Town and Durban international airports, R3bn of which has been allocated to Africa's largest and busiest airport, the OR Tambo International Airport.

The government's R17,4bn direct investment in the World Cup is part of a much larger spending programme between 2006 and 2010. During this time, the government will invest more than R400bn in the country's infrastructure –

from rail freight services and energy production to communications, airports and ports of entry. Acsa intends to spend R19,3bn by 2010 on investing in and improving facilities at airports around the country and remains committed to delivering world-class aviation infrastructure to meet the country's needs for the 2010 FIFA World Cup and beyond.

The government is expected to work closely with the airports operator to ensure business sustainability and the timely delivery of the critical infrastructure required to ensure the successful execution of the biggest marketing opportunity yet for our country, the 2010 FIFA World Cup.

For further information, see:
www.fifa.com/worldcup
www.2010safwc.com
www.sa2010.gov.za

The Extended Public Works Programme

The Extended Public Works Programme (EPWP) is being implemented across four sectors: infrastructure, environment and culture, social and economic. From 2004 to the end of 2007, the EPWP created over 950 000 temporary work opportunities. Of those who benefited over that period, 48% were female and 37% young people, already surpassing the intended number of targeted beneficiaries.

Although slow in taking off, the EPWP in the social sector has the potential to employ a large number of unemployed in areas such as home-based care and early-childhood development. The high number of work opportunities created in KwaZulu-Natal can be ascribed to strong EPWP institutional capacity in the provincial public works department and in the eThekwini municipality.

Quoted from source: Development Indicators 2008, The Presidency, Republic of South Africa.

8. Why Invest in South Africa?

South Africa is one of the most sophisticated and promising emerging markets globally. The unique combination of a highly developed first-world economic infrastructure and a huge emergent market economy has given rise to a strong entrepreneurial and dynamic investment environment.

South Africa's GDP grew at a healthy 5,2% in 2007, declining to 3,1% in 2008 due to the impact of the global economic crisis. The country has one of the most sophisticated and promising emerging markets, offering a unique combination of highly developed first-world economic infrastructure with a vibrant emerging-market economy.

Market Opportunity

South Africa is internationally renowned for its abundance of mineral resources, which account for a significant portion of both world production and world reserves.

South Africa's mineral wealth is found in the following well-known geological formations and settings:

- The Witwatersrand Basin, which yields some 98% of South Africa's gold output and contains considerable resources of uranium, silver, pyrite and osmiridium;
- The Bushveld Complex, which is famous for its platinum-group metals (with associated copper, nickel and cobalt mineralisation), chromium and vanadium-bearing titanium-iron ore formations as well as large deposits of the industrial minerals fluorspar and andalusite;
- The Transvaal Supergroup, which contains enormous resources of manganese and iron ore;
- The Karoo Basin, which extends through the Mpumalanga, KwaZulu-Natal, Free State and Limpopo provinces and hosts considerable bituminous coal and anthracite resources;
- The Phalaborwa Igneous Complex, which hosts extensive deposits of copper, phosphate, titanium, vermiculite, feldspar and zirconium ores;
- Kimberlite pipes, which host deposits of diamonds that also occur in fluvial and marine alluvial deposits as a result of erosion processes;
- Heavy mineral sands that contain ilmenite, rutile and zircon; and
- Significant deposits of lead-zinc ores associated with copper and silver in the Northern Cape, near Aggeneys.

The bulk of the known mineral resources and reserves was discovered using conventional exploration methods, but the country still has significant potential for additional discoveries of world-class deposits, using modern exploration technologies. In addition, the new mining legislative framework facilitates access to permits and rights by interested parties. South Africa has the world's largest turnover resources of platinum-group metals (87,7%), that is manganese (80%), chromium (72,4%), gold (40%) and alumino-silicates. South Africa also accounts for over 40% of the global production of the following mineral commodities: ferrochromium, platinum-group metals (PGMs) and vanadium. It is also the world's leading producer of chrome ore, gold, vermiculite and alumino-silicates, and is among the top three producers of manganese ore, titanium minerals and fluorspar.

Quoted directly from source: South Africa's Mineral Industry 2006/7, Directorate Mineral Economics, Department of Minerals and Energy.

South Africa forms part of the South African Development Community (SADC) and will form a common regional market in the near future, to consist of 14 member-states with a combined population of 180m.

Infrastructure

South Africa has one of the best infrastructure and service industries among developing nations, particularly as regards roads, telecommunication, harbours, banking systems, insurance and shipping. With its 3 000km-long coastline and seven commercial ports, South Africa has by far the largest and best-equipped network of ports in Africa and is able to function as a hub for commercial traffic emanating from and destined for Europe, Asia, the Americas as well as the east and west coasts of Africa. With the biggest rail service, the largest airline and the most developed road infrastructure in Africa, South Africa is also regarded as the gateway into the continent.

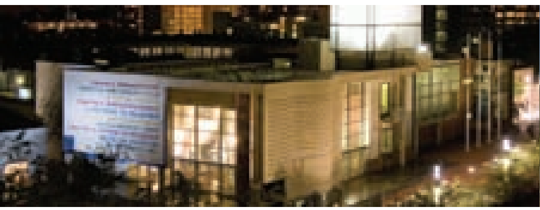
Interesting Facts about a Remarkable Nation

Economy

1. The Rand was the best-performing currency against the US Dollar between 2002 and 2005 (Bloomberg Currency Scoreboard).
2. South Africa has 55 000 high-net-wealth individuals holding at least US$1m in financial assets each *(World Wealth Report 2008).*
3. South Africa has the twenty-seventh-biggest economy in the world, with a GDP of US$254bn (World Bank).
4. South Africa accounts for almost 25% of the GDP of the entire African continent, with an economy more than twice the size of the second-biggest, Algeria (World Bank).
5. Gauteng is South Africa's smallest province yet produces 34% of South Africa's GDP (StatsSA).
6. The JSE Securities Exchange is the fourteenth-largest equities exchange in the world, with a total market capitalisation of some R2,3 trillion (JSE).
7. More than 12 000 'Black Diamond' families (South Africa's new black middle class) – or 50 000 people – are moving from the townships into the suburbs of South Africa's metro areas every month (UCT Unilever Institute).
8. The black middle class grew by 30% in 2005, adding another 421 000 black adults to SA's middle-income layer and ramping up the black population's share of SA's total middle class to almost a third. Between 2001 and 2004, there were 300 000 new black entrants to the middle class *(Financial Mail).*

Infrastructure

1. South Africa generates two-thirds of Africa's electricity (Eskom).
2. The South African power supplier provides the fourth-cheapest electricity in the world.
3. Chris Hani-Baragwanath Hospital in Soweto is the biggest hospital in the world.
4. Durban is the largest port in Africa and the ninth-largest in the world.
5. There are 39m cellphone users in South Africa (International Telecommunication Union).



Tourism

1. The number of tourists visiting South Africa grew by 200% from three million in 1994 to over nine million in 2007 (Department of Environment and Tourism).
2. The world's best land-based whale-watching spot is located in Hermanus in the Western Cape.
3. In 2002, South Africa was the world's fastest-growing tourist destination. In 2006, South Africa's tourism grew at three times the global average.

Source: South Africa The Good News, www.sagoodnews.co.za

Each of the country's nine provinces offers specific investment sector opportunities, listed below:

GAUTENG	MPUMALANGA	FREE STATE
• Mining • Information and communication technology • High-technology industries • Research and development • Business services • Financial services • Auto assembly and components • Food processing • Beverages • Chemicals and pharmaceuticals • Machinery and appliances • Tourism (leisure and business)	• Mining (coal) • Agro-forestry • Wood, wood products and furniture • Food processing • Horticulture • Petrochemicals • Tourism • Sugar	• Mining • Gold beneficiation • Alternate/Eco-tourism • Petrochemicals • Farm equipment and machinery • Agro-processing

EASTERN CAPE	KWAZULU- NATAL	NORTHERN CAPE
• Agriculture and forestry • Aquaculture • Tea production • Ostrich farming and related products • Automotive assembly and components • Pharmaceuticals (Generic and high-volume) • Mohair apparel	• Aluminium production and conversion • Automotive and components • Petrochemicals • Engineering and metal works • Wood and wood products • Clothing and footwear • Agro-processing • Textiles, paper and paper products • Sugar • Tourism	• Agro-processing • Tourism: historical and cultural • Tourism: hotels and resorts • Tourism: game • Lodges/Eco-tourism

WESTERN CAPE	NORTH-WEST	LIMPOPO
• Fishing • Agro-processing • Biotechnology • Petrochemicals • Information and communication technology • Financial services • Clothing and textiles • Printing and publishing • Tourism • Retail trade, hotels and restaurants • Film production • Fruit and wine • Ship repair and containerisation • Precision engineering • Boat-building	• Mining • Dimension stone • Leather tanning and finishing • Meat products • Tourism	• Tourism: game lodges and nature reserves • Granite mining, cutting and polishing • Hotels and resorts • Sub-tropical fruits • Vegetable processing

Sector Information

The potential of the South African economy is evident in the diverse sectors and industries that exist in the country, the following of which have the highest growth and investment potential:

- Agro-Processing Industry;
- Automotive and Transport Industries;
- Chemicals, Pharmaceuticals and Biotechnology;
- Information Communication Technology (ICT) and Electronics;
- Mining and Metal-Based Industries;
- Marine, Aerospace and Railroad Transport;
- Textiles, Clothing, Leather and Footwear;
- Tourism; and
- Creative and Design Industry.

Agro-Processing Industry

Agriculture contributes 2,6% (2008) to South Africa's GDP and consists largely of cattle and sheep farming, with only 13% of land being used for growing crops. Maize is the most widely grown crop, followed by wheat, oats, sugar cane and sunflowers. The government is working to develop small-scale farming in an effort to boost job creation. Citrus and deciduous fruits are exported, as are locally produced wines and flowers.

Agro-processing (i.e. food, beverages and tobacco) contributed R66,6bn in 2008, which is 17,3% of the total amount generated by the manufacturing sector. The direct contribution of agro-processing to the GDP in 2008 was 3,2%, making it the third-largest contributor to GDP after chemicals and metals.

According to Statistics South Africa (StatsSA), around 207 000 people are employed in agro-processing, which is 16% of the total employment number for the manufacturing sector and 2,5% of the total employment number for the economy.

The agro-processing sector contributes about 4,0% to the total South African exports. Exports of processed products were valued at R24,3bn in 2008 and showed an increasing trend from the year 2000 to the year 2008. South Africa has varying climates, ranging from semi-arid and dry to sub-tropical. As a result, a diversity of crops, livestock and fish can be found.

The South African agri-food complex has a number of competitive advantages, making it both an important trading partner and a viable investment destination. A world-class infrastructure, counter-seasonality to Europe, vast biodiversity and marine resources, and competitive input costs make the country a major player in the world's markets. The establishment of preferential trade agreements, such as the African Growth and Opportunity Act (AGOA) for the US market and a Free Trade Agreement (FTA) with the European Union (EU), confer generous benefits to the country.

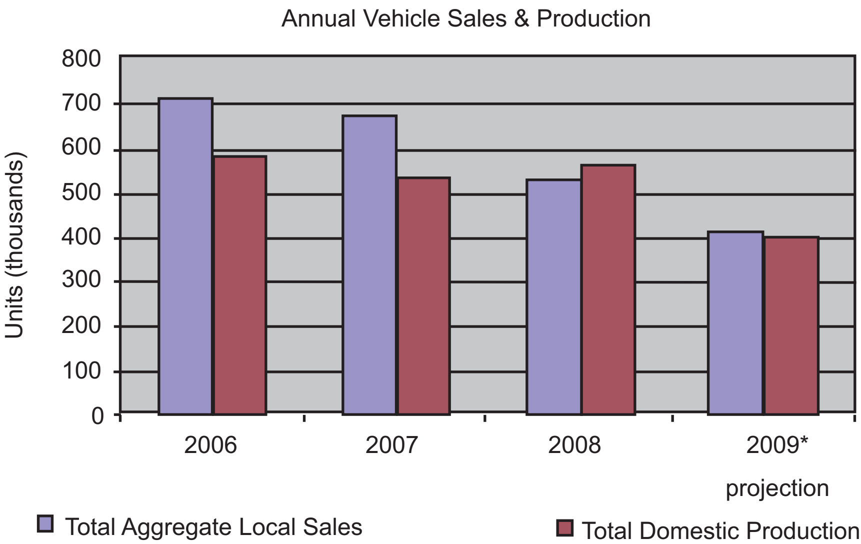
Automotive and Components Industry

South Africa's automotive industry is a global engine for the manufacture and export of vehicles and components. The sector accounts for about 10% of South Africa's manufacturing exports, making it a crucial cog in the economy. Annual production decreased from 535 000 vehicles in 2007 to 498 728 in 2008, due to the global economic crisis. With the economic crisis, employment decreased by close to 2 000 people, and further losses of jobs are expected. Nevertheless, the automotive sector is a giant locally, contributing approximately 7,5% to the country's GDP and employing around 36 000 people.

The government has identified the automotive industry as a key growth sector and aims to increase vehicle production to 1,2m units by 2020, while significantly increasing local content at the same time.

In 2006, sales increased by 14,4% to just under 650 000 units, generating revenue of R118,4bn. Sales dropped by 4,0% in 2008 and are expected to decline even further, as companies are still recovering from the global economic crisis.

Vehicle Sales in South Africa



Source: National Association of Automobile Manufacturers of South Africa.

However, major export programmes are likely to keep the local industry buoyant. Vehicle exports were around 284 000 units in 2008, and the National Association of Automobile Manufacturers of South Africa (Naamsa) expects this to decline to 182 500 in 2009. This is extraordinary growth when compared to 1997, however, when the number of units exported was below 20 000. South Africa currently exports vehicles to over 70 countries, mainly Japan (around 29% of the value of total exports), Australia (20%), the UK (12%) and the US (11%). African export destinations include the North African nation of Algeria, the Southern African nation of Zimbabwe and the West African country of Nigeria.

All of the major vehicle makers are represented in South Africa, as are eight of the world's top 10 auto component manufacturers and three of the four largest tyre manufacturers. Many of the major multinational companies use South Africa to source components and assemble vehicles for both the local and overseas markets.

Between 2000 and 2006, the industry's investment in production and export infrastructure quadrupled from R1,5bn to R6,2bn, before slowing to R3bn in 2007. Capital investment is expected to be around the R3,6bn mark in 2009. Most of this has been foreign investment, with the parent companies of local car manufacturers expanding local operations to improve production capacity, export facilities and supporting infrastructure. All of the large manufacturers in the country have launched major export programmes in recent years.

Chemicals and Plastics

According to Statistics South Africa, sales volumes in 2008 amounted to 24% of the manufacturing sector at about R318bn. The sector employed around 140 000 people nationwide in 2007 and accounted for 4% of GDP in 2008.

It invests around R2bn annually in upgrades, with less than 1% of sales being spent on research and development. Around 60% of upstream chemicals are consumed within the chemical pipeline as feedstock. Products of the chemical sector are also the basis for almost every manufacturing activity in South Africa.

Chemical production in other Southern African Development Community (SADC) member-countries is focused upon the downstream formulation of products, such as consumer cleaning products and cosmetics, and plastic conversion. South Africa is the major chemicals-producing country in Africa, accounting for over 80% of the total SADC output.

The value of sales of plastics in 2008 was R42bn. The export output ratio (share of production being exported) in 2008 was 9,4%. This is indicative of a plastic industry that is not yet export-oriented. The export value of plastic products in 2008 was R2,7bn, compared to an import value of R7,1bn. However, the plastics sector has a high employment rate, with around 36 000 people employed in 2008.

South African exports of chemical products were in the region of R38bn to R62bn per year for the three years from 2006 to 2008, while imports ranged from R60bn to R105bn. During the same period, South Africa's trade balance showed that we import more than we export, namely from R25bn to R43bn per annum. Exports under plastics varied between R1bn and R2bn, while imports ranged from R4bn to R6bn per annum.

Major markets for South African exports in priority sub-sectors are as follows:
- **Inorganic chemicals:** US, India, France and Germany;
- **Bulk-formulated chemicals:** Zimbabwe, Zambia, Malawi and Tanzania;

- **Consumer-formulated chemicals:** Angola, Mozambique, the UK and Zambia; and
- **Plastics conversion:** Zambia, Zimbabwe, China and Mozambique.

Electronics, Information Technology and Communications

South Africa is at the leading edge of the continent's technology evolution with its consistent introduction of new technologies and solutions to the market, such as Voice-over-Internet Protocol (VoIP) and broadband.

The South African telecommunications market is the largest in Africa, in terms of both customers and revenues. The market is growing consistently and substantially. The estimated revenue generated in the telecommunications sector during 2008 is US$28,8bn (R230bn) and telecommunications (hardware and software) contribute an estimated additional US$3bn.

Fixed-line penetration is estimated at 9,3%, while mobile penetration is significantly higher at around 93%. South Africa is the fourth-fastest-growing mobile communications market in the world. The number of subscribers is more than 50m (end 2008). Rapid growth is expected to continue in the medium term, driven by further penetration, increased innovation and competitive activity in the markets.

The cellular market has also experienced explosive growth since inception and continues on a strong growth path. The market largely comprises three operators (Cell C, MTN and Vodacom) and five service providers, two of which are independent (Autopage Cellular and Nashua).

Two mobile networks (MTN and Vodacom) have thus far implemented 3G networks in South Africa, although at present they are limited to parts of the large metropolitan areas. Cell C is also expected to offer 3G services in the future, although it is not ascribing much weight to mobile data, preferring to concentrate on voice as a future revenue generator.

South Africa has an estimated 990 000 broadband subscribers (end 2009), while the privatised monopoly Telkom had 492 000 ADSL fixed-line subscribers at the end of 2008.

The total size of the South African information technology (IT) market is expected to increase from US$8,8bn in 2009 to around US$13bn in 2013. A wave of public infrastructure projects with IT dimensions, many associated with the 2010 FIFA World Cup, will immunise South Africa against negative growth in IT spending due to the recent global economic slowdown. Much spending on key IT verticals, such as telecommunications, banking and mining will continue, driven by factors internal to those sectors. South Africa has one of the Middle East and Africa's most significant IT markets in terms of size and growth potential. Its IT market is supported by factors such as the 2010 FIFA World Cup, government digital divide projects and the telecommunications sector.

