

MOZAMBIQUE
JLA ADVOGADOS

FIRM INFORMATION

Website address : **www.jlaadvogados.com**
Languages spoken : **Portuguese, English**
Telephone : +(258) 21 317 159
Address : Rua dos Desportistas, n.º 691, Edifício Jat 6.1, 13.º Piso, Fracção Norte, Maputo, Mozambique
Contact : Zara Jamal (Partner), Deivid Sacur (Associate), Cecil Gobo (Associate)
Email : maputo@jlaadvogados.com

MOZAMBIQUE | JLA ADVOGADOS

COUNTRY INFORMATION

Mozambique has a 2 470 kilometre coastline and a total land area of 801 590 square kilometres. It is a tropical country with effectively two seasons, a hot and wet season from October to March, and a dry season from April to September. The country's official language is Portuguese. It has an estimated population of about 33 244 414. The official currency is the Metical. The use of the US Dollar, the South African Rand and the Euro in business transactions has been restricted since January 2016.

POLITICAL SYSTEM

Multiparty Democracy. Mozambique's political system is a Presidential Republic. The country is governed by a President, who is the head of state and government. The President is elected by popular ballot for a five-year term. Legislative power is exercised by the Assembly of the Republic, a unicameral parliament made up of deputies elected by the people. The political system also includes an independent judiciary.

LATEST GDP FIGURES

The growth of the Mozambican economy is expected to accelerate in the medium term, reaching 6% in 2025, driven by a continued recovery in services, an increase in the production of liquefied natural gas and high raw material prices. However, negative factors, caused by climate shocks, security risks and pressure on food and fuel prices, could reduce GDP growth in the medium term to 4.5%.

INFLATION RATE

Inflation is expected to fall to 7 % in 2025 due to pressure from oil and gas megaprojects.

INVESTMENT CLIMATE

Mozambique strongly encourages foreign direct investment and has enormous investment opportunities in sectors such as agriculture, oil and gas, mining, fisheries and aquaculture, tourism, construction, public infrastructure and energy.

Mozambique has the third largest proven reserves of natural gas in Africa. In accordance with recent data from the National Institute for Petroleum, these reserves amount to about 100 trillion cubic feet. In addition to the onshore fields located in the southern part of the country, the offshore field in the area of the Rovuma Basin has become the focus of international attention, with several major players showing their interest in this area (ENI, Total, Anadarko/Occidental Petroleum and Exxon) over the last few years.

Mozambique is also renowned as a metal exporter and the country has significant deposits of coal, ruby, titanium, marble, copper and gold, amongst others. An ongoing and growing influx of investment is therefore expected, boosting Mozambique's competitiveness in this area.

Mozambique is a country with enormous potential in the tourism sector, whether regionally or internationally. Thus is a result not only of its wealth of natural resources and its history and culture, but also its proximity to the Republic of South Africa, one of the most popular destinations in Africa and in the world. In this sector there is an almost unparalleled range of opportunities for potential investors, especially when compared to other countries in Southern Africa.

The Constitution of the Republic of Mozambique guarantees foreign investment undertaken in terms of its economic policy. Foreign investment is allowed in all economic sectors. The State guarantees the right to property. Expropriation may only occur if in the context of public interest and if fair compensation is paid. The investment law, its regulations and the Code of Fiscal Benefits constitute the general regulatory framework for national and foreign investments that are eligible for Government guarantees and financial incentives. These guarantees/ incentives comprise:

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

Investment projects approved under the legislation applicable to investment in Mozambique, are eligible for the following benefits, based on their location and/or activity:
- guarantee of protection of ownership rights

- guarantee of the transfer of funds (profits or dividends, royalties, amortisations and interest from loans and foreign capital invested and re-exportable) abroad
- grant of tax benefits.

Tax benefits include:
- exemption from custom duties and Value Added Tax on the import of capital goods in class "K" of the Custom Tariff
- tax credit for investment
- accelerated depreciation and amortization
- deductions from taxable income for investments in modernisation and launching of new technology
- deductions from taxable income for investments in vocational training.

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

The following are subject to specific tax benefits:
- the creation of basic infrastructure
- commerce and industry in rural areas
- manufacturing and assembly industries
- agriculture and fisheries
- hotel and tourism activity
- science and technological parks
- large-scale projects (representing an investment of more than 12 500 000 000 Meticais)
- projects carried out in Rapid Development Zones
- projects carried out in Industrial Free Zones
- projects carried out in Special Economic Zones.

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

Although most sectors of Mozambique's economy are open to foreign investment and foreign investors generally receive the same treatment as domestic investors, some restrictions remain. The private ownership of land is restricted and mining and management contracts are subject to specific performance requirements. Foreign ownership or control of companies is however not restricted.

The Government has created the Agency for Investment and Export Promotion (APIEX) from the merger of three institutions promoting trade and exports namely CPI (Investment Promotion Centre), GAZEDA (Office for Economic Accelerated Development Zones) and IPEX (Export Promotion Institute). APIEX is a public institution whose purpose is the promotion and facilitation of public and private investment and exports (including assisting investors to obtain governmental approvals), the optimisation of resources and the creation of greater synergies in the country's economy.

The mining and oil and gas sectors are each subject to a specific investment regime which allows for tax benefits. Undertakings covered by the Mega-Project Law (public-private partnerships, large scale projects and business concessions) are subject to specific investment, operating and financial requirements.

FORMS OF BUSINESS

- private limited liability company or quota companies
- public limited liability company or share companies
- joint partners limited liability company
- simplified joint-stock company
- State owned companies
- individual trader
- foreign company by means of a foreign commercial branch or representative office of a foreign company.

INCORPORATION OF A COMPANY

Companies must:

- reserve the company's name at the Legal Entities Registrar Offices
- prepare a standard draft of the articles of association of the company
- open a bank account with a local bank to deposit the share capital and register the equity transfers with the Bank of Mozambique (for foreign shareholders)
- execute a public deed or a private deed of incorporation of the company
- formalise the company registration at the Legal Entities Registrar Offices
- publish the incorporation of the company and its articles of association on the Official Gazette
- register the company with the relevant Tax Department to obtain a taxpayer number (NUIT)
- obtain licenses from the relevant authorities for the intended area of business activity
- present the declaration of beginning of business before the relevant Tax Department.

Incorporation procedures of Foreign Companies in Mozambique (Branch)

The following procedure is required:

- request for an opinion from the entity/authority that supervises the activity to be carried out
- submission of an application addressed to the Minister of Industry and Trade, for the licensing and inspection of the branch
- notification of the date of the inspection
- inspection
- issuance of the License
- registration of the branch at the Legal Entities Registrar
- tax Registration before the relevant Tax Department

- if applicable, obtain the competent license by the entity that supervises the activity
- declaration of beginning of activity before the relevant Tax Department.

EXCHANGE CONTROLS

On 20 March 2024, Central Bank of Mozambique, through Notice number 03/GBM/2024 of 20 March 2024, approved new regulations under the Exchange Control Law and revoked the existing regulations. These regulations were approved by the Central Bank in the exercise of its powers of the "Exchange Control Authority". These include:

- pre approval by the Central Bank is required for a list of transactions
- the inflow and outflow of foreign currency is subject to conditions and restrictions to be determined by the Central Bank
- remittance of export earnings from goods and services and investment income generated or held abroad is subject to terms and conditions determined by the Central Bank
- the creation of a specific account in order to receive export earnings is permitted
- mandatory and priority use of the balance in such specific accounts is required for payments abroad. Transfers may only be made to accounts of the same nature in foreign currency, at the level of the national banking system. Payments in foreign currency to non-exporting residents is no longer allowed
- the submission of requests for authorisation of capital transactions, is made by the interested party through an intermediary bank which must check the documentation and carry out the proper characterisation and framing of the foreign exchange operation
- an account in foreign currency may be opened by residents with a proven relationship outside Mozambique or with a nonresident
- regarding Foreign Direct Investment (FDI):
- FDI is automatically authorised, the only requirement being registration with the intermediary bank
- the entry of foreign currency must be registered with the intermediary bank in real time and duly classified
- registration with the Central Bank is required within 90 days if it involves machinery, equipment or other material goods
- investments through shareholders loans or related company credit are automatically authorised when:
- the interest rate is 0%, the duration is 3 years or more and there are no charges and commissions
- the interest rate is above 0% (but below the reference rate of the currency of credit), the duration is equal to or greater than 3 years, without commissions and charges, up to an amount of USD 5 million
- in the oil and gas sector, all payments in the production phase must be made by intermediary banks authorised to operate in Mozambique.

Most other forms of importation or exportation of capital, as well as other transactions between residents and non-residents, or between non-residents, regarding assets located in Mozambique require prior authorisation from the Bank of Mozambique and must also be registered. Failure to comply with the exchange control provisions and regulations will prevent any outflow of funds from Mozambique and may result in penalties and fines as well as forfeiture of the assets or values involved in the illegal transaction. The import and export of goods and services, and certain foreign payments are permitted provided that payments are not deferred for more than two years and that the transaction is registered.

TAXATION

Corporate income tax (CIT) is a direct tax levied on income obtained by legal persons during the relevant tax period (usually the calendar year) over the global annual value of the income (if the taxpayer is resident) or income derived from activities in Mozambique (if the taxpayer is non-resident). The basic test of residence is whether the taxpayer has headquarters or effective management in Mozambican territory. Commercial companies with a head office or effective management in Mozambique are subject to a general CIT rate of 32%.

Non-residents earning income in Mozambique, or related to activities in Mozambique may be subject to CIT. This tax is collected by withholding it at source at the flat rate of 20% of the income (except for those incomes qualified as capital gains which are levied at the general tax rate of CIT of 32%) or 10% in the following cases:

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

With regard to the taxation of income received in Mozambique by entities which do not have a registered office or effective management in Mozambique, or a permanent establishment in Mozambique, account should be taken of the provisions of conventions for the avoidance of double taxation and the prevention of tax avoidance or evasion which establish the place of taxation of the income and, in some situations, provide for rates lower than those established in national legislation. To date, Mozambique has entered into such conventions with Portugal, Mauritius, United Arab Emirates, Italy, Macau, South Africa, Botswana, India and Vietnam. These conventions are not automatically applicable and

require a residence certificate of the beneficiary of the income issued by the Tax Administration of the relevant country, to be confirmed by the Mozambican Tax Authority. Appropriate forms approved by the Ministry of Finance must be completed for that purpose.

Value Added Tax (VAT) is levied at a fixed rate of 16% on the sale of goods and services in Mozambique, and on imported goods. Exports are VAT exempt.

Specific taxation regimes apply to certain economic sectors such as mining and oil and gas. Laws governing these sectors provide for capital gains tax to be paid on the transfer of oil and mining participating interests and other assets by residents and non-residents, at a rate of 32%. Specific rules relate to the calculation of gains, taxable income, deductible costs and amortisation. Income from the provision of services rendered by non-resident entities to Mozambique oil and mining companies is subject to withholding tax at the rate of 10% of the gross amount paid. The mining and oil and gas tax regime provides tax stability, regarding tax incidence, rates and benefits, for a period of up to 10 years, as follows:

- Mining - from the date of production or approval of a development plan (without affecting the assumptions of feasibility and profitability) and may be extended up to the termination of the primary concession, subject to an additional payment of 2% of the Production Tax. This becomes effective through proven investment in an amount equivalent to USD 5 million

- oil and gas - from the date of production or approval of a development plan (without affecting the assumptions of feasibility and profitability of the project) and may be extended up to the termination of the primary concession, subject to an additional payment of 2% of the Production Tax, from the eleventh year of production. This becomes effective through proven investment in an amount equivalent to USD 100 million.

The Corporate Income Tax liability of companies holding concession contracts is calculated separately for each concession contract. This means that a separate tax return must be submitted for each concession (oil and mining activities are subject to a ring-fencing principle).

Exemptions from custom duties are granted for a period of five fiscal years for the import of equipment and goods for oil and mining operations (to the extent that they are not precluded on the local market). Value Added Tax exemptions are not granted on the import of equipment and goods.

Mining and oils and gas companies operating under a concession contract are obliged to have their accounts audited by authorised independent auditors. The Mining Law expressly provides that indirect transfers of participating interests, titles and/or mining rights, by way of change of control of any license holder, are considered as a transfer of rights and obligations under a mining license and, therefore require prior governmental approval. Non-compliance with any transfer requirements will result in any such transfers being void.

Under the Corporate Income Tax Code, transactions between non-residents regarding shareholding interests or rights concerning assets in Mozambique are taxable if such transactions relate directly to Mozambique companies irrespective of where the transaction occurred.

COMPETITION LAW – MERGER CONTROL

The Competition legal framework is applicable to all economic activities (both private and public sectors) carried out in Mozambique. The law focuses primarily on regulating prohibited conduct, anti-competitive practices as well as enterprise concentrations in order to avoid distortions or restrictions on the relevant markets. Under the Competition Law, all transactions that result in concentrations of enterprises are subject to control by the Competition Regulatory Entity (the "ARC"). Filing with the ARC is mandatory for those transactions that exceed a certain market share, business volume (based on global turnover) or annual turnover. Such filing must be made within seven working days after the conclusion of the transaction agreement or the project that gives rise to the concentration. The thresholds for market shares are:

- if the execution of such transaction results in a share equal to more than 50% being acquired, created or reinforced in the national market for certain goods or services, or a substantial part of it
- if the execution of such transaction results in a share equal to or more than 30% but less than 50% being acquired, created or reinforced in the national market for certain goods or services, or a substantial part thereof, as long as the business volume individually made in Mozambique by at least two of the enterprises participating in the transaction is more than 100 million Meticais, net of taxes directly related with such business
- if the companies participating in the concentration transaction have jointly made in Mozambique, a volume of business of approximately 900 million Meticais, net of taxes directly related to such business.

The filing of foreign mergers is mandatory to the extent that they have an effect in Mozambique and exceed the above thresholds even if none of the enterprises involved in the transaction are established in Mozambique.

LEGAL SYSTEM

Mozambique's legal system is based on Roman-Germanic law (i.e. a civil law system). There are two main regulatory bodies, the Parliament (which approves the laws) and the Council of Ministers (which approves decrees). The courts

have exclusive jurisdiction to settle disputes by judicial means unless the parties have agreed to submit a dispute to arbitration. The courts operate according to the principle of separation of powers and are classified as sovereign bodies under the Constitution. The law differentiates between judicial courts, administrative courts and other special courts like the customs court and tax court. The courts include the Supreme Court, The Supreme Appeal Courts, the Provincial Courts and the Districts Courts. The administrative court has special jurisdiction to hear disputes in legal administrative relationships, litigation appeals lodged against the decisions of state bodies and agents and appeals lodged against tax and customs' court decisions.

The Arbitration Law expressly provides that arbitral awards rendered in Mozambique pursuant to the Arbitration Law should be treated and enforced in the same manner as a judgement of the Mozambican courts. In cases of non compliance with any arbitral award, enforcement proceedings must be commenced in the Mozambican courts. Mozambique ratified the New York Convention on 11 June 1998 (subject to reciprocity) and this entered into force on 9 September 1998. The Mozambican courts are prima facie required to give effect to an arbitration agreement and recognise and enforce arbitral awards made in other New York Convention Member States against the assets of a party located in Mozambique. The enforcement of foreign judgment and arbitral awards in Mozambique is subject to consideration and recognition by the Mozambican Supreme Court.

INTELLECTUAL PROPERTY

In Mozambique, the protection of Intellectual Property is governed by the Copyright Law, approved by Law no. 9/2022 of 29 June) and the respective regulations, approved by Decree no. 46/2024 of 27 June and by the Industrial Property Code, approved by Decree no. 47/2015 of 15 December 2015. Mozambique employs an IP strategy known as the 'Intellectual Property Strategy-2008-2018' (currently under review) promulgated at the XXIII Meeting of the Council of Ministers on 28 August 2007, which identifies the international Conventions and Treaties that Mozambique has ratified or acceded to, as follows:

- Berne Convention for the Protection of Literary and Artistic Works (1886);
- Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) (1994);
- Southern African Development Community (SADC) Protocol on IP;
- Paris Convention of 1883 for the Protection of Industrial Property, promulgated by Resolution No. 21/97 of 12 August 1997;
- Madrid Agreement (1891) and Protocol (1989) concerning the international registration of trademarks, promulgated by Resolution no. 20/97 of 12 August 1997;
- Nice Agreement on the International Classification of Goods and Services for the Purposes of the Registration of Marks (1957), approved by Resolution 38/2001 of 12 June 2001;
- Patent Cooperation Treaty (PCT) (1970) for the international registration of patents and utility models;
- Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) (1994);
- Banjul Protocol on the accession of trademarks, adopted by Resolution 52/2017, with effect from 15 August 2020 (ARIPO);
- Harare Protocol on patents and industrial designs within the framework of the African Regional Intellectual Property Organisation (ARIPO), adopted by Resolution 34/99 of 16 November 1999;
- Swakopmund Protocol on the protection of traditional knowledge and expressions of folklore within the framework of ARIPO, adopted on 9 August 2010.

Mozambique is a member of the World Trade Organisation (WTO), the World Intellectual Property Organisation (WIPO) and the African Regional Intellectual Property Organisation (ARIPO).

TREATIES AND BILATERAL AGREEMENTS

Mozambique has signed investment promotion and reciprocal protection agreements with Algeria, Belgium, Luxembourg, China, Cuba, Denmark, Egypt, Finland, France, India, Indonesia, Italy, Mauritius, Netherlands, Portugal, South Africa, United Arab Emirates, Sweden, Switzerland, United Kingdom, USA, Vietnam, Zimbabwe and Japan. Mozambique has also signed bilateral treaties to prevent double taxation and tax evasion on income tax with Portugal, Mauritius, United Arab Emirates, Macau, Italy, Botswana, India, Vietnam and South Africa.

MEMBERSHIP OF INTERNATIONAL AND REGIONAL ORGANISATIONS

Mozambique is a member of the Southern African Development Community (SADC), African Union (AU), United Nations (UN), Community of Portuguese Language Countries (CPLP), British Commonwealth, African Countries of Portuguese Official Language (PALOP), International Monetary Fund (IMF), World Bank, Food and Agriculture Organisation (FAO), World Trade Organisation (WTO), World Tourism Organisation, International Labour Organisation (ILO), World Intellectual Property (WIPO), United Nations Educational, Scientific and Cultural Organisation (UNESCO), World Trade Organisation (WTO), International Fund for Agriculture Development (IFAD), World Food Program, International Criminal Police Organisation (INTERPOL), International Maritime Organisation, International Civil Aviation Organisation (ICAO), World Food Program, World Health Organisation (WHO), International Labour Organisation (ILO), the association of the countries on the edge of the Indian Ocean for Regional cooperation (IOR-

ARC), Organisation of African, Caribbean and Pacific States and Organisation of Islamic Cooperation.

ENERGY

Mozambique's vast energy resources have the capacity to satisfy most of its domestic energy needs. They include hydropower (the Cahora Bassa Dam), natural gas, coal, biomass, solar and wind power. The country has considerable hydropower potential (especially in the Zambezi River basin at sites such as Cahora Bassa) with an estimated capacity of 12 500 MW with an annual energy generation potential of 60 000 GWh. The country has expanded its energy generation capacity to more than 16 000 MW. This is a result of the commercial extraction of natural gas (the Pande gas fields), the rehabilitation and construction of new hydroelectric dams and the exploitation of alternative and renewable energies such as solar, oleic and biofuels (bioethanol, biodiesel and biogas).

Mozambique is a key player in the development of regional energy infrastructure. Mozambique's Southern African Power Pool (SAPP) interconnections offer opportunities for trading electricity regionally. There is an urgent need on a short, medium and long-term basis to promote the construction of additional and alternative sources of energy and the creation of transmission infrastructures to deliver power to load centers with cost effective rates. Under electricity legislation, the production, transport, distribution, sale, import and export of electricity, as well as the construction, operation and management of electrical facilities by individuals or by private and public entities require, as a rule, the grant of a concession by the Government. Moreover, power projects must be undertaken under a Public-Private Partnership regime.

MINING, OIL AND GAS

Mozambique has significant investment opportunities for the exploration, extraction, processing and utilization of natural gas, coal, gold, titanium, ilmenite, zircon, rutile, tantalite, marble, graphite and precious stones. The Strategic Plan for the Concession of Areas for Petroleum Operations, approved by Resolution 39/2021 of 4 August, states that Mozambique's sedimentary basins have great oil potential. The Mozambique Basin, which has an area of 300 000km^2, has a density of around one well per 8 000km^2 onshore and one well per 17 000km^2 offshore, while the Rovuma Basin, which has an area of 60 000km^2, has a density of one well per 17 000km^2 onshore and none offshore. In 2012, Mozambique emerged as a new natural gas giant with discoveries of more than 100 trillion cubic feet in Areas 1 and 4 of the offshore Rovuma Basin.

Under the Mining Law, a potential investor can obtain prospecting and exploration licences, mining concessions, mining certificates, mining passes, mining treatment licences and licenses to commercialize mining products. Exploration licences govern all research and prospecting activities and are valid for:

- 2 years for mineral resources intended for the construction industry, and may be renewed once for the same period; and
- 5 years for other mineral resources, including mineral water, and can be renewed once for a further 3 years.

Mining concessions grant the concessionaire (which must be a legal person incorporated and registered under Mozambican law) the right to extract, develop and process mineral resources discovered under an exploration licence. Mining concessions are valid for up to 25 years and can be extended for a further 25 years. Mining licences govern the sale and purchase of mineral products from outside Mozambique. These licences can be granted to Mozambican citizens as well as legal entities. All concession contracts for oil and gas exploration and production activities must be awarded by public tender, while concession contracts for other petroleum activities (e.g. infrastructure concession contract) can result from public tender or direct negotiation.

TELECOMMUNICATIONS

Although the State owned TMCEL (Mozambique Telecom) still enjoys a monopoly, the telecommunications sector was liberalised in 2004 and the mobile sub-sector has experienced significant growth. The current Telecommunications Law entered into force on 3 August 2016 and applies to natural and legal persons licensed for the establishment, management and operation of telecommunications networks and services. The law introduced an innovation by setting out the conditions under which diplomatic missions may set up and operate private telecommunications networks and radio equipment. Telecommunications licensees must, whenever requested by the Communications Regulatory Authority (INCM), cooperate and provide all information related to their activities (including financial information and information regarding future developments in their networks and services). The licensees may classify information they consider confidential and the INCM is prohibited from disclosing such confidential information.