South Africa's IT market is the largest in Africa, while it ranks 20th in the world in overall market size and eighth in IT spending as a proportion of GDP. A major opportunity lies in increased capital spending by SMMEs, with particular focus on environmental resources management (ERM) and customer relationship management (CRM) applications. Software, hardware and services spending was projected for 2009 at US$1,7bn, US$3,9bn and US$3,2bn, respectively.

The growing penetration of the Internet should fuel personal computer demand for higher-end products in the urban consumer market. The number of broadband Internet users is projected to more than double to around 2,15m by 2013.

Source: BMI, 2009, Q3.

South Africa has the largest Internet market in Africa, with an estimated 9,5m Internet users, which constitutes approximately 20% of the population. There are some 1,4m dial-up accounts. Ranked among the elite in terms of world-wide IT spend, South Africa has ready access to cutting-edge technologies, equipment and skills, and has the advantage of access to the rapid expansion of telecommunications and IT throughout the African continent. For this reason, South Africa is seen as the gateway to Africa – South African companies have long been providing IT services in other African countries and have been thriving because of their understanding of the local business environment. Implementing solutions under various business conditions in Africa has given South African software companies the time and space to perfect their solutions. South African companies understand that each country and each market demands a different kind of solution and that success in Africa lies in providing tailored solutions.

The South African market is the gateway to Africa's wireless future. Through its ability to provide high-quality products and services in line with global trends, the country is offering significant return on investment and greater access to world-class technology for business and consumers throughout the continent. Already, growing levels of turnover and market-share are evident in this market; increases that will continue to come from the geographic expansion of company activities as well as product and service expansion.

Metal-Based Industries

Iron and Steel

The primary steel industry is a significant contributor to the South African economy and earns considerable amounts of valuable foreign exchange. South Africa ranks in the region of 21^{st} in terms of crude-steel-producing countries in the world, producing in the region of 0,6% of the world's crude steel. South Africa is also the largest steel producer in Africa, accounting for 48% of the total crude-steel production of the continent in 2008. Total South African crude steel production is in the region of eight million tonnes per year, of which about 5,3m tonnes are consumed domestically.

The range of primary carbon steel products and semi-finished products manufactured in South Africa includes billets, blooms, slabs, forgings, light-, medium and heavy sections and bars, reinforcing bars, railway track material, wire rods, seamless tubes, plates, hot- and cold-rolled coils and sheets, electrolytic galvanised coils and sheets, tinplates, and pre-painted coils and sheets. The range of primary stainless steel products and semi-finished products manufactured in South Africa includes slabs; plates; and hot- and cold-rolled coils and sheets.

Approximately 40m metric tonnes of iron ore are mined per annum in South Africa, of which about 12m metric tonnes are consumed locally and 27m metric tonnes are exported.

Non-Ferrous Metals

South Africa's non-ferrous metal industries comprise aluminium and other metals, including copper, brass, lead, zinc and tin. South Africa is ranked eighth in world production of aluminium. The aluminium industry consists of primary and secondary rolled products and extruded products. South Africa produces approximately 677 kilotonnes of primary aluminium per year, of which 512 kilotonnes are exported.

Aluminium is locally converted into semi-fabricated products, including rolled products (37%), castings (21%), extrusions (15%), deoxidants (7%), automotive alloy feedstock (8%), redraw rod (6%), powder and paste (3%), direct cast (3%), and miscellaneous (3%).

Sales of non-ferrous metals are estimated at R3bn per annum, excluding aluminium but including primary copper, primary zinc and the secondary copper, zinc, tin and lead industries.

Stainless Steel

South Africa produces 500 000 tonnes of stainless steel per annum. Only 150 000 tonnes are converted locally into value-added products, with the balance being exported to 50 countries world-wide.

The catalytic converter industry is the highest single consumer of stainless steel in South Africa, with expectations of doubling its present capacity to 20% of the world market.

Jewellery

Approximately 20% or US$35 million's worth of South Africa's finished jewellery is exported. The export basket includes precious metal jewellery, rough diamonds and unwrought gold, silver and platinum. The jewellery industry, including gold, platinum and silver, employs approximately 4 500 people, while the diamond industry employs approximately 2 500. Currently there are 150 registered jewellery and goldsmith apprentices in South Africa.

Marine, Aerospace and Railroad Transport Sector

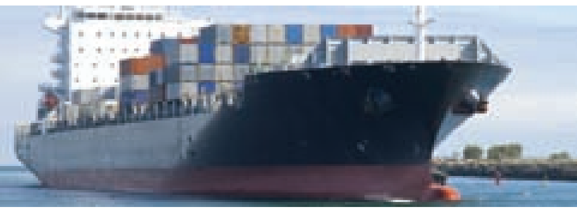
The Marine Industry

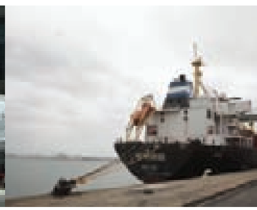
The marine industry consists of the boatbuilding, oil and gas sector, and the shipbuilding and ship repair sector. The turnover of the boatbuilding industry is around R1,2bn, with 85% of production being exported to various parts of the world, including the US and the Caribbean. South Africa is the second-largest manufacturer of catamarans world-wide and produces 29% of the 30 to 40ft catamarans. Export products include kayaks, rigid inflatable boats, and sail and power catamarans.

The Aerospace Industry

The South African aviation industry is one of a number of industries that were boosted during the country's long period of economic isolation. Today there is indigenous capability to make light aircraft and helicopters as well as a range of aircraft components.

South Africa is also a major location for aircraft refurbishing. Exports of refurbished aircraft amounted to R1,5bn in 2000, while exports of aircraft parts amounted to R400m. South Africa was the third-largest exporter of microlight aircraft last year, representing 11% of world exports of this product. South African rankings in world exports of rotary-type aircraft engines and aircraft seats were respectively 12th and 10th.





The industry has developed excellent skills and manufacturing capabilities, as illustrated below:

- South Africa has built one of the most sophisticated helicopter gunships in the world (the Rooivalk), thereby paving the way for the manufacturing of commercial helicopters in South Africa.
- Present production includes light and microlight aircraft, as well as parts such as propellers, avionics, gearboxes and engines.
- Aircraft service capability includes the maintenance, conversion and upgrading of large commercial and military aircraft.

Railway Equipment

The rail industry in South Africa developed in tandem with the mining industry. Today it is more diversified, serving domestic as well as export demand. The primary market focus of the industry is its two most important domestic clients, Spoornet (the national rail service provider) and the South African mining companies.

The capability of the industry is quite comprehensive:

- Industry stakeholders have the capability to plan and scope railway projects and to manufacture rolling stock and signalling and other rail-related equipment.
- Spoornet has world-class capabilities in the operation of long-haul rail systems and has developed several world-class technologies.
- Local railway stock has a very high local content because of the availability of steel and the necessary engineering skills to manufacture these products.
- Estimates suggest that some 100 local companies are involved in the industry.

- South Africa is a major contender for railway projects and maintenance contracts, particularly in Africa. The sector is also a source for scoping, designing, planning and rolling out railway projects.
- Railway engineering skills and experience are available to replicate the rail systems implemented in South Africa elsewhere in Africa. The industry is capable of maintaining the networks needed to support infrastructure projects across the continent. It also has access to the necessary raw materials and capable manufacturers to supply the required railway components and services.

Textiles, Clothing and Footwear

Textile, clothing and footwear products are among the most widely traded manufactured products world-wide, and the buyer-driven global structure of the sector has created cost pressures on the industry as a whole.

The Agreement on Textiles and Clothing (ATC) or Multifibre Agreement (MFA) expired at the end of 2004, and its termination gave way to the liberalisation of trade world-wide. As newer, lower-cost locations are continually identified, producers of clothing and textiles are unlikely to be able to compete on the basis of price for any period of time. As a result of world trade liberalisation, South African textile, clothing and footwear manufacturers are operating under extreme pressure against low-cost imports. The market share of imports has grown from 25% of domestic SA demand in 2004 to 39% in 2008. Notwithstanding the fast-changing operating environment, however, a portion of the industry has been able to adapt through innovation, in the form of technology, value-chain integration and production improvement initiatives, to compete successfully against imports.

Specialised textile companies such as Gelvenor Textiles supply more than 30% of the world's demand for parachute fabrics. Its success can be partly attributed to its comprehensive understanding of the end customer’s needs and servicing those needs by the innovative use of technology. The industry has embarked on a comprehensive drive to improve competitiveness through the Cape and the KwaZulu-Natal clothing and textile clusters. This was a joint initiative between industry and provincial government. These clusters are focusing primarily on improving the operational efficiency of companies through interventions to reduce cost of production and improve quality and delivery time. The intervention will further be supported by national government through the Competitiveness Improvement Programme (running from 2009 to 2014), whereby competitiveness improvement interventions will be subsidised by up to 75%.

Since their initiation in 2005, the competitiveness improvement interventions implemented via the clusters have doubled the operational efficiencies of some companies. The best-performing companies are producing around R80 000 of output per employee, whereas the industry average is R42 000. These improvements were brought about through major improvements in change-over times and the reduction of re-work rates.

The sector is also realising the financial benefit of the vertical integration of supply chains, through collaboration and information-sharing among companies operating along the value chain. This allows the value chain to service customer needs better and to respond more quickly to changes in customer demands, resulting in less waste along the value chain and therefore maximisation of profit.

The Department of Trade and Industry is putting in place a number of support instruments to assist the industry to primarily recapture the domestic market.

These instruments include capital expenditure grants, preferential financing, rebate instruments, a competitiveness improvement programme, skills development and a possible production incentive.

Those South African textiles, clothing and footwear manufacturers that are embarking on continuous improvement activities through capital upgrades, competitiveness improvement programmes and closer alignment along the value chain will continue to outperform imports as a result of understanding customer needs better. With continued support from the Department of Trade and Industry, the sector will further improve its competitiveness to successfully compete against imports and produce a good return on investment for its shareholders.

Source: **the dti**, *2009.*

Tourism

South Africa is one of the world's fastest-growing holiday destinations. The country is well known for its scenic beauty, magnificent outdoors, sunny climate and cultural diversity. Together with its reputation for delivering value for money, this has resulted in a phenomenal growth in tourism. Tourism is one of the five priority economic sectors that the government has chosen to focus on in its effort to support investment and facilitate growth. Tourism plays a meaningful role in contributing to the economic development of South Africa.

Since 1994, tourism growth has been exceptional, and this seems to have continued with the 2008 performance indicators:

- *Tourism arrivals:* 9,6m – an increase of 5,5%;
- *Tourism contribution to GDP* (direct and indirect): R194,5bn, an overall contribution of 8,5% to GDP;

- *Tourism expenditure*: R73,2bn; and
- *Job creation*: 438 500 direct jobs.

South African tourist arrivals have grown eight-fold since 1990 and continue to outperform the global tourism growth of 6,1%. This exceptional growth has been primarily driven by Africa land arrivals. The World Travel and Tourism Council (WTTC) reports tourism contribution to the economy grew by approximately R32bn from 2007 to 2008, resulting in an increased contribution to GDP. Tourism statistics also indicate increased revenue (up to 6%) from foreign air markets. There has also been a 6% increase in total employment since 2007. For 2008, total employment in tourism stood at approximately one million, with 438 500 being direct jobs in tourism.

With more than 200 countries in the world and limited resources, South African Tourism has decided to focus on markets where it is most likely to earn returns in the short to medium term. South African Tourism's latest portfolio review (2008 – 2010) indicates the US, the UK, Australia, India, France, Germany, the Netherlands, Botswana, Nigeria, Kenya and the domestic market as core markets (those which represent the greatest opportunity).

For the year 2008, the nine core air markets accounted for 55% of air arrivals and 61% of foreign direct spend (excluding Africa land). Most of the other regions fall under either investment, tactical or watch-list markets.

Tourism is performing well relative to other priority sectors. It is often referred to as the 'new gold' of the South African economy, partly due to the above and also because the total foreign direct spend of tourists has overtaken gold foreign exchange earnings.



SECTION 2:

RESIDING AND WORKING IN SOUTH AFRICA

9. Entry of Foreigners into South Africa

The country's sustained economic growth is encouraged by foreign investment, employing needed foreign labour, enabling the entry of skilled and exceptionally skilled people, and facilitating academic exchanges within the Southern African Development Community (SADC) region.

To achieve this, a new system of immigration control has been put in place that will ensure that temporary and permanent residence permits are issued as expeditiously as possible. Under the Immigration Amendment Act, No. 19 of 2004, and the new Immigration Regulations, both of which came into effect by proclamation on 1 July 2005, immigration procedures have been simplified, making the requirements for entry and residence objective, predictable and reasonable.

South Africa's immigration legislation and regulations are very much in line with international principles of immigration. The applicable legislation is the Immigration Act, No. 13 of 2002, which came into operation on 7 April 2003, together with the relevant regulations, both of which have been amended from time to time.

Work permits are generally skills-driven. They remain a major tool for bridging general skills shortages and shortages where the South African government has identified national critical skills. The process for importing those skills is being expedited at present. One of the underlying principles of this type of immigration system is that of supply and demand. A prospective employer must attempt to employ a South African citizen or resident first. The position should be advertised in the national printed media. If a suitable candidate cannot be found, the position can be offered to a foreign national.

An innovative work permit, called the **Quota Work Permit**, has been designed to facilitate the employment of highly skilled foreign nationals. The Minister of Home Affairs, in consultation with the Ministries of Labour and Education, publishes a national critical skills list on an annual basis. This list defines specific professional categories and skills sets and couples them to a numerical quota. If an individual falls into one of the categories, then a prospective employer would not have to advertise the position.

Persons who have unique skills with high qualifications may also qualify under the **Exceptional Skills Work Permit** category. In this category, an individual would have to prove not only the nature of his or her exceptional skills, but also how the skills would be to the advantage of the South African economy. Testimonials and publications by the incumbent can also be used to support the application for this type of work permit.

The **General Work Permit** category remains available to all other types of applicants. Advertisements in the national printed media form an integral part of this type of application as one element of proof of the efforts made by the prospective employer to secure the services of a South African citizen or resident. A very important category of work permit is that of the **Intra-Company Transfer Work Permit**, which enables multi-national companies to transfer senior or key members of personnel, posted elsewhere, to their South African offices for a limited period. Currently such deployments are limited to three years.

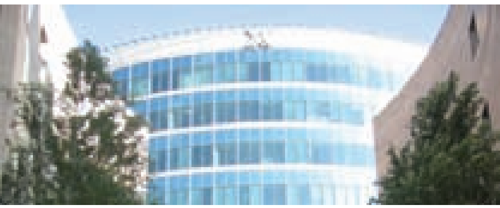
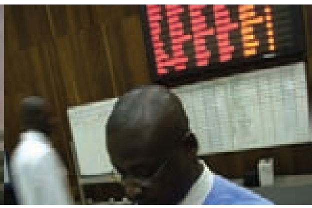
Investing in South Africa in terms of the Immigration Act is subject to qualification for a **Business Permit**. This category of permit was previously known more appropriately as the 'own business/self-employment' permit, which was more descriptive. To qualify for this category, one would have to either start up a new business in South Africa or purchase an existing business or part thereof.

In either instance, an applicant would have to demonstrate that a feasibility and viability study has been undertaken, which would have to be proven in the form of a substantive business plan.

Further elements to be shown in order to qualify for a business permit are the following:

- Adequacy of capitalisation, currently R2,5m;
- An undertaking to employ at least five South African citizens or residents in the business or intended business; and
- An undertaking to register with the South African Revenue Service (SARS).

Trade and Investment South Africa (TISA), a division of the Department of Trade and Industry (**the dti**), makes recommendations to the Department of Home Affairs for certain key industries, as well as for investments under R2,5m. These recommendations are formulated in conjunction with the various provincial investment promotion agencies. TISA provides a comprehensive facilitation service for investors who have to comply with the various elements of the Immigration Act. Alternatively, investors may also approach specialist immigration attorneys and practitioners.


10. Foreign Exchange Control

The responsibility for exchange control policy has always vested with the Minister of Finance. The Minister delegated certain powers and functions to the Exchange Control Department of the South African Reserve Bank, which implements and administers such policy on behalf of the government. The Minister of Finance also appointed certain banks to act as authorised dealers in foreign exchange. Being appointed as an authorised dealer gives a bank the right to buy and sell foreign exchange, subject to conditions and within limits prescribed by the Exchange Control Department.

Non-residents may freely invest in the Republic, provided that suitable documentary evidence is presented that such transactions are being concluded at arm's length and at fair market-related prices and financed in an approved manner. Financing must be in the form of the introduction of foreign currency, rands from a non-resident account or local financial assistance to affected persons and non-residents.

Investors are advised to ensure that share certificates are endorsed as 'non-resident'. A record should be kept of funds introduced into South Africa. For every purchase of exchange, irrespective of the amount involved, authorised dealers are required to report to the South African Reserve Bank details of payments received from foreign partners by South African residents.

Authorised dealers may allow the transfer of dividends, profit and/or income distributions from quoted companies, non-quoted companies and other entities to non-residents in proportion to their percentage shareholding and/or ownership. Authorised dealers may also allow the transfer of dividends, profit or income distributions by ‘affected persons’ who have local financial assistance at their disposal, provided that the relative distribution will not cause the entity to be placed in an over-borrowed position in terms of the formula requirements.

The local sale or redemption proceeds of non-resident-owned assets in the Republic may be regarded as being freely remittable. Such proceeds may also be freely used in the Common Monetary Area (CMA) by non-residents for investment and other purposes and may, accordingly, be credited to non-resident accounts.

Authorised dealers may approve applications by residents to avail of inward foreign loans and foreign trade finance facilities from any non-resident, subject to adherence to specific criteria applicable to such loans being recorded via the loan reporting system. For any other request which falls outside the applicable criteria, an application must be submitted to the Exchange Control Department for consideration. Approval is normally granted, provided the loan is for a period of at least one month and a market-related interest rate is charged, i.e. up to prime plus 3% for rand-denominated loans and up to the base lending rate plus 2% for foreign-denominated loans which are not shareholder-related funds, with shareholder funds being restricted to prime.

A South African-registered entity that is 75% or more foreign-controlled is restricted in the amount that it may borrow or access from South African lenders and is known as an ‘affected company’. The borrowing or facility limit for local financial assistance is based on a pre-set formula. Non-resident wholly owned subsidiaries may borrow locally up to 300% of total shareholder investment. This excludes emigrants, the acquisition of residential property by non-resident or affected persons and any other financial transactions, for example portfolio investments by non-residents, hedging, etc. In such cases, a ratio of 100%

applies. Effective capital includes paid-up equity capital, preference shares, undistributed earned profit, shareholders' loans from abroad and, in certain instances, the hard-core shareholders' trade credit.

The percentage of effective capital that may be borrowed is:

$$300\% + \left(\frac{\%\ \text{South African interest}}{\%\ \text{Non-resident interest}} \right) \times 100\%$$

The Exchange Control Department will not permit the remittance of profits or repayment of loans where, as a result of the remittance, the local financial assistance limit will be exceeded and will require local financial assistance to be reduced before remittance.

Royalties, and licence and patent fees to non-residents, may be approved, provided the authorised dealer is satisfied that the payments fall within the terms of the relative agreement and, where applicable, comply with any conditions laid down in the authority granted by Exchange Control and/or the Department of Trade and Industry and the application is accompanied by an auditor's statement showing the amount due has been correctly calculated.

Current account payments, such as management fees and other fees for services provided, may be paid by authorised dealers on presentation of an invoice, provided that such payments are not calculated as a percentage of sales, profits, purchases or income.

Source: South African Reserve Bank.

11. Business Entities and Registration

The most common business entities in South Africa are:

- Companies;
- Close corporations;
- Partnerships and sole traders;
- Joint ventures; and
- Local branches of foreign companies.

Companies (Private and Public)

Companies, common investment vehicles for foreign investors operating in South Africa, may be public (Limited) or private ((Proprietary) Limited). They exist as separate legal entities from their shareholders and/or members. The Companies Act makes no distinction between companies that are locally-owned and those that are foreign-owned and, once formed, a company has an unlimited lifespan. Both public and private companies must be incorporated and registered with the Registrar of Companies.

Companies incorporated in South Africa must have a registered office and maintain certain statutory and accounting records in South Africa. If the accounting records are maintained outside of the Republic, the company must receive financial information and returns that will enable the statutory financial statements to be prepared. Approval of the name of the company must be obtained from the Registrar of Companies before incorporation.

Public companies may offer their shares for sale to the public, although they need not be listed on the stock exchange for the public to hold an interest in their shares. The number of shareholders is unlimited, and there are no restrictions on the transfer of their shares. They must file a copy of their annual financial statements with the Registrar of Companies, and these statements are available for public inspection.

Private companies, on the other hand, may not offer their shares for sale to the public. The right of transfer of their shares is restricted and the number of members is limited to 50. Private companies are not required to file their annual financial statements with the Registrar of Companies; thus, the statements are not available to the general public. They must include the word ‘Proprietary’ or (Pty) at the end of the registered name immediately before the word ‘Limited’ or ‘Ltd’. For both public and private companies, an audit by a registered accountant and auditor is obligatory.

The Companies Amendment Act, No. 37 of 1999 makes provision for:

- A company to acquire its own shares under certain circumstances, thereby providing a mechanism to restructure the company’s capital and unlock shareholder value;
- Disclosure of beneficial interest in securities to enable companies to ascertain who its shareholders are; and
- The mandatory appointment of a company secretary for all public companies, excluding a share block company.

In order for a company to buy back its own shares, the following conditions must be met:

- The company's articles of association must permit share buy-backs.
- Shareholders must be circularised regarding the proposed buy-back, and a special resolution must be passed by the shareholders, authorising the buy-back.
- The company should be solvent and liquid, otherwise the directors will be jointly and severally responsible.
- Following the buy-back, the company's share capital should not consist wholly of redeemable shares.

Registration Requirements

All required registration forms may be purchased for approximately R100 each from a stationer dealing in statutory forms. To reserve a name, a CM5 application form (duplicate copies are no longer required), stamped with R50 in revenue stamps, must be submitted to the Registrar's office. In order to save time and costs, it is recommended that three to four alternative names be furnished in order of preference. A preliminary search can be done on the Companies and Intellectual Property Registration Office of South Africa (CIPRO) website.

Following approval, the name will be reserved for a period of two months. Within this period, the documents for incorporation should be submitted. An extension of one month may be applied for by submitting a CM6 form, stamped with R20 in revenue stamps. The Registrar must receive the application for extension before the end of the first two-month period.

Legal and other professional fees relating to the registration of a company depend on the complexity of the individual application. For ordinary applications without complications, legal costs start at about R4 500.

Standard versions of a memorandum and articles of association are included in the Companies Act. A company may choose to submit its own version. However, this may slow down the approval process, as it would require close examination by the Registrar's office. All companies must have an independent auditor to produce annual financial statements. At the time of incorporation, the auditor is required to sign an acceptance of the office.

Registration applications must be submitted to the Office of the Registrar in Pretoria. If no errors or omissions are made, the application will be processed in three to five business days.

A complete application includes:

- Copy of an approved CM5;
- Power of attorney (if an attorney is used or if more than one subscriber exists);
- CM22 (notice of postal address and registered office address), in duplicate;
- Memorandum and articles of association, in duplicate (one copy bound in book form and certified by a notary public);
- CM1 (certificate of incorporation);
- CM2 (first page of memorandum of association), stamped with a minimum registration fee of R350, plus R5 per R1 000 of share capital or part thereof and/or R5 per 1 000 shares if no-par-value shares;
- CM44c (signature page for subscribers);
- CM46 (certificate to commence business), stamped with R60;
- CM47 for each director;
- CM29 (return of register of directors);
- CM27 (notice of company secretary), if a public company; and
- CM31 (notice of appointment of auditor) in duplicate.

Close Corporations

A close corporation does not have directors, as its business is conducted by the members, who must be natural persons (i.e. individuals). Another company, close corporation or trust cannot, therefore, own a close corporation. In a close corporation, the members have the rights and obligations of both shareholders and directors. Consequently, ownership and management of the corporation are not separated. Close corporations may have up to 10 members. In general, few formal requirements are imposed on close corporations.

The capital of close corporations is called a ‘contribution’. A close corporation is not subject to the stringent capital maintenance rules applicable to share capital in companies. The interest of a member of a close corporation is represented by a percentage, which is established on registration of the founding statement and which may be changed by the registration of an amended founding statement.

Members of a close corporation enjoy limited liability, which may be lost if they violate certain provisions of the Close Corporations Act. The Companies Act and the Close Corporations Act both allow the conversion of a company to a close corporation and the reverse. They also provide that the legal entity continues after the conversion.

Reporting requirements for close corporations are not as onerous as those for companies. A statutory audit is not required; however, the close corporation must have an accounting officer, who must report that the annual financial statements are in agreement with the accounting records.

Registration Requirements

Close corporations are required to register with the Registrar of Close Corporations. The reservation of a name is similar to that of a company. No auditors are required for the registration of close corporations, and lawyers are not necessary. The corporation will need to appoint an accounting officer. Due to the volume of applications received by the Registrar's office – up to 650 daily – approval takes five business days. Applications may be submitted either by mail or by hand and should include the founding statement application, the CK1 form in duplicate, an approved CK7 form and an original letter of consent from the accounting officer.

Partnerships and Sole Traders

Partnerships and sole traders are subject to few statutory requirements, but the partners and the traders generally do not have the protection of limited liability. However, in a partnership in which not all the names of the partners are disclosed, the undisclosed partners may limit their liability to third parties to the amount of their contribution to the partnership.

Under the Companies Act, any unincorporated company, association or partnership may not consist of more than 20 persons, except in the case of certain professional partnerships, where there is no limitation on the number of partners. Registration is not required and there are no statutory reporting requirements, except that for tax purposes financial statements must be produced in sufficient detail to enable tax assessments to be made by the Receiver of Revenue.

Joint Ventures

A joint venture is a contractual relationship between two or more enterprises engaged in a trade or business that does not qualify as a partnership.

Local Branch of a Foreign Company

With the exception of banking and insurance companies, any foreign company may establish a place of business and carry on its activities in South Africa without forming a separate locally incorporated company. The establishment of a branch requires registration with the Registrar as an 'external company' under Section 32 of the Companies Act within twenty-one days after the establishment of a place of business in the Republic.

The application requirements to establish a branch include:

- A completed application form;
- A certified copy of the memorandum and articles of association of the company and a certified translation in one of the official languages of the Republic;
- A notice specifying the registered office and postal address of the company;
- The consent and name and address of the auditor in South Africa;
- A notice of the financial year-end of the company;
- Details of the local manager and secretary of the company as well as details of the directors and their consent to act in that capacity; and
- A notice of the name and address of the person authorised to accept service on behalf of the company.

The legal costs should be less expensive than for incorporating a South African company. A registered office must be established in South Africa and the company must appoint a South African resident to act as its legal representative. A local auditor must be appointed, and audited financial statements in respect of the South African branch, together with a certified copy of the most recent financial statements prepared under the requirements of its country of incorporation, must be filed with the Registrar of Companies. In certain circumstances, an exemption may be granted in respect of these filing requirements.

There are no **local equity requirements**, except for major banking institutions, where local control is required by government policy. However, in the case of business entities with non-resident ownership equal to or greater than 75%, restrictions exist in relation to local borrowings and debt:equity ratios.

The company will be taxed at a flat rate of 29%, but no STC is payable. An external company is taxed on 50% of its net capital gain.

Business Trusts

In South Africa, the Trust Property Control Act, 1988 governs the formation and operation of trusts. Through a trust, trustees for the benefit of nominated beneficiaries can carry on a business. The trust affords limited liability in that neither the trustees nor the beneficiaries are liable for the obligations thereof. The trust does not have a separate legal personality (other than for taxation purposes). The trust assets vest in the trustees, who hold them for the benefit of others. A trust is usually formed by means of a trust deed, which needs to be lodged with the Master of the High Court. No trustee can act in the capacity of a trustee until a written authorisation is obtained from the Master. The Master can request security, but exemption is usually granted.

The benefit of a trust is that the onerous provisions of the Companies Act do not apply. A trust need not submit financial statements and does not have to appoint an auditor. There is no limit on the number of trustees or beneficiaries that are permitted. There are income tax benefits in making use of a trust. Where income is distributed by a trust, it is considered the income of the recipient and is taxed in the hands of the recipient and not of the trust.

In this way, effective splitting of income can be achieved, subject to the tax avoidance provisions of the South African income tax legislation. Distributions to beneficiaries of profits of the trust are not subject to STC, as with companies and close corporations. A trust is taxed on 40% of its net capital gain.

Source: www.cipro.co.za

For more information, please contact:

Companies and Intellectual Property Registration Office of South Africa (CIPRO)

Tel.: 0861 843 384; +27 (12) 394 9500

Fax: 0861 843 888; +27 (12) 394 9501

E-mail: info@cipro.gov.za

Website: www.cipro.co.za

12. Sources of Finance for Foreign Investors

The main sources of short-, medium- and long-term financing for companies are commercial banks. Funding an investment by way of a loan is tax-efficient: if the funds are used for the purposes of trade and in the production of income, the interest paid on the loan should be tax deductible, subject to the transfer-pricing and thin-capitalisation provisions.

Restrictions on South African Borrowing by Foreign Companies

A South African company in respect of which 75% or more of its capital, assets or earnings may be paid to the benefit of a non-resident of South Africa, or of which 75% or more of its voting power, power of control, capital assets or earnings are vested in or controlled by or on behalf of a non-resident of South Africa, is restricted in the amount that it may borrow from South African lenders and is known as an 'affected company'. Local borrowing for these purposes is widely defined and includes virtually all forms of borrowing and financing facilities, e.g. bank loans, overdrafts, facilities and finance leases, but does not include normal trade credit extended by suppliers of goods or services. The borrowing limit is based on a pre-set formula.

Non-residents may borrow up to 100% of the rand value of funds introduced from abroad and invested locally. However, in instances where a non-resident wishes to borrow locally to finance a foreign direct investment in South Africa, Exchange Control would, on application, consider such borrowing up to 300% of the rand value of funds introduced from abroad and invested locally. Total shareholders' investment includes paid-up equity capital, preference shares, undistributed earned profit, shareholders' loans and hard-core shareholders' trade credit.

The percentage of effective capital that may be borrowed is (300% + (% local participation divided by % foreign participation x 100%)). Affected companies applying for local finance must complete Form MP79(a), which discloses the assets and liabilities of the applicant company prior to the granting of the financial assistance. On application, the assets and liabilities of a number of South African companies under common control can be aggregated for the purposes of establishing the maximum level of local borrowings that may be granted to the group, such that an individual company may be 'over-borrowed', provided that the group as a whole is within the borrowing limit for the group.

The South African Reserve Bank will not permit the remittance of profits or repayment of loans where, as a result of the remittance, the local borrowing limit will be exceeded and will require local borrowings to be reduced before remittance.

Source: SA Reserve Bank.

Types of Loans

Mortgage Loans

Each commercial bank applies its own policy in the granting of a mortgage over a commercial property. The factors that it takes into account include the value of the buildings, based on a professional valuation undertaken by the bank, and where they are situated. Normally, South African banks lend about 70% of the value of a commercial property, but this can vary from one bank to another (see Appendix for a list of South African banks).

Unsecured Loans

The most common way for a business to finance its working capital is through an overdraft facility. A commercial bank might be prepared to grant this on an unsecured basis depending on the financial standing of the company, taking into account, for example, whether the business has sufficient assets and cash-generation ability to service the overdraft. Alternatively, the bank might require security for the loan in the form of, for example, personal guarantees by the directors, physical security such as a bond over an unbonded property, or a cession of the book debts of the company.

Discounting and Factoring

South African banks will also, in some cases, be prepared to discount, for example, foreign bills, trade bills, bankers' acceptances or promissory notes. There are also a number of institutions, many associated with the banks that undertake factoring, that will advance money against the client's debtors' book. Normally, factoring gives a better rate than a normal bank cession over a debtors' book, but that also depends on the quality of the book.

Corporate Finance

The commercial divisions of the major banks offer standard lending products to medium-sized companies. There are also corporate finance divisions in the major banks, or specialised corporate finance institutions, which offer tailor-made solutions for larger or more complex needs, such as the financing requirements of multinationals or listed companies.

Export Finance and Guarantees

Commercial banks will assist with export credits, guarantees and letters of credit. The Credit Guarantee Insurance Corporation of South Africa administers an export credit insurance scheme on behalf of the Department of Trade and Industry.

State Assistance

The state-owned Industrial Development Corporation (IDC) provides financing to the private sector to facilitate commercially sustainable industrial development and innovation to the benefit of South Africa and Southern Africa. Finance is in the form of equity, quasi-equity and medium-term loan finance. Interest rates are competitive and risk-related and based on the prime bank overdraft rate.

The IDC offers specific financing products:

- Bridging finance: for entrepreneurs who have secured firm contracts – except for construction contracts – with the government and/or the private sector and who have short-term financing needs;
- Financing for empowerment: for emerging industrialists/entrepreneurs who wish to acquire a stake in formal business by way of management buy-ins or buy-outs, leveraged buy-outs or strategic equity partnerships;
- Financing for small and medium-sized mining and beneficiation: aimed at small and medium-sized mining and beneficiation activities and jewellery manufacturing activities;
- Financing for the development of the techno-industry: aimed at entrepreneurs in the IT, telecommunication, electronic and electrical industries wanting to develop or expand their businesses;
- Financing for the development of agro-industries: for entrepreneurs in the agricultural, food, beverage and marine sectors wanting to expand and develop their businesses;
- Financing for the development of the tourism industry: aimed at commercial projects in the medium to large sectors of the tourism industry;
- Financing for the expansion of the manufacturing sector: aimed at entrepreneurs wishing to develop or expand their manufacturing businesses and create new or additional capacity;

- Wholesale finance: for intermediaries looking for wholesale funding to lend to individual entrepreneurs;
- Financing for the export of capital goods: for manufacturers and providers of exported capital goods or services. The aim is to provide competitive US dollar and rand financing to prospective foreign buyers of equipment;
- Import credit facilities: for local importers of capital or services requiring medium- to long-term import credit facilities;
- Short-term trade finance facilities: for exporters looking for short-term working capital facilities to help them facilitate export orders; and
- Project finance: aimed at large projects in the metals, petro and chemical, manufacturing, agriculture, minerals and mining, and energy market sectors.

13. Regulatory Environment

There are regulations governing the conduct of business in various sectors of the economy such as finance, banks and other financial institutions; medicine; and manufacturing and mining.

Regulatory bodies include:

- The Financial Services Board (FSB), a statutory body charged with supervising the activities of financial institutions, including financial services and banking services. The FSB acts in an advisory capacity to the Minister of Finance, and its powers include the suspension and withdrawal of authorisations to provide financial services.
- The Independent Communications Authority of South Africa (ICASA) regulates television and radio broadcasting, telecommunications and the assignment of radio frequencies. ICASA also regulates the government-controlled Telkom Limited, which provides telecommunication services, and recently granted an operating licence to a second network operator, Neotel, which will compete against Telkom.
- The Securities Regulation Panel (SRP) is a statutory body established to investigate insider trading and regulate acquisitions and takeovers where there is a change in control over public companies and private companies and the shareholders' interests exceed a prescribed limit. The SRP has the power to compel the making of like offers to minorities or to reverse transactions which have been implemented. In appropriate circumstances, the SRP will grant exemption from compliance with any or all of the provisions of the Code and Regulations.
- Provincial gambling boards regulate gambling and related activities in accordance with national and provincial legislation and regulations.

- The Lotteries Act provides for a licence to conduct the National Lottery. The National Lotteries Board regulates the National Lottery and other lawful lotteries.

Other Relevant Laws for Business

Competition Law

The new Competition Act, 1998, which came into effect on 1 September 1999, fundamentally reformed South African competition law and has significant implications for conducting business in South Africa. The Act enables competition authorities to take into account both competitiveness and public interest issues, which include, *inter alia*, Black Economic Empowerment (BEE).

The Act also substantially strengthens the powers of the competition authorities on similar lines to EU, Canadian and USA models by granting them, *inter alia*, powers of search and seizure.