The Telecommunications Law allows the owner of a private network to resell the existing available capacity of its facilities and to assign, transfer or dispose of the rights to use such facilities in favor of a telecommunications operator. The law also states that the setting, management and operation of networks and provision of telecommunications services is subject to the allocation of a unified license or a license by class and that the use of radio frequency spectrum is subject to a license. The licensing process has become more complex. The award of telecommunications or radio communications licenses involving the use of radio frequencies, numbering or other scarce resources, is subject

to a public tender process or auction on terms set out by the Government.

The sharing of telecommunication infrastructure between operators is mandatory. This is aimed at fostering competition and decreasing the investment required for the building and maintenance of networks (the previous law only required operators to allow access to their infrastructure). Operators of networks or public telecommunications service providers should connect with each other. Connection is defined as the physical connection of telecommunications networks used by the same or different operators in order to allow access and communications between different consumers of the services provided.

AGRICULTURE

Agriculture is one of the sectors that could easily be developed in Mozambique, as the country has a lot of potentially usable arable land, along with access to river water for irrigation in many areas, particularly in central and northern Mozambique. Agribusiness is therefore an important potential investment opportunity in Mozambique. Mozambique exports baby corn, flowers, citrus fruits, cashew nuts, various fruits, chillies and peppers. There are also opportunities for the production of cereals, fruit, flowers and vegetables for the local market and for export.

Following the approval of the new national land policy by resolution 45/2022 of 28 November, which responded to the challenges of consolidating the structures of the market economy, taking into account the challenges posed by the general increase in population, the accelerated growth of the urban population, climate change and the emergence of mega projects. The public consultation process for the revision of Law 19/97 of 1 October is therefore underway, and it is hoped that the revision will introduce a legal and institutional framework adjusted to the country's new social and economic dynamics and promote the right to use and enjoy land.

LABOUR RELATIONS

The national legal framework establishes a set of laws and regulations that protect legal-labour relations between national and foreign workers and employers. Law no. 13/2023, of 25 August, which approves the Labour Law, recently came into force and includes a number of changes in order to respond and adjust the legal framework to the new dynamics of socio-economic development in the country:

- making employment contracts on commission, home work contracts, contract work, temporary work, employment contracts for use, intermittent work contracts and teleworking subject to the written form
- extending paternity leave to seven days in the event of the birth of a child and sixty days in the event of the death or incapacity of the parent
- the system for hiring workers of foreign nationality for non-profit organizations was strengthened, as was the system for plurality of employers and provision was made for multi-employment
- the legal system for intermittent work contracts and teleworking was introduced
- working hours were established on an alternating basis
- the system for suspending employment contracts due to force majeure and unforeseeable circumstances was established.

The hiring of foreign workers is specifically regulated by Decree 37/2016 of 31 August 2016, amended by Decree 45/2021 of 01 July 2021, as well as by Decree 43/2022 of 19 August 2022, which establishes the Regulation of the mechanisms and procedures for hiring citizens of foreign nationality, in this sense, under the terms of this regulation it is foreseen that, as a general rule, foreign workers are entitled to the same treatment as Mozambican workers. However, there are certain quotas applicable to the number of foreign workers that a company (national or foreign) can employ in Mozambique:

- the maximum percentage for foreign workers is 5% for large enterprises employing more than 100 employees
- the maximum percentage for foreign workers is 8% for medium enterprises
- The contracting of foreigners by national and foreign employers is subject to authorisation by the Minister of Labour, or the entity to which the minister delegates the relevant authority.

Foreigners may be hired for long term work in one of two ways:

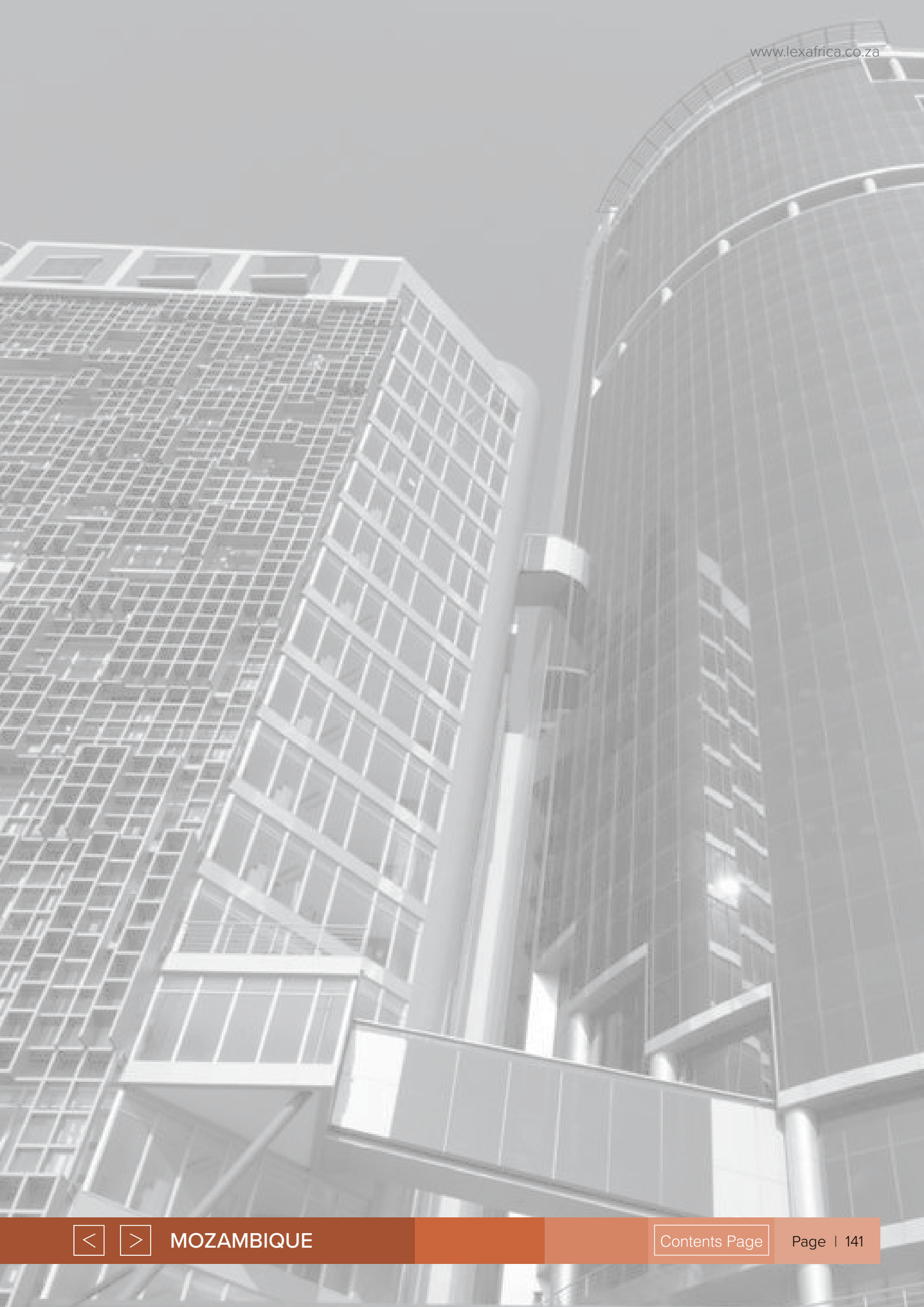
- through a special quota system that is granted under the investment project approved by the government
- under a work authorisation that is granted under the discretionary power of the Minister of Labour.

Work permits will generally only be issued in accordance with the following work permit quotas provided for by legislation:

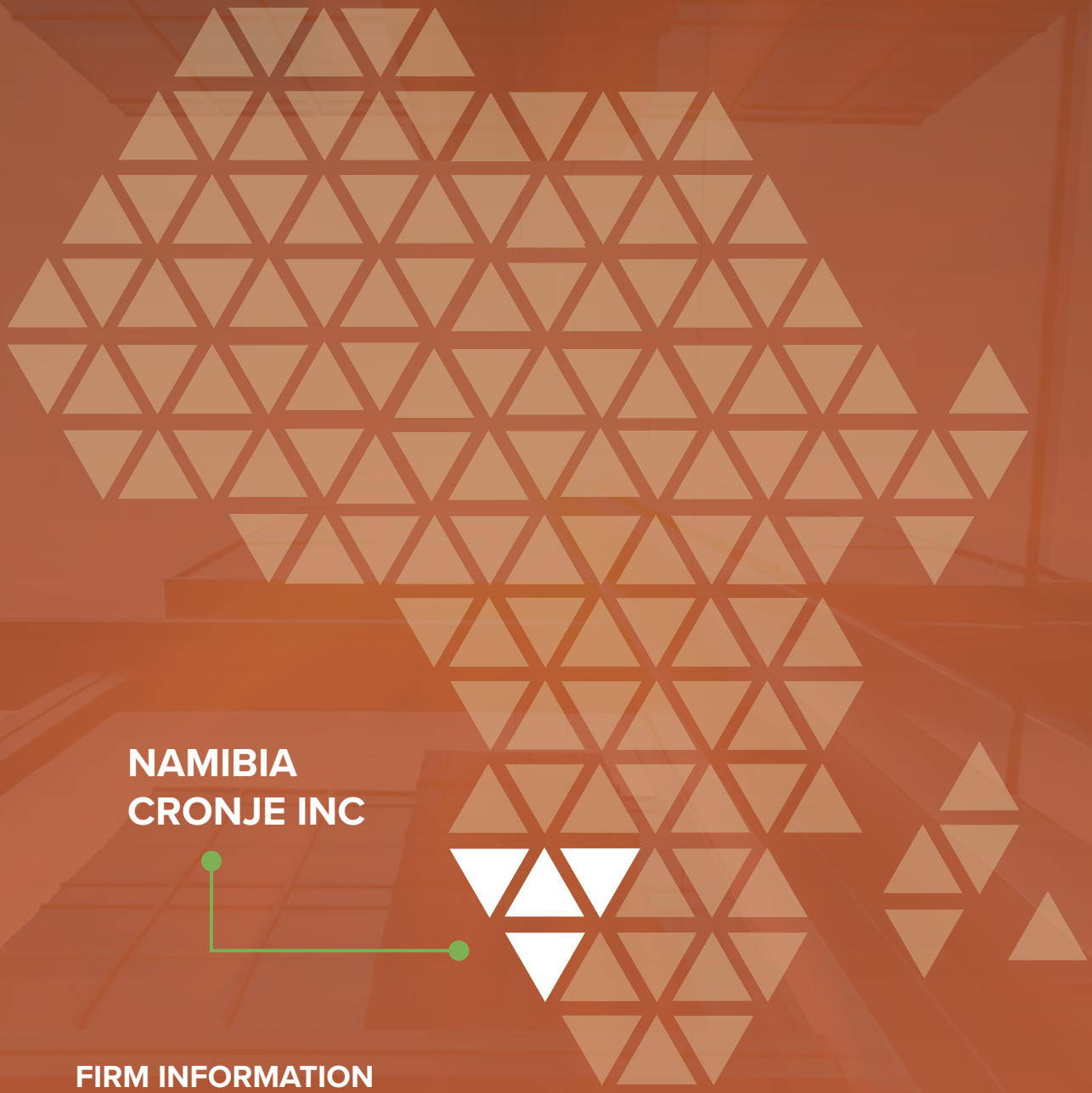
- 5% (five per cent) of the total number of employees, for large companies – companies with more than 100 (one hundred) employees
- 8% (eight per cent) of the total number of employees for medium-to-large sized companies – companies with more than 30 (thirty) and up to 100 (one hundred) employees
- 10% (ten per cent) of the total number of employees, for medium-sized companies – companies more than 10 (ten) and up to 30 (thirty) employees
- 15% of the total number of employees, for small-sized companies – companies up to 10 employees.

In investment projects approved by the government, in which the hiring of foreign employees is foreseen in a

percentage lower or higher than those foreseen in the quota system, a work permit is not required, and communication to the Minister who oversees the Labour area is sufficient for this purpose. Employees that remain in Mozambique for more than 120 (one hundred and twenty) days per year require a work permit, which is valid for 2 (two) years and renewable for an unlimited number of two-year periods. Expatriates must also hold a valid work visa and residence permit. A short-term work permit, which does not fall under the work permit quota system, can be obtained for a period of up to 90 (nineteen) days in general and 180 (one hundred and eighty) days for the oil and gas and mining industries. Special permit provisions exist in the mining and oil and gas sector maximum percentage for foreign workers is 10% for small enterprises.



NAMIBIA
CRONJE INC



FIRM INFORMATION

Website address : **www.cronjelaw.com**
Languages spoken : **English, Afrikaans, German**
Telephone : **Office Hours:** +264 81 146 97408 / **After Hours:** +264 81 319 8200
Address : 1 Jan Jonker Road, Klein Windhoek, Windhoek, Namibia
Contact : Cronjé and Jomari Jurgens
Email : cronje@cronjelaw.com and jomari@cronjelaw.com

NAMIBIA | CRONJE INC

COUNTRY INFORMATION

Namibia is a vast but sparsely populated country with a total population of about 3 000 000 spread over an area of approximately 824 292 square kilometres. Most of the population resides in the central and northern regions of the country, cradled by the Namib Desert stretching along the cold Atlantic Ocean in the west, the Kalahari semi-desert along the eastern border with Botswana, and the arid southern areas bordering South Africa.. The capital city of Namibia is Windhoek, with a population of 500 000.

POLITICAL SYSTEM

Multiparty democracy.

LATEST GDP FIGURES

GDP: USD13 billion
GDP real growth rate: 3.2%
GDP per capita (PPP): USD 5 154.

INFLATION RATE

4.6 % (August 2024).

INVESTMENT CLIMATE

The Investment climate in Namibia is generally very positive for foreign investors.

The Government has stakes (sometimes 100% ownership) in companies in the following sectors: telecommunications (fixed and mobile voice and data services), energy, water, transport (rail and road), postal services, fishing, mining, petroleum, oil and gas, infrastructure, and tourism.

Namibia welcomes foreign investment and virtually all business activities are open to foreign investors. Namibia introduced the Foreign Investment Act in 1990 which affords protection to foreign investment and introduced an Investment Centre within the Ministry of Trade and Industry to streamline and encourage foreign investment. Foreign nationals are protected by this legislation which guarantees the repatriation of funds and interest invested in Namibia.

FOREIGN INVESTMENT

Foreign investment is restricted in certain designated business categories. The Foreign Investment Act provides that the Minister of Industrialisation and Trade may, by notice in the Government Gazette, designate businesses or categories of businesses which, in his opinion, is engaged in the provision of services or the production of goods which can be provided or adequately produced by Namibians. Following such notice, foreign nationals are prohibited from engaging in or investing in such specified businesses or categories. To date notice has been given in respect of public transport services and hair salons, hair dressing and beauty treatment services.

The Foreign Investment Act also permits preference to Namibian nationals in certain respects and provides that any law relating to natural resources or any license or other authorisation granted under such a law conferring rights for the exploitation of such resources, may provide for the granting or enjoyment of such rights to or by Namibians on terms more favourable than those applicable to foreign nationals.

It is important to highlight that in 2016, the Parliament passed new investment legislation known as the Namibian Investment Promotion Act of 2016, which repeals the Foreign Investment Act. However, as at December 2024, this Act has not yet come into effect. If it were to come into effect, the Namibian Investment Promotion Act of 2016 would represent a significant departure from the current investor-friendly provisions established by the Foreign Investment Act.

FOREIGN OWNERSHIP OF AGRICULTURAL LAND

Foreign ownership of agricultural land is regulated. The Government's land reform policy is shaped by two key pieces of legislation, the Agricultural (Commercial) Land Reform Act 6 of 1995 and the Communal Land Reform Act 5 of 2002. The Agricultural (Commercial) Land Reform Act provides that no person can acquire and hold, as a nominee owner, on behalf or in the interest of any foreign national any agricultural land if the Minister's written consent therefore has not been obtained. The Agricultural (Commercial) Land Reform Act further provides that a foreign national may not hold a controlling interest in relation to a company that owns agricultural land. A controlling interest means more than 50% of the issued share capital of the company, more than half of the voting rights in respect of the issued shares of the company or the power, either directly or indirectly, to appoint or remove majority of the directors of the company without the concurrence of any other person.

INDIGENISATION PRACTICES

Since 2004, the Namibian Government has expressed its intention to establish policies, frameworks, or laws regarding economic indigenisation and equity for the broader Namibian economy. In 2015, Parliament approved a policy known as "The New Equitable Economic Empowerment Framework" ("NEEEF"). This policy mandated all enterprises to foster transformation through six empowerment pillars, with the first three being mandatory and subject to scoring:

- ownership;
- management control and employment equity;
- human resources and skill development;
- entrepreneurship development;
- marketing and corporate social responsibility; and
- value addition.

NEEEF imposed a mandatory 25% ownership requirement for previously disadvantaged persons. Entities failing to comply with NEEEF targets could face penalties, including ineligibility for government contracts, work permits, access to natural resources and the issuance of business licenses in trading, telecommunications and financial services.

The New Equitable Economic Empowerment Bill ("NEEEB") was introduced in Parliament and section 23 of NEEEB required private sector enterprises to secure 25% of ownership by a "racially disadvantaged person". Enterprises owned and controlled by previously disadvantaged individuals were prohibited from transferring ownership to entities not meeting the criteria. The initial NEEEB faced strong criticism from the Namibian business community due to economic, constitutional and investor-unfriendly concerns.

Since March 2018, the status of NEEEB and the government's stance have remained unclear. In response to criticism, there were indications that the mandatory 25% ownership pillar might be abolished, and a revised version of NEEEB would be presented to Parliament.

On 15 February 2021, the Prime Minister made references to the NEEEB during a Namibia Chamber of Commerce and Industry (NCCI) event. Although the 2021 NEEEB is not publicly available, a document identified as the "National Equitable Economic Empowerment Act, 2021" (2021 NEEEB) was obtained. However, it lacks meaningful details as to the core purpose of the draft legislation and relies on forthcoming "standards" to be determined by the executive arm of government.

The 2021 NEEEB leaves crucial details on economic indigenisation requirements to be determined by future "standards," creating inconsistencies with the Empowerment Policy and the Foreign Investments Act of 1990. The constitutional viability of both the Empowerment Policy and the 2021 NEEEB remains doubtful. In summary, until the promulgation of the 2021 NEEEB and the establishment of "standards" by the minister responsible for NEEEB administration, the economic indigenisation requirements under Namibian law remains uncertain.

NEEEF also deals with financing mechanisms aimed at finding solutions to address developmental challenges and to broaden entrepreneurship in Namibia. The proposed options are grants and incentives, state-facilitated lending, project financing, venture capital and targeted investment.

The Development Bank of Namibia (DBN) provides finance for private sector start-ups and expansions, equity deals, bridging finance, enterprise development finance, trade finance, small and medium enterprises, public private partnerships, public sector infrastructure, local authorities, and bulk finance to responsible micro-finance providers. The DBN only finances Namibian participation in projects.

FORMS OF BUSINESS

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

COMPETITION LAW – MERGER CONTROL

Companies, close corporations, and external companies must be registered with the Business and Intellectual Property Authority (BIPA).

The legislation regulating trusts was drastically amended in 2023. With the enforcement of the Trust Administration Act 11 of 2023, strict penalties, which includes fines and/or criminal liability, are imposed for any contravention to the statutory provisions of the Trust Administration Act. The Trust Administration Act requires that all trust deeds must be registered with the Master of the High Court. Trustees require the express authorisation from the Master of the High Court before they can commence their duties as trustees. All trusts are required to have a financial year end of 28 February, and the annual financial statements and proof that all tax returns of the trust have been submitted and paid up to date, must be lodged with the Master of the High Court within 7 months from the financial year end of the trust.

A business generally has to register for various tax purposes such as Value Added Tax (VAT), import VAT, Pay-as-You-Earn (PAYE), workmen's compensation as well as with the Social Security Commission. However trading licences are not required.

EXCHANGE CONTROLS

Namibia is part of the Common Monitory Area and the Namibian Dollar is pegged to the South African Rand. Exchange control in Namibia is regulated by the Currency and Exchanges Act 9 of 1933 and the Regulations published pursuant thereto. Exchange control approval is required for all transactions by Namibian residents (whether natural or juristic persons, or trusts) which involve the transfer of assets to countries outside the Common Monetary Area. The Common Monetary Area comprises of Namibia, Lesotho, South Africa and Eswatini.

There is no exchange control applicable on transactions within the Common Monetary Area but money-laundering regulations require the disclosure of cross border transactions. The countries in the Common Monetary Area mostly apply similar regulations to exchange control policies with specific variances in each jurisdiction. In Namibia, a company can be capitalised by way of equity or loan capital or a combination of the two. A resident for purposes of exchange control is any person (i.e., a natural person, legal entity or trust) who has taken up permanent residence in, is domiciled in or registered in Namibia.

In terms of the relevant Currency and Exchanges Guidelines issued by Bank of Namibia, if a share is issued to a non-resident, such share certificate is to be endorsed as "non-resident". Practically this is done by the submission of the original share certificate to the authorised dealer the local commercial bank of the company issuing the shares. Additionally, proof of the transfer of funds into Namibia for the subscription of shares must also be submitted.

In order to obtain exchange control approval for a loan, there must be a written loan agreement. Prior to the funds being introduced into Namibia, the loan must be approved by the Bank of Namibia (BON) and stamped. In terms of such approval, BON will require notification on the drawdown of amounts in terms of the facility and an appropriate interest rate. If a resident company is wholly owned by non-residents, the ratio of shareholders' loans to share capital may not exceed a debt-equity ratio of 3:1 (i.e. 75%). Concessions to allow debt funding beyond the 75% threshold can be obtained from BON in very special circumstances only. Capital repayment on loans can generally only take place after a period of six months, whereas interest on loans can be immediately repatriated.

If the shares are not endorsed as "Non-Resident Shareholder" or the loan is not approved prior to funds being introduced in Namibia, the dividends or interest earned from such investment/s may not be repatriated.