The Act provides for:

- The establishment of a Competition Commission, Competition Tribunal and Competition Appeal Court. These bodies are independent of the government although, subject to certain requirements in the Act, the Commissioner is appointed by the Minister of Trade and Industry and the members of the Tribunal and Court are appointed by the President;
- Various prohibitions on anti-competitive conduct, restrictive practices (for example resale price maintenance, price fixing, predatory pricing and collusive tendering) and ‘abuses’ by ‘dominant’ firms (generally defined as firms with at least a 35% market share or, alternatively, market power);

- A notification and prior approval procedure for certain mergers and acquisitions (please refer to Part Five of the Act). A notifiable merger and acquisition may not be implemented without such approval; and
- Competition authorities to have jurisdiction outside South Africa with regard to economic activity in the country or with an effect on the country.

The significant penalties for contravention of the Act include:

- Divestiture of assets;
- Declaring agreements to be void in whole or in part;
- Ordering a party to supply goods and services to another party; and
- Fines of up to 10% of a firm's annual turnover in and exports from South Africa.

The Competition Act also applies to agreements and arrangements involving intellectual property. This is a significant deviation from previous competition legislation, which specifically exempted intellectual property from the ambit of South African competition law.

Environmental Law

Environmental legislation is receiving increasing attention in South Africa. Since 1994, various pieces of legislation have been introduced to protect the environment and promote its sustainable use, including:

- The National Environment Management Act, No. 107 of 1998, which provides a legal framework for environmental developments;
- Obligatory environmental impact assessments (EIAs) at national and provincial level. At least 100 applications are processed each year. The Department of Environmental Affairs and Tourism is in the process of revising the regulation of EIAs to, *inter alia*, make them more streamlined and provide for more appropriate public participation;

- The National Environmental Management: Biodiversity Act, No. 10 of 2004, which provides a regulatory framework to protect South Africa's valuable species, ecosystems and biological wealth; and
- The World Heritage Convention Act, No. 49 of 1999, which covers the management, protection and sustainability of the country's world heritage sites.

Labour Laws

Labour Relations and Skills Development

New labour laws have been introduced in South Africa to:

- Regulate the relationship between employers and employees;
- Provide basic employment standards for employees;
- Advance historically disadvantaged employees in the workplace; and
- Improve the skills of employees.

Labour Relations Act

The new Labour Relations Act (LRA) applies to all employees in South Africa, except members of the Defence Force and National Intelligence Agency. The LRA encourages and regulates collective bargaining between employers and trade unions. Bargaining councils can be formed by agreement between registered trade unions and registered employers' organisations.

A bargaining council's primary function is the conclusion of collective agreements between employers' organisations and trade unions. Employees have the right to strike on matters of mutual interest, such as wages and conditions of work. They cannot strike on dismissals. The Act also sets down a process which needs to be followed before the right to strike can be exercised. These strikes are then regarded as procedural and workers who strike cannot be dismissed for striking.

The LRA regulates unfair dismissal and sets up the Commission for Conciliation, Mediation and Arbitration (CCMA) and the Labour Court as dispute resolution bodies. The CCMA handles the bulk of dispute resolution, as almost all disputes have to be mediated by the CCMA first. The Labour Court, on the other hand, has exclusive jurisdiction to deal with matters such as retrenchments, strike interdicts and the review of CCMA decisions. Appeals against decisions of the Labour Court lie with the Labour Appeal Court.

Dismissal of Employees

In South Africa an employee can be dismissed if there is a fair reason for the dismissal and a fair procedure is followed before the employee is dismissed.

Fair Reason

Fair reasons for dismissal include:

- Misconduct on the part of the employee;
- Incapacity of the employee (unable to perform duties properly owing to illness, ill-health or inability); and
- Operational reasons (retrenchment).

In all the above instances, the procedures contained in the LRA as well as in the company's own disciplinary procedures must be followed before an employee may be dismissed.

Retrenchment

Before an employer can retrench employees, the employer must consult with the employees concerned or their trade unions on, amongst other things, the reasons for the dismissals, the number of employees affected, the proposed methods of selecting the employees to be retrenched and severance pay.

Severance Pay

With regard to severance pay, an employer must pay a retrenched employee a minimum of one week's wages for each year of completed service.

Disputes about Dismissals

Disputes over unfair dismissals must first be referred to the relevant bargaining council or the CCMA for conciliation. If conciliation fails, the dispute may be referred for arbitration or to the Labour Court, depending on the type of dispute. The process of dispute resolution is speedy: disputes must be referred within thirty days of their occurrence and are usually also set down for conciliation within thirty days.

Basic Conditions of Employment Act

The new Basic Conditions of Employment Act (BCEA) covers the basic rights of South African employees. These conditions are the minimum conditions and can be varied and improved upon by collective bargaining through plant or company-level collective agreements or sectoral bargaining councils. They can also be varied through ministerial determination. The BCEA places obligations on employers in respect of working hours, annual leave, leave pay, maternity leave, family responsibility leave and overtime pay for employees. The LRA provides special protection to night workers and shift workers. It also prohibits child and forced labour.

Key Provisions of the Basic Conditions of Employment Act

Normal time: The maximum ordinary hours of work that an employee may work in any week or on any day are as follows:

- 45 hours in any week;

- Nine hours a day for employees who work five or fewer days a week; and
- Eight hours per day for employees working more than five days per week.

Any time worked in excess of these limits is regarded as overtime. An employee's ordinary hours of work may, by agreement, be extended by up to 15 minutes a day to enable the employee to continue serving members of the public after the completion of ordinary hours of work. This is subject to a weekly limit of one hour.

Overtime

An employee may not be required or permitted to work overtime unless there is an agreement between the employer and employee, either in an employment contract for compulsory overtime or in an *ad hoc* agreement for voluntary overtime. An employee who works overtime must be paid one-and-a-half times the employee's ordinary hourly wage (time and a half). An employee may, however, agree to take paid time off instead of being paid for overtime work.

The paid time off must be granted to the employee within one month of the employee becoming entitled to it.

Work on Sundays

An employee may only work on a Sunday if there is an agreement to this effect. Such an agreement may be general or apply to a particular Sunday only. An employee who normally works on Sundays must be paid one-and-a-half times his or her normal hourly wage. If an employee does not normally work on a Sunday, the employee must be paid double his or her normal wage.

At a minimum, however, an employee who works on a Sunday must receive at least his or her ordinary daily wage. In other words, an employee who works for one or two hours on a Sunday must be paid at least his or her ordinary daily wage for that work. An employer and employee may agree that the employee be granted paid time off rather than being paid for Sunday work.

Work on Public Holidays

In the absence of an agreement, an employer may not require an employee to work on a public holiday. An agreement, or contract of employment, may provide that an employee will work on some or all public holidays. If there is no such agreement, the employer will have to secure the employee's agreement for work on any public holiday.

There are 12 officially recognised public holidays in South Africa:

New Year's Day – 1 January;

Human Rights Day – 21 March;

Good Friday – Friday before Easter Sunday;

Family Day – Monday after Easter Sunday;

Freedom Day – 27 April;

Workers' Day – 1 May;

Youth Day – 16 June;

National Women's Day – 9 August;

Heritage Day – 24 September;

Day of Reconciliation – 16 December;

Christmas Day – 25 December; and

Day of Goodwill – 26 December.

If any of these days falls on a Sunday, the following Monday becomes a public holiday.

Leave

There are four categories of leave to which employees are entitled:

- Annual leave;
- Sick leave;
- Maternity leave; and
- Family responsibility leave.

With the exception of employees who work for an employer for less than twenty-four hours a month, all employees have the right to annual leave, sick leave and maternity leave. Family responsibility leave is only for employees who work for an employer for four or more days a week.

Annual Leave

An employee is entitled to at least twenty-one consecutive days' (three weeks') leave in respect of each year of employment. An employee is entitled to consecutive days and can insist on a three-week period of unbroken leave each year. Annual leave must be granted within six months after the end of each annual leave cycle. The timing of leave should be agreed upon between the employer and employee. If no agreement can be reached, the employer is entitled to decide when leave must be taken. An employee may not take annual leave during any other period of paid leave in terms of the BCEA, such as sick leave, or during any period of notice of termination.

Sick Leave

An employee's sick leave is calculated over a three-year sick-leave cycle. During each cycle an employee is entitled to receive paid sick leave for the number of days that the employee normally works during a six-week period. For example, an employee who works five days a week for an employer is entitled to thirty days' paid sick leave over the three-year cycle.

Maternity Leave

Employees have the right to four consecutive months' maternity leave. Maternity leave may be taken at any time from four weeks before the expected date of birth of the child. An employee is not required to stay away from work for the full four-month period and may choose to return earlier. However, she may not work within six weeks of the birth of her child unless a medical practitioner or midwife certifies that she is fit to do so.

An employee must give an employer at least four weeks' notice before she starts her maternity leave of when she intends to take the maternity leave and return to work.

A pregnant or breastfeeding employee may not be required to perform work that is hazardous to the health of the employee or the child.

Family Responsibility Leave

An employee is entitled to three days' paid family responsibility leave during each annual leave cycle. Family responsibility leave may be taken:

- When the employee's child is born;
- When the employee's child is sick; and
- In the event of the death of a member of the employee's immediate family.

Family responsibility leave must be paid at the employee's ordinary wage and on the employee's usual payday.

Age of Employment

The BCEA prohibits the employment of any child under 15 years of age. In addition, a child between the ages of 15 and 18 may not be in employment:

- That is inappropriate for the child; and
- That places at risk the child's well-being, education, physical or mental health or spiritual, moral or social development.

It is a criminal offence to employ a child in contravention of the BCEA.

Employment Equity Act

The Employment Equity Act prohibits discrimination at the workplace and promotes employment equity. Employees who are discriminated against on a wide range of grounds, including race, gender and disability, are entitled to declare a dispute against their employer. Such disputes are conciliated and, if not resolved, can be either arbitrated or sent to the Labour Court for adjudication.

Employers who employ over 150 employees are obliged to report to the Department of Labour on an annual basis and are obliged to develop employment equity or affirmative action plans. Employers who employ between 50 and 150 employees are expected to report every second year. In the South African environment, the promotion of employment equity will enable enterprises to take maximum advantage of the opportunities offered by diversity.

Skills Development Act/Skills Development Levies Act

The Skills Development and Skills Development Levies Act oblige all employers to look at the issue of training and education. All employers are obliged to contribute an amount equivalent to 1% of their payroll to an assigned industry-controlled Sector Education and Training Authority (Seta). Employers who submit a sensible training plan will be eligible to receive back a percentage of their contributions.

A national skills fund has been established and may, in some cases, be accessed to train local people to benefit from new employment opportunities linked to new investments.

In addition to the above legal requirements, foreign investors are also expected to import new technologies in order to raise the productive capacity of the South African economy.

Recommendations for Investors

Though not required by law, it is strongly recommended that investors consult with the relevant industry union(s) during the start-up phase. Investors should consider that union interests reach far beyond the bread-and-butter issues of wages and benefits.

Consultations should include a discussion of:

- The enterprise's human resource strategy, including plans for skills and technology transfer;
- Plans to address affirmative action;
- Possible stakeholding/profit-sharing agreements for employees; and
- The enterprise's market plans.

Once the enterprise is in operation, unions also have the right to be consulted on such matters as:

- Proposed restructuring of the workplace;
- Planned mergers and acquisitions that would affect labour; and
- Proposed retrenchments.

For more information, please contact:

The Ministry of Labour

Postal address: Private Bag X499, Pretoria 0001

Tel.: +27 (12) 309 4000

Fax: +27 (12) 309 4082/320 2059

Website: www.labour.gov.za

Labour Union Federations Congress of South African Trade Unions (Cosatu)

Tel.: +27 (11) 339 4911

Fax: +27 (11) 339 5080

Website: www.cosatu.org.za

Federation of Unions of South Africa (Fedusa)

Tel.: +27 (11) 279 1800

Fax: +27 (11) 279 1821

Website: www.fedusa.org.za

National Council of Trade Unions (Nactu)

Tel.: +27 (11) 833 1040

Fax: +27 (11) 833 1032

Website: www.nactu.org.za

Intellectual Property

South Africa has a developed system of intellectual property (IP) law covering patents, industrial designs, copyright and trademarks. South African IP law has been amended and consolidated in accordance with the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) requirements and the International Convention for the Protection of Performers, Products of Phonograms and Broadcasting Organisations.

Patents

Patents are granted for inventions that have not been previously known and that differ adequately from what was previously done along the same lines. An individual can apply for a temporary patent for the duration of one year, at a cost of R60. Before the expiry of a temporary patent, a patent attorney or agent must file a complete patent application, which costs R266. It takes twelve to eighteen months to obtain a patent in South Africa. Patents last for twenty years from the date of application, subject to the payment of prescribed renewal fees.

How do you register for patent protection?

First conduct a novelty search to ensure you are not infringing on existing patent rights. You can conduct a search at the office of the Registrar of Patents in Pretoria. The Registrar does not conduct novelty searches; it is the responsibility of the client to personally conduct the search.

All documents except drawings must be:

- In typescript or machine-printed;
- In a dark durable colour;
- Free from erasures, alterations, over-writings and interlineations;
- Legible;
- Free of cracks, creases and folds; and
- Produced on A4 sheets of paper.

The Registrar examines the complete patent application and, if found in order according to the requirements of the SA Patent Act, it is published in the *Patent and Trademark Journal.* According to the International Patent Convention, an applicant can file an application in another country and claim a priority date, which will then be dated the same as the original South African application.

Benefits of the Patent Co-operation Treaty (PCT) system include the following:

- No representation required (attorney/agent is optional);
- There is no multiple search;
- One month to pay filing fees;
- Protection will be granted in 109 member-states;
- One single application is filed in triplicate; and
- Nationals and residents of South Africa are entitled to a reduction of 75% of the international fee.

Designs

Designs incorporating the visual or aesthetic appearance of an article are protected and registered in terms of the Designs Act, No. 195 of 1993, provided that it is new in comparison to that previously known on articles of a similar nature. Designs are divided into aesthetic and functional designs. Any individual may file for a design. An attorney is not required. The duration of registration is fifteen years for aesthetic designs and ten years for functional designs. Both are renewable at a prescribed renewal fee.

Copyright

Artistic works and other works containing intellectual content, such as literary works, music, cinematographic films, sound recordings, drawings (including engineering drawings), plans, computer programmes, pictures of all forms and numerous other two-dimensional and three-dimensional articles are protected by copyright under the Copyright Act, No. 98 of 1978. Copyright is different from other forms of intellectual property in that it exists automatically and no steps need to be taken in South Africa to register it. If you are not South African, you can obtain copyright protection provided the country you are a national of is part of the Berne Convention. Copyright endures for 50 years.

Trademarks

Trademarks may be registered under the Trademarks Act, No. 194 of 1993. After an initial term of ten years, a trademark may be renewed for a further 10-year period. Being registered as a trademark protects the name or logo in association with which an article is marketed or a service is rendered, and even the shape of a special container.

An attorney is not required to file for a trademark. A thorough preliminary trademark search, conducted by an experienced individual, can ensure against possible conflicts, thereby preventing the prolonging of an already lengthy process.

The Office of the Registrar will, on request, do an in-depth search for possible conflicts for a fee. The application fee for registering a trademark is R266. On average, approval requires at least two years, but a business may trade during that period. Applications may be lodged by hand or post with the registrar and fees are payable in revenue stamps, excluding Patent Co-operation Treaty (PCT) patent applications.

For more information, please contact:

Companies and Intellectual Property Registration Office of South Africa (CIPRO)
Tel.: 0861 843 384; +27 (12) 394 9500
Fax: 0861 843 888; +27 (12) 394 9501
E-mail: info@cipro.gov.za
Website: www.cipro.co.za

Specialised Licences

Cellular Licences

The Independent Communications Authority of South Africa (ICASA) regulates all wireless transmissions and issues licences to providers of telecommunication services and broadcasters.

The Telecommunications Act, No. 103 of 1996 determines the procedures for applications for specialised licences, such as cellular licences, but application for these types of licences can only be made on invitation by the Minister for Communications. The procedures for licensing private automatic branch exchange (PABX) systems and very-high-frequency (VHF) radios remain the same as in the past. In almost all cases, the equipment supplier handles licences for small-scale communications tools.

For more information, please contact:

Independent Communications Authority of South Africa (ICASA)
Tel.: +27 (11) 321 8200
Fax: +27 (11) 321 8551
E-mail: info@icasa.org.za
Website: www.icasa.org.za

Banking Licences

A company may conduct banking operations in South Africa through one of three mediums. All of these require the approval of the Registrar of Banks, who heads up the Banking Supervision Department of the Reserve Bank.

The three mediums are:

1. A separate banking company;
2. A branch of an international bank or banking group; and
3. A representative office of an international bank.

A Separate Banking Company

To establish a separate banking company, the investor must begin by incorporating a public company with the Registrar of Companies. The greater of R250m or 8% of risk-weighted assets is required as capital to establish a bank. The investor must then supply the information required by the Banks Act on banking licence application form DI 002.

The following information must be included:

- Details of the applicant and the proposed bank, including notice of registered office and postal address of company;
- Memorandum and articles of association;
- Certificate of incorporation;
- Business plan (including predominant business activities planned, schematic representation of group structure, dividend policy, auditors, risk management policy and names of directors and executive directors);
- A number of Banks Act returns, referred to as 'DI returns', to forecast the position for the ensuing year are required. The forecast DI returns required are those dealing with the balance sheet, off-balance-sheet activities, income statement, liquidity risk, capital adequacy, trading risk, and restriction on investments, loans and advances;
- Curriculum vitae of proposed directors and executive officers;
- Application for approval of appointment of auditors;
- A report from a public accountant on funds received from anticipated shareholders and held in trust;
- Planned internal audit activities; and
- Application for permission to acquire shares in a bank.

A Branch of an International Bank or Banking Group

Should a foreign bank seek to establish a subsidiary or a branch in South Africa, the procedures are similar to those for other investors as set out above.

However, foreign banks are also required to include the following with their application:

- Foreign bank holding company resolution approving proposed formation of a bank;
- Letter of comfort and understanding from foreign bank holding company;

- Letter from the foreign bank's home regulatory authority to the effect that it has no objections to the application and that it will comply with certain minimum standards of supervision; and
- Board minutes from the holding company empowering an official to sign all documents relating to the application.

Approval time for a banking company, a foreign subsidiary or a branch depends on the quality of the application. Banking licenses are not transferable.

A Representative Office of an International Bank

The requirements for establishing a representative office are less onerous, and it takes considerably less time to obtain approval for a representative office. Such offices cannot take deposits; they can merely act as information conduits to the parent company.