Residents are not allowed to transact business in foreign currencies without the approval of Bank of Namibia. Transactions may be invoiced in foreign currencies, but payments must be made in local currency. There are also certain limitations on the amount of foreign currency available for residents each year in respect of foreign travel and study.

TAXATION AND OTHER DUTIES

Namibia has a source-based tax system, which means that income from a source derived within Namibia, or deemed to be derived within Namibia will be subject to tax in Namibia, unless a specific exemption applies. The source of income is attributed to the place where the income originates or is earned, commonly referred to as the "originating cause of the income". Moreover, the source of income derived from services rendered, is where the services were rendered, irrespective of where the contract was concluded or where payment was made.

Domestic companies and close corporations are subject to a tax rate of 32%, which will be reduced to 31% in 2025. Individuals are taxed on a sliding scale. The maximum tax rate for individuals is 37%. Insurance companies are effectively taxed at 12.8% of investment income and mining companies at 37.5% (although diamond mines are effectively taxed at 55%).

Namibia has no capital gains tax or estate duty. However, proceeds from the sale of mining or oil rights or the shares in entities that own mineral or oil rights are taxed as income.

Non-residents who do not have a place of business in Namibia may be subject to withholding taxes. Namibia has four types of withholding taxes:

- non-resident shareholders tax
- withholding tax on services
- withholding tax on royalties
- withholding tax on interest.

Non-resident shareholders tax is levied on dividends received by a non-resident shareholder. Non-resident shareholders tax is payable at a standard rate of 10%, but only if at least 25% of the shares are held in the Namibian company and the shareholder is a company. In all other cases, the non-resident shareholders tax will be payable at 20%.

Withholding tax on services is applicable to any Namibian resident paying a management, consultancy, director's or entertainment fee to a non-resident. Withholding tax is payable at a rate of 25% on directors' fees and foreign entertainment. In all other cases withholding tax is payable at a rate of 10%.

Withholding tax on royalties is payable when a Namibian company pays a royalty to a non-resident, which is levied at a fixed rate of 10%.

The Namibian Income Tax Act provides for two types of withholding taxes applicable to interest. Firstly, a withholding tax is payable at a rate of 10% on interest accruing to any person, other than a Namibian company, from a registered Namibian banking institution or unit trust scheme. Secondly, withholding tax is payable on interest received by or accrued to non-residents at a rate of 10%.

There is no taxation on local dividends from companies and distributions from close corporations paid to Namibian residents.

Double taxation agreements may override Namibian withholding taxes as well as taxation of deemed source income. Namibia has double tax treaties with Botswana, France, Germany, India, Malaysia, Mauritius, Romania, the Russian Federation, South Africa, Sweden and the United Kingdom. Namibia is currently negotiating treaties with Belgium, the Seychelles, Singapore, Zambia and Zimbabwe.

Value-Added Tax is a transaction tax and the implications will vary for different types of transactions. Some transactions are taxed at a rate of 15% or 0% while other are exempt from VAT. Input tax deductions may be claimed subject to certain provisions. VAT is levied on every taxable supply (any supply of goods or services in the course of furtherance of a taxable activity) by a registered person. A taxable activity means any activity that is carried on continuously or regularly in Namibia and in the course or furtherance of which goods or services are supplied for consideration.

VAT is payable upon the importation of goods into Namibia. The importer is responsible for paying the VAT when the goods are imported and it is irrelevant whether or not the importer is a registered person. If the importer is a registered person and is to utilise the goods for the purposes of making taxable supplies, he is able to deduct the tax as input tax. It should however be noted that goods imported solely in operations in connection with the prospecting for, or mining of, natural oil or natural gas are exempt from VAT upon importation.

A Namibian company is required to register for VAT if it supplies goods and services on a regular basis for consideration and if its taxable supplies exceed 500 000 Namibian Dollars in any 12 month period. A registered VAT vendor is entitled to deduct input tax credits paid in the course of taxable supplies, provided that a tax invoice is available to support the input tax deduction. Import VAT paid may be deducted only as input tax if the import was in furtherance of a taxable activity and the required documentation is held by the importer.

Imports by areas declared as Export Processing Zones are exempt from VAT. The export of goods is not subject to VAT. Customs duty is also payable.

Certain transactions may attract stamp duty and the amount of stamp duty payable differs based on the nature of every individual transaction.

LEGAL SYSTEM

Namibian law is based on Roman and Roman-Dutch law and is, because of the country's history, influenced by South African law to a large extent, and to a certain extent by German and English law. Because the Namibian legal system shares its roots with the South African legal system and has developed in close connection to the South African legal system, much use is made of South African case law and authorities when interpreting and applying Namibian law. Namibia adheres to the principles of rule of law, the supremacy of the Constitution and the independence of the judiciary.

INTELLECTUAL PROPERTY

The Namibian Industrial Property Act No. 1 of 2012 ("the IP Act") regulates the registration, protection and administration of patents, utility model certificates, industrial designs, trade marks, collective marks, certification marks and trade names. The IP Act provides for the protection of well-known trade marks in Namibia under article 6bis of the Paris Convention. This is an effective means of providing protection for international brands which are yet to enter the Namibian market. The IP Acts recognizes and protects international trademarks and patents filed through ARIPO of the Madrid Protocol. Infringement proceedings under the IP Act are now be brought before the Industrial Property Tribunal.

Copyright protection is still mainly governed separately under the existing Copyright and Neighbouring Rights Protection Act 6 of 1994. Any of the works listed in the Copyright and Neighbouring Rights Protection Act are eligible for copyright protection. Copyright comes into existence without registration and the Act prohibits the unauthorised reproduction, publication, broadcast, performance, transmission or adaptation of a literary, dramatic or musical work. Special provision is made for the protection of artistic works and of sound recordings, cinematograph films, television and sound broadcasts, published editions of works and computer programs.

FINANCIAL SERVICES/INSURANCE

Namibia has a well-established insurance industry. There are however regulatory restrictions on foreign ownership for certain financial institutions as well as restrictions on foreign directorship and public officers. Insurance is divided into long-term insurance (pertaining to life insurance, health, disability, funeral or sinking fund policies) and short-term insurance (relating to fire, marine, aviation, vehicles, guarantee and personal accident, sickness, general liability, damage to property, goods in transit, credit, railway rolling stock, legal expenses and expropriation and confiscation of property, personal and co-insurance business). Long-term and short-term insurance and the registration, cancellation and carrying on of business in relation thereto are regulated by the Long-Term Insurance Act and Short-Term Insurance Act.

TREATIES AND BILATERAL AGREEMENTS

Namibia has ratified, acceded to, or is a member of various treaties and international agreements. In terms of article 144 of the Constitution of the Republic of Namibia, an international agreement binding upon Namibia forms part of Namibian law.

MEMBERSHIP OF INTERNATIONAL AND REGIONAL ORGANISATIONS

Namibia is a full member of a number of international and regional organisations including: United Nations (UN) and its agencies, International Monetary Fund (IMF), World Bank, World Trade Organisation (WTO), African Union (AU), The Southern African Development Community (SADC), Southern African Customs Union (SACU), British Commonwealth of Nations and the Lomé Convention.

ROAD AND TRANSPORT

Namibia has modern civil aviation facilities, an extensive well-maintained land transportation network and an important seaport at Walvis Bay and Lüderitz. Construction continues to expand two major road arteries, the Trans-Caprivi and Trans-Kalahari Highways which will further open up the region's access to Walvis Bay. Unfortunately Air Namibia, Namibia's national airline, has been subject to liquidation proceedings in the High Court of Namibia as at February 2021. Construction and upgrading of roads and railways are being undertaken throughout Namibia.

WATER

Article 100 of the Namibian Constitution vests all natural resources including water in the State. The control, conservation and use of water for domestic, agricultural, urban and industrial purposes are regulated by statute. The Namibia Water Corporation Limited (NamWater) is a State-owned company dealing with bulk water supply and providing water-related services and facilities.

ENERGY

Namibia has a well-developed legislative framework governing the upstream and downstream oil business. Currently there are over thirty petroleum exploration licences issued to companies exploring for oil and gas.

Namibia has recently emerged as a significant player in the global oil industry with several promising offshore oil discoveries. The most notable finds have been made in the Orange Basin, located off the southern coast of Namibia, by major international energy companies like TotalEnergies and Shell. These discoveries have generated considerable excitement due to the potential size and quality of the reserves. The prospects for success appear to be high, as initial assessments indicate that these oil fields could be substantial, with the potential to significantly boost Namibia's economy. The government is optimistic that these finds could lead to large-scale commercial production within the next few years, attracting further investment and positioning Namibia as a key oil producer in Africa. However, challenges such as the technical complexity of offshore drilling and global market dynamics remain factors that could influence the pace and scale of development.

Namibia is further aiming to positioning itself as a leader in the emerging markets and an international exporter of green hydrogen. Namibia holds a unique potential to become a leading global producer of green hydrogen due to several key factors, including its vast land resources, its
prime location for abundant wind and solar energy resources. Namibia has one of Africa's most stable democracies and there are minimal competing interests such as other industries or unsupportive private landowners, with a close proximity of renewable energy resources to the coast, with port access to international markets.

TELECOMMUNICATIONS

Telecommunications in Namibia is primarily regulated by the Communications Regulatory Authority of Namibia (CRAN). CRAN was established by the Communications Act of 2009 and is responsible for overseeing the telecommunications, broadcasting, and postal sectors in the country. The main functions of CRAN include licensing, spectrum management, competition and consumer protection, regulatory oversight, and policy advice. Namibia's telecommunications sector also benefits from a legal framework that encourages investment and innovation, while CRAN plays a critical role in balancing the interests of service providers, consumers, and the state. Namibia limits foreign ownership of telecommunications entities to a minority stake.

TOURISM

Namibia, known for its vast landscapes, diverse wildlife, and rich cultural heritage, has established itself as a premier destination for eco-tourism and adventure travel. The country's vast deserts, dramatic coastlines and abundant wildlife attract visitors from around the world, making tourism one of the most important sectors of Namibia's economy. Namibia's tourism is primarily driven by its natural attractions. The Namib Desert, the oldest desert in the world, offers unique landscapes like the towering sand dunes of Sossusvlei, while the Skeleton Coast provides a stark contrast with its desolate beauty. National parks such as Etosha are renowned for their

wildlife, offering visitors the chance to see lions, elephants, and rhinos in their natural habitats. The tourism sector is characterised by its focus on sustainability and conservation.

MINING

Namibia's mining sector is one of the most significant contributors to the national economy, driving growth, creating jobs and generating substantial export revenues. The country's rich mineral resources have made it a leading mining jurisdiction in Africa, attracting investment from major global mining companies. The most prominent minerals mined include uranium, diamonds, copper, gold, and zinc. In recent years, the diamond mining sector has faced challenges, largely due to declining diamond prices caused by reduced demand from consumers and retailers in major markets. This has led to a decrease in domestic diamond production.

AGRICULTURE

Agriculture in Namibia plays a critical role in the formal and informal economies, supporting 70% of the population directly or indirectly through employment and income generation. The sector faces challenges such as erratic rainfall, frequent droughts and the broader impacts of climate change, which make it vulnerable to environmental and economic shifts. Efforts to improve agricultural productivity and resilience (including investments in climate-smart agriculture and infrastructure) are ongoing priorities for the country. Livestock farming contributes to approximately 2.8% of GDP with crop farming and forestry contributing 2.1% of GDP.

LABOUR RELATIONS

Employment relationships are regulated by the Labour Act No. 11 of 2007 (which applies to all employees, including foreign employees). There are no explicit appointment requirements or predetermined salary scales unless the employees are categorised within the domestic or construction worker industry. In such cases, a relevant minimum wage would apply. Namibia has subscribed to various International Labour Organisation (ILO) conventions. In terms of the Namibian Constitution all persons have the right of freedom of association, which includes the freedom to form and join associations or unions. No employee may be dismissed without a valid and fair reason and without following a fair procedure. It is unfair to dismiss an employee because of the employee's sex, race, colour, ethnic origin, religion, creed or social or economic status, political opinion or marital status.

AFFIRMATIVE ACTION

In terms of the Affirmative Action (Employment) Act 29 of 1998, an employer who employs more than 10 or more employees must submit a compliance report in terms of the Act. The report must contain a comprehensive statistical report detailing job categories, grades and the representation of individuals from designated groups. The report must incorporate an affirmative action plan developed as well as affirmative action measures. The report should further include the names of non-Namibian citizens employed and Namibian citizens trained by such non-Namibian citizen. If an employer fails to comply with these provisions, such employer shall be guilty of an offence and on conviction be liable for a fine and/or imprisonment.

PAY AS YOU EARN

An employer is required to apply to the Inland Revenue Department for registration as an employer within 14 days of becoming an employer. An employer is then required to deduct income tax from the salary of an employee ("pay as you earn" or "PAYE") in accordance with the tax rates and pay over such an amount to the Inland Revenue Department. Expatriate employees of foreign companies will be taxable in Namibia in respect of services rendered in Namibia except to the extent that the Namibian services are purely incidental to their services elsewhere in the world.

SOCIAL SECURITY ACT 34 OF 1994

Every employer must register as an employer with the Social Security Commission, as well as register every employee employed by him/her as an employee. An employer must deduct the contributions payable by his/her employees, as required by the Social Security Act, from such employee's remuneration and pay it, together with the contributions payable by him/her as an employer, over to the Social Security Commission.

VOCATIONAL EDUCATION AND TRAINING ACT 1 OF 2008

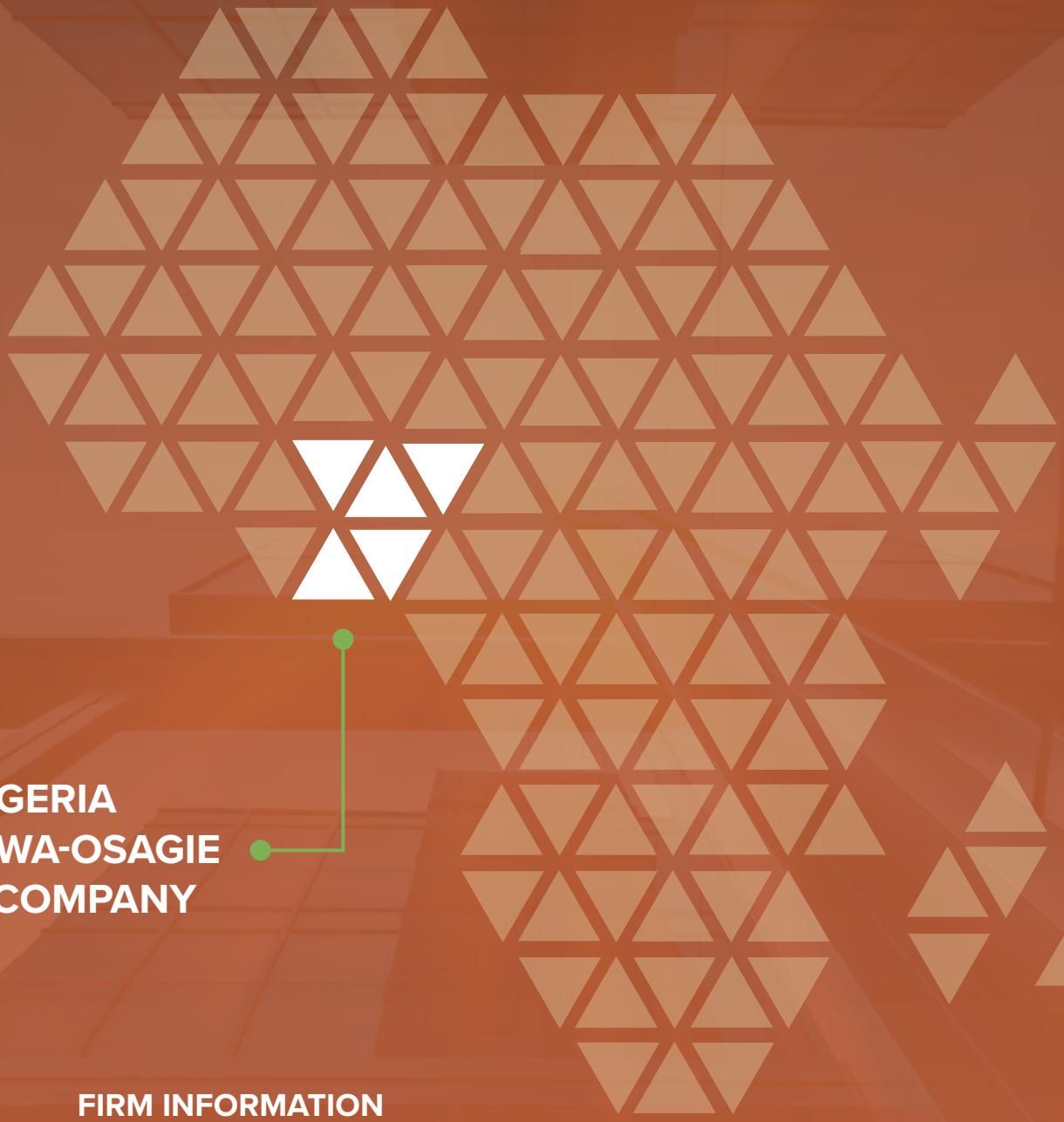
An employer is required to pay a vocational education and training levy of 1% insofar as the payroll of the employer exceeds 1 000 000 Namibian Dollars per annum.

EMPLOYMENT SERVICES ACT 8 OF 2011

If an employer has more than 25 employees, such employer is required to comply with the Employment Services Act which regulates the advertisement and placing of employment opportunities with the National Employment Service.

IMMIGRATION CONTROL ACT 7 OF 1993

In terms of the Immigration Control Act, persons who are not citizens of the Republic of Namibia require a work visa, valid for 3 months, or an employment permit, valid for 12 months to 24 months, in order to be able to work in Namibia. There are no particular requirements for a work visa or employment permit. However standard practice has been that such visa and/or permits are only awarded for a specialised field of employment. The visa and permit application process in Namibia is slow and tedious. Foreign investors are cautioned to ensure that enough time is allocated thereto.



NIGERIA
GIWA-OSAGIE & COMPANY

FIRM INFORMATION

Website address : **www.giwa-osagie.com**
Languages spoken : **English**
Telephone : +234-1-2707433
Address : 2nd Floor, Wing A, Sapetro Towers, No. 1 Adeola Odeku Street Victoria Island, Lagos
Contact : Mr. Osayaba Giwa-Osagie SAN
Email : giwa-osagie@giwa-osagie.com

NIGERIA | GIWA-OSAGIE & COMPANY

COUNTRY INFORMATION

Nigeria covers 923 768 square kilometres. It has Africa's largest population of over 229 million with a growth rate of 2.42% per annum according to the National Population Commission.

POLITICAL SYSTEM

The 1999 Constitution of the Federal Republic of Nigeria provides for a multi-party democracy and a presidential system of government which includes the Executive, Legislature and Judiciary. The Executive branch is headed by the President and is divided into Federal Ministries each headed by a Minister appointed by the President and confirmed by the Senate. The Legislative arm consists of the Senate and the House of Representatives while the judicial arm consists mainly of the Supreme Court of Nigeria, the Court of Appeal, the Federal High Courts, State High Courts, Customary Courts and Sharia Courts. Each arm acts as a check and balance on the powers of the other arms.

The Constitution provides for the operation of three tiers of government at the Federal, State and Local levels. Each State has its own Executive, Legislature and Judiciary. The State Government makes Laws in accordance with the powers vested on it by the
Constitution.

INVESTMENT CLIMATE

Nigeria has attracted both local and foreign investors In the first quarter of 2024, total capital importation into Nigeria stood at USD3 376.01 million, higher than the USD1 132.65 million recorded in the first quarter of 2023, indicating an increase of 198.06% in comparison to the preceding quarter. Capital importation also rose by 210.16% from USD1 088.48 million in the fourth quarter of 2023. Portfolio Investment ranked top with USD2 075.59 million (accounting for 61.48%) followed by other investments of USD1 181.25 million. In the first quarter of 2024, Foreign Direct Investment recorded the least amount, contributing just USD119 18 million, being 3.53% of the total capital inflow.

By a notice dated 5 December 2023, the Corporate Affairs Commission notified the public of the 100 million Naira minimum paid-up capital requirement for companies with foreign participation in line with the provisions of the Federal Ministry of Interior Handbook on Expatriate Quota Administration (Revised 2022). This is a deviation from the previous minimum capital requirement of 10 million Naira, for companies with foreign participation.

In recent times, Nigeria is returning to be a safe haven for investment and enjoys a stable political and macro-economic environment. The Government is making progress in resolving the security issues in the North East and the Niger Delta regions of the country. Despite the global fall in oil prices, investment opportunities abound. There are untapped investment opportunities in the non-oil sectors. The Government is committed to implementing an appropriate policy frame work to enhance investment in the non-oil sectors of the economy.

Nigeria has significant deposits of natural resources including gold, zinc, limestone, salt, cassiterite, uranium, marble and tantalite, bitumen, coal, columbite, granite, cotton, clay, glass-sand, iron–ore, gypsum and kaolin. The Nigerian market is huge due to its large population with a high percentage of young persons with untapped skills. The large population of Nigeria creates a huge opportunity for investors to market their goods and services and use skilled local labour for the purpose of their investment. Other attractive factors exist to making the environment viable for business. These include a free market, tax incentives, favourable monetary policies, the rule of law and a stable legal and regulatory framework for conducting business. Foreign investors are allowed to own 100% of their investment, except in some restricted areas where indigenous participation is encouraged. Repatriation of capital and profits is allowed and the process is easy.

Nigeria has a growing and stable financial sector and a strong private sector. Policies and regulations in operation are favourable to ensure protection of investments in the country. Major imports include machinery, chemicals, transport, equipment, manufactured goods and live animals.

One of the notable laws enacted to encourage enterprises in Nigeria is the Nigerian Investment Promotion Commission Act (NIPC Act). In terms of the NIPC Act, ownership of enterprises in Nigeria has generally been liberalised. A foreign enterprise can generally invest in all or a portion of the shares of any Nigerian enterprise (other than certain business activities expressly prohibited by the NIPC Act) in any convertible foreign currency, thereby opening up the Nigerian economy to foreign investment capital.

Notable amongst the efforts of the Government to promote the ease of doing business and encourage foreign investment is the enactment of the Business Facilitation (Miscellaneous Provisions) Act 2023. The Act removes bottlenecks associated with obtaining approvals and permits by mandating Ministries, Departments and Agencies (MDAs) to publish a complete list of requirements on their website including timelines and fees to obtain products and services. If a MDA fails to communicate an approval or rejection of an application within the timeline published in the list, the application will be deemed to be approved. This has helped to remove administrative hurdles that individuals and

corporations face in obtaining permits and licences. The Act also introduces several technological solutions with the aim of making the Nigerian business climate conducive for investors.

It is important to highlight that most incentives offered to businesses in Nigeria take the form of tax relief. For example the Companies Income Tax Act (CITA) allows for the deduction of expenses from taxable income provided these expenses are wholly, exclusively and necessarily incurred in the advancement of a business venture. The CITA also provides capital allowances for eligible capital expenditure incurred during business operations (as outlined in the Second Schedule of the CITA). Furthermore, the CITA grants tax exemptions for interest payments related to foreign and agricultural loans invested in Nigeria under certain conditions, as detailed in the Third Schedule (under Section 11) of the CITA.

To encourage international trade and investment by cutting down on the costs of international transactions, Nigeria has entered into Double Taxation Agreements ("DTAs") with some countries to provide relief from double taxation including Belgium, Canada, China, Czech Republic, France, the Netherlands, Pakistan, Philippines, Romania, Singapore, Slovakia, Spain, Sweden, South Africa, the United Kingdom, United Arab Emirates and Italy (shipping and air transportation only).

To encourage quick industrial growth, foster local content development, attract foreign direct investment and promote public-private partnerships for economic progress (particularly in industries oriented towards export), the Government has designated certain regions as free zones or export processing zones. Corporations operating in these zones benefit from tax exemptions on their profits, other fiscal incentives and the advantages of economies of scale and concentrated infrastructure. The Nigeria Export Processing Zones Act ("NEPZ Act") established the Nigeria Export Processing Zones Authority (NEPZA). NEPZA is responsible for the general administration, supervision and coordination of activities within the Export Processing Zones in Nigeria, as outlined in Section 4 of the NEPZ Act. There is also an Oil and Gas Free Zone in Onne, Rivers State, known as the "OGFZ". This zone is managed by the Oil and Gas Free Zone Authority (OGFZA) which was established by the Oil and Gas Export Free Zone Act.

In addition, Nigeria offers particular incentives to investors in its extraction industries, which include sectors like petroleum and mining. In 2021, former President Muhammadu Buhari assented to the Petroleum Industry Act (PIA) 2021. The PIA overhauled the registration and governance of the oil and gas industry. It established two regulatory agencies namely the Nigerian Upstream Regulatory Commission and the Nigerian Midstream and Downstream Petroleum Authority. The PIA introduced the incorporation of the Nigerian National Petroleum Company Limited (NNPC Limited) which is a privatisation of the Nigerian National Petroleum Commission (NNPC). The commercialisation of the oil and gas industry is expected to lead to increased efficiency and foreign investment. The PIA set up a Midstream and Downstream Gas Infrastructure Fund which is anticipated to be used for equity investments in midstream and downstream activities to enhance domestic gas usage and promote investments in gas projects. The PIA also abolished the Petroleum Profit Tax (PPT) and replaced it with the Companies Income Tax (CIT) and Hydrocarbon Tax (HT).

FORMS OF BUSINESS

Joint ventures
A joint venture is formed in terms of an agreement concluded between two or more parties for the purpose of executing a particular business undertaking. All parties agree to share in the profits and losses of the enterprise.

Partnerships
A partnership is usually established between joint owners of a business who are personally liable for the obligations and debts of the partnership.

Incorporated companies
A company may be incorporated with unlimited liability, limited by shares or limited by guarantee. Where it is limited by shares, it may be a private or a public limited company. Foreign companies intending to do business in Nigeria must incorporate a local entity. The time frame for incorporating a company is approximately one week from the date of the submission of all the required documents and payment of all fees. The filing fees for the registration of companies are based on the proposed share capital of the company. The higher the share capital, the higher the percentage charged as filing fees. As part of recent reforms, the registration of businesses and incorporation of companies is now carried out online. This, among other things, has greatly improved Nigeria's ranking on the ease of doing business rankings prepared by the World Bank.

The new Companies and Allied Matters Act 2020 replaced the term 'authorised share capital' by minimum issued share capital which for a private company may not be less than 100 000 Naira (previously 10 000 Naira) and in the case of public companies, the minimum issued share capital shall not be less than 2 000 000 Naira (previously 500 000 Naira). Therefore, what is relevant is no longer the share capital of a company but the number of shares allotted.

Limited Partnerships and Limited Liability Partnership
The new Companies and Allied Matters Act 2020 (CAMA) introduces the concept of Limited Liability Partnerships (LLPs) and Limited Partnerships (LPs). Partners in an LLP are not personally liable for claims against the LLP. This differs from limited partnerships, which must consist of one or more persons ('general partners'), at least one of whom must have unlimited liability. This combines the organisational flexibility and tax status of a partnership with the limited liability of

members of a company. There was no such provision in the previous Act.

Registration with other bodies (i.e. regulators and government agencies) may be required depending on the area of business of the foreign investor.

Non-governmental organizations (NGOs) may be registered as a company limited by guarantee or as incorporated trustees (whereby trustees of the NGO, rather than the NGO itself, obtain the status of a body corporate).

A company limited by guarantee cannot have a share capital and cannot have the objective of carrying on business for the purpose of making profits for distribution to its members. Under CAMA, the consent of the Attorney General of the Federation (AGF) is required and the AGF must give his consent or raise objections or reasons for withholding approval within 30 days from when he receives the application for consent. Where the AGF does not respond within 30 days, the promoters may place an advert in three national dailies and invite objections within twenty-eight days. Where there are no objections, CAMA empowers the Corporate Affairs Commission (CAC) to assent to the application and register the company without the AGF's Consent.

The CAMA also introduced a new provision to ensure transparency in incorporated trustees. The CAC now has the power in certain circumstances to suspend the trustees of an association and appoint an interim manager(s) to manage the affairs of that association.

Exemption of foreign companies:
Foreign companies intending to do business in Nigeria must be incorporated in Nigeria. However, under the new CAMA, foreign companies may apply for exemption to the Minister for Industry, Trade and Investment if the company falls under any of these categories:

- foreign companies (other than those specified in 4 below) invited to Nigeria by or with the approval of the Federal Government to execute specific projects
- foreign companies which are in Nigeria for the execution of specific individual loan projects on behalf of a donor country or international organisation
- foreign government-owned companies engaged solely in export promotion activities
- engineering consultants and technical experts engaged on any individual specialist project under contract with Federal or any of the State Governments or any of their agencies or with any other body or person, where such contract has been approved by the Federal Government
- companies exempted under any other Act of the National Assembly in effect.

Previously foreign companies were required to apply for an exemption to the President through the National Council of Ministers. The application can now be made directly to the Minister of Industry, Trade and Investment. This aims to streamline the process and enhance the ease of doing business in Nigeria.

EXCHANGE CONTROLS

There are comprehensive exchange control measures in place. Exchange control regulations however have been liberalised to ensure the free flow of international finance. There is now unrestricted movement of investment capital. Under the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act an individual or corporate body wishing to invest in any Nigerian enterprise with capital imported into Nigeria is required to do so through an authorised dealer.

Subject to the prior submission of prescribed documentation, the authorised bank issues a "Certificate of Capital Importation" (CCI) within 24 hours of receipt of the funds of a foreign investor. This certificate enables foreign companies to transfer dividends and profits from investments out of Nigeria. It also enables the settlement of foreign loan obligations and in the event of a sale or liquidation of the company it allows the investor to transfer the proceeds of the sale/liquidation out of Nigeria.

REGISTRATION WITH THE NIGERIAN INVESTMENT PROMOTION COMMISSION (NIPC)

The NIPC is an agency of the Federal Government set up primarily to promote and encourage foreign investments in Nigeria. It serves as a regulatory agency for foreign investors operating in Nigeria and requires that all foreign investors register with it before commencing business operations. This provides a "one-stop shop" for foreign investors, simplifying administrative procedures for business approvals, permits, licenses and company incorporation.

BUSINESS PERMITS

The consent of the Minister of Interior is required for any company to employ a foreigner or for a foreigner to establish or take over any trade or business. Such consent takes the form of a "Business Permit".

EXPATRIATE QUOTA POSITIONS

Any company wishing to employ an expatriate in Nigeria is required to apply to the Federal Ministry of Interior for "Expatriate Quota" positions. This is an official permit authorising the employment of individual expatriates in specifically approved job designations. An application for an expatriate quota must be accompanied by evidence that

the expertise required is not available in Nigeria. Expatriate Quota positions are usually granted for 2 to 3 years and subject to renewal.

COMBINED EXPATRIATE RESIDENCE PERMIT AND ALIEN'S CARD (CERPAC)

A CERPAC is required for all foreigners' residents in Nigeria. The Federal Ministry of Interior issues the card on application and it is valid for two years at a time. The card permits foreigners to reside in and move within Nigeria legally. An expatriate entering Nigeria under an Expatriate Quota is required to apply for and obtain the CERPAC from the Nigerian Immigration Service (NIS).

In 2023, the NIS introduced a non-renewable 'Brown' CERPAC. This card grants indefinite residence and work privileges in Nigeria to qualifying foreign nationals. Eligibility criteria include being of African descent, being a foreign investor, being an expert in fields such as science, technology, engineering, mathematics, arts, sports, and other specific industries or being married to a Nigerian woman for at least one year. Before the development of the separate 'Brown' CERPAC card, foreign nationals were eligible for a 'Green' CERPAC card, which has a definitive validity depending on the activities performed. The 'Green' CERPAC will remain available to applicants not eligible for the 'Brown' CERPAC card.

TAXATION

The Federal Government is tasked with collecting various taxes from corporate entities and individuals in Nigeria. These include companies' income tax, withholding tax, value-added tax (VAT), education tax, capital gains tax, and stamp duties. Individuals residing in the Federal Capital Territory and non-residents earning income from Nigeria are also subject to personal income tax.

In Nigeria, all businesses are mandated to remit companies' income tax on profits generated within the country, irrespective of whether the income is accrued, derived, brought in, or received in Nigeria. The rate of companies' income tax is determined by the revenue of the company. Remarkably, there is provision for the payment of minimum tax for companies having no taxable profits for the year or where the tax on profits is below the minimum tax. Section 13 of Finance Act 2020 introduced a further amendment to Section 33 of Companies Income Tax Act (CITA) by providing a 50% reduction in the minimum tax rate from 0.5% of gross turnover less franked investment income (introduced by the Finance Act 2019) to 0.25%.

Furthermore, the new Finance Act 2020 amended the Schedules to the CITA so that there is no longer a 100% tax exemption on interest on foreign loans. Rather, the highest tax exemption allowed is 70% which applies to loans with above 7 years repayment period with not less than 2 years moratorium, 40% for loans with repayment period between 5-7 years, 10% for loans with repayment period between 2-4 years and 0% for loans with repayment period below 2 years. Education tax is also charged (but only on Nigerian companies) at the rate of 2% of the assessable profit for each year of assessment.

Stamp duty is imposed on written agreements and relevant documents involving companies, either as a fixed amount or based on transaction value. Value Added Tax (VAT) of 7.5% is applicable to all taxable goods and services. Withholding tax varies between 2% and 20% depending on the nature of the services or transactions involved. Additionally, there are taxes imposed at the State or local government levels such as stamp duties, development levies, land charges, tenement rates and rates for shops and kiosks.

Capital gains tax (CGT) is set at 10% on profits from asset disposals. The Finance Act of 2020 exempts CGT for asset sales or transfers between related companies involved in reorganisation, provided they have maintained a relationship for at least 365 days before the transaction. If the acquiring company transfers the assets within a shorter period, the exemption is nullified and CGT will be payable as if the exemption had never been granted.

A comprehensive set of tax incentives is in place to attract investments. This includes a 3 to 5 year tax exemption for companies falling within sectors identified as priority areas or pioneer industries by the Government. Currently, there are 71 industries eligible for "pioneer status", including agriculture, mining, quarrying, manufacturing, pharmaceuticals, information and communication, trade, construction, electricity and gas supply and waste management. Other incentives are available in the mining sector, liquefied natural gas projects and export-oriented enterprises.

The Petroleum Industry Act introduced a dual tax system to Nigeria's tax administration, specifically tailored for natural resources taxation. This system includes a special tax on oil resources to ensure government revenue from oil exploitation and to ensure that oil and gas companies pay their corporate income taxes. The Hydrocarbon Tax (HT) is a new tax applicable to crude oil, condensates and natural gas liquids produced from associated gas operations. The tax rates are 15% for Onshore and Shallow Onshore (including marginal fields) and PPLs and 30% for Converted/ Renewed Onshore and Shallow Offshore operations in each accounting period. This implies that the maximum headline tax rate for companies in the upstream oil and gas sector is now 60%, reduced from the previous rate of 85%. Notably, the HT does not apply to companies with investments in deep offshore areas. Companies engaged in Upstream Petroleum Operations are also subject to Companies Income Tax, and the tax computed under hydrocarbon taxes cannot be offset against their Companies Income Tax liability.
There is a comprehensive package of tax incentives to attract investments. This includes a 3 to 5 year tax holiday

for companies that fall within sectors defined as priority areas/pioneer industries by the Government. The Federal Government has recently introduced a list of 44 industries and products eligible for pioneer status. There are currently 71 industries eligible for "pioneer status" in Nigeria. Other incentives are available in the mining sector, liquefied natural gas projects and export oriented enterprises.

Nigeria ratified the OECD Convention on Mutual Administrative Assistance in Tax Matters in 2015. This aims to enhance administrative cooperation among countries in assessing and collecting taxes, combating tax avoidance and evasion, particularly by multinational companies operating in Nigeria.

Nigeria has double taxation agreements with the United Kingdom, France, Belgium, Pakistan, Canada, Romania, Netherlands, Czech Republic, Slovakia, Poland, Philippines, Japan, China, South Africa, United Arab Emirates and Italy (shipping and air transportation only). Nigeria and Singapore have signed a treaty for the avoidance of double taxation on income and capital gains tax between the two countries. However, this is yet to be domesticated by the National Assembly. Withholding tax for rents, dividends, commissions, directors' salaries, rates or any other income derived by a company (which is normally calculated at the rate of 10%) may be reduced to 7.5% in terms of an applicable double taxation treaty. The double taxation agreements generally cover personal income tax, companies' income tax, petroleum profits tax and capital gains tax.

THE NIGERIAN LEGAL SYSTEM

The Namibian Industrial Property Act No. 1 of 2012 ("the IP Nigeria is made up of 36 states and a Federal Capital Territory (FCT), located in Abuja. These states are as a matter of convenience generally grouped into 6 geopolitical zones of North East, North West, North Central, South East, South West, and South-South. The Nigerian legal system is based on the English common law and legal tradition. English law has a strong influence and forms a substantial part of Nigerian law. The Nigerian Constitution is a federal one which provides for the division of powers between the constituents of the Federal Government. It is the supreme law and is binding on all authorities and persons throughout the country. The doctrine of judicial precedent is accepted and customary law can apply if it is not contrary to the principles of natural justice, equity and good conscience. Sharia law has been instituted as a main body of civil and criminal law in 12 Muslim-majority areas and in some parts of Muslim-plurality states.

THE NIGERIAN COURT SYSTEM

The Nigerian court system consists of the Supreme Court, the Court of Appeal, the Federal High Court, the State High Courts, the Magistrate Courts and the Customary Courts. There is also the National Industrial Court which has original jurisdiction in civil labour matters Appeals also lie from this Court to the Court of Appeal. The State High Courts have jurisdiction in both civil and criminal proceedings and hear appeals from the Magistrate Courts. The Federal High Court has co-ordinate jurisdiction with the State High Courts but is only bound by the decisions of the Supreme Court and the Court of Appeal. The Federal High Court has jurisdiction over revenue matters, banking, fiscal matters, aviation matters, admiralty, foreign exchange and matters involving the Federal Government or its agencies. The Supreme Court is the highest court in the Nigerian judicial system.

INTELLECTUAL PROPERTY IN NIGERIA

Nigerian intellectual property law provides ample protection for the intellectual property rights of both Nigerians and foreigners. This includes copyright, patents and industrial and design rights. The law prevents others from copying or taking unfair advantage of the work or reputation of another and provides remedies where this arises.

FINANCIAL SERVICES IN NIGERIA

The Central Bank of Nigeria (CBN) is responsible for amongst others, ensuring monetary and price stability and promoting a sound financial system in Nigeria. The CBN regulates Bureaux De Change in order to check activities such as rent seeking among operators, depletion of the nation's foreign reserves, unauthorised financial transactions and the dollarisation of the economy. The CBN also took measures to strengthen the foreign exchange market by closing the rDAS/wDAS foreign exchange window. This helped to check further pressure on the country's dwindling foreign exchange reserves, avert the emergence of multiple exchange rate regimes and preserve Nigeria's foreign exchange reserves.

The CBN has also introduced the Development Bank of Nigeria, in partnership with the Federal Government in order to address the issue of high interest and long term funding for Micro Small and Medium Enterprises in Nigeria. The CBN has introduced development financing initiatives like the N 300 billion Real Sector Support Fund and the 213 billion Naira Nigerian Electricity Market Stabilisation Facility. The Commercial Agricultural Credit Scheme Guidelines were reviewed.

In March 2024, the CBN issued a circular to all commercial, merchant, and non-interest banks, as well as promoters of proposed banks, announcing an upward review of the minimum capital requirements for financial institutions to 500 billion Naira, 50 billion Naira and 20 billion Naira respectively, depending on the nature of the institutions coverage. Nigerian banks are currently significant players in global financial markets, with several ranking among the top

20 banks in Africa and the top 1000 worldwide. The CBN continues to implement measures to ensure the prudent utilisation of foreign exchange reserves and to prevent practices such as over-invoicing, transfer pricing, double handling charges and unnecessary costs that ultimately impact the average Nigerian consumer.

INSURANCE

The insurance industry in Nigeria is governed by the Insurance Act 2003 with the National Insurance Commission (NAICOM) as its regulatory body. The Insurance Act complies with the International Association of Insurance Supervisors' (IAIS) core principles. Government reforms in the insurance industry, through the process of recapitalisation and consolidation, are aimed at restoring public confidence in the market and enhancing international competitiveness of local operators.

To this end NAICOM introduced the Market Development and Restructuring Initiative (MDRI), a medium term reform plan which focuses on the enforcement of compulsory insurance in six areas including group life insurance, employers' liability insurance, buildings under construction, occupiers' liability insurance, motor third party insurance and healthcare professional and indemnity insurance. It also focuses on the enforcement of compulsory insurance products in Nigeria, the modernisation of the insurance agency system, removing fraudulent insurance institutions and the introduction of risk-based supervision. The entrance of banks into the insurance industry has helped to boost the growth of the sector.

On May 20 2019 NAICOM issued a circular which reviewed upward, the minimum paid-up share capital requirement of insurance and reinsurance companies in Nigeria. The minimum paid-up share capital for life insurance companies is now 8 billion Naira (previously 2 billion Naira), for general insurance companies is now 10 billion Naira (previously 3 billion Naira), for composite insurance companies is now 18 billion Naira (previously 5 billion Naira) and for reinsurance companies is now 20 billion Naira (previously 10 billion Naira).

STRATEGIC GROWTH INITIATIVES BY GOVERNMENT/PRIVATE SECTOR

The country has a dynamic private sector. The Government is committed to improving the country's economy and its long term strategy is to build a stable economy led by a strong and responsible private sector to reduce the poverty rate and boost economic growth. Considering the recent decline in oil prices, the main focus of the Government is to diversify the nation's economy away from reliance on oil. The Federal Ministry of Industry, Trade and Investment was created to help diversify the economy by promoting trade and investment and creating an enabling environment to stimulate industrialisation, accelerate domestic and foreign investment, create jobs and drive inclusive growth while promoting the integration of Nigeria-based businesses into regional and global value chains.

MEMBERSHIP OF INTERNATIONAL AND REGIONAL ORGANISATIONS

Nigeria is a member of the African Union (AU), United Nations (UN), Organisation of Petroleum Exporting Countries (OPEC), British Commonwealth, Economic Community of West African States (ECOWAS), the New Partnership for Africa's Development (NEPAD), World Bank, International Monetary Fund (IMF), World Trade Organisation (WTO), International Labour Organisation (ILO), African Development Bank Group (AfDB), International Bank for Reconstruction and Development (IBRD), International Chamber of Commerce (ICC), International Criminal Court (ICC), International Criminal Police Organisation (Interpol), International Development Association (IDA), International Finance Corporation (IFC), International Maritime Organisation (IMO), International Mobile Satellite Organisation (IMSO), International Olympic Committee (IOC), International Organisation for Migration (IOM), International Organisation for Standardisation (ISO), Islamic Development Bank (IDB), Organisation of Islamic Cooperation (OIC), Organisation for the Prohibition of Chemical Weapons (OPCW), United Nations Conference on Trade and Development (UNCTAD), United Nations Educational, Scientific, and Cultural Organisation (UNESCO) and World Health Organisation (WHO) amongst many others.

OIL AND GAS

The Nigerian economy is dominated by crude oil exports which account for about 90% of its foreign exchange earnings and 65% of its budgetary revenues. The oil and gas sector in Nigeria has attracted the most interest for investors in the Nigerian economy. Foreign companies are involved in the oil and gas sector, but mostly as contractors to the Nigerian Government. Major oil companies are active in the upstream sectors of the oil industry. Apart from investing directly in the upstream sector of the oil industry, foreign investors can invest in lucrative downstream industries like crude oil refining, transportation and storage and the production of liquefied natural gas. The Petroleum Industry Act in Nigeria acknowledges the necessity of addressing the infrastructure gap in the gas sector and emphasises the development of this sector. It established a comprehensive framework for effective legal, regulatory and fiscal governance of the upstream, midstream, downstream, and host communities.