For more information, please contact:

The Registrar of Banks

South African Reserve Bank

Tel.: +27 (12) 313 3196

Fax: +27 (12) 313 3758

Website: www.reservebank.co.za

Land Acquisition, Rezoning, Sub-Division and Transfer

Land Acquisition

There are no restrictions on property ownership by non-residents, save for a prohibition on illegal aliens owning immovable property within South Africa. The procedures and requirements which must be complied with in certain circumstances include the local registration of entities registered outside of

South Africa, where they purchase property in South Africa, and the appointment of a South African resident public officer for a local company whose shares are owned by a non-resident.

In the event of a non-resident purchasing property in the country with the intention of residing here for longer periods, permanent residency will have to be applied for in accordance with the given requirements and procedures of South African law.

Purchasing Property in South Africa as a Foreigner

Property of any kind in South Africa is normally purchased through a broker or real estate agent, who should be registered as a member of the Estate Agency Affairs Board.

The South African Reserve Bank refers to foreigners as non-residents, whether they are natural persons or legal entities, whose normal place of residence, domicile or registration is outside the common monetary area of South Africa. Should the non-resident be paying cash for the property, the transaction can be processed without intervention from the Reserve Bank.

Non-residents purchasing a property in South Africa may borrow up to a maximum of 50% of the purchase price in South Africa; the other 50% must be brought into the country by the purchaser and transferred from a recognised foreign bank to a bank in South Africa. The total amount that may be borrowed is at the discretion of the commercial bank offering the loan.

Non-residents who are in possession of a valid South African work permit are considered to be residents for the duration of their work permit and are therefore not subject to borrowing restrictions placed on non-residents without work permits.

Legal Documentation

All contracts to acquire land must be in writing, contain certain prescribed information and be signed by both buyer and seller to be valid and legally binding. Contracts most commonly take the form of an agreement of sale or offer to purchase.

Once an agreement of sale has been signed by both parties it represents a valid and binding document from which neither party can withdraw without legal consequences, save for certain instances where:

- The agreement is subject to certain conditions that are either fulfilled/not fulfilled; and
- The purchase price is less than R250 000 and certain additional criteria in terms of the Alienation of Land Amendment Act are present, entitling the purchaser to 'cool off'.

A non-resident must open a non-resident account at a South African commercial bank to facilitate loan repayments. This account would normally be funded from abroad or from rentals received on the property purchased, subject to the bank holding the account being provided with a copy of any rental agreement.

However, the Exchange Control Authority allows a non-resident desirous of obtaining permanent residence status in South Africa to be dealt with as a South African resident for exchange control purposes. This takes place upon completion of a so-called immigrant's declaration and undertaking, issued by South African banks.

Once such declaration has been completed, such applicant will be eligible to borrow 100% of the purchase price of the property. However, it will then be incumbent upon such persons to actually apply for and obtain permanent residence within a reasonable period.

Exchange control is currently going through a process of deregulation in South Africa to make it progressively easier for foreigners to invest in this country and for South Africans to do business abroad. However, it remains a complex subject and non-residents investing in South Africa are strongly advised to consult a reputable lawyer or accountant for advice. The Reserve Bank retains considerable control, and while notes and guidelines have been issued, allowances will be made for exceptional circumstances.
Source: Pam Golding Properties, 2009.

Acquiring and Disposing of Land

Investors face a wide array of possibilities when choosing land for development in South Africa. Private, state, provincial, municipal and parastatal landholdings are all potentially available for commercial development – each with its own application process. The specific details of this process are determined and administered by the municipality concerned.

Commercial real estate is well developed in South Africa, with private landholdings in both urban and outlying areas. The availability of industrially zoned and serviced land varies by location. Property owners, brokers, managers and developers who are members of the South African Property Owners Association are available to assist investors in locating, leasing, buying and selling private property. Any of these bodies can be contacted through the South African Property Owners Association.

For more information, please contact:

South African Property Owners Association (Sapoa)
Telephone: +27 (11) 883 0679
Fax: +27 (11) 883 0679
Website: www.sapoa.org.za

Acquiring Publicly Held Land

The process of acquiring publicly held land tends to be significantly slower than with private landholdings. Efforts are underway throughout much of South Africa to make more public land available for private purchase.

State Land

All purchases or leases of State land are subject to tender. Two scenarios exist for the acquisition of State land:

- Application by an investor or developer for the use of a particular plot of State land; and
- A response by an investor to an invitation by the government for bids to develop land.

If an investor identifies a plot of land belonging to the State, the investor must provide a detailed proposal as to how the land will be used. The proposal should include:

- A description of the land (available from the deeds office);
- Context of the land (within a municipality, town, etc.);
- A description of the investment and how it would facilitate development in the region;
- Time frames for development; and
- Participation of South African citizens in ownership, management and/or marketing.

Upon receipt of the proposal by the Department of Public Works, the following occurs:

- The land is evaluated to determine whether a freehold sale or long-term lease would be more appropriate.
- The property is advertised for six weeks for competing developers to respond.
- A valuation by an independent valuer is carried out.
- The proposal (and any others received from the advertisement) is evaluated by the evaluation committee.
- The Minister of Public Works then signs the sale.
- The process will usually take from three to six months to complete.

Investors should note that land belonging to many agencies and institutions is subject to a fallback clause. Should any land that is owned by an institution, such as a university, be used for any purpose other than intended, title reverts to the state. This can cause delays for an investor who wishes to acquire land from government organisations.

For more information, please contact:

Department of Land Affairs

Telephone: +27 (12) 312-8911

Fax: +27 (12) 312-8066

Website: www.land.pwv.gov.za or www.dla.gov.za/

Provincial Land

In most cases, any sale of provincial land requires a tendering procedure. An investor may identify a site and submit a letter of application for use of the site.

The investor must supply the following information:

- What the land will be used for;
- Background of the company;
- Shareholding of the company; and
- Company's financial projections.

The land is then advertised for tender, and a provincial committee evaluates the responses. Responses are usually judged on project viability, social impact, environmental impact and best use of the land. The process can take between six and eighteen months.

Municipal Land

Local authorities are major holders of public land. Land development falls under the jurisdiction of the relevant municipal council. Municipalities vary greatly in their approach to development, in terms of governing legislation, attitudes and processing systems.

In terms of legislation, some municipalities permit the direct negotiation of land sales, while others require tendering in some or all cases. Tendering typically requires a period of twelve to eighteen months, although the process can be completed in as little as six months. Direct negotiation tends to be significantly quicker, although a period may also be allowed for communities to lodge objections and appeals against such agreements.

Rezoning and Sub-Division of Land

Any requests for the rezoning or subdivision of land, regardless of land ownership, must be submitted to the local authorities. Specific application processes vary from jurisdiction to jurisdiction, although typically the applicant must submit a rezoning application, statement of motivation and processing fee. The rezone request is advertised for three weeks, after which objections are sought from parties affected by the rezoning. In some cases the investor is invited to respond to the objections. The application is then reviewed. Rezoning applications can take from as little as three weeks to as long as six months in larger cities.

Transfer of Land

Whether land is purchased from private or public sources, the process of transfer of ownership is the same. South Africa is reputed to have one of the best deeds registration systems worldwide, with an exceptional degree of accuracy and of tenure being guaranteed.

South Africa offers an unusual degree of certainty with regard to property ownership. Property can be owned individually, jointly in undivided shares or by an entity such as a company, close corporation or trust or a similar entity registered outside South Africa.

All land in South Africa, public and private, has been surveyed, beaconed and assigned plot numbers by the Surveyor General's Office.

The role of the Deeds Office in the transfer process is two-fold:

1. to guarantee the title deed, and
2. to maintain a registry of deed holdings.

There are nine regional Deeds Offices throughout South Africa.

The investor has no direct interaction with the Deeds Office, however; conveyancers handle the transfer of ownership. It is the accepted practice in South Africa that the seller appoints the conveyancer who attends to the transfer of the legal title in the name of the purchaser and has the responsibility to protect the interests of both the seller and the purchaser.

The conveyancer draws up a deed of transfer based on the existing owner's title deed and attends to the registration of the final document with the Deeds Office.

The conveyancer must submit the following to the Deeds Office for registration:

- Deed of transfer;
- Title deed (from owner);
- Power of attorney;
- Rates clearance certificate, if applicable; and
- Transfer duty receipt or exemption certificate.

The purchaser pays the costs of transfer, including the conveyancer's fee. Should a mortgage bond be registered over the property as security for the advancement of the purchase price, the bank or financial institution will instruct its conveyancer to register the mortgage bond.

The bank's conveyancer will lodge the following documents to be registered simultaneously with the transfer documents:

- Mortgage bond; and
- Power of attorney.

The mortgagor pays the costs of registering the bond as well as the stamp duty. Should the property being transferred be encumbered by an existing mortgage bond, the financial institution in whose favour it is registered will, after the necessary financial arrangements have been made with the seller, instruct its attorney to cancel the mortgage bond. This is done simultaneously with registration of transfer of the property. The costs relating to the cancellation are payable by the seller.

Depending on the workload at the Deeds Office, the documents will be in the system after lodgement for a period ranging between two to three weeks.

Fees, Taxes and Transfer Duties

The rate of transfer duty payable depends on the nature of the purchaser. If the purchaser is a company, close corporation or trust, transfer duty at a flat rate of 10% of the purchase price is payable. An individual pays transfer duty on a sliding scale from 1 to 8% of the purchase price, depending on the value of the property being transferred.

The conveyancer will obtain a receipt for the payment of the transfer duty from the Receiver of Revenue for lodgement with the transfer documents at the Deeds Office.

Should the seller be registered for VAT and be, for example, a developer, no transfer duty will be payable by the purchaser, as the seller would have to include the VAT amount in the purchase price. In this case the conveyancer will obtain a transfer duty exemption certificate from the Receiver of Revenue for lodgement with the documents. The purchaser must provide the conveyancer with the transfer duty payable to the Receiver of Revenue prior to registration of the transfer.

Legal Protection of Property Rights in Land

Security of tenure in landholding is provided for in Section 25 of the Constitution of the Republic of South Africa, No. 108 of 1996.

Conveyancing Fees

Conveyancers' charge fees for the work they do in the Deeds Office on behalf of their clients. The fees charged are in accordance with guidelines laid down by the Association of Law Societies.

Deeds Office Fees

The Deeds Office will charge the conveyancer a registration fee for each transaction registered. This fee is included in the conveyancer's account to the purchaser and varies from R55 to R500, depending on the nature and value of the transaction. The average time required for the complete transfer process – including bond approval, the drafting of the deed and registration with the Deeds Office – is approximately two to three months.

For more information, please contact:

The Deeds Office Help Desk

Telephone: +27 (12) 338 7205

Fax: +27 (12) 338 7186

Website: www.deeds.gov.za

Tax and Reporting

Tax Registration for Businesses

New enterprises must file with the South African Revenue Service (SARS) for the following taxes: provisional income tax, value-added tax (VAT) and employees' tax, namely standard income tax on employees (SITE) and pay as you earn (PAYE).

For corporate entities, the Registrar of Companies or Close Corporations notifies SARS of the incorporation of a new business enterprise once the registration procedures with the relevant Registrar's office have been processed. The business entity is then automatically registered as a provisional taxpayer and issued with a registration number. Every enterprise must appoint a public officer within one month after commencing business activities in order to represent it in all dealings with the revenue authorities. The public officer is designated as representative taxpayer in respect of the income and related tax obligations of the entity. The public officer appointee must reside in South Africa and approval of the appointment should be obtained from the Commissioner for SARS.

Reporting

Business entities are required to file annual income tax returns with SARS. Most file their returns with the Receiver of Revenue in the jurisdiction in which they operate. If the SARS office is not equipped to handle your volume of business, they will refer you to the nearest office that can.

Each business entity may select its own financial year-end. Natural persons are not entitled to this privilege – their tax year runs from 1 March to 28 February. Two provisional tax payments based on an estimate of annual income are made during each financial year. The first provisional payment is made after six months of the current financial year have elapsed and the second at the end of the financial year.

For the first payment, the estimate of taxable income may not be less than the 'basic amount', which is the taxable income reflected in the most recent assessment received from the Receiver of Revenue. In the case of a new enterprise, the basic amount will be nil. If, at the time of making the second provisional payment, the estimate of taxable income is less than 90% of the actual taxable income for the year and less than the basic amount, the taxpayer will be liable for an additional penalty tax of 20% of the difference between the actual tax paid and the lesser of the tax on the basic amount and the tax on 90% of the actual taxable income. To avoid this, it is best to base the estimate for the second provisional payment on the basic amount.

A third payment may be made six months after the financial year-end for corporate entities and seven months thereafter in the case of natural persons to reconcile estimated income with actual income. Interest accrues from the due date of the third payment on any underpayment of tax for the year concerned. For corporate entities, a copy of the audited financial statements of the enterprise, signed by the auditor and the public officer of the enterprise, must accompany the return, as well as any other documentation necessary to support the information contained in the return. The aim of SARS is to issue assessments within three months after the filing of returns.

The investigation division of SARS assesses all income tax returns referred to it by the local tax offices. It also conducts detailed tax audits on a random basis and in circumstances where it is suspected that a return contains material irregularities or omissions.

Taxable Income

Income tax is calculated on an enterprise's taxable income, earned from South African as well as foreign sources. Tax is residence-based. The rate of corporate income tax was recently reduced to 28% (previously 35%). Companies are not entitled to any rebates except for foreign royalties and foreign taxes paid.

Companies are also liable for secondary tax on companies (STC) at 12,5% in respect of all dividends declared after 13 March 1996.

Tax Rates (year of assessment ending March 2009)

Tax rates for individuals are calculated as follows:

Taxable Income	Rates of Tax
R0 – R122 000	18% of every R1
R122 001 – R195 000	21 960 + 25% of the amount over R122 000
R195 001 – R270 000	40 210 + 30% of the amount over R195 000
R270 001 – R380 000	62 710 + 35% of the amount over R270 000
R380 001 – R490 000	101 210 + 38% of the amount over R380 000
R490 001 and over	143 010 + 40% of the amount over R490 000

Rebates

Primary rebates are R8 280, and additional rebates for persons 65 years or older are R5 040. The rebates for individuals are deducted from the normal tax as determined by the statutory rates of tax.

Tax Thresholds

Below age 65 – R46 000; and

Age 65 and over – R74 000.

Provisional Tax

A provisional taxpayer is any person who earns income other than remuneration or an allowance or advance payable by the person's principal.

The following individuals are exempt from the payment of provisional tax:

- Individuals below the age of 65 who do not carry on a business and whose taxable income:
    - will not exceed the tax threshold for the tax year; or
    - from interest, dividends and rental will be R10 000 or less for the tax year.
- Individuals aged 65 and older if their annual taxable income:
    - consists exclusively of remuneration, interest, dividends or rent from the lease of fixed property; and
    - is R80 000 or less for the tax year.

Retirement Lump Sum Benefits

Taxable Income (Rand)	Rates of Tax (Rand)
0 – 300 000:	18% of each R1
3001– 600 000:	54 000 + 27% of the amount above R300 000
600 001 and above:	135 000 + 36% of the amount above R600 000

The taxable income from a retirement fund lump sum benefit (lump sum from a pension, provident or retirement annuity fund) is determined by deducting a basic amount of R300 000. The tax payable on a retirement fund lump sum during a year of assessment is determined by aggregating all retirement fund lump sum benefits received during the current and previous years of assessment.

Foreign Dividends

Most dividends received by individuals from foreign entities are taxable.

Exemptions

Interest and Dividends

Interest and otherwise taxable dividends earned by any natural person under 65 years of age, up to R19 000 per annum, and persons 65 and older, up to R27 500 per annum, are exempt from taxation. Foreign interest and foreign dividends are only exempt up to R3 200 out of the total exemption. Interest is exempt where earned by non-residents who are physically absent from South Africa for 183 days or more per annum and who are not carrying out business in South Africa.

Deductions

Current Pension Fund Contributions

Pension fund contributions are the greater of:

- 7,5% of remuneration from retirement funding employment; or
- R1 750.

Any excess may not be carried forward to the following year of assessment.

Arrear Pension Fund Contributions

Arrear pension fund contributions are limited to a maximum of R1 800 per annum. Any excess over R1 800 may be carried forward to the following year of assessment.

Current Retirement Annuity Fund Contributions

Current retirement annuity fund contributions amount to the greater of:

- 15% of taxable income other than from retirement funding employment; or
- R3 500 less current deductions to a pension fund; or
- R1 750.

Any excess may be carried forward to the following year of assessment.

Arrear Retirement Annuity Fund Contributions

Arrear retirement annuity fund contributions are limited to a maximum of R1 800 per annum. Any excess over R1 800 may be carried forward to the following year of assessment.

Medical and Physical Disability Expenses

- Taxpayers 65 and older may claim all qualifying expenditure.
- Taxpayers under 65 are not taxed on, or may deduct, monthly contributions to medical schemes up to R570 for each of the first two dependants on their medical scheme and R345 for each additional dependant. In addition, they can claim a deduction for medical scheme contributions above the caps and any other medical expenses limited to the amount which exceeds 7,5% of taxable income.
- Taxpayers under 65 may claim all qualifying medical expenses where the taxpayer or the taxpayer's spouse or child is a handicapped person.

Donations

Deductions in respect of donations to certain public benefit organisations are limited to 10% of taxable income before deducting medical expenses.

Allowances

Subsistence Allowances and Advances

Where the recipient of a subsistence allowance or advance is obliged to spend at least one night away from his/her usual place of residence on business and the accommodation to which that allowance or advance relates is in the Republic and the allowance or advance is granted to pay for:

- meals and incidental costs, an amount of R240 per day is deemed to have been expended; or
- incidental costs only, an amount of R73,50 for each day which falls within the period is deemed to have been expended.

Where the accommodation to which that allowance or advance relates is outside the Republic, an amount equal to US$215 per day is deemed to have been expended.

Corporate Tax Rates 2008/09

Corporate tax is levied at the following rates:

R0 – R46 000:	0%
R46 001 – R300 000:	10%
R300 001 and above:	28%
Employment companies:	33%

- Foreign resident companies which earn income from a source in South Africa pay 33%.

- STC on dividends declared after being reduced by dividends receivable during a dividend cycle (South African branches of foreign resident companies are exempt from STC) is levied at 10%.