POWER GENERATION

In 2023, President Bola Tinubu enacted the Electricity Act 2023, marking a significant milestone in Nigeria's electricity

sector. This legislation aims to dismantle the monopoly in electricity generation, transmission, and distribution at the national level. In 2024, Nigeria had 11 Electricity Distribution Companies established in November 2013 as part of sector reforms, though their performance in power distribution has been suboptimal. The Electricity Act 2023 supersedes the Electric Power Sector Reform Act of 2005 and outlines guidelines for the post-privatisation phase of Nigeria's electricity industry. It decentralises electricity generation, transmission, and distribution, providing opportunities for states, companies, and individuals to participate in these functions. The Act mandates the Ministry of Power, in consultation with relevant stakeholders, to formulate an Integrated Electricity Policy and Strategic Implementation Plan aimed at guiding the holistic development of Nigeria's power sector and addressing policy gaps. Furthermore, the legislation establishes a legal framework for the promotion and utilisation of renewable energy, including policies like waivers and subsidies to foster renewable energy development.

BANKING AND FINANCE

The country has a highly developed financial services sector with a mix of local and international banks, asset management companies, brokerage houses, insurance companies and brokers, private equity funds and investment banks. The Banks and Other Financial Institutions Act 2020 (BOFIA 2020) was signed into law by President Muhammadu Buhari on 13 November 2020. The BOFIA 2020 introduces and amends major provisions that govern the activities of banks, specialised banks and other financial institutions, reflecting the evolution of the Nigerian financial sector over the last three decades. The Act, among other things, seeks to strengthen regulatory oversight and increase investor confidence in the financial sector. The BOFIA 2020 has six major new provisions including sections on the creation of a new banking sector resolution fund, the creation of a new tribunal for the enforcement and recovery of eligible loans, the closure of banks during strikes, epidemics or pandemics, restrictions on the operations of banking agents, cybersecurity and netting arrangements.

REAL ESTATE

Driven by rapid economic growth, Nigeria's real estate sector has experienced significant demand and investment. Major cities like Lagos and Abuja see high demand for housing and commercial spaces, fostering investment opportunities. Government commitments to infrastructure projects enhance connectivity and boost property values, while ongoing reforms streamline processes and bolster transparency. These advances, coupled with increasing investment in innovative technologies, promise a future of sustainable growth and prosperity in Nigeria's real estate market.

INFORMATION AND COMMUNICATION TECHNOLOGY

Nigeria hosts one of the world's largest and fastest-growing telecommunications markets, making it highly attractive to investors. The sector is pivotal within Nigeria's Information and Communications Technology (ICT) landscape, contributing substantially to the country's GDP. According to the Nigerian Bureau of Statistics, the telecommunications sector was the third-largest contributor to Nigeria's GDP in the second quarter of 2023, accounting for 16.06%. The sector is projected to grow from USD8.68 billion in 2023 to USD10.92 billion by 2028, at a Compound Annual Growth Rate (CAGR) of 4.70%. The Nigerian Data Protection Act, 2023 establishes the legal framework for the regulation of personal data in Nigeria to safeguard the fundamental rights, freedoms and interests of data subjects.

MINING

The Government's policy focus on the mining sector is based on the need to develop a private sector led mining industry with Government restricting its role to that of a regulator. Nigeria is blessed with 34 different types of minerals but the Government has prioritised the development of 7 minerals, namely coal, bitumen, limestone, iron ore, barite, gold and lead-zinc. This reflects their strategic importance to the country's economy and their availability in quantities which can sustain mining operations for many years. In a bid to diversify the country's economic base, the Government has introduced a regulatory framework for the exploration and exploitation of mineral resources by the enactment of the Nigerian Minerals and Mining Act, 2007 which empowers the Minister of Mines and Steel Development to grant exploration or mining leases based on a competitive bidding process. Opportunities now exist for the exploitation and export of natural gas, bitumen, limestone, coal, tin, columbite, gold, silver, lead-zinc, gypsum, glass sands, clays, asbestos, graphite and iron ore.

AGRICULTURE

Agriculture is characterised by the cultivation and processing of a diverse array of products in Nigeria. This includes commodities such as cocoa, peanuts, cotton, palm oil, corn, rice, sorghum, millet, cassava (also known as manioc or tapioca), and yams. The discovery of crude oil in the late 1960s shifted government priorities away from food exports, leading to increased dependency on food imports. Despite this, recent Government initiatives aim to revive the agricultural sector by incentivising private investment. As of the second quarter of 2023, agriculture contributed approximately 21% to Nigeria's Gross Domestic Product (GDP), with crop production alone accounting for nearly 19% of GDP. Agriculture remains a vital economic activity,

providing livelihoods for a significant portion of the Nigerian population.

THE NIGERIAN LABOUR MARKET

According to a July 2024 World Bank report, the total labour force in Nigeria was reported to be over 75 million people in 2023. With a labour force of this size, skilled and unskilled labour is available in Nigeria at a relatively cheap rate compared to other parts of the world. The National Bureau of Statistics in its Q3 2023 survey on Nigeria's labour force, reported the unemployment rate in urban areas was 6% in Q3 2023, a slight increase of 0.1% from Q2 2023. There are several labour laws such as the Factory Act, Labour Act and Trade Dispute Act. The minimum wage in Nigeria was recently increased from 30 000 to 70 000 Naira per month. The National Industrial Court has exclusive jurisdiction in matters relating to or connected with any labour or employment matter, trade unions, industrial relations and other workplace matters including health, safety, welfare and other related matters.

TECHNOLOGY

The technology sector in Nigeria is pivotal to the country's economic landscape.
In October 2022, Nigeria enacted the Nigeria Startup Act aimed at fostering innovation and growth within the technology startup ecosystem. This legislation provides startups with opportunities to obtain official recognition through a certification process, granting access to various incentives such as tax relief, export facilities, Government grants, loans and investor incentives. To qualify for these benefits, startups must meet specific criteria, including being registered under the Companies and Allied Matters Act, operating for fewer than ten years and focusing primarily on digital technology products or processes. The Act also establishes a centralised startup portal to facilitate registration, information sharing and collaboration among stakeholders in the startup community. Maintaining compliance with national business laws and financial transparency standards is essential for maintaining the startup label, which remains valid for ten years once granted.



REPUBLIC OF GUINEA
THIAM & ASSOCIÉS

FIRM INFORMATION

Website address : **https://www.thiam-associes.com/**
Languages spoken : **English, French, Soussou, Fulani, Mandingo**
Telephone : +224 623 92 66 92 / +224 610 74 83 15
Address : Kipé – Métal Guinée A côté de l'Hôpital Sino-Guinéen Commune de Ratoma BP 781 Conakry, Guinée
Contact: : Baba Hady Thiam and Zahra Diallo
Email : babahady.thiam@thiam-associes.com / zahra.diallo@thiam-associes.com

REPUBLIC OF GUINEA | THIAM & ASSOCIÉS

COUNTRY INFORMATION

Guinea, officially the Republic of Guinea, covers an area of 245 857 square kilometers in West Africa and has a population of about 15.417 millions inhabitants (IMF 2024 figures). There are four natural regions involving distinct human, geographical and climatic characteristics. These regions are:

- Lower Guinea (Guinée Maritime) which covers about 15% of the country and is mainly inhabited by five ethnic groups (the Soussou, the Baggas, the Landoumas, the Nalous and the Mikhi Forè). It is a narrow coastal plain bordered by estuaries, with a flat terrain. In the monsoon season, the climate is marked by heavy rainfall
- Middle Guinea (Moyenne Guinée) which covers about 26% of the country and is mainly inhabited by Peulh (Fulani), Djallonké and Coniagui ethnic groups. The area comprises mountains like Fouta Djallon and high plateaus. The climate is characterized by low temperatures and heavy rain in the rainy season
- Upper Guinea (Haute Guinée) which is a savannah region mainly inhabited by the Malinké. It covers about 39% of the country. Upper Guinea is a dry and hot region where the year is divided into the dry season from November to April and the rainy season from May to October
- Forested Guinea (Guinée Forestière) which is a forested and mountainous region, it covers about 20% of the country, mainly inhabited by the Kissis, the Kono, the Guerzes, the Manos, the Tomas, the Toma Manias and the Konianké.

POLITICAL SYSTEM

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

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

There was a military coup on 5 September 2021 and President Alpha Condé was overthrown. The military authorities, led by General Mamadi Doumbouya, has since overtaken the power under the name of the Comité National du Rassemblement pour le Dévelopment (CNRD).

ECONOMIC INDICATORS

According to the latest figures provided by the International Monetary Fund, the overall statistics on Guinea's economy are as follows:

- GDP: USD 226,143 billion (2024) with GDP growth of 4.1% (2024)
- GDP per capita: USD 1 663.9 (2023)
- Inflation rate: 11% (2024).

INVESTMENT CLIMATE

Guinea has a considerable potential for growth, especially in the agricultural, fishing and mining sectors. However, Guinea's poorly developed infrastructure, corruption and political instability has limited foreign investment in the past. In 2023, according to the African Development Bank Group, the country's GDP grew by 5.7%, up from 4% in 2022, and inflation decreased from 10.5% to 7.8%. The budget deficit rose to 1.6% of GDP due to subsidies, while public debt decreased to 35.2%. The current account deficit is stable at 8.6%, supported by foreign investments. The poverty rate fell from 55.2% in 2012 to 43.7% in 2019, and GNI per capita increased from USD1 010 in 2021 to USD1 180 in 2023, raising Guinea to lower-middle-income status.

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

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

EXCHANGE CONTROLS

The Central Bank of Republic of Guinea (CBRG) has implemented several regulations regarding the exchange controls. The Governor of the CBRG specifies, by instruction or circular, the regulations relating to the following schemes: regime for the import of goods and services, regime for the export of goods and services, regime for the import and export of means of payment, regime for technical assistance, film and audiovisual royalties, regime for external financing, regime for direct investment in Guinea and regime for miscellaneous current operations. The CBRG also regulates

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

FORMS OF BUSINESS

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

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

INCORPORATION OF A GUINEAN COMPANY

The duration of the registration procedure depends on the type of the corporation. In practice, it takes 3 weeks to 1 month. The procedure concerning a SARL takes less time than that of an SAS and SA which takes more time because of the mandatory intervention of a notary. The registration procedure can be summarised as follows:

- drafting of the articles of association
- payment of the registered share capital
- commercial registration with the APIP.

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

TAXATION IN GUINEA

The main taxes are:

- Corporate income tax (based on net profit): 35% for telephone companies, banks and insurance companies and companies importing, storing, storing and distributing petroleum products, 30% for companies holding a mining title and 25% for other legal entities
- Social security contributions (employer: 18%, employee: 5%)
- Payroll tax (6% of total payroll)
- Apprentice tax (3% of gross salary)
- Capital gains tax (10%)
- Value added tax (18%)
- Income tax (40%).

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

Company tax is payable at rates varying from 35% of any profits and revenues made by companies or other legal entities engaged in business activities in Guinea. Gains from the sale of fixed assets, which are reinvested, are not considered for the purposes of company tax (for the year in which they occurred). The tax may be paid in two instalments, both equal to one third of the previous year's company tax. Installments are paid no later than June 15 and September 15 of each year.

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

MONETARY POLICY

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

IMPORT/EXPORT

Imports of goods and services in 2023 accounted for USD7.04 billion of the economy and consisted mainly of machinery and oil & gas, a 47.47% decline from 2022. Exports in 2023 accounted for USD9.25 billion, a 0.84% increase from 2022. Imports of goods from any country whose CIF value is equal to or higher than the minimum amount set by the competent authorities must be domiciled with a local bank.

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

LEGAL AND JUDICIAL SYSTEM

The legal system is based on French civil law and customary law. Law L/2015/019/AN on the Judicial Organisation of the Republic of Guinea governs the Guinean judicial system. It is organised into two branches: ordinary courts and special courts.

Ordinary courts comprise ten First Instance Courts (TPIs),

two Courts of Appeal (in Kankan and in Conakry), twenty-six Justices of the Peace and the Supreme Court. A traditional system of dispute resolution exists at the village and neighbourhood level, which are to be transformed into TPIs.

Special courts comprise the Court of Auditors, the commercial court, the Military court (to handle criminal cases involving military personnel), juvenile courts (one for each TPI except for the Conakry special zone, which has only one for the three TPIs in the zone), labour courts and the State Security Court.

In addition, there is a High Court of Justice, which is responsible for judging the President of the Republic and ministers guilty of offences in the exercise of their duties.

The criminal code provides for the presumption of innocence, the equality of citizens, the right to a counsel and the right to appeal a judicial decision.

INTELLECTUAL PROPERTY

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

FINANCIAL SERVICES/INSURANCE

The number of financial institutions is constantly growing. According to the CBRG in 2023, Guinea had 21 banks, 26 Micro Finance Institutions (MFIs), 21 of which are active, and 13 insurance companies. Guinea's financial system is dominated by the banking sector, which is overseen by the CBRG. The CBRG serves as the Treasury's agent to regulate banking and credit operations in Guinea and abroad. The CBRG manages foreign exchange reserves on behalf of the Government. The insurance sector differs from other countries in the subregion because the country is not a member of the Inter-African Conference of Insurance Markets (CIMA) and is therefore regulated by the Guinean insurance code (Law L/95/022/CTRN of June 12, 1995).

TREATIES AND BILATERAL AGREEMENTS

The Republic of Guinea has signed a number of bilateral agreements with other countries in various fields, such as:

- a double tax treaty between Guinea and France signed in 1999
- a double taxation avoidance agreement preventing tax evasion signed between Guinea and Morocco in 2014
- an agreement on the Prevention of Fiscal Evasion and the Fight against Fraud between United Arab Emirates and Guinea signed in 2011
- a convention for the avoidance of double taxation between Tunisia and Guinea signed in 1993.

Guinea is a member of various international and regional organisations such as the United Nations, the International Monetary Fund, the World Bank, the Multilateral Investment Guarantee Agency (MIGA), Islamic Cooperation Organisation, International Organisation of Francophone States, the World Trade Organisation, the African Union, the OHADA, the Economic Community of West African States (ECOWAS), the Mano River Union (MRU) with Liberia and Sierra Leone, the Gambia River Basin Development Organisation (OMVG), The Senegal River Basin Development Organisation (OMVS), the Niger Basin Authority (ABN) and the Global System of Trade Preferences among Developing Countries (SGPC).

INFRASTRUCTURE

Since 2010, the development of infrastructure in Guinea has been marked by a policy encouraging the withdrawal of the State from productive and commercial activities and the provision of services in favour of the private sector.

Road infrastructure

Road infrastructure is very underdeveloped. Out of the 43 493 km road network, national roads represent 16% (7 625 km), prefectural or secondary roads represent 36% (16 000 km) and community or tertiary roads represent 48% (19 000 km). Only 30% are asphalted. The overall state of national roads is very unsatisfactory. There are different projects that the Government intends to launch with the support of development partners. The road plan contains a portfolio of nearly 30 priority projects estimated at USD1.50 billion. One of the major projects underway is the rehabilitation of the Conakry-Mamou-Dabola road, which is 355 km long.

Urban infrastructure

According to the US International Trade Administration, Guinea lacks the infrastructure necessary to support advanced commercial activities but conditions are improving. Transportation infrastructure, including roads, railroads, and the port system, is under developed in terms of quantity and quality throughout the country, though the Government has targeted infrastructure improvement as a high priority for the coming years. The road networks in certain areas, such as the outskirts of Conakry, between Dabola and Kankan and Beyla to N'Zerekore, have improved with resources from either international donors or corporate partners in the mining sector.

Urban infrastructure includes the urban planning, sanitation and housing sub-sectors. Access to housing is a challenge for the vast majority of Guineans. The problem arises in terms

of quantity and quality and is felt especially in the urban centers which in 2012 were home to 3.2 million inhabitants for 470 270 households. The problem is even more serious in Conakry, where there are 290 000 households. It is estimated that 420 000 housing units, including 150 000 in Conakry, will be needed over the next ten years if annual household growth rates of 3% for the country as a whole and 6.1% for Conakry are maintained. Housing needs are estimated at 1 420 000 over the next 10 years.

Railway infrastructure

There are 3 railway lines with a total length of 390 km (Conakry-Fria, Kamsar-Sangarédi and Conakry-Kindia) which are operated by mining companies. The country also has a great single-track axis linking Conakry to Kankan, which extends over 662 km but whose operation ceased in 1995 due to the obsolescence of infrastructure and rolling stock. However, as part of the rehabilitation of railway infrastructure, one of the major projects in the near future will be to rehabilitate the Conakry – Kankan rail network. The Simandou iron ore project, the most important project in the country, envisions major infrastructure developments, notably a 600km railway.

Maritime infrastructure

As 90% of foreign trade is carried out by sea, this sector is essential in Guinea. The port of Conakry covers the main part of the transit of goods but projects for mineral ports could eventually alleviate its congestion (including the port of Kamsar already in operation) and see it devote itself to non-mineral activities and the transit of goods from landlocked countries. In order to relieve congestion at the Port Autonome de Conakry (PAC), the following projects are planned: the implementation of a dry port at the entrance of the city (which will be linked by rail), the extension of the container terminal and the enlargement of the entrance channel (allowing access to the two port sites). The Simandou project is planning to build a deep-water port.

Airport infrastructure

Guinea is well served by its airport network. There is one international airport in Conakry-Gbéssia (which is currently being renovated and extended), three regional airports in the heart of departments with the strongest demographic dynamics and economic potential: Kankan, Labé and N'Zérékoré (with laterite runways but regular maintenance), seven secondary airports in Boké, Faranah, Fria, Kissidougou, Macenta, Sambailo and Siguri as well as five aerodromes built and operated by mining companies. With air traffic growth, the authorities are considering a second international airport in Mafèrinya, 70 kilometers from Conakry and close to Sierra Leone and mining service sites including deep water ports.

Telecommunication infrastructure

The telecommunications sector is regulated by the Agence de Régulation des Postes et Télécommunications (ARPT). According to the African Public Procurement Network (APPN), Guinea's telecommunications sector is a crucial lever for innovation and economic growth, but remains limited by insufficient infrastructure, particularly in rural areas. National network coverage is around 93%, leaving some remote areas without reliable Internet access. In response to these challenges, Guinea has chosen to strengthen its collaboration with the private sector to mobilise the financing and technologies needed to develop modern and efficient networks.

The telecommunications market is currently characterised by the presence of mobile telephone operators (Cellcom, MTN and Orange), Internet Service Providers (ETI, Mouna Group, Skyvision and VDC) and an infrastructure operator (GUILAB). Projects completed or in progress include:

- the rehabilitation of the national telecoms company (SOTELGUI) which, shortly before suspending its activities, had a market share of 16% (the only holder of the fixed-line telephony license, was put under judicial receivership in 2012 and ceased to operate its network in 2014)
- the incorporation of regional economic community ECOWAS laws into Guinean national legislation. A new law on telecommunications and information technology was promulgated on 13 August 2015.

In the long term, the country wishes to interconnect all its administrative services, particularly public and semi-public services and state institutions through the Conakry metropolitan network built on a fiber optic infrastructure.

MINING, OIL AND GAS

Guinea is known for its rich mineral resources, including bauxite, iron, gold and diamonds. The mining sector accounts for over 85% of exports in 2023 and provides around 20% of Government revenue. Guinea has the world's largest bauxite reserves and exported over 102 million tons of bauxite in 2022, becoming the world's second largest bauxite exporter. The reforms undertaken in this sector have facilitated investment by several multinationals and foreign companies. The mining sector is the second largest employer (after the public service) employing more than 10 000 permanent employees and about 200 000 temporary workers. Offshore oil reserves are being explored.

Mining activities are regulated by the Mining Code of 9 September 2011 as amended by the Law no L/2013/053/CNT dated April 8, 2013. The sector has grown in recent years due to the Government's policy of promoting private investment by improving the legal, administrative, and judicial framework. In addition, the Investment Code no longer discriminates between foreigners and nationals and allows the repatriation of profits.

An agreement has been signed on the Simandou project to start exploiting the world's largest undeveloped iron ore deposit. This is Guinea's greatest potential economic driver and the project is expected to attract a lot of investors from around the world.

ENERGY

Guinea is endowed with important hydroelectric potential with 1 165 watercourses, an estimated capacity of 6 000 MW for a guaranteed energy of 19 300 GWH/year. Despite this energy potential, the country's electricity production capacity is still not enough to cover the national needs and meet the objectives of accelerated growth. The energy sector faces significant challenges such as dilapidated infrastructure, high technical and commercial losses, and poor overall financial performance. But there are some positive developments:

- the African Development Bank (ADB) plans to finance access to electricity in Guinea in the amount of USD66.39 million
- Électricité de Guinée (EDG) and the Swiss developer of integrated renewable energy projects, Terra Sola Group AG, have signed an agreement to invest USD500 million with the aim of accelerating the electrification of Guinea, particularly in rural areas, by stabilising the existing transmission and distribution networks and stimulating the country's socio-economic development
- solar power plants will make a major contribution to Guinea's goal of producing 30% of its energy from renewable sources by 2030, in line with the country's commitment to the Paris Agreement. Solar energy production potential is estimated at 4.8 Kwh/m^2/day
- wind energy production potential is material
- the currently exploited hydroelectric capacity is less than 5%
- a five-year priority electrification program for the period from 2023 to 2027, known as 'Programme d'Urgence d'Électrification Rurale de la Guinée - PUERG' (Emergency Rural Electrification Programme for Guinea), has been launched. It includes two distinct phases, aiming to electrify 4 550 localities and increase the electrification rate from 7% to 17% and then to 36%, at a total cost of USD1 582 123 850
- A medium-term program for the period from 2028 to 2033, known as the 'Medium-Term Rural Electrification Programme - PERMT', will cover 7 110 localities and raise the electrification rate to 83%, at a total cost of USD1 483 537 810
- A long-term program for the period from 2034 to 2040, known as the 'Programme Final pour l'Accès Universel à l'Électricité dans le Rural - PFAUER' (Final Programme for Universal Access to Electricity in Rural Areas), will cover the remaining 3 520 localities, aiming for 100% coverage of the country, at a total cost of USD541 483 330.