Taxation of Capital Gains

Capital gains on the disposal of assets are included in taxable income and are taxed at the following rates:

Individuals:	10%
Companies:	14%
Trusts:	20%

Events that trigger a disposal include a sale, a donation, an exchange, a loss, death and emigration. The following are some of the specific exclusions:

- R1,5m gain/loss on the disposal of a primary residence;
- most assets that are for personal use;
- retirement benefits;
- payments in respect of original long-term insurance policies;
- annual exclusion of R16 000 capital gain or capital loss for individuals and special trusts; and
- exclusion of R120 000 granted to individuals during the year of death instead of the annual exclusion.

Value-Added Tax

Business entities conducting enterprises in the course of which the total value of taxable supplies made exceeds R1m in any 12-month period are required to register for VAT. Voluntary registration is permissible for those with turnovers of less than R1m. The standard rate of VAT on the supply of goods and services is 14%. The supply of certain goods, such as financial services, are exempt from VAT, while certain supplies are zero-rated, for example exports and the sale of a business as a going concern.

Registration for VAT must be effected either at the end of any month in which the total value of taxable supplies made by the enterprise for the preceding 12-month period exceeds R1m or at the commencement of any month in which it is reasonable to conclude that the total value of supplies to be made in the coming 12 months will exceed R1m. The enterprise must have an active bank account before registering.

The registration application must be accompanied by the following documentation:

- registration form (VAT 101);
- bank statement or cancelled cheque of enterprise;
- certified copies of IDs of public officer of company, members of close corporation or partners of partnership; and
- certified copies of:
  - articles of association of company,
  - founding statement (CK1) of close corporation, or
  - partnership agreement of partnership.

VAT returns normally cover a two-month period and account for VAT on the supply of goods or services on an invoice basis. They must be submitted to SARS together with payment of any VAT due by the 21st day of the month following the end of the return period. A VAT vendor who is a natural person or an unincorporated body of natural persons, the taxable supplies of whom do not exceed R2,5m annually, may apply to account for VAT on the payment basis as opposed to the invoice basis.

Remittances are filed using VAT form 201. SARS conducts VAT audits on randomly selected vendors.

Employee Tax

All enterprises with employees must register as employers and account for employees' tax in the form of SITE, and PAYE. The main exception to this is directors of private companies, whose remuneration is not subject to employees' tax and who are required to register as provisional taxpayers.

SITE is a tax on net remuneration. Net remuneration represents income earned from employment less deductions for pension fund and retirement annuity fund contributions. Where an employee's net remuneration is R60 000 or less, only SITE is payable. Such an employee need not render returns and will not be subject to assessment, assuming that he/she earns no other income. If an employee's net remuneration for the year exceeds R60 000, employee's tax will comprise both SITE and PAYE. Such employees are required to render tax returns and are subject to assessment. The employees' tax withheld by the employer will be credited against the tax assessed. In the event of the assessed tax being less than the SITE paid, no refund of SITE will be made, although overpaid PAYE will be refunded. Employers must register with their local SARS office, using form IRP 101. Registration must be effected within 14 days after the liability to pay any amount by way of remuneration arises.

Employers are required to deduct employees' tax from employees' remuneration on a monthly basis. Employers must pay the tax to SARS within seven days of the end of the month in which the tax was withheld. Form IRP 201 must accompany the payment. The tax withheld represents an advance payment of normal income tax on behalf of the employees concerned. Employers are also required annually to file a tax reconciliation form, IRP 501, with SARS and issue a tax certificate, IRP 5, to each employee on an annual basis.

Accounting Policies

The Companies Act requires all public and private companies to maintain accounting records in one of the official languages of the Republic. Similar provisions exist for close corporations under the Close Corporations Act. Companies and close corporations are required to follow statements of Generally Accepted Accounting Principles (GAAP) in preparing their final statements, and to achieve fair presentation, other entities should also follow these standards.

Certain companies, including public companies and foreign companies with branches in South Africa, are required to file their financial statements with the Registrar of Companies. Directors of companies listed on the main board of the JSE are required to report on their companies' compliance with the Code of Corporate Practices and Conduct, and similar disclosure by all other entities is encouraged.

Other Taxes, Duties and Levies

Transfer Duty

Transfer duty is payable at the following rates, on transactions which are not subject to VAT:

- Acquisition of property by natural persons:
  R0 – R500 000: 0%
  R500 001 – R1 000 000: 5% of the value above R500 000
  R1 000 001 and above: R25 000 + 8% of the value exceeding R1 000 000
- Acquisition of property by persons other than natural persons: 8% of the value.

Estate Duty

Estate duty is levied at a flat rate of 20% on all property of residents and South African property of non-residents. A basic deduction of R3,5m is allowed in the determination of an estate's liability for estate duty as well as deductions for liabilities, bequests to public benefit organisations and property accruing to surviving spouses.

Donations Tax

- Donations tax is levied at a flat rate of 20% on the value of property donated.
- The first R100 000 of property donated in each year by a natural person is exempt from donations tax.
- In the case of a taxpayer who is not a natural person, exempt donations are limited to casual gifts not exceeding R10 000 per annum in total.
- Dispositions between spouses and donations to certain public benefit organisations are exempt from donations tax.

Uncertificated Securities Tax

Uncertificated securities tax (UST) is a tax imposed on the issue or transfer of beneficial ownership of securities listed on the JSE. This tax is governed by the Uncertificated Securities Tax Act, 31 of 1998.

With effect from 1 January 2006, no UST is payable on the issue of listed securities. Uncertificated securities tax is payable as a percentage of the consideration paid in the transaction, at the following rates:

- On issue: 0,25% (until 31 December 2005); and
- On a change in beneficial ownership: 0,25%.

Source: SARS.

Securities Transfer Tax

This tax came into effect on 1 July 2008 and is levied at a rate of 0,25% on the transfer of both listed and unlisted securities. Securities consist of shares in companies or members' interests in close corporations.

Skills Development Levy

A skills development levy (SDL) is payable by employers at a rate of 1% of the total remuneration paid to employees. Employers paying annual remuneration of less than R500 000 are exempt from the payment of skills development levies.

Unemployment Insurance Contributions

Unemployment insurance contributions are payable monthly by employers on the basis of a contribution of 1% by employers and 1% by employees, based on employees' remuneration below a certain amount. Employers not registered for PAYE or SDL purposes must pay contributions to the Unemployment Insurance Commissioner.

Other Tax Proposals

A number of tax proposals were brought forward by SARS, some of which have since been implemented, including the following:

- Replacement of STC with a final dividend-withholding tax (effective 2009).
- Increase of the compulsory VAT registration threshold from R300 000 to R1m (effective 2009).
- Introduction of a simplified tax package for businesses with an annual turnover of less than R1m.
- Introduction of incentives to encourage venture capital investment in small and medium-sized businesses.
- Introduction of an electricity levy of two cents per kilowatt hour.

Source: SARS Tax Pocket Guide.

For more information, please contact:

South African Revenue Service (SARS)

Postal Address: Private Bag X923, Pretoria, 0001

Tel.: +27 (12) 422 4000

Fax: +27 (12) 422 6848

Website: www.sars.gov.za

14. Prospecting and Mining Rights

The mining industry is strongly regulated, and as such, investors should be aware of the legal requirements with which they are required to comply. Government's leading agent in the regulation and development of South Africa's mineral resources is the Department of Minerals and Energy. Two principal Acts govern the exploitation of mineral resources in South Africa.

14.1 The Mineral and Petroleum Resources Development Act

This is the fundamental Act regulating the prospecting for and optimal exploitation of minerals in South Africa. Among other functions, the Mineral and Petroleum Resources Development Act (MPRDA) also regulates the rehabilitation of the land surface during and after prospecting and mining operations. This Act defines the entire regulatory environment of the minerals industry, from rights and ownership to mineral sales, value-addition (beneficiation) and marketing. It also identifies all other industries and entities that have an influence on the minerals business in general.

In terms of the MPRDA, mineral rights are vested in the state, with the state holding the right to issue prospecting, mining and other rights to applicants.

A five-year transitional arrangement gives current operators the right to apply for the conversion of old-order rights into so-called new-order mining and prospecting rights. The Act requires that companies submitting applications provide mining works plans, including environmental management plans, among other deliverables.

The MPRDA is a milestone as regards environmental management in the transformation of all aspects of the mining industry. It provides a holistic cradle-to-grave approach from prospecting to mine closure. This ensures that liabilities are fully dealt with by the holder of a prospecting right, mining permit or mining right. In Section 24 of the Constitution, to the MPRDA aims to re-affirm its obligation to the environment to:

- protect the environment for the benefit of present and future generations; and
- ensure the ecologically sustainable development of mineral and petroleum resources.

The MPRDA also confirms the adoption of sustainable development, as set out in the Constitution (1996) and the National Environmental Management Act (NEMA) of 1998, as well as other generally accepted principles of sustainable development by integrating social, economic and environmental factors into the planning, implementation, closure and post-closure management of prospecting and mining operations.

Prospecting and mining may only proceed with an approved environmental management plan (EM plan) or environmental management programme (EM programme). The approval process includes consultation with the other 11 government departments charged with the administration of a law which relates to any matter affecting the environment. An EM plan is required when applying for a prospecting right (size of prospecting area determined by Department of Minerals and Energy) or mining permit (a mining area of 1,5ha or smaller) and is based on an infill document which requires the assessment of environmental impacts, setting of mitigation measures, recording of stakeholders consulted, determination of the amount for financial provision and mine closure objectives.

An EM programme is also required when applying for a mining right to a mining area bigger than 1,5ha and is based on a scoping report, an environmental impact assessment (EIA) report and an EM programme report. Sections 49 to 52 of the Mineral and Petroleum Resources Development Regulations (2004) can be consulted with regard to the detailed contents and requirements of these reports. After the approval of the EM plan or EM programme, further environmental regulatory measures for monitoring and performance assessment are required during the operations of the mine.

The MPRDA requires that holders of mining authorisations must apply for a mine closure, which was not required under the previous Minerals Act (1991). The Mineral and Petroleum Resources Development Regulations further require that a mine closure plan must be submitted to the Department for approval. The closure plan includes an environmental risk report and an indication of the long-term implementation of the closure plan. The MPRDA provides that, if the Department (Regulator) is satisfied, a closure certificate is issued to the holder and the whole or part of the financial provision (confirmation of ability to meet obligations pertaining to the execution of an EM programme) is returned to the holder. Section 43 of the MPRDA can be consulted for further detail.

14.2 The Broad-Based Socio-Economic Empowerment Charter for the Mining Industry (Mining Charter)

The main objective of the Broad-Based Socio-Economic Empowerment (B-BSEE) Charter is to redress the historical, social and economic inequalities that exist in South Africa's mineral industry. By means of a scorecard it sets the framework, targets and timetable for facilitating the entrance of historically disadvantaged South Africans into the mining sector, thus giving effect to Section 100 of the Mineral and Petroleum Resources Development Act.

The B-BSEE Charter consists of seven strategies, namely:

1. Human resource development – The main aim is to increase functional literacy and numeracy and promote skills development in the mining industry.
2. Employment equity – Mining companies aspire to a baseline of:
   - 40% of historically disadvantaged South Africans (HDSAs) participating in management, particularly in the junior and senior management categories; and
   - 10% of women participating in managerial positions within five years.
3. Community upliftment – Stakeholders will co-operate in the formulation and implementation of integrated development plans for communities where mining takes place and in major labour-sending areas. They will also co-operate in encouraging urban renewal in mined-out areas in order to avoid the creation of ghost towns.
4. Housing and living conditions – Stakeholders undertake to co-operate in improving the standard of living of mine employees.
5. Procurement – Stakeholders undertake to ensure that HDSAs receive preferred-supplier status in all levels of procurement services.
6. Beneficiation – Mining companies are encouraged to promote the beneficiation of their products beyond mere mining and processing.

7. Ownership – The mining industry undertakes to achieve 26% HDSA ownership within mining companies within 10 years of the promulgation of the Mineral and Petroleum Resources Development Act.

South Africa has also recently reformed two pieces of outdated legislation, *viz.*:

- Chapter XVI of the Mining Rights Act, No. 20 of 1967, in the form of the Precious Metals Act, No. 37 of 2005; and
- The Diamonds Act, No. 56 of 1986, in the form of the Diamond Amendment Act, No. 29 of 2005 and the Diamond Second Amendment Act, No. 30 of 2005.

The amended pieces of legislation, which involve precious metals and diamonds separately, were enacted early in 2006. The objective of these Acts is to promote access to rough diamonds and precious metals for the purpose of local mineral beneficiation and value addition. However, the three pieces of legislation will only come into operation on proclamation by the State President.

Employment Equity

In terms of the B-BSEE Charter, companies have to publish their employment equity plans and achievements and subscribe to the following:

- Companies are to establish targets for employment equity, particularly in the junior and senior management categories. Companies agree to spell out their plans for employment equity at management level. The stakeholders aspire to a baseline of 40% HDSA participation in management within five years.
- South African subsidiaries of multinational companies and South African companies, where possible, will focus their overseas placement and/or training programmes on historically disadvantaged South Africans.

- Companies undertake to identify a talent pool and fast-track it. This fast-tracking should include high-quality operational exposure.
- Higher levels of inclusiveness and the advancement of women have to be ensured. The stakeholders aspire to a baseline of 10% of women participating in the mining industry within five years.
- Targets and achievements will be set and published.

Procurement

Procurement can be broken down into three levels, namely capital goods, services and consumables. Stakeholders undertake to give disadvantaged individuals preferred-supplier status, where possible, at all three levels of procurement.

To this end, stakeholders undertake to:

- identify current levels of procurement from HDSA companies;
- commit to a progression of procurement from HDSA companies over a three- to five-year timeframe, reflecting the genuine value-addition by the HDSA provider;
- encourage existing suppliers to form partnerships with HDSA companies, where no HDSA company tenders to supply goods or services; and
- help develop HDSA procurement capacity and access assistance programmes offered by the Department of Trade and Industry (**the dti**) to achieve this.

It is envisaged that information on all HDSA companies wishing to participate in the industry will be collected and published. All participants in the industry will assist **the dti** in compiling such a list of suppliers that will, *inter alia*, be published by government on the Internet and updated regularly.

Ownership and Joint Ventures

Government and industry recognise that one of the means of effecting the entry of HDSAs into the mining industry and of allowing HDSAs to benefit from the exploitation of mining and mineral resources is by encouraging greater ownership of mining industry assets by HDSAs. Ownership and participation by HDSAs can be divided into active or passive involvement as follows:

Active involvement:

- HDSA-controlled companies (50% plus one vote), which includes management control;
- Strategic joint ventures or partnerships (25% plus one vote), including a management agreement that provides for joint management and control and for dispute resolution; and
- Collective investment, through employee stock ownership plans (ESOPs) and mining-dedicated unit trusts, where the majority ownership would need to be HDSA-based. Such empowerment vehicles would allow the HDSA participants to vote collectively.

Passive involvement:

- Greater than 0% and up to 100% ownership with no involvement in management, particularly broad-based ownership such as ESOPs.

In order to measure progress on the broad transformation front, the following indicators are important:

- The currency of measure of transformation and ownership could, *inter alia*, be market share as measured by attributable units of South African production controlled by HDSAs.
- There should be capacity for offsets, which would entail credits/offsets to allow for flexibility.

- The continuing consequences of all previous deals would be included in calculating such credits/offsets in terms of market share as measured by attributable units of production.
- Government will consider special incentives to encourage HDSA companies to hold on to newly acquired equity for a reasonable period.

In order to increase participation and ownership by HDSAs in the mining industry, mining companies agree:

- to achieve 26% HDSA ownership of mining industry assets in 10 years by each mining company; and
- that where a company has achieved HDSA participation in excess of any set target in a particular operation, such excess may be utilised to offset any shortfall in its other operations. All stakeholders accept that transactions will take place in a transparent manner and for fair market value. Stakeholders agree to meet after five years to review the progress and to determine what further steps, if any, need to be taken to achieve the 26% target.

Beneficiation

The Mining Charter will also apply to mining companies in respect of their involvement in beneficiation activities, specifically activities beyond mining and processing. These include the production of final consumer products. Mining companies will be able to offset the value of the level of beneficiation achieved by the company against its HDSA ownership commitments.

Mining companies are to agree to:

- identify their current levels of beneficiation; and
- indicate to what extent they can grow their baseline level of beneficiation.

Exploration and Prospecting

The government will support HDSA companies in exploration and prospecting endeavours by, *inter alia*, providing institutional support.

State Assets

The government will ensure compliance with the provisions of the Charter and be exemplary in the way in which it deals with state assets.

Licensing

To facilitate the processing of licence conversions, there will be a scorecard approach to the different facets of promoting broad-based socio-economic empowerment in the mining industry. This scorecard approach would recognise the commitment of stakeholders at the levels of ownership, management, employment equity, human resource development, procurement and beneficiation. The prospective HDSA participation required to achieve conversion within the five-year period, on a company-specific basis, will be specified in the scorecard.

Corporate Taxes

For tax purposes, a distinction is made between gold mining companies and non-gold mining companies. With regard to gold mining companies, mining income derived from gold is taxed in terms of a formula, while non-gold mining income is taxed at a flat rate.

Non-gold mining companies are taxed at the basic rate of 29% on gross income less deductions (as allowed in accordance with the Income Tax Act). In addition to the basic rate, a dividend tax of 10% is payable on the net amount of dividends declared by the company.

Source and further information: Invest in an Intense and Diverse Mineral Industry, Department of Minerals and Energy, www.dme.gov.za/pdfs/minerals/Invest_SA_min.pdf

15. Land/Site Development

Although the procedures for developing a site are generally consistent throughout the country, the individual municipality or local authority concerned defines the specific steps an investor must take. In most cases, the approval of plans, the assessment of environmental impact and the provision of utilities, including water, sewerage, and electricity, are handled exclusively by the municipality concerned.

In general, in areas where land is already serviced and no upgrades are required, utility hook-ups are fairly simple and swift. Where capacity upgrades or servicing is required, the wait for connections may be longer.

Building Permits

The municipal authority with jurisdiction over the particular site will issue any building permits required. Each municipality has its own application process. Most applications must meet both the building codes of the municipality and the national codes set out in the National Development Act. The Act specifies that each structure must conform to over 20 requirements. Decisions to consult with exterior bodies such as the Department of Health, local fire department, and Ministry of Environmental Affairs are made by the engineer at the local authority.