AGRICULTURE

Agriculture plays a crucial role in the economy of Guinea, employing over 52% of the population and contributing 27.8% to the GDP. The country boasts 13 million hectares of arable land, of which only 10% is currently farmed. Additionally, it has 364 000 hectares of potentially irrigable land, although only 30 200 hectares have been developed for irrigation so far. The country's vast river network, with 6250 km of rivers across 1161 rivers and 24 catchment areas, offers significant water resources. Furthermore, Guinea's favourable climate and diverse agro-ecological zones support a wide range of food production. The country also has a valuable forest heritage of around 2.7 million hectares, making up 11% of the national territory, alongside abundant rainfall, contributing over 400 billion cubic meters of water annually. This combination of resources presents substantial potential for agricultural development and food security although Guinea is not self-sufficient at this time.

LABOUR RELATIONS

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



RWANDA
CERTA LAW

FIRM INFORMATION

Website address : **www.certalaw.rw**
Languages spoken : **English, Kinyarwanda, and French**
Telephone : +250788309964
Address : 1st Floor, ECD Plaza KN 4 Avenue, P.O. Box 7354, Kigali
Contact : Florida Kabasinga
Email : fkabasinga@certalaw.rw

RWANDA | CERTA LAW

COUNTRY INFORMATION

Rwanda is a country situated in East Central Africa, bordered by Uganda, Tanzania, Burundi and the Democratic Republic of Congo. Rwanda's total area is 226 338 km^2, with a population density estimated to be 445 people per km^2.
Name: Republic of Rwanda
Capital City: Kigali
Currency: Rwandan Francs (RWF)
Time Zone: UTC +2 (Central Africa Time)
Altitude (Above sea level): 1000m - 4500m
Temperature: 21°-27° Celsius
The lowest point: 950 m
The highest point: 4 507m
Life expectancy: 70.27 years
GDP per capital: USD994.23 (projected at USD1060 by end of 2024)
GDP growth per annum: +8%

Rwanda is known for its resilience and rapid development, offers a compelling environment for investment. Over the past decade, Rwanda has achieved remarkable economic growth, with an average GDP increase of over 7% annually. This growth is supported by progressive Government policies and strategic initiatives under Vision 2050, aiming to transform Rwanda into an upper-middle-income country by 2035. Key sectors driving this growth include agriculture, tourism, ICT and manufacturing, each presenting significant opportunities for investment.

POLITICAL SYSTEM

Rwanda is a multiparty democratic Republic led by the President who is elected for a five year term and may be re-elected once. The Government has three branches, the executive, the legislature and the judiciary. The three branches are separate and independent from each other but are all complementary. Legislative power is exercised by a Parliament, which consists of the Chamber of Deputies and the Senate. Deputies serve for a five-year term whereby about two-thirds are directly elected. The rest of the deputies are indirectly elected, two are elected by the National Youth Council, one is elected by the Federation of the Association of the Disabled and the remaining seats are allocated to female representatives elected by local government bodies. The judiciary is composed of ordinary and specialised courts. Rwanda's judiciary is independent and exercises financial and administrative autonomy. The judiciary is under the authority of the High Council of the Judiciary which is chaired by the Chief Justice who is also the President of the Supreme Court.

INVESTMENT CLIMATE

Rwanda has a history of strong economic growth, high rankings in the World Bank's Ease of Doing Business Index, and a reputation for low corruption. Rwanda's GDP grew 9.5% in 2019 before declining 3.4% in 2020 due to the global COVID-19 pandemic, the first recession since 1994. GDP is projected to exceed 8% in 2024. In late 2020 and early 2021, the Government adopted significant policy reforms intended to return the economy to growth, improve Rwanda's competitiveness in selected strategic growth sectors, increase foreign direct investment (FDI), and attract foreign companies to operate in the newly created Kigali International Financial Centre.

In February 2021, the Government amended the Law on Investment Promotion and Facilitation (Investment Code), the Law on Anti-Money Laundering and Counter-Terrorism Financing, and the Company Act. The Government passed a new law governing partnerships and a law governing mutual legal assistance in criminal matters. The Rwanda Financial Intelligence Centre (FIC) was also created to curb money laundering and terrorism finance.

The country presents a number of foreign direct investment (FDI) opportunities including in manufacturing, infrastructure, energy distribution and transmission, off-grid energy, agriculture and agro-processing, affordable housing, tourism, services and information and communications technology (ICT).
Over the past decade, the Government has undertaken a series of policy reforms intended to improve the investment climate, wean Rwanda's economy off foreign assistance and increase FDI levels. Rwanda enjoyed strong economic growth until March 2020, averaging over 7% annually over the last decade, high rankings in the World Bank's Doing Business report (38 out of 190 economies in 2020, and second best in Africa, compared to 29 in 2019 and 41 in 2018).

The Rwanda Development Board, (RDB), was established in 2008 out of a merger of 8 government institutions to fast-track investment projects by integrating all government agencies responsible for the entire investor experience under one roof. This included key agencies responsible for business registration, investment promotion, environmental compliance clearances, export promotion and other necessary approvals. New investors can register online at the RDB's website and receive a certificate in as fast as six hours. The agency's "one-stop shop" helps investors secure required approvals, certificates and work permits expeditiously. RDB states its investment priorities as innovation and technology, particularly ICT and green innovation, tourism and real estate, agriculture and food security, energy and infrastructure and mining.

Newly formed small and medium businesses are exempted

from paying for a trading license during their first two years of operation. In addition, the Government reduced the time to obtain water and sewage connections in order to facilitate construction permits and improved building controls by requiring construction professionals to obtain liability insurance. The country also upgraded its power grid infrastructure and improved its regulations on weekly rest, working hours, severance pay and reemployment priority rules.

The Government published an Investment Code in 2015 (which was amended in 2021) to provide various incentives designed to boost foreign direct investment (FDI). The updated Investment Code offers both fiscal and non-fiscal incentives aimed at attracting investors to key priority sectors. Among the fiscal incentives are:

- companies planning to relocate their headquarters to Rwanda benefit from zero corporate income tax
- a 15% preferential corporate income tax rate is applied to strategic sectors such as energy, transport, affordable housing, ICT, and financial services
- investors in key priority sectors like tourism, construction, manufacturing, and agro-processing enjoy accelerated depreciation of 50%
- exemption from capital gains tax is also available for qualifying investments
- large projects in strategic sectors, including energy, exports, tourism, health, manufacturing, and ICT, are granted a seven-year corporate income tax holiday
- the repatriation of capital and assets is permitted without restrictions, enhancing the appeal for foreign investors.

Non-fiscal incentives complement these fiscal benefits by simplifying the investment process. Rwanda offers quick business and investment online registration, making it easier for investors to establish their presence in the country. The Government provides assistance with tax-related services and exemptions, as well as access to utilities such as water and electricity. Investors receive help with obtaining visas and work permits for foreign employees and a one-stop center offers notary services to streamline administrative procedures. Aftercare services are available to fast-track project implementation, ensuring that investments proceed smoothly.

It is important to note that all fiscal incentives listed above have specific requirements that must be fulfilled before they are granted. The Investment Code ensures equal treatment for foreign and national investors regarding certain operations, free transfer of funds and compensation in cases of expropriation.

Except for apparel products, Rwanda is eligible for trade preferences under the African Growth and Opportunity Act (AGOA), which the United States enacted to extend duty-free and quota-free access to the US market for many goods produced in eligible beneficiary countries. Rwandan exports qualify for the United Kingdom's Developing Countries Trading Scheme (DCTS) and the European Union's Generalised System of Preferences (GSP). Certain Rwanda exports also qualify for the Peoples Republic of China's Zero Tariff program for African countries.

BUSINESS FACILITATION

RDB offers one of the fastest business registration processes in Africa. New investors can register online on RDB's website or register in person at RDB offices in Kigali. Once a certificate of registration is generated, company tax identification and employer social security contribution numbers are automatically generated. The RDB "One Stop Center" assists firms in acquiring visas and work permits, connections to electricity and water, and support in conducting required environmental impact assessments.

RDB has prioritised additional reforms to improve the investment climate including amending the land policy to merge the issuance of freehold titles and occupancy permits to foreigners, introducing online notarisation of property transfers, implementing small claims procedures to allow self-representation in court and reduce attorney costs, launching electronic auctions to reduce time to enforce judgments, reducing court fees and allowing electronic payments and establishing a commercial division at the Court of Appeal to fast-track commercial dispute resolution.

Rwanda promotes gender equality and has pioneered a number of projects to promote women entrepreneurs, including the creation of the Chamber of Women Entrepreneurs within the Rwanda Private Sector Federation (PSF). Men and women have equal access to investment facilitation and protections.

BILATERAL INVESTMENT AND TAXATION TREATIES

Rwanda is a member of the World Trade Organisation (WTO), the East African Community (EAC), the Economic Community of the Great Lakes, the Economic Community of Central African States and the Common Market for Eastern and Southern Africa (COMESA). Rwanda ratified the African Continental Free Trade Area agreement in March 2018, but its implications for the region remain unclear. The United States and Rwanda signed a Trade and Investment Framework Agreement (TIFA) in 2006 and a bilateral investment treaty (BIT) in 2008. Rwanda has active BITs with Germany (1969), the Belgium-Luxemburg Economic Union (1985) and the Republic of Korea (2013).

Rwanda has signed BITs and Double Taxation Agreements with Mauritius (2013), China 2021, South Africa (2000), Turkey (2016), Morocco (2016), the United Arab Emirates (2016) and Qatar (2018), Barbados (2014), Jersey (2015), Luxembourg (2021), Singapore (2014) and Turkey (2018). Rwanda signed

an Economic Partnership Agreement between the EAC and the European Union but this agreement has not yet entered into force.

COMPETITION AND ANTI-TRUST LAWS

Since 2010, a Competition and Consumer Protection Unit was created at the Ministry of Trade and Industry (MINICOM) to address competition and consumer protection issues. The Government has set up the Rwanda Inspectorate, Competition and Consumer Protection Authority (RICA), a new independent body with the mandate to promote fair competition among producers. The body aims to ensure consumer protection and enforcement of product standards. Law no. 36/2012 of 21/09/2012 relating to competition and consumer protection aims to promote fair competition and prevent unfair business practices that could harm consumers.

Market forces determine most prices in Rwanda, but, in some cases, the Government intervenes to fix prices for items considered sensitive in Rwanda. The Rwanda Utilities Regulatory Authority (RURA), in consultation with relevant ministries, sets prices for petroleum products, water, electricity, and public transport. MINICOM and the Ministry of Agriculture have fixed farm gate prices, or the market value of a cultivated product minus the selling costs, for agricultural products like coffee, maize, and Irish potatoes from time to time. On international tenders, a 10% price preference is available for local bidders, including those from regional economic integration bodies of which Rwanda is a member.

EXPROPRIATION AND COMPENSATION

In Rwanda, land expropriation is provided for in the Constitution of 2023. Article 34 of the Constitution considers protection of private property, whether personal or owned in association with others, as one of the fundamental human rights. However, paragraph 3 of Article 34 provides that the right to property may be interfered with in the public interest. The Constitution emphasises that expropriation can only be carried out in circumstances and procedures determined by law and subject to fair and prior compensation. The 2021 Investment Code forbids the expropriation of investors' property in the public interest unless the investor is fairly compensated. The expropriation law has been in force since 2015 and includes more explicit protections for property owners. Additionally, the law governing land in Rwanda stipulates that the Government has the supreme power of management of all land. The law gives the Government power to accord rights of occupation and use of land, and has the right to order expropriation in the public interest.

DISPUTE SETTLEMENT

- **ICSID Convention and New York Convention**
  Rwanda is a signatory to the International Centre for Settlement of Investment Disputes (ICSID) and the African Trade Insurance Agency (ATI). ICSID seeks to remove impediments to private investment posed by non-commercial risks, while ATI covers risk against restrictions on import and export activities, inconvertibility, expropriation, war, and civil disturbances. Rwanda ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards in 2008.

- **Investor-State Dispute Settlement**
  Rwanda is a member of the East African Court of Justice for the settlement of disputes arising from or pertaining to the EAC. Rwanda has also acceded to the 1958 New York Arbitration Convention and the Multilateral Investment Guarantee Agency convention. There have been a number of private investment disputes in Rwanda, though the Government has not yet been involved in a WTO dispute settlement. Rwanda has been party to two cases at ICSID since Rwanda became a member in 1963.

- **International Commercial Arbitration and Foreign Courts**
  In 2012, the Government launched the Kigali International Arbitration Center (KIAC). KIAC case handling rules are modelled on the United Nations Commission on International Trade Law (UNCITRAL) arbitration rules. In 2024, KIAC had more than 100 prominent international arbitration practitioners from more than 20 nationalities and trained in different legal systems including common law, civil law, Islamic law and hybrid legal systems. Arbitration proceedings under KIAC are mainly conducted in English or French or Kinyarwanda (the native language of Rwanda) for some domestic arbitration disputes. KIAC is listed among the top three leading arbitration institutions in Africa (SOAS Survey report 2020). By July 2024, KIAC had reviewed 250 cases worth over USD250 million in claims involving petitions from various nationalities.

BANKRUPTCY REGULATIONS

Rwanda ranks 38th out of 190 economies for resolving insolvency in the World Bank's 2020 Doing Business Report and is number two in Africa. It takes an average of two and a half years to conclude bankruptcy proceedings in Rwanda. The recovery rate for creditors on insolvent firms was reported at 19.3 cents on the dollar, with judgments typically made in local currency. The Government has periodically instituted several amendments to the Insolvency and Bankruptcy Law, the most recent being in 2023. One major change is the introduction of an article on "pooling of assets", allowing creditors of a subsidiary to pursue parent companies and other members of the group.

INVESTMENT INCENTIVES

The 2021 Investment Code offers a package of benefits and incentives to both domestic and foreign investors under certain conditions, including:

- for an international company with its headquarters or regional office in Rwanda, a preferential corporate income tax rate of 0% subject to fulfilling certain requirements including investing at least USD10 million
- a preferential corporate income tax rate of 15% subject to fulfilling the requirements in the investment code
- corporate income tax holiday of up to seven years subject to fulfilling certain requirements including an investment amount of USD50 million
- exemption of customs tax for products used in Export Processing Zones
- exemption of capital gains tax
- Value Added Tax (VAT) refunds
- accelerated depreciation
- immigration incentives.

FOREIGN TRADE ZONES/FREE PORTS/ TRADE FACILITATION

Rwanda has established the Kigali Special Economic Zone (KSEZ), which was set up through the merger of the former Kigali Free Trade Zone and the Kigali Industrial Park projects. Special Economic Zones (SEZs) in Rwanda are regulated by the SEZ Authority of Rwanda (SEZAR) which is based at the Rwanda Development Board (RDB). Land in KSEZ is currently acquired through SEZAR. Bonded warehouse facilities are now available both in and outside of Kigali for use by businesses importing duty-free materials. The Government has established a number of benefits for investors operating in the SEZs including tax and land ownership advantages. A company basing itself in the SEZ can also opt to be part of the Export Processing Zone (EPZ). Holding an EPZ license will exempt a company from VAT and import duties. The company is obliged to export a minimum of 80% of production & will pay applicable taxes to goods sold on the domestic market.

Rwanda created the Export Growth Facility (EGF) in 2015, with an initial capital of RWF 500 million and which is administered by the Development Bank of Rwanda (BRD). The German KfW Development Bank injected EUR8.5 million in support of the fund. The pilot program targets small and medium sized enterprises (SMEs) with export sales below USD1 million. Priority sectors include horticulture, agro-processing, and manufacturing. The facility has three windows, an investment catalyst fund, a matching grant fund for market entry cost and an export guarantee facility.

Investment catalyst funds support private sector investments in export-oriented production through a 6.5% subsidy on market interest rates (normally between 16-20%). The matching grant fund provides grants (50% of the required amount) for expenditure on specific market entry costs (like export strategy elaboration, export promotion and compliance with standards). The export guarantee fund provides short-term guarantees to commercial banks financing exporters' pre and post-shipment operations.

Rwanda also created the Business Development Fund (BDF) in 2011 to provide support to small and medium sized enterprises (SMEs) in the form of credit guarantees, matching grants, asset leasing and advisory services. BDF works with banks to provide guarantees of between 50-75% of the required collateral by lending institutions. The maximum guarantee is RWF 500 million in all sectors (agricultural and non-agricultural) with a maturity period of up to 10 years.

The Government also manages the Rwanda Green Fund (FONERWA) established in 2012 to spur investment in green innovation. The UK Aid Department for International Development, KFW, and other donors have invested in the fund. FONERWA claims that projects it supports have created more than 162 000 green jobs.

PROTECTION OF PROPERTY RIGHTS

Real Property

The law protects and facilitates the acquisition and disposal of property rights. Investors involved in commercial agriculture have leasehold titles and are able to secure property titles, if necessary. The 2015 Investment Code (updated in 2021) provides investors with the right to own private property, whether individually or in association with others. Foreign investors can acquire real estate although there is a general limit on land ownership. The mortgage industry is expanding steadily with the mortgage to GDP ratio being about 4.35%, which is relatively high by regional standards. Mortgage lending is concentrated at the upper and middle sections of the income pyramid. While Rwanda's microfinance sector is an important source of finance for lower income segments of the market, the products and services of microfinance providers are not typically addressed towards housing.

Intellectual Property Rights

The 2021 Investment Code guarantees protection of investors' intellectual property rights (IPR) and legitimate rights related to technology transfer. IPR legislation covering patents, trademarks and copyrights was approved in 2009. A Registration Service Agency, which is part of the Rwanda Development Board (RDB), was established in 2008 and has improved IPR protection by registering all commercial entities and facilitating business identification and branding. The RDB and the Rwanda Standard Board (RSB) are the main regulatory bodies for Rwanda's intellectual property rights law. The RDB registers intellectual property rights, providing a certificate and ownership title. Every registered IPR title is published in the Official Gazette. The fees payable for substance examination and registration of IPR apply equally to domestic and foreign applicants.

Registration of patents and trademarks is on a first time, first right basis, so companies should consider applying for trademark and patent protection in a timely manner. It is the responsibility of the copyright holders to register, protect and enforce their rights where relevant, including retaining their own counsel and advisors. Through the RSB and the RDB, Rwanda has worked to increase IPR protection but many goods that violate patents (especially pharmaceutical products) enter the market. Rwanda conducts anti-counterfeit goods campaigns on a regular basis but statistics on IPR enforcement are not publicly available. A few companies have expressed concern over the inappropriate use of their intellectual property.

As a COMESA member, Rwanda is automatically a member of African Regional Intellectual Property Organization (ARIPO). Rwanda is also a member of the World Intellectual Property Organization (WIPO) and is working toward harmonising its legislation with the WTO Agreement on the Trade-Related Aspects of Intellectual Property (TRIPS). Rwanda has yet to ratify World Intellectual Property Organisation (WIPO) Internet Treaties although the Government has taken steps to implement and enforce the TRIPS Agreement. In addition to TRIPS, Rwanda is a party to the Paris Convention, the Berne Convention, the Patent Cooperation Treaty, the Madrid Protocol, the Hague Agreement and the Brussels Convention.

FINANCIAL SECTOR

Since 1994, The National Bank of Rwanda (BNR) has reformed Rwanda's financial sector in the face of what appears to be three contradictory pressures:

- the IFI model of financial liberalisation, inflation targeting, financial inclusion and regulatory best practice, including adhering to Basel financial standards
- retaining some prioritisation for directing investments to strategic sectors to support economic transformation
- reforming the financial sector in line with becoming a regional financial hub borrowing from the models of low-tax jurisdictions like Jersey and Mauritius.

By 2024, a key priority in Rwanda's National Strategy for Transformation is to become 'a hub for financial services to promote investments'. In a survey of 23 respondents in Kigali in July-September 2017, BNR was recognised as being the fifth-highest performing state organisation. In 2022, the BNR started a cycle of tightening the monetary policy to curb inflationary pressures. In February 2023, the Central Bank Rate (CBR) was increased further to reach 7% from 6.5% resulting in a 12-month cumulative increase of 250 basis points. In response to the CBR hikes, the interbank rate increased by 215 basis points to 7.55% on average in 2023H1 from 5.4% in 2022H1. The deposit rate saw a significant increase of 207 basis points to an average of 9.55% in 2023H1, up from 7.48% in 2022H1. In contrast, the average lending rate decreased by 16 basis points to 16.26% in 2023H1. The CBR was further increased to reach 7.5% in August 2023.

CAPITAL MARKETS AND PORTFOLIO INVESTMENT

Rwanda's capital markets have matured, though few companies remain publicly listed and trading equities. The Rwanda Capital Market Authority was established in 2017 to regulate the capital market, commodity exchange and related contracts, collective investment schemes and warehouse receipts. Most capital market transactions are domestic.

While offers can attract some international interests, they are rare. Rwanda is one of a few sub-Saharan African countries to have issued sovereign bonds. In 2019, the central bank, the National Bank of Rwanda (BNR), issued five new bonds including a 20-year bond. During the same year, seven existing bonds were reopened. Rwandan Government bonds and other debt securities are highly oversubscribed and bond yields average 12%. BNR has implemented reforms in recent years that are helping to create a secondary market for Rwandan treasury bonds. The secondary market continues to grow albeit from a low base. In 2019, BNR reported that deals and turnover increased by 47% and 106.5% respectively following intense awareness campaigns and increased number of products (new issuances and re-openings).

Rwanda's financial sector remains highly concentrated. The share of the three largest banks's assets increased from 46.5% in December 2018 to 48.4% in December 2019. The largest, partially state-owned Bank of Kigali (BoK), holds more than 30% of all assets. The banking sector holds more than 65% of total financial sector assets in Rwanda. Non-performing loans dropped from 6.4% in December 2018 to 4.9% in December 2019. Foreign banks are permitted to establish operations in Rwanda, with several Kenyan-based banks in the country.

Insurance is classified into two broad categories, namely non-life insurance and life business. The sector also has three special categories: micro insurance, captive insurance and health maintenance organisation (HMO). Private insurance is composed of 15 insurance companies, of which 9 offer non-life insurance products, 3 offer life insurance, 1 micro insurance business, 1 captive insurance and 1 health maintenance organisation.