The following areas are included in the approvals:

- Fire;
- Pollution control;
- Health impact;
- Frontage works;
- Elevation control;

- Drainage and coastal engineering;
- Roads;
- Sanitation;
- Sewerage reticulation; and
- Structures.

Once plans have been approved, the municipality conducts a minimum of five inspections of the building site. Some municipalities conduct more, especially in the case of a multi-storey building. Other inspections may be carried out from time to time, depending upon the specifics of the building.

Environmental Assessments

Some applications for building permits will require an environmental impact assessment. An environmental consultant must carry out the assessment at the expense of the landowner. Some investors have recently carried out social impact assessments as well. It has been estimated that an environmental impact assessments can cost up to 5% of the investment.

There is no established criterion for determining when an assessment is required. Assessments are carried out at the request of the municipality, although some investors have been required to carry out assessments as a result of pressure by environmental activists. Companies are advised to carry out assessments before the erection of a manufacturing or processing plant.

Electricity Connection

Eskom, a state-owned enterprise, generates most of the electricity in South Africa. Eskom sells to local authorities, who act as redistributors. The local redistributors, in turn, supply the majority of electricity to end-users.

There are approximately 450 local redistributors. Eskom sells directly to the end-user:

1. when the local redistributor is unable to meet the needs of heavy electricity users; or
2. when no local redistributor has jurisdiction over a particular geographic area.

Procedures

The application and installation procedures are simple and swift for a site with existing structure and an adequate electrical supply already in place, i.e. where no equipment upgrades or added infrastructure is required.

An application for the supply of electricity should be submitted to the nearest Eskom sales office at least seven days prior to the requested connection date. Connection fees vary, depending on the category of service (standard users, off-peak users or peak users). A cash deposit or bank guarantee may also be required to cover costs in the event of non-payment.

Eskom is also able to meet the needs of investors who require capacity upgrades such as for energy-intensive factories. For capacity upgrades, the waiting time depends on the availability of the size of transformer required. Costs also depend on the size of the upgrade.

The utility is also able to supply greenfield sites in serviced areas. However, investors should prepare their applications well in advance, as installation can take up to 24 months for large projects. Investors may submit an application for the supply of electricity or a letter of requirements to the nearest Eskom office. Eskom will provide an estimated quote of installation costs within 14 days of the initial application. The quote is subject to negotiation.

Water Connection

Local municipalities generally provide water connections. Connection times are usually fast, with the exception of those sites not serviced.

The time required for connection to serviced sites ranges from one day to two weeks. Times required for connection to sites that are not serviced range from one month to one year and more.

Telephone Connection

Telkom can usually provide a telephone line within one week if lines are in place. It has established seven call centres across South Africa and in many cases can connect a line within one day. The installation fee is R468,10, and R369 for more than one additional line. The company will usually dispatch a sales representative for any request for more than three lines. Any investor must provide a surety from a South African citizen. Failure to acquire a surety will mean that a deposit will have to be paid.

If an equipment upgrade is required, Telkom can upgrade a facility within four months, depending on the need. No additional fees are required unless the upgrade is not in Telkom's strategic plan. If the upgrade is not within its strategic plan, Telkom will base its fees on a cost recovery basis. No special forms are required to be completed.

Telkom can provide a number of means by which an investor can receive telecommunication services in an un-serviced area, but it requires approximately two to four months, depending upon the type of solution. Radiophone systems are installed in a number of remote areas around South Africa.

16. Importing and Exporting

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

Import Permits

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

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

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

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

Export Permits

A number of products are currently subject to export control and licensing. Exporters should apply directly to the government agency that controls the specific permit in question. Currently, restrictions exist on strategic goods (exhaustible resources), agricultural products administered by control boards, and metal waste and scrap. Metal scrap must first be offered to downstream manufacturers at a discount to the price at which it can be exported (15% discount for non-ferrous metals and 7,5% for ferrous metals). If manufacturers turn down the offer, an export permit may be issued.

Registration as Importer/Exporter

All importers and exporters in South Africa are required to register with the Commissioner for Customs and Excise. Form DA163 covers importers and exporters as well as clearing agents and warehouse licensees. Forms are submitted to the Customs Commissioner’s Office in Pretoria and may be submitted by fax. Upon registration, applicants are issued with a customs code number. The registration process can take as little as one day, although traders are permitted to use a general code number issued by Customs in order to begin importing or exporting immediately, if required.

Customs Clearance Procedures

Import Process

The clearance of imported goods generally takes a maximum of 24 hours for airfreight and two to three days for sea freight, depending on the port of entry. All required documentation must be submitted to Customs and Excise before goods can be cleared through Customs. Most transactions are covered by a bill of entry, form DA500.

Other required documentation includes:

- Commercial invoice;
- Prescribed certificate of origin when preferential duty rates are claimed;
- Negotiable copy of bill of lading or equivalent document;
- Import permit, if required;
- Rebate permit 470,03, if applicable (for raw materials to be processed and re-exported); and
- Payment, by a bank-guaranteed cheque, for all applicable duties and taxes (including VAT), if the exporter does not qualify for a deferment.

Import shipments may be cleared through Customs prior to the goods arriving at a South African port. In order to avoid unnecessary delays, an importer may wish to submit an application for a tariff heading. These can be acquired from the Commissioner of Customs in Pretoria.

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

Use of a freight-forwarder is strongly recommended by Customs. Freight-forwarders commonly apply for all licences and registration numbers. They can apply for tariff headings and provide assistance in properly classifying goods. Through the use of technology, they can clear goods more quickly than an individual investor and provide ground transport for the goods to reach the investor.

Export Process

As with imports, all required documentation must be submitted to Customs and Excise before goods can be cleared through Customs. Most transactions are covered by a bill of entry, form DA550. Customs can process paperwork within 24 hours. All exports must reflect payment from the receiver of the goods. Exporters must complete form F-178, available at commercial banks.

Other required documentation includes:

- Export invoice; and
- Export permit, if required.

Electronic Processing

The larger customs offices accept electronic versions of required documentation to expedite the clearance process. The electronic version must still be accompanied by a paper version, as a paper document is still regarded as the legal declaration.

To facilitate clearance, Customs and Excise, in co-ordination with Portnet and Spoornet, has also introduced electronic processing for the clearance of containerised cargo through a select number of district offices. Customs electronically communicates its instructions directly to the depot or terminal operators.

Deferment-of-Payment Scheme

A deferment scheme is available to qualifying importers. It allows the deferment of applicable import duties, surcharges and VAT. Payment is generally deferred for 30 days, with seven days to settle the account. Importers may apply for deferment at the local customs controller.

Required documentation includes:

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

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

Duty Drawback Scheme

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

Bonded Warehouses

Secure bonded warehouse facilities are available at all points of entry and may be used to store imported goods without payment of duties until required for use, resale or re-export. Goods withdrawn from a bonded warehouse are liable for duties only if cleared out of bond for home consumption.

Manufacturing Under Rebate Programme

South African Customs and Excise also administers a programme for manufacturing under rebate. Manufacturers may claim a rebate on imported materials used in the production of exports. Imported materials must be used within 12 months. This facility is exclusively export-driven, and qualifying manufacturers must have secure facilities on their premises for the storage of dutiable materials. The premises are subject to inspection by Customs. It is recommended that building plans be submitted to Customs prior to construction to ensure that all requirements are met. Upon approval, manufacturers are also required to draw up a bond.

The entire process can take anything from two weeks to two months, depending on the length of time required to obtain the bond. If the process needs to be expedited, Customs will accept a cash deposit until the bond is obtained.

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

Clearing Agents

Clearing agents/customs brokers are available throughout South Africa to attend to all formalities necessary for the clearance of goods through Customs, including any required permits, documentation, payment of duties, port charges, and forwarding and transport costs. In addition to registering for a customs code, clearing agents are required to put up a bond.

For more information on importing and exporting, please contact the ITAC at*:*

Tel.: +27 (12) 394 3590; 0861 843 384

Fax: +27 (12) 394 4628; 0861 843 888

E-mail: info@itac.org.za

Website: www.itac.org.za

For more information on customs and excise, please contact:

South African Revenue Service (SARS)

Tel.: +27 (12) 422-4000

Fax: +27 (12) 422-5181

Website: www.sars.gov.za

17. Incentive Programmes for Investors

Investment Incentives

South Africa offers various attractive investment incentives, targeted at specific sectors or types of business activities.

Research and Development (R&D) Tax Incentive Programme

The R&D Tax Incentive Programme was introduced in November 2006 in terms of Section 11(d) of the Income Tax Act. It is administered by the Department of Science and Technology (DST) in conjunction with SARS to encourage innovation, and scientific and technological research and development by taxpayers/companies in South Africa. The incentive is two-fold. Firstly, it consists of a deduction of 150% in respect of eligible expenditure on eligible scientific or technological R&D undertaken by taxpayers within South Africa. Secondly, it allows for the accelerated depreciation of assets for the purposes of scientific and technological R&D over three years, at a rate of 50:30:20, starting from the year of assessment in which the asset is first brought to use. Taxpayers can claim for eligible scientific or technological R&D expenditure on salaries and wages, materials, buildings, machinery, equipment and contracted R&D.

Expenditure on the following activities is deductible:

- Exploration and prospecting;
- Management of internal business processes;
- Management of trade marks;
- Social sciences or humanities; and
- Market research, sales or marketing promotion.

IDZ Programme

An Industrial Development Zone (IDZ) is a purpose-built industrial estate linked to an international airport or seaport, which contains a controlled customs-secured area (CSA). A CSA is exempt from VAT and import duty on machinery and assets. The aim of an IDZ is to provide demand-driven infrastructure, generate sustainable local and foreign investment, and improve international competitiveness. There are currently four IDZs in South Africa, all strategically positioned close to an international seaport or airport. These are the Coega and East London IDZs in the Eastern Cape, the OR Tambo International Airport (designated) IDZ in Gauteng and the Richards Bay IDZ in KwaZulu-Natal.

The IDZs also comprise industries and service areas that are designed to:

- provide a location for the establishment of strategic investments;
- promote and develop links between domestic and zone-based industries to optimise the use of existing infrastructure, generate employment and create technology transfers;
- enable the exploitation of resource-intensive industries;
- allow for the smooth operation of investors' plants within the IDZ;

- attract advanced foreign production and technology methods in order to gain experience in global manufacturing and production networks; and
- provide world-class industrial infrastructure.

Each IDZ offers:

- direct links to an international port or airport;
- world-class infrastructure, specially designed to attract tenants;
- suitability for export-oriented production;
- dedicated customs support services to expedite excise inspection and clearing;
- duty-free importation of production-related raw materials and inputs;
- a zero rate of VAT on supplies procured from South African sources;
- import status for finished goods which are sold into South Africa;
- government incentive schemes;
- reduced taxation and exemption for some activities/products; and
- access to the latest information technology for global communications.

For more information, please contact:

East London IDZ

Tel.: +27 (43) 702 8200

Fax: +27 (43) 736 6405

Website: www.elidz.co.za

Coega IDZ
Tel.: +27 (41) 408 4800
Fax: +27 (41) 408 4998
E-mail: contact.centre@coega.co.za
Website: www.coega.com

Johannesburg International Airport IDZ
Tel.: +27 (11) 833 8750/7
Fax: +27 (11) 833 8777/8930
Website: www.geda.co.za / www.bluiq.co.za

Richards Bay IDZ
Te.: +27 (35) 789 3400
Fax: +27 (35) 789 3414
Website: www.richardsbayidz.co.za

Critical Infrastructure Programme

The Critical Infrastructure Programme (CIP) provides subsidised support for the economic infrastructure required for committed productive investments, including new projects or the expansion of existing projects. It also assists companies with a top-up grant providing funding ranging from 10 – 30% of the qualifying development costs.

The scheme aims to:

- improve the competitiveness of South African industries;
- achieve economic growth and create employment;
- support the development of industrial activities that have strategic economic advantage for South Africa; and

- achieve a geographical spread of economic activities within South Africa and prioritise rural and economically depressed areas.

Private sector enterprises, private/public partners, industrial development project operators, strategic incentive programme applicants and investors in strategic economic projects are eligible to apply for the CIP scheme.

Entities may claim for:

- costs incurred directly in the installation, construction and erection of infrastructure;
- remuneration costs incurred by the applicant for payment of employees undertaking project work;
- costs of materials directly consumed during the installation, construction and erection of the infrastructure; and
- the cost of new capital items, e.g. test equipment.

Automotive Production and Development Programme

The Automotive Production and Development Programme has four key elements:

- A tariff reduction freeze from 2013 to 2020;
- Production incentives;
- A local assembly allowance; and
- An automotive investment allowance.

Enterprise Investment Programme

The Enterprise Investment Programme (EIP) is an incentive grant which comprises the Manufacturing Investment Programme (MIP) and Tourism Support Programme (TSP). The incentive is accessible to both local and foreign-owned entities intending to locate their projects in South Africa.

The EIP (manufacturing) is a cash grant for locally-based manufacturers who wish to establish a new production facility, expand an existing facility or upgrade an existing facility in manufacturing industries.

The EIP (tourism) is an investment incentive grant that is payable over a period of two to three years to support the development of tourism enterprises and in so doing stimulate job creation and encourage the geographical spread of tourism investment country-wide. Tourism-related activities supported by the grant include accommodation, recreational/entertainment and cultural services, and tour operator and passenger transport services.

Foreign Investment Grant

The Foreign Investment Grant (FIG) is designed for international companies investing in plant, new machinery and equipment in South Africa. The grant compensates investors for the transportation of new machinery and equipment to South Africa.

Business Process Outsourcing and Offshoring Investment Incentive

The Business Process Outsourcing and Offshoring (BPO&O) Investment Incentive comprises an investment grant and a training and skills support grant towards the cost of company-specific training. The incentive is offered to local and foreign investors who establish projects that aim to serve offshore clients.

For more information, contact:

Trade and Investment South Africa
Tel.: (012) 39 4000/41339
E-mail: investmentsa@thedti.gov.za

Technology and Human Resources for Industry Programme

The Technology and Human Resources for Industry Programme (THRIP) is a partnership programme funded by **the dti** and managed by the National Research Foundation (NRF). On a cost-sharing basis with industry, THRIP supports science, engineering and technology research collaborations focused on addressing the technology needs of participating firms and encouraging the development and mobility of research personnel and students among participating organisations.

Contact information:

THRIP Manager:

Dr Mphekgo Maila

Tel.: +27 (12) 481 4131

Fax: +27 (12) 481 4197

E-mail: mphekgo@nrf.ac.za

Website: www.nrf.ac.za/thrip

Support Programme for Industrial Innovation

The Support Programme for Industrial Innovation (SPII) is a support programme of **the dti**, managed by the Industrial Development Corporation (IDC). SPII is designed to promote technology development in industry in South Africa through the provision of financial assistance for the development of innovative products and/or processes. SPII specifically focuses on the development phase, which begins at the conclusion of basic research and ends when a pre-production prototype has been produced.

Contact Details:

Fund Manager

Sithembile Bagopi

Tel.: +27 (11) 269 3450

Fax: +27 (11) 269 3126

E-mail: sithembileb@idc.co.za

SPII BEE Manager

Dr Ntokozo Mthembu

Tel.: +27 (11) 269 3552

Fax: +27 (11) 269 3126

E-mail: Ntokozom@idc.co.za

Share-call: 086 069 3888

General Tel.: +27 (11) 269 3911

Fax: +27 (11) 269 3126

E-mail: spii@idc.co.za

Website: www.spii.co.za

seda Technology Programme

The **seda** Technology Programme (**stp**) is a special ring-fenced programme of **the dti,** housed within the Small Enterprise Development Agency (**seda**). It was created to provide a broad array of business incubation, technology transfer, and quality and standards services and support to small enterprises.

As part of the government's strategy to consolidate small-enterprise support activities since April 2006, the activities of the Godisa Trust, the National Technology Transfer Centre (NTTC), the three business incubators of **the dti**, the Technology Advisory Centre (TAC), the technology-transfer activities of the

Technology for Women in Business (TWIB) programme and the support programmes for small enterprises of the South African Quality Institute were merged into a single programme – the **seda** Technology Programme (**stp**). The **stp** seeks to stimulate economic growth and development through facilitating technological innovation and increasing the accessibility to, and utility of, technologies and technical support for small enterprises, whilst at the same time improving the sustainability and international competitiveness of small enterprises supported through the programme.

The **stp**, as a programme of **the dti**, is therefore responsible for the provision of both financial and non-financial technology transfers, business incubation and quality support services for small enterprises.

Contact Details:

Technology Transfer Division (TTD):
Ravini Moodley
Tel.: +27 (12) 441 1113
Fax: +27 (12) 441 2113
E-mail: rmoodley@seda.org.za
Website: www.stp.org.za

The Location Film and Television Production Incentive

This incentive programme consists of what is called the Large Budget Film and Television Production Rebate Scheme, whereby foreign-owned qualifying producers are rebated a maximum sum of R10m for the production of large-budget films and television productions.

The South African Film and Television Production and Co-Production Incentive

Under this incentive scheme, financial assistance is provided to South African feature films, tele-movies, television drama series, documentaries and animation. The objective is to contribute to the local film industry. Production budgets are required to be over R10m, with the rebate being 35%, capped at R10m.

Export Marketing and Investment Assistance Scheme

The Export Marketing and Investment Assistance (EMIA) scheme partially compensates exporters and investors for costs incurred in respect of activities aimed at developing export markets and assists with the facilitation of investments in South Africa. The scheme provides assistance in the form of air travel expenses; freight-forwarding costs relating to display materials; subsistence allowances; and exhibition space and booth rental costs.

Eligible applicants for the scheme include:

- South African-based manufacturers of products, including Small, Medium and Micro-sized Enterprises (SMMEs), Previously Disadvantaged Individuals (PDIs) and other businesses;
- South African export trading houses;
- South African commission agents, representing at least three SMMEs or PDI-owned businesses; and
- South African export councils, industry associations and Joint Action Groups (JAGs) representing at least five South African entities.

Entities/divisions/subsidiaries forming part of a group, joint venture or partnership qualify for EMIA assistance at the discretion of the EMIA scheme.

For more information on incentives, please contact:

the dti Customer Contact Centre

Tel.: 0861 843 384 (local) /+27 (012) 394 9500 (international)

E-mail: CSaaiman@thedti.gov.za

E-mail: DMabusela@thedti.gov.za

Website: www.thedti.gov.za

18. Broad-Based Black Economic Empowerment

As part of the country's growth strategy, the South African government has developed policies on Broad-Based Black Economic Empowerment (B-BBEE) that will help bring the country's black majority into the economic mainstream.