General insurance (non-life) business (which is considered short term) is the highest contributor to private insurance premiums, with 79% of premiums of private insurers and 46% of the sector's total gross written premiums (GWP) as of June 2023. The general insurance business is largely dominated by motor and medical insurance with a combined share of 63% of total gross premiums and 29% of total insurance

industry's premiums. On the other hand, life insurance is a long-term category of insurance that provides financial compensation in the amount assured at maturity or in case of the death of a policyholder. Life insurance business consists of ordinary life, traditional life and term and credit life products. Ordinary life and credit protection dominated with 71% of gross premiums collected as of June 2023.

Equity Group Holdings Plc has successfully completed the acquisition of Compagnie Générale de Banque (Cogebanque) Plc in Rwanda, acquiring 99.125% of its issued share capital. This acquisition, finalised on 30 November 2023 following the grant of all necessary regulatory and corporate approvals, makes Cogebanque a subsidiary of Equity Group. This strategic move enhances Equity Group's footprint in Sub-Saharan Africa, promising expanded branch networks and improved digital banking services for customers of both Cogebanque and Equity Bank Rwanda. The merger is expected to create a stronger banking institution, contributing significantly to Rwanda's economic growth and the financial sector's development.

In 2022, BNR reported that the financial sector remains liquid with the banking industry's aggregate liquidity coverage ratio (LCR) at 269% as at 31 December 2021 (higher than the 100% minimum requirement) while the aggregate liquidity ratio of the microfinance sector stood at 112% at the end of December 2021 (higher than the 30% minimum requirement). This suggests reluctance toward making loans and that the Rwanda banking sector is generally risk averse. Local banks often generate significant revenue from holding government debt and from charging a variety of fees to banking customers. Credit cards are becoming more common in major cities, especially at locations frequented by foreigners, but are not used in rural areas. Rwandans primarily rely on cash or mobile money to conduct transactions.

MONETARY POLICY

The Monetary Policy Committee (MPC) convened on 22 February 2024 to assess the outcomes of previous decisions, analyse recent global and domestic economic developments, and set the Central Bank Rate (CBR) for the next quarter. The Inflation forecasts as of February 2024 indicate that year-on-year headline inflation will remain within the inflation target band, close to 5% over the medium term. The path in headline inflation reflects the impact of past monetary policy decisions by the National Bank of Rwanda, other government policies, the ease in international commodity prices and subdued global demand. However headline inflation projections are prone to uncertainties. Domestic risks include weather-related challenges that may affect future agriculture performance and fresh food prices. On a global scale, the ongoing war in the Middle East and disruptions in the Red Sea may exert pressures on international trade and commodity prices (food and energy products), adding to the pre-existing threats posed by different wars over the globe.

FOREIGN EXCHANGE

In 1995, the Government abandoned a US dollar peg and established a floating exchange rate regime, under which all lending and deposit interest rates were liberalised. The National Bank of Rwanda (BNR) publishes an official exchange rate on a daily basis, which is typically within a 2% range of rates seen in the local market.

Transacting locally in foreign currency is prohibited in Rwanda. Regulations set a ceiling on the foreign currency that can leave the country per day. In addition, regulations specify limits for sending money outside the country. BNR must approve any transaction that exceeds these limits. Most local loans are in local currency. In December 2018, BNR issued a new directive on lending in foreign currency which requires the borrower to have a turnover of at least RWF50 million or equivalent in foreign currency and a known income stream in foreign currency not below 150% of the total instalment repayments. Repayments must be in foreign currency. The collateral pledged by non-resident borrowers must be valued at 150% of the value of the loan. In addition, BNR requires banks to report regularly on loans granted in foreign currency.

The widening external trade deficit and the strong USD resulting from tight financial conditions in the USA put pressure on the Rwandan franc. As of the end of December 2023, the Rwandan franc depreciated by 18.05% year-on-year compared to the US dollar which is a significant drop compared to the 6.05% depreciation recorded in December 2022. The import bill increased significantly due to high international commodity prices amid the increased need for capital and intermediate goods imports, and a rise in food imports to compensate for the shortfall in food crop production. However, the recovery in the travel and tourism industry contributed to foreign exchange availability. The franc also weakened against other major currencies, including the pound (25.07% by December 2023), the Euro (22.5%) and the Japanese Yen (10.78%). Nonetheless, gross official foreign exchange reserves remained sufficient, covering an estimated 4.4 months of prospective imports of goods and services by the end of 2023.

REMITTANCE POLICIES

Investors can remit payments from Rwanda only through authorised commercial banks. There is no limit on the inflow of funds although local banks are required to notify BNR of all transfers over USD10 000 to mitigate the risk of potential money laundering. A withholding tax of 15% to repatriate profits is considered high by a number of investors given that a 30% tax is already charged on profits, making the realised tax burden 45%. However companies registered to operate as free-trade zone developers or foreign companies with headquarters in Rwanda are entitled to pay 0% corporate income tax and to receive exemptions from withholding tax

and tax-free repatriation of profits.

Additionally, there are some restrictions on the outflow of export earnings. Companies generally must repatriate export earnings within three months after the goods cross the border. Tea exporters must deposit sales proceeds shortly after auction in Mombasa, Kenya. Repatriated export earnings deposited in commercial banks must match the exact declaration the exporter used when the goods crossed the border.

Rwandans working overseas can make remittances to Rwanda without impediment. It usually takes up to three days to transfer money using SWIFT financial services. The concentrated nature of the Rwandan banking sector limits choice and some U.S. investors have expressed frustration with the high fees charged for exchanging Rwandan francs to dollars.

SOVEREIGN WEALTH FUND

In 2012, the Rwandan government launched the Agaciro Development Fund (ADF), a sovereign wealth fund that includes investments from Rwandan citizens and the international Rwandan diaspora. The ADF operates under the custodianship of BNR and reports quarterly and annually to the Ministry of Finance and Economic Planning, its supervisory authority. ADF is a member of the International Forum of Sovereign Wealth Funds and is committed to the Santiago Principles. ADF only operates in Rwanda. The 2020 financial year was marked by two major changes to which ADF had to adapt in the very short term:

- as part of the implementation of the cabinet's decisions of 14 September 2018, the Government's assets were transferred to AGF. This made it a holding company managing 33 companies at the end of December 2020. In this regard, equity participation increased from RWF153 billion in 2019 to RWF174 billion in 2020
- the Government and AGF have appreciated the contribution made by Rwandans and friends of Rwanda since its creation in 2012. The Government considered that AGF has developed and made investments that increase its income and therefore decided in April 2020 to phase out contributions.

As the above changes emerged, the Covid-19 pandemic was devastating the global economy. However AGF has nevertheless maintained a slight but constant growth. In 2019, the return on investment was RWF 8 billion before decreasing to RWF 6.7 billion in 2020.

PRIVATISATION PROGRAM

Rwanda continues to carry out a privatisation program that has attracted foreign investors in strategic areas ranging from telecommunications and banking to tea production and tourism. Around 130 companies have been fully privatised since 1999. Currently privatisation is managed by the Ministry of Finance. The Rwanda Development Board (RDB) is the lead negotiator for privatisation projects and its investor aftercare department is responsible for monitoring implementation.

RESPONSIBLE BUSINESS CONDUCT

There is a growing awareness of corporate social responsibility (CSR) within Rwanda and several foreign-owned companies implement CSR programs. Rwanda implements the OECD's Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas and the International Tin Supply Chain Initiative tracing scheme. In 2016, the Better Sourcing Program (currently RCS Global Group) began an alternative mineral tracing scheme in Rwanda. Rwanda also has guidelines on corporate governance by publicly listed companies.

MINING

Rwanda's mineral resources include cassiterite, coltan, wolfram, peat (used for electricity generation or processed as an alternative for firewood), gold and nickel. The country also has amphibolite, granites, quartzite, volcanic rocks, clay, sand and gravel. In the first quarter of 2023, Rwanda exported over 5 million kilogrammes of minerals, worth over USD247 million. Rwanda is the world's second biggest tantalum producer with output of 520 metric tons in 2023. Gold mining and exports have recently emerged to have big potential. Rwanda has two refineries of gold and tin, both of which have the capacity to process large amounts of minerals from within the country and the region. Rwanda has a mineral tagging and sealing scheme and is internationally recognised as a member of the iTSCi program that ensures that the origins of the minerals can be traced in order to avoid conflict financing, human rights abuses or other malpractices such as bribery in mineral supply chains. By the middle of 2023, Rwanda had over 96 registered mining companies and at least 132 licences had been issued.

CORRUPTION

Rwanda is ranked among the least corrupt countries in Africa, with Transparency International's 2022 Corruption Perception Index putting the country among Africa's third least corrupt nations and 49th in the world. The Government maintains a high-profile anti-corruption effort and combating corruption is a key national goal. The Government investigates corruption allegations and generally punishes those found guilty. High-ranking officials accused of corruption often resign during the investigation period and many have been prosecuted. Rwanda has ratified the UN Anticorruption

Convention. It is a signatory to the OECD Convention on Combating Bribery. It is also a signatory to the African Union Anti-Corruption Convention. Foreign firms have identified the perceived lack of Government corruption in Rwanda as a key incentive for investing in the country. There are no local industry or non-profit groups offering services for vetting potential local investment partners but the Ministry of Justice keeps judgments online, making it a source of information on companies and individuals in Rwanda.

POLITICAL AND SECURITY ENVIRONMENT

In 2024, Rwanda was the safest country in Africa. It had a score of roughly 73.2 points in the safety index, making it the African nation with the lowest crime incidents and the only country with high safety levels - over 60 index points. Investors have cited the stable political and security environment as an important driver of investments. A strong police and military provide a security umbrella that minimises potential criminal activity.

LABOUR POLICIES AND PRACTICES

Labour is regulated by the law n° 66/2018 of 30th August 2018 as amended in 2023 alongside complementary ministerial orders. The law grants some workers the right to conduct strikes, subject to numerous restrictions, but strikes are very rare. There is no unemployment insurance or other social safety net programs for workers laid off for economic reasons. There is no minimum wage. However for the purposes of calculating insurance compensation to persons with an unknown or unstable salary, the Supreme Court set the minimum wage to be 3 000 RWF daily.

In Rwanda the recruitment of foreign employees is subject to certain conditions with the exception of workers at embassies and international government organisations operating in Rwanda. These restrictions include a requirement to be on the occupation demand list. Investors on the other hand are strongly encouraged to hire Rwandan nationals whenever possible. According to the Investment Code, a registered investor who invests an equivalent of at least USD250 000 may recruit three foreign employees. Rwanda has ratified all of the International Labour Organization's eight core conventions. Policies to protect workers in special labour conditions exist, but enforcement remains inconsistent. The Government encourages, but does not require, on-the-job training and technology transfer to local employees. The law restricts voluntary collective bargaining by requiring prior authorisation or approval by the authorities and requiring binding arbitration in cases of non-conciliation.

In 2000, the Government revised the national labour code to eliminate gender discrimination, restrictions on the mobility of labour and wage controls. Private firms are responsible for their local employees' income tax payments and Rwanda Social Security Board pension contributions. For full-time workers, these payments amount to more than 30% of take-home pay, which can be a disadvantage if competing firms are in the informal economy and not compliant with these requirements. Labour laws are not waived in order to attract or retain investment. There are no labour law provisions in SEZs or industrial parks and collective bargaining is not common in Rwanda.

MEMBERSHIP OF INTERNATIONAL AND REGIONAL ORGANIZATIONS

Rwanda is a member of the African, Caribbean and Pacific Group of States, the African Union, the Commonwealth, the Non-Aligned Movement, the Organisation internationale de la Francophonie, the United Nations, the World Trade Organisation, the Common Market for Eastern and Southern Africa, the East African Community (EAC), the Economic Community of the Great Lakes (CEPGL), Economic Community of Central African States and the African Continental Free Trade Area (AfCFTA).


Ecobank

SENEGAL
MAME ADAMA GUEYE & PARTNERS

FIRM INFORMATION

Website address : **www.magp.sn**
Languages spoken : **French, English**
Telephone : + 221 33 922 66 86
Address : Résidence Kër Diaba, Rue MZ 81 X Rue MZ 94, Mermoz Pyrotechnie Dakar, Senegal
Contact : Me Mame Adama Gueye
Email : contact@magp.sn

SENEGAL | MAME ADAMA GUEYE & PARTNERS

COUNTRY INFORMATION

Senegal is a country with a long democratic tradition marked by an integral multiparty system. Its constitution has enshrined the separation of powers between the executive power embodied by the Government, the legislative power embodied by the National Assembly and the legislative power embodied by the courts and tribunals. The President of the Republic is the Head of State and appoints the Prime Minister who is the Head of Government and is responsible for implementing the policies defined by the President. The National Assembly votes on laws and oversees government action, while the courts and tribunals ensure that laws are enforced.

ECONOMIC INDICATORS

According to the National Statistics and Demography Agency (ANSD) report on the quarterly national accounts for the first quarter of 2024, GDP related to that period is estimated at 3 880.53 billion FCFA, marking growth of 2.3% compared with the first quarter of 2023. Senegal's inflation rate averaged 2.23% from 2006 to 2024.

FORMS OF BUSINESS

- Branch (succursale) The parent company will be given a local registration number and will operate in its own name and on its own behalf and liability through its local representative. Because a branch cannot continue for more than two years, this type of entity is not appropriate for a long-term business in Senegal. After two years, a branch has to be liquidated or transformed into another entity.
- Partnership Company (société en nom collectif) The shareholders will be jointly and severally liable for the debts of the company. An advantage is that a financial contribution to the company's capital is not required and this form of company is suitable where funds are not readily available.
- Limited Partnership Company (société en commandite) There are two categories of shareholders for this kind of company, namely the partners who are jointly and severally liable for the debts of the company and the limited or "sleeping" partners who are liable only to the extent of their contribution to the company's capital. The "sleeping" partners do not have any involvement in the management of the company. No minimum capital is required.
- Limited Liability Company by Share (Société anonyme or SA) This form of company can be incorporated with one or more shareholders (who can be individuals and/or corporates) who will be liable only to the extent of their contribution to the capital of the company. A minimum capital of CFA10 000 000 is required but only 25% needs to be disbursed by the time of incorporation unless otherwise agreed by the shareholder/s. Shareholders are not liable for the company's debts. The company will have a board of directors and a chief executive officer. This form of company is suitable for larger businesses.
- Private Limited Liability Company (Société à responsabilité limitée or SARL) This form of company can be incorporated with one or more shareholders (who can be individuals and/or corporates) who will be liable only to the extent of their contribution to the capital of the company. No minimum capital is required but it is usual to incorporate the company with a capital of CFA1 000 000 to be disbursed entirely by the time of incorporation. Shareholders are not liable for the company's debts. The SARL does not have a board of directors but instead has one or more managing directors (as decided by the shareholders).
- Simplified joint-stock company (Société par action simplifiée) Unless otherwise directed by the law, the shareholders have the right to organise the company according to their needs.
- Representative office (bureau de representation) A representative office (bureau de representation/de liaison) is registered in the name and on behalf of a company (corporation). A representative office does not have its own legal personality. All the obligations and responsibilities of the representative office will be borne by the parent company. To be registered as a representative office, an application must be made in an officially prescribed form accompanied by the following information: name of the parent company, name of the representative office, activities of the parent and representative office and the name, date and place of birth of the locally resident individual who is duly authorised to represent the representative office. A representative office is easy to register.
- Joint-venture company (société en participation) It is a company that the shareholders have decided not to register with the registry of commerce. It will therefore not have a legal personality nor be subject to legal announcement.
- De facto company (société créée de fait ou de fait) A de facto company can arise when two or more individuals or corporate bodies behave as if they were shareholders without registering one of the forms of company provided by the law or when two or more individuals or corporate bodies have registered a company with defects in their registration or have registered a company not provided by the law.

INVESTMENT CLIMATE

Senegal is an attractive investment destination in West Africa brimming with young, skilled and multilingual talent and with emerging sectors such as energy, agro-industry, the blue and green economy, digital, the financial sector, creative industries, tourism and real estate offering great investment

opportunities. Senegal boasts a modern infrastructure that facilitates trade and regional and international connectivity. This attracts foreign investors by offering them a wide range of opportunities.

Senegal benefits from a strategic geographical position. Located on the west coast of Africa. Senegal's position makes it a hub linking Africa to the rest of the world. Widely recognised as the easiest and fastest gateway to West Africa, it provides access to a common market of 300 million consumers.

From a political point of view, Senegal is a democracy with a multi-party system, solid institutions and recognition of political and social rights and freedom of expression. In addition to being a model in West Africa, it is a stable country with a moderate level of risk according to Credit Risk International (CRI). The country has a long tradition of peace and democracy. This peaceful climate has helped to create a business environment conducive to investment and increased flows of foreign direct investment.

Looking to the future, Senegal has implemented an accelerated growth strategy designed to boost investment and combat poverty in the long term. This formal commitment is reflected in a proactive, innovative investment promotion policy and the introduction of incentives. The country has high-quality human resources, modern infrastructure, a good quality of life and the political will to protect investments.

Senegalese law has established entrepreneurial freedom as a general constitutional principle guaranteeing all individuals the right to engage in economic or commercial activity. The regulatory framework allows all individuals to set up a business and grants them the right to freely create and exercise any economic activity save in certain limited business sectors where restrictions may be imposed, for example, for safety reasons, professional qualification requirements (like pharmacies) and for the participation of Senegalese nationals in the shareholding or management of companies conducting certain activities like mining, oil & gas and fishing.

In order to promote the use of domestic goods and services and the development of local labour, technology and capital throughout the oil and gas and mining industries' value chain, Senegal has enacted laws on local content in these business sectors.

REGULATORY FRAMEWORK

Senegalese law is based on national regulations, international conventions and texts adopted by the following major pan-African organisations of which Senegal is a member:

WAEMU, the West African Economic and Monetary Union
ECOWAS, the Economic Community of West African States
OHADA, the Organization for the Harmonisation of Business Law in Africa
AIRPO, the African Intellectual Property Organisation
CIMA, the Inter-African Conference on Insurance Markets (Conférence Interafricaine des Marchés d'Assurance)
AU, the African Union and the African Continental Free Trade Area (AfCFTA).

In each of the above organisations, member countries (including Senegal) aim at establishing an integrated and unified market capable of meeting the demands and expectations of local and foreign business and investors by having one harmonised legal framework covering several countries. This helps to remedy problems arising from contradictory national laws, often with obsolete content. Efforts to update national legal systems have often led to unnecessary inflation and complexity.

The Senegalese Constitution provides for laws approved by the Parliament and regulations issued by the President and Ministers.

LABOUR LAW

As a member of the International Labour Organisation (ILO), Senegal has ratified a number of conventions, including Convention No. 182 on the Worst Forms of Child Labour (1999), Convention No. 138 on the Minimum Age for Admission to Employment and Work (1973), Convention No. 105 on the Abolition of Forced Labour (1957) and Convention No. 89 on Night Work by Women (1948). These Conventions are intended to complement domestic law, which is made up of Act no. 87-17 of December 1, 1997 on the Labour Code, Act no. 73.37 of July 31, 1973 on the Social Security Code, Act no. 75-50 of April 3, 1975 on social welfare institutions and Act no. 2005-06 of May 10, 2005 on the fight against human trafficking and similar practices and the protection of victims.

The following implementing regulations are in force:

- decree no. 3751/MFPTEOP/DTSS of June 6, 2003 setting the categories of businesses and work prohibited to children and young people, as well as the age limit to which the prohibition applies
- decree no. 3750/MFPTEOP/DTSS of June 6, 2003 setting the nature of dangerous work prohibited to children and young people
- Order no. 3749/MFPTEOP/DTSS of June 6, 2003 setting out and prohibiting the worst forms of child labour
- Order no. 3748/MFPTEOP/DTSS of June 6, 2003 on child labour.

The National Collective Interprofessional Agreement of 27 May 1982 (CCNI) and sectoral collective agreements also apply.

SENEGAL'S GENERAL INVESTMENT FRAMEWORK

Senegal has adopted an investment code that applies to all companies operating in the following sectors: agriculture, fishing, livestock breeding and storage of plant, animal or fish products, manufacturing, production or processing, extraction or processing of mineral substances, tourism and port infrastructure (including the installation of fixed equipment, investments to improve assistance to ships embarking and disembarking, increased storage and preservation capacity and infrastructure to improve the flow of port traffic). Priority objectives are the creation of new businesses, job creation, the establishment of businesses in inland regions and the development of existing businesses. The law comprises 31 articles covering guarantees, the rights, freedoms and obligations of businesses, privileged schemes and application procedures.

Law 95-35 of December 21, 1995 introduced a specific framework for industrial and agricultural companies whose entire production is destined for export. Under this law, such export-processing companies are subject to a lighter tax regime with:

- exemption from income tax on dividends distributed
- exemption from all taxes based on salaries paid by the company
- exemption from the tax on the sale of goods and services paid by companies, and in particular the flat-rate contribution payable by employers
- exemption from all registration and stamp duties including those levied on the incorporation and amendment of company bylaws
- exemption from the contribution des patents, the land tax on built properties, the land tax on unbuilt properties and the contribution des licences
- tax collection at a rate of 15%.

TAXATION OF COMPANIES

Taxes include:

- corporate income tax, which applies to profits made during a financial year corresponding to the calendar year, i.e. from January 1 to December 31. The corporate income tax rate is 30%. In the event of a loss-making financial year, the corporate income tax is replaced by a minimum tax known as the minimum flat-rate corporate tax (Impôt Minimum Forfaitaire sur les Sociétés IMF). The IMF is determined on the basis of sales for the year and may under no circumstances be less than 500 000 CFA francs or more than 5 000 000 CFA francs
- value-added tax (VAT) which applies to the supply of goods in Senegal. VAT is also charged on the supply of services if the debtor is established in Senegal, irrespective of whether the services are rendered/used in Senegal or abroad, and also if the services are used or rendered in Senegal. The VAT rate is 18%. There is a reduced rate of 10% applicable to hotel and restaurant services supplied by approved establishments
- the single global contribution (Contribution Globale Unique or CGU) which enables individual entrepreneurs to settle their tax obligations in a single, definitive payment. It applies to individuals whose annual sales, including all duties and taxes, do not exceed 50 million CFA francs when they are engaged in the supply of goods or services. It does not apply to individuals whose activity falls into the category of non-commercial profits, or to individuals carrying out sales, property rental or property management operations. The amount of the CGU is determined on the basis of sales from January 1 to December 31 of the previous year.

Financial statements and tax returns must be filed by 30 April of each year.

Taxation of Individuals

Individuals are subject to income tax on revenue determined from the taxpayer's overall net income. Aggregate net income consists of the total of the following: property income, industrial and commercial profits, non-commercial profits and similar income, income from movable capital, salaries, wages, indemnities, emoluments, benefits in kind, pensions and other benefits and life annuities and profits from farming operations.

Double Tax Treaties

Senegal has signed double taxation agreements with France, Belgium, Canada, Norway, Cameroon, Spain, Portugal, Italy, Tunisia, Central African Republic, Ivory Coast, Benin, Gabon, Burkina Faso, Madagascar, Niger, Rwanda, Togo, Mauritania, Mali, Chad, the Democratic Republic of Congo, United Kingdom, Qatar, Türkiye Malaisia, China (Taiwan), Morocco, Liban, United Arab Emirates and Luxembourg. The treaty with Mauritius was terminated in 2020. These agreements may vary slightly depending on the negotiations between the two signatory states, but they generally share the same basic principles.

EXCHANGE CONTROLS AND REGIONAL ORGANISATIONS

In West African regional organisations such as WAEMU and ECOWAS, exchange controls are designed to maintain economic and monetary stability, protect foreign exchange reserves and promote regional integration, while encouraging the liberalisation of foreign exchange to stimulate investment and trade. Control measures may include restrictions on the purchase or sale of foreign currency, limits on the transfer of funds abroad or strict rules on foreign investment.

Senegal is a member of the West African Economic and Monetary Union (WAEMU/UEMOA) and belongs to the CFA Franc zone in which the transfer of funds is unrestricted.

The CFA Franc is the currency of the Union and is linked to the Euro at a fixed rate of 655.957 CFA to 1 Euro. There are no exchange controls between Senegal and the other countries which belong to the CFA Franc zone, namely Benin, Burkina Faso, Ivory Coast, Equatorial Guinea, Mali, Niger, Togo, Cameroon, Central African Republic, Congo Brazzaville, Gabon and Chad. In general, the transfer of funds for commercial operations is allowed but there may be exchange control restrictions with regard to funds transferred outside the CFA zone and the conversion of currency. If a bank account is opened in the name of a foreign entity and funds are received in foreign currency in that account, then transfers can also be made in that foreign currency without any restriction. This may generally be done by the relevant commercial bank. However, depending on the currency of the bank account and whether the account holder is a resident or non-resident, the ability to convert currency may vary.

Senegal is a signatory to the Treaty of Lagos, which established ECOWAS (Economic Community of West African States), signed on 28 May 1975 by fifteen West African countries: Benin, Burkina Faso, Ivory Coast, Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo. ECOWAS was created to promote the ideal of collective self-sufficiency among its member states. As an economic union, it also aims to create a single trading bloc through economic cooperation.

Senegal is a signatory to the Organisation for Harmonisation of Business Law in Africa (OHADA) Treaty that came into effect on 1 January 1998. The treaty standardises business law in the seventeen signatory states and establishes a Common Court of Justice and Arbitration. The OHADA signatory states are Benin, Burkina Faso, Cameroon, Central African Republic, Comoros, Congo Brazzaville, RD Congo, Ivory Coast, Gabon, Equatorial Guinea, Mali, Niger, Senegal, Chad, Togo, Guinea Bissau and Guinea Conakry.

INTELLECTUAL PROPERTY

Industrial property rights can be grouped into three categories: industrial creations, distinctive signs and protection against unfair competition. Inventions, utility models, industrial designs and plant varieties fall into the category of industrial creations, while trademarks, trade names and geographical indications fall into the category of distinctive signs. Literary and artistic property rights include copyright (for example rights of musicians, authors of novels and authors of cinematographic works) and rights related to copyright (for example rights of performers and producers of phonograms or videograms).

Senegal is a member of the African Intellectual Property Organisation for promotion of Industrial Property (OAPI). The OAPI is the intergovernmental body of seventeen African States, responsible for uniformly protecting intellectual property rights in the territories of these States. The other members of this organisation are Benin, Burkina Faso, Cameroon, Central African Republic, Comoros, Congo, Ivory Coast, Gabon, Guinea Conakry, Niger, Mali, Mauritania, Senegal, Chad, Togo, Equatorial Guinea and Guinea Bissau. The OAPI plays an essential role in the economic development of its member states by uniformly protecting intellectual property rights. By harmonising national legislation, it makes it easier for businesses and innovators to do business, thereby boosting competitiveness and access to international markets. This protection is particularly beneficial for SMEs and start-ups, enabling them to secure their development and attract investors.

OAPI also carries out training and awareness-raising activities to strengthen the management and enforcement of intellectual property rights. It also works with other international organisations to promote protection on a global scale. By protecting local creations, OAPI helps to preserve the economic and cultural identity of its member countries. However, challenges remain, particularly in terms of implementation and awareness, requiring additional efforts to modernise legal infrastructures and strengthen national capacities. The duration of protection varies according to the type of right, and it is essential to monitor and enforce these rights in member countries.

LEGAL SYSTEM

Senegal's judicial system is based on a set of principles and institutions that ensure the application of laws and the protection of the rights of individuals and companies. All persons have a right of recourse to the courts to assert their rights and a right to appeal to the court of appeal and, if necessary, to the Supreme Court.



SOUTH AFRICA
WERKSMANS ATTORNEYS

FIRM INFORMATION

Website address : **www.werksmans.com**
Languages spoken : **English, German, French, Zulu, Tswana, Xhosa, Sotho and Afrikaans**
Telephone : +27 11 535 8296
Address : The Central, 96 Rivonia Road, Sandton, Johannesburg, 2196
Contact : Pieter Steyn
Email : psteyn@werksmans.com

SOUTH AFRICA | WERKSMANS ATTORNEYS

COUNTRY INFORMATION

South Africa is the second largest economy in Africa (after Nigeria) and has sophisticated banking, financial services, mining, telecommunications, agricultural, ICT, commercial and industrial sectors and a developed road, rail, airport and port infrastructure. It is ranked as an upper-middle income economy by the World Bank. Its population is about 65 million (although it is estimated that there could be several million legal and illegal immigrants) and comprises a rich diversity of cultures and religions (including Christian, Hindu, Islam, Judaism and African customary). It has 12 official languages including English, Afrikaans, nine African languages and sign language. Its area is about 1 219 090 square kilometres and it is divided into nine provinces with three capital cities, Pretoria (administrative capital), Cape Town (legislative capital) and Bloemfontein (judicial capital).

POLITICAL SYSTEM

Multiparty democracy. The Constitution is one of the most progressive in the world and entrenches a bill of rights which guarantees property rights, equality, socioeconomic rights, individual freedoms, an independent judiciary and a free press. The President is limited to two five year terms of office. Parliament is elected based on a proportional representation system. Each of the nine provinces has its own provincial legislature and executive. During national elections in 2024, the ruling African National Congress lost the majority in Parliament which it had enjoyed since 1994. A coalition of 10 parties was formed as a "Government of National Unity" (GNU).

INVESTMENT CLIMATE

South Africa generally welcomes foreign investment and virtually all business activities are open to foreign investors. However foreigners may not directly or indirectly control or have a greater than 20% interest in a commercial broadcasting licensee and foreign residents may not hold more than 25% of the voting rights in an air services licensee (although the Minister of Transport may grant an exemption in this regard). Private security firms must be at least 51% locally owned. The establishment of branches of foreign banks requires the consent of the Registrar of Banks (several foreign banks operate in South Africa including Citibank, China Construction Bank, Standard Chartered Bank, Bank of China, JP Morgan and State Bank of India). There is no restriction on the foreign ownership of land. Monetary policy is determined by the South African Reserve Bank which is independent of Government and follows a generally conservative monetary policy involving inflation targeting. Inflation was about 3.2% in January 2025.

Foreign investors are generally afforded the same treatment as local investors with some exceptions (for example only residents are subject to the South African exchange control regime). During 2013, the Government decided to unilaterally terminate South Africa's Bilateral Investment Treaties ("BITS") with Belgium, Luxembourg, Spain, the Netherlands, Germany and Switzerland and announced that all other existing BITS would be phased out and replaced by the new Protection of Investment Act. The Act provides protections for foreign investment. For example investors have a right to fair administrative treatment, a right to property in terms of the Constitution and a right not to be treated less favourably than locals. The Act however reserves the sovereign rights of the South African Government to legislate in the "public interest" and restricts foreign investors' recourse to international arbitration (as provided in most BITS) including arbitration at the International Centre for the Settlement of Investment Disputes (ICSID). Compensation for expropriation will be "just and equitable" as required by the Constitution (ie unlike most BITS, it is not guaranteed that the compensation will be fair market value). Most BITS (including those already terminated by the Government) contain survival provisions for periods of 10 years or more post termination and investors from those countries will continue to be able to rely on the protections in the BITS (including recourse to international arbitration and fair market value compensation for expropriation) for such survival period. However some of these survival periods in BITS terminated in 2013/2014 are expiring or have expired.

Many foreign companies have based their sub Saharan operations in South Africa due to its advanced infrastructure and economy (especially compared to other African countries), political stability and strong South African business and Government ties to the rest of the continent. Other advantages are South Africa's network of double tax treaties (see under taxation below) and investment protection agreements as well as a favourable "headquarter company regime" (see under investment incentives below). The Government has implemented localisation policies in certain sectors (like sugar and textiles) to restrict imports including by maintaining tariffs on certain imports (like steel) to protect local producers.

The Government has developed industrial development zones in East London and Coega near Port Elizabeth (both ports in the Eastern Cape Province), the Saldanha Bay port in the Western Cape, the Dube Trade Port in Durban and the port of Richards Bay in KwaZulu Natal. Special economic zones have been established at Maluti A Photung in the Free State Province, OR Tambo International Airport in Johannesburg and Musina/Makhado in the Northern Limpopo Province. Incentives exist for companies to carry on business in such zones. Financing for various projects may be provided through the State owned Industrial Development Corporation (IDC), the Development Bank of Southern Africa

(DBSA) and, for small and medium sized businesses, from the Small Enterprise Development Finance Agency (SEFDA). The National Empowerment Fund has been set up to fund Black Economic Empowerment transactions but currently requires recapitalisation.

An electricity supply crisis started in 2008 and has continued intermittently for the last 16 years causing widespread blackouts and economic dislocation due to corruption and a failure to maintain electricity infrastructure. Blackouts decreased significantly in 2024 but have started again in 2025. The supply crisis has damaged investor confidence and electricity costs have increased significantly. South Africa still relies on coal based electricity plants but there is a longstanding existing nuclear energy plant based at Koeberg in the Western Cape and several solar, wind and other alternative renewable energy projects have been developed in terms of a public private partnership initiative with the Government.

Concerns about a secure water supply are increasing due to drought, poor planning and a failure to maintain infrastructure. The city of Cape Town almost ran out of water in 2018 and there have been increasing instances of water cut offs in the economic heartland of Gauteng province (which includes Johannesburg and the capital city, Pretoria).

Corruption and mismanagement remain serious problems at all levels of Government and State owned enterprises. The Zondo Commission (chaired by Chief Justice Zondo) uncovered serious corruption especially during the term of former President Zuma (who left office in 2018). Unfortunately there have been few prosecutions pursuant to its report and the Government has been slow to implement its recommendations. In February 2023, South Africa was added to the Financial Action Task Force's (FATF) "greylist" for failure to comply with international standards to prevent money laundering and terrorist financing. The Government has taken steps to address the concerns and hopes to resolve all concerns by the end of 2025.

Unemployment remains very high (officially about 32% in 2024) and growth has been anaemic (0.8% in 2024 and projected at 1.5% for 2025) especially when compared to other African countries. Government's failure to maintain port, rail and road infrastructure has negatively affected trade and exports. Steps are being taken to try and resolve these issues through public-private partnership but progress has been slow.

The Government owns approximately 25% of the land area of the country and, through various State owned enterprises, owns airports, ports, the national airline (South African Airways recently saved from insolvency by a Government bail out), oil pipelines, railways, electricity generation and distribution facilities and interests in oil and gas exploration and the defence industry. A State owned company, Alexkor, is involved in diamond mining. Several State owned enterprises (for example electricity parastatal Eskom, the Post Office, Petrosa, the South African Broadcasting Corporation and South African Airways) have had severe debt and solvency problems due to corruption and/or mismanagement.

A law introducing a National Health Insurance (NHI) scheme was signed by the President in May 2024 and will (if fully implemented) seriously disrupt the private health care sector. Several court challenges have been launched against the NHI on constitutional grounds.

A new Expropriation Act was signed by the President in February 2025. The Constitution provides that compensation for expropriation must be "just and equitable". The new Act expressly provides that compensation for the expropriation of land "in the public interest" may be nil (so called "expropriation without compensation") depending on the facts and circumstances of the particular case. This provision has been controversial and resulted in court challenges on constitutional grounds as well as criticism from the US Government. It remains to be seen how the new Act will actually be implemented in practice. A land claims process (which started 30 years ago and allows restitution or granting compensation to black South Africans deprived of land as a result of apartheid policies) has not yet been finalised.

BROAD-BASED BLACK ECONOMIC EMPOWERMENT ("BBBEE")

The promotion of BBBEE is one of the key Government policies to address the racial and gender inequalities of the country's apartheid legacy (which restricted and excluded non-white South Africans from participating in the economy). BBBEE is regulated by the Broad Based Black Economic Empowerment Act and Codes of Good Practice on BBBEE. BBBEE transformation charters and Codes have been developed for certain sectors of the economy including mining, financial services and construction. It must be noted that there is (other than in certain sectors like mining where licence conditions include BBBEE ownership requirements) no general legal requirement that a firm must have a BBBEE shareholder but a firm's BBBEE rating will be negatively affected if it earns no BBBEE ownership points. There is a special dispensation allowing certain multinationals to remain 100% foreign owned and still earn BBBEE ownership points by means of so called "equity equivalent" programs approved by the Department of Trade, Industry and Competition.

Government policy has generally been based on the principle that the manner in which a firm applies BBBEE is to be decided by the individual firm and the BBBEE legal framework simply provides a methodology for measuring the BBBEE rating of the firm. However Government, regulatory bodies, parastatals and other public entities are obliged to take BBBEE into account in granting tenders and licences (eg mining and gambling licences) and in practice firms with low BBBEE ratings are less likely to be granted such tenders and licences. Government and parastatal procurement is

regulated by statute (a new Public Procurement Act was signed into law in July 2024 but regulations required to implement it have not yet been issued). Private sector firms may increase their BBBEE procurement scores by procuring from other private sector firms with good BBBEE ratings.

The BBBEE Act was amended in 2014 to inter alia criminalise "fronting" (effectively misrepresenting BBBEE status or conduct that undermines or frustrates the achievement of the objectives of the Act). Contraventions may result in fines (in the case of enterprises, fines of up to 10% of its annual turnover) and/or imprisonment for up to 10 years. In addition, the guilty person will be prohibited from contracting or transacting any business with any organ of State and/or public entity and will be entered into the National Treasury's register of tender defaulters. Any contract or authorisation awarded due to false information on BBBEE status may be cancelled by an organ of state or public entity. A BBBEE Commission has been established with wide powers to investigate complaints relating to BBBEE and "fronting".

The so called "generic" Codes (which apply to firms in sectors not covered by sector specific Codes) set out BBBEE targets and quite complex methods of measuring a firm's BBBEE status (level 1 is the top score). Five BBBEE elements (namely ownership, management control, skills development, enterprise and supplier development and socio economic development) are measured. Three "priority sectors" have been identified, namely ownership, skills development and the enterprise and supplier development elements. Failure to meet certain minimum requirements for these "priority sectors" will result in the automatic downgrading of the firm's BBBEE rating by one level.

An Exempt Micro Enterprise is a firm with a total annual turnover under R10 million and Qualifying Small Enterprises are firms with total annual turnover of between R10 million and R50 million. Exempt Micro Enterprises are deemed to have a Level four BBBEE status. Exempt Micro Enterprises and Qualifying Small Enterprises that are 100% black owned are deemed to have a level one BBBEE rating (the highest possible rating) and those that are 51% black owned are deemed to have a level two BBBEE rating.

Codes for specific sectors of the economy (and not the "generic" Codes) must be used for firms in a sector covered by a sector code. Sector codes have been issued in the tourism, construction, marketing/advertising, forestry, transport, defence, property, information and communication technology (ICT), agricultural, legal and financial sectors.

FORMS OF BUSINESS

- Private or public limited liability profit company
- Close corporation (a separate "member managed" legal entity with no board of directors which was intended to facilitate small/medium sized businesses)
- External company (a branch of a foreign company conducting business or non-profit activities in South Africa)
- Partnership (including a limited partnership)
- Trading trust
- Sole trader
- Co-operatives.

Pursuant to the Companies Act, no new close corporations may be formed. Close corporations existing before the Act came into effect on 1 May 2011 are however permitted to continue to exist and conduct business and may be converted into companies.

FORMATION OF COMPANIES

Companies and close corporations are registered with the Companies and Intellectual Property Commission (CIPC) in Pretoria. Foreign incorporated (so called "external") companies must be registered within 20 business days of commencing business or non-profit activities in South Africa.

It is common to acquire a "shelf company" (ie an already incorporated company which has never traded and has no assets or liabilities) as an alternative to incorporating a new company with CIPC. The incorporation process involves reserving the company's name with CIPC, submitting certain prescribed forms and documents and paying certain prescribed fees to CIPC. Directors need not be South African residents and there are no minimum share capital requirements. The public officer of the company (the contact person for the tax authorities) must be a South African resident.

A business generally has to register for various tax purposes (including Value Added Tax and as a taxpayer), for the purposes of the skills development levy and with the Unemployment Insurance Fund. Business licences are required for certain activities (for example liquor sales and gaming).

EXCHANGE CONTROLS

The exchange control regime is administered by the Financial Surveillance Department of the South African Reserve Bank (SARB) and various "authorised dealers" appointed by SARB (which include the main commercial banks).

There are no exchange control restrictions on non-residents who may freely transfer capital in and out of South Africa. However certain exchange controls exist for South African residents, some of which may impact on non-residents (see below). South African subsidiaries and external companies (branch offices of foreign companies) are treated as residents and are accordingly subject to the exchange control regulations. Non-resident shareholders in a resident company should have their share certificates endorsed "non-resident". Endorsement is however generally a formality

(proof of payment of the purchase or subscription price into South Africa is required) and facilitates dividend payments by the resident company, as well as the remittance of sale proceeds, to the non-resident shareholder.

South Africa, Lesotho, Namibia and Eswatini have no exchange control restrictions between them by virtue of their membership of the Common Monetary Area.

All payments by residents to non-residents involve exchange control procedures and/or approvals. Payments for imported goods do not generally raise any issues. Resident companies (including external companies) may generally freely remit dividends and branch profits to non-residents provided that they are made out of trading profits and available funds. Auditors' certificates and other documents may have to be submitted. The acquisition by residents of assets outside the Common Monetary Area is also regulated to a greater or lesser degree.

Exchange control approval (some of which may be given by an authorised dealer rather than an application having to be made to SARB) is required for:

- a loan by a non-resident to a South African resident. SARB will generally not permit an interest rate exceeding the local prime bank overdraft rate for loans by non-resident shareholders to their local subsidiaries but may allow an interest rate of up to 3% above the prime rate for loans by other non-residents
- the sale of South African intellectual property to a non-resident.

Approval is no longer required for the following but they must be demonstrably arm's length amounts:

- payment of management, services and other fees by a resident to a non-resident
- payment of royalties, licence and similar fees to non-residents for the right to use knowhow, patents, trademarks, copyright or other intellectual property.

In 2021 the exchange control regime was further relaxed to allow "loop" structures where South African residents hold South African assets directly or indirectly through a non-resident.

TAXATION

Income tax (including capital gains tax) is levied on the worldwide income of South African residents subject to certain exemptions. Non-residents are however only taxed on their South African sourced income. There is no provision for group taxation.

The standard corporate tax rate is 27% for resident companies, close corporations and external companies. As dividends are subject to a withholding tax on dividends at the rate of 20% (reduced where appropriate by a double tax agreement). Foreign investors may prefer operating through external companies as there is no extra tax when branch profits are remitted abroad. Special rules apply for gold mining companies, long-term insurance companies, small business corporations and micro businesses. Individuals pay tax on a sliding scale with a maximum rate of 45%. Trusts pay tax at 45% of income retained and not distributed to beneficiaries.

Foreign dividends paid to residents may be subject to income tax at a maximum effective rate of 20%. There are however participation exemption rules.

There is a withholding tax of 15% of gross royalty payments to non-residents although double tax treaties may provide relief in appropriate cases.

There is a 15% withholding tax on interest paid to non-residents, subject to certain exemptions (including Government debt and listed debt interests) and relief under a relevant double tax agreement.

There is no tax levied on service fees paid to non-residents. However where the fee exceeds or is expected to exceed R10 million and representatives of the foreign service provider will be present in South Africa, the client is required to report the arrangement to the South African Revenue Service in the prescribed format.

Value added tax is levied at 15% (certain exemptions and zero ratings apply).

Capital gains tax is levied at an effective rate of 21.6% for all resident companies. Individuals pay the tax at the maximum effective rate of 18% and trusts at the maximum effective rate of 36% on gains not distributed to beneficiaries. Non-residents are not liable for this tax except where they hold a direct or indirect interest in immovable property in South Africa, or the asset is effectively connected to a permanent establishment that the non-resident has in South Africa.

There are a number of other specific taxes and duties including donations tax (20/25%), estate duty (20/25%), transfer duty on the transfer of immovable property (unless subject to VAT), securities transfer tax and a skills development levy.

There are various capital allowances and deductions as well as rules regulating transfer pricing, thin capitalisation and interest limitation.

South Africa has double taxation agreements with more nearly 80 countries including the Netherlands, Canada, India, Indonesia, Iran, Italy, Japan, Kenya, Malawi, the Peoples Republic of China, Singapore