Through its B-BBEE policy, the government wishes to achieve the following objectives:

- Empower more black people to own and manage enterprises. Enterprises are regarded as black-owned if 51% of the enterprise is owned by black persons and black people have substantial management control of the business.
- Achieve a substantial change in the racial composition of ownership and management structures and in the skilled occupations of existing and new enterprises.
- Promote access to finance for black economic empowerment.
- Empower rural and local communities by enabling access to economic activities, land, infrastructure, ownership and skills.
- Promote human resource development of black people through, for example, mentorships, learnerships and internships.

- Increase the extent to which communities, workers, co-operatives and other collective enterprises own and manage existing and new enterprises and increase their access to economic activities, infrastructure and skills.
- Ensure that black-owned enterprises benefit from the government's preferential procurement policies.
- Assist in the development of the operational and financial capacity of Black Economic Empowerment (BEE) enterprises, especially SMMEs and black-owned enterprises.
- Increase the extent to which black women own and manage existing and new enterprises and facilitate access to economic activities, infrastructure and skills training.

Since the B-BBEE Act, 2003 came into operation, major deals have been signed to herald in a new era of sustainable growth. These include:

- Barclay's acquisition of almost 60% in Absa, which has a minority of black shareholders; and
- Anglo American and Kumba Resources' establishment of the country's largest black-owned, -controlled and -managed company, Newco, valued at R16bn (2005).

The government has introduced the B-BBEE Codes of Good Practice to provide a standard framework for the measurement of B-BBEE across all sectors of the economy. The first phase of these Codes seeks to encourage all entities, both public and private, through the issuing of licences, concessions, sale of assets and preferential procurement, to implement proper B-BBEE initiatives.

The second phase of the Codes covers seven components of the B-BBEE scorecard: preferential procurement, Employment Equity (EE), skills development, enterprise development, residual (industry-specific and corporate) social investment initiatives, ownership, management control and socio-economic development.

The *Strategy for Broad-Based Black Economic Empowerment* was released in 2003. This document not only defines B-BBEE and the transformation imperative, but outlines the first broad-based scorecard, comprising the seven elements of B-BBEE.

The seven elements and their respective weightings out of 100 are depicted below, as per the Generic Scorecard contained in the Codes of Good Practice:

Element	**Points**
Ownership	20
Management Control	10
Employment Equity	15
Skills Development	15
Preferential Procurement	20
Enterprise Development	15
Socio-Economic Development	5
TOTAL	**100 POINTS**

The strategy document of 2003 was followed by the B-BBEE Act, No. 53 of 2003, the latter of which was promulgated in January of 2004. In Section 10, the Act outlines government's leverages for the implementation of B-BBEE, meaning that organs of state and public entities must take an entity's BEE status into account when:

- determining qualification criteria for the granting of licences and concessions;

- developing and implementing a preferential procurement policy;
- determining criteria for the sale of state-owned enterprises; and
- developing criteria for entering into partnerships with the private sector.

Other statements covered include fronting practices and specific verification issues relating to complex structures, multi-nationals and state-owned/public entities.

Source: The Department of Trade and Industry, Black Economic Empowerment Unit.

19. Foreign Trade Relationships

South Africa is engaging with key developed markets in order to actively maintain and expand its relations with traditional trading partners. The country is also developing bilateral trade relations with key markets in Africa, South America and Asia. These offer vast export opportunities to South Africa because of their rapid growth and also because the structure of the country's trade reflects a higher proportion of value-added exports. In light of the complementarities that emerge from comparable levels of industrial development, these economies also offer unique opportunities in terms of investment, joint ventures and technology transfer.

In order to maintain and expand trade relationships with established markets as well as new developing markets, the country enjoys a number of favourable access conditions, as described below.

EU Trade, Development and Co-operation Agreement

South Africa's Trade, Development and Co-operation Agreement (TDCA) with the European Union (EU) is in its seventh year of implementation. The free trade area, defined by the Agreement, accompanied by a process of phasing down custom tariffs on both sides of the border, has started to take effect in a powerful way. South Africa is obligated, after a phase-down period ending on 1 January 2012, to grant duty-free access to 86% of imports from the EU. In return, after a phase-down period ending on 1 January 2010, the EU will liberalise 95% of its imports from South Africa. The agreement, which was extended to 10 new EU member states in 2004, is an important component of South Africa's foreign trade policy. This may be ascribed to the EU being the country's largest trade and investment partner, accounting for about 40% of South Africa's total trade with the world. The impact on trade and investment flows between South Africa and 25 EU member states will contribute positively towards the restructuring of the South African economy and its long-term economic growth potential.

SADC Trade Agreement

The Southern African Development Community (SADC) Trade Agreement envisaged a Free Trade Agreement (FTA) by 2008, with more than 85% of intra-SADC trade being duty-free. The SADC Protocol on Trade was launched in September 2000, with important progress having been made towards the achievement of an FTA by 2008. Outstanding issues such as the need to improve market access and resolve the rules of origin for certain commodities are currently receiving attention. The Agreement is an extremely important tool for fostering regional economic integration and prosperity in so far as it encourages intra-regional trade and promotes the transfer of investment and technology.

African Growth and Opportunity Act

The African Growth and Opportunity Act (AGOA) builds on existing United States (US) programmes designed to increase trade and investment between the United States and developing countries. The Act expands benefits available under the Generalised System of Preference (GSP), which offers duty-free treatment to imports of selected products from specific beneficiary countries. AGOA provides three important benefits to sub-Saharan African exporters. Firstly, it extends the duty-free treatment under the GSP programme to September 2015. Secondly, AGOA eliminates most of the limitations of the GSP programme for sub-Saharan African countries. Thirdly, AGOA expands the product coverage of the GSP programme exclusively for products of sub-Saharan Africa. Naturally, South Africa, as a sub-Saharan African country, stands to gain from all these benefits.

The Act includes the duty-free treatment of 1 835 tariff line items in addition to the standard GSP list of approximately 4 600 items currently available to non-AGOA GSP beneficiary countries. These tariff line items include all major industries and also additional commodities which were previously excluded from GSP treatment, such as footwear, textiles, apparel products, luggage, handbags and flatware. Furthermore, AGOA provides duty-free and quota-free access to the US market without limits for apparel made in sub-Saharan African countries from US fabric, yarn and thread. It also makes provision for substantial growth of these commodities, given the relatively high limits set on the volume of their exports to the US.

European Free Trade Association

A free trade area as agreed with the European Free Trade Association or EFTA, comprising Iceland, Liechtenstein, Norway and Switzerland, came into effect in May 2008. In terms of access to the EFTA, the latter offered South Africa full duty- and quota-free access and entry for industrial products. On processed agricultural products, EFTA is offering the same treatment as that which it accords to the EU. For its part, South Africa offered EFTA what it had already offered the EU on both processed agricultural products and industrial products, with some marginal adjustments. EFTA and South Africa also provided limited access in terms of basic agricultural products.

Southern Common Market/*Mercado Común del Sur*

The Southern Common Market or *Mercado Común del Sur* (Mercosur), a preferential trade agreement covering around 1 500 products, was concluded in December 2004 between the Southern African Customs Union (SACU) and the South American Mercosur group of countries. Discussions are continuing on issues such as rules of origin, sanitary and phyto-sanitary regulations, customs procedures and additional products.

South Africa is also involved in discussions on preferential negotiations with a number of other countries, including future possible partners such as India and China.

20. Investment Promotion Agencies

Investment promotion is a national, provincial, and local government strategy designed to promote and maintain new and additional foreign and local direct investment in the country as well as in Africa. To this end, each province is served by its own independent investment promotion agency. Investment promotion activities are co-ordinated with the national investment promotion agency. Investment promotion agencies *inter alia* provide the following services to the prospective or current investor:

- Promotion of investment opportunities;
- Marketing of investment projects;
- Information on the various investment sectors and industries within South Africa;

- Facilitation of investment missions, including travel itineraries;
- Introduction to key stakeholders in the private and public sectors;
- Introduction to potential joint venture partners and BEE partnerships;
- Consultation on the prevailing regulatory environment;
- Information on incentive packages;
- Guidance on plant/site locations of Industrial Development Zones (IDZs);
- Assistance with work permit applications;
- Logistical support for relocation; and
- Dedicated aftercare service.

The agencies listed below can be of assistance to new as well as current investors in South Africa.

National

Trade and Investment South Africa (TISA), a division of the Department of Trade and Industry (**the dti**), has established trade and investment promotion offices world-wide to facilitate trade and investment flows. **the dti** also provides supportive services to the New Partnership for Africa's Development (NEPAD), which plays a critical role in catalysing trade and economic development on the African continent.

Trade and Investment South Africa (TISA)

Physical Address: 77 Meintjies Street, Sunnyside, Pretoria, 0002

Postal Address: Private Bag X84, Pretoria, 0001

Courier delivery address: 12 Esselen Street, Sunnyside, Pretoria, 0002

Tel.: 0861 843 384 (national); +27 (12) 394 9400 (international)

E-mail: investmentsa@thedti.gov.za

Website: www.thedti.gov.za

Regional

Gauteng Economic Development Agency (GEDA)

Physical address: 56 Main Street, Johannesburg, South Africa

Postal address: PO Box 61840, Marshalltown, 2107, South Africa

Tel.: +27 (11) 833 8750

Fax: +27 (11) 836 9070

E-mail: info@geda.co.za

Website: www.geda.co.za

Mpumalanga Economic Growth Agency (MEGA)

Physical address: 33 van Rensburg Street, Nelspruit

Postal address: PO Box 3881, Nelspruit, 1200

Tel.: +27 (13) 752 2440

Fax: +27 (13) 755 1756

Website: www.mii.co.za

KwaZulu-Natal: Trade and Investment KwaZulu-Natal (TIKZN)

Physical address: Trade and Investment House

Kingsmead Office Park

Kingsmead Boulevard

Stanger Street

Durban, 4001

Postal address: PO Box 4245, Durban, 4000, South Africa

Tel.: +27 (31) 368 9600 or +27 (31) 368 7050

Fax: +27 (31) 368 5888

E-mail: info@tikzn.co.za

Website: www.tikzn.co.za

Eastern Cape: Eastern Cape Development Corporation

Physical address: Ocean Terrace Park, Moore Street, Quigney, East London

Postal address: PO Box 11197, Southernwood, East London, Eastern Cape, South Africa, 5213

Tel.: +27 (43) 704 5600

Fax: +27 (43) 704 5700

E-mail: info@ecdc.co.za

Website: www.ecdc.co.za

Western Cape: The Western Cape Investment and Trade Promotion Agency (Wesgro)

Physical address: Waldorf Arcade, 12th floor, 80 St Georges Mall, Cape Town, 8001

Postal address: PO Box 1678, Cape Town, 8000, South Africa

Tel.: +27 (21) 487 8600

Fax: +27 (21) 487 8700

E-mail: info@wesgro.co.za

Website: www.wesgro.co.za

Free State: Investment Promotion Agency

Physical address: 49 Maibland Street, 3rd Floor, Fedsure Building, Bloemfontein

Postal address: PO Box 7024, Bloemfontein, 9300

Tel.: +27 (51) 400 0800

Fax: +27 (51) 447 0929

E-mail: fdccorp@fdc.co.za

Website: www.fipa.org.za

Northern Cape: Department of Economic Affairs and Tourism

Physical address: 13th Floor Post Office Building, Market Square, Kimberley

Postal address: Private Bag X 6108, Kimberley, 8300

Tel.: +27 (53) 839 4002

Fax: +27 (53) 832 6805

Website: www.northern-cape.gov.za

North West Province: Invest North West

Physical address: 171 Wolmarans Street, 1st Floor Old Mutual Building, Rustenburg

Postal address: PO Box 6352, Rustenburg, 0300

Tel.: +27 (14) 594 2570

Fax: +27 (14) 594 2575

Website: www.investnorthwest.co.za

Limpopo: Trade and Investment Limpopo

Physical address: 130 A Marshall Street, Polokwane

Postal address: PO Box 3490, Polokwane

Tel.: +27 (15) 295 5171

Fax: +27 (15) 295 5197

Website: www.til.co.za

Sources Consulted and Acknowledgements

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3. Deloitte & Touche
4. Department of Environmental Affairs and Tourism
5. Department of Minerals and Energy
6. Department of Trade and Industry
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8. Gauteng Economic Development Agency
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11. Industrial Development Corporation of South Africa
12. International Marketing Council
13. International Trade Administration Commission of South Africa
14. Julian Pokroy Attorneys
15. Mercer Human Resources Consulting
16. National Association of Automobile Manufacturers of South Africa
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24. Statistics South Africa, *Mid-Year Population Estimates, South Africa: 2008*, July 2008, www.statssa.gov.za/publications/P0302/P03022008.pdf
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26. Trade and Investment South Africa, **the dti**
27. UNCTAD, *World Investment Report*

SECTION 3:

APPENDIX

List of Banks in South Africa

Registered Banks – Locally Controlled

Institution	Contact	Tel.	Web Address
Absa Bank Limited	Dr S F Booysen	+27 (11) 3504000	www.absa.co.za
African Bank Limited	Mr D Woollam	+27 (11) 256-9000	www.africanbank.co.za
Bidvest Bank Limited	Mr A C Salomon	+27 (11) 407 3000	www.bidvest.co.za
Capitec Bank Limited	Mr R Stassen	+27 (21) 809-5900	www.capitecbank.co.za
FirstRand Bank Limited	Mr S E Nxasana	+27 (11) 282 8000	www.firstrand.co.za
Grindrod Bank Limited	Mr D A Polkinghorne	+27 (31) 333 6600	
Imperial Bank Limited	Mr R Van Wyk	+27 (11) 275 3000	www.imperialbank.co.za
Investec Bank Limited	Mr S Koseff	+27 (11) 286 7000	www.investec.com
MEEG Bank Limited	Mr D Nkonki	+27 (43) 702 9600	www.meegbank.co.za
Nedbank Limited	Mr T A Boardman	+27 (11) 294 4444	www.nedbank.co.za
Regal Treasury Private Bank Limited (In liquidation)	Mr T A P du Plessis	+27 (12) 344 4315/ +27 (11) 839 3920	
Sasfin Bank Limited	Mr R D Sassoon	+27 (11) 809 7500	www.sasfin.co.za
Teba Bank Limited	Mr M Williams	+27 (11) 518 5000	www.tebabank.co.za
The Standard Bank of South Africa Limited	Mr J H Maree	+27 (11) 6369111	www.standardbank.co.za

South African Reserve Bank

PO Box 427, Pretoria, 0001

Tel.: +27 (12) 313 3911

Fax: +27 (12) 313 3197 or +27 (12) 313 3929
Website: www.reservebank.co.za

Registered Banks – Foreign-Controlled

Institution	Contact	Tel.	Web Address
Albaraka Bank Limited	Mr S Chohan	+27 (31) 366 2800	www.albaraka.co.za
Habib Overseas Bank Limited	Mr A Zaheer	+27 (11) 8347441	www.habiboverseas.co.za
HBZ Bank Limited	Mr Z A Khan	+27 (31) 267 4400	www.hbzbank.co.za
Islamic Bank Limited (In Final Liquidation)	Mr A D Wilkins	+27 (11) 484-7860	
Mercantile Bank Limited	Mr D J Brown	+27 (11) 302 0300	www.mercantile.co.za

Registered Branches

Institution	Contact	Tel.	Web Address
China Construction Bank Corporation – Johannesburg Branch	Mr Y He	+27 (11) 520 9400	www.ccbjhb.com
Citibank N.A.	Mr Z Turek	+27 (11) 944 1000	www.citibank.co.za
Commerzbank Aktiengesellschaft	Mr C G Kellow	+27 (11) 328 7600	www.commerzbank.com
Deutsche Bank AG	Mr H Bosman	+27 (11) 775 7000	www.db.com

Registered Branches

Institution	Contact	Tel.	Web Address
JPMorgan Chase Bank, N.A. (Johannesburg Branch)	Mr J H Zehner	+27 (11) 5070300	www.jpmorgan.com
Société Générale	Mr P Wolmarans	+27 (11) 448 8400	www.socgen.com
Standard Chartered Bank – Johannesburg Branch	Mr C Low	+27 (11) 217 6600	www.standardchartered.com
State Bank of India	Mr V Jasuja	+27 (11) 778 4500	www.statebank.co.za
The Hong Kong and Shanghai Banking Corporation Limited	Mr K Patel	+27 (11) 676 4200	www.hsbc.co.za
ABN AMRO Bank N.V.	Mr S Penney	+27 (11) 685 2000	
Bank of Baroda	Mr S K Chakrabarti	+27 (31) 209 0133 ext. 0	www.bankofbaroda.com
Bank Of China Limited Johannesburg Branch (trading as Bank Of China Johannesburg Branch)	Mr A Li	+27 (11) 520 9600	
Bank of Taiwan South Africa Branch	Mr H Chen	+27 (11) 880 8008	www.bot.com.tw/english
Calyon (trading as Calyon Corporate and Investment Bank)	Mr S N P Bonneau de Beaufort	+27 (11) 448 3300	www.calyon.com

Registered Mutual Banks

Institution	Contact	Tel.	Web Address
GBS Mutual Bank	Mr A M Vorster	+27 (46) 622 7109	www.gbsbank.co.za
VBS Mutual Bank	Mr V N A G Sandamela	+27 (15) 516 3542 /4410	www.vbsmutualbank.co.za

Foreign Banks – Representative Offices

Institution	Contact	Tel.	Web Address
NATIXIS Southern Africa Representative Office	Mr Alexandre Cosson	+27 (11) 684 1498	www.nxbp.banquepopulaire.fr
American Express Bank Limited	Mr Jaap van Luijk	+27 (11) 721 4196 /4199	
Banco BPI, SA	Mr R Sebastiao	+27 (11) 622 4376 /86	
Banco Espirito Santo e Comercial de Lisboa	Mr Paulo A Alfaiate	+27 (11) 616 5382 /9	
Banco Privado Português, S.A.	Ms Victoria Sinclair	+27 (11) 666 1605	www.bpp.pt
Banco Santander Totta S.A.	Mr José M M Pinheiro	+27 (11) 656 3156	
Bank Leumi Le-Israel BM	Mr C J Strime	+27 (11) 328 1700	
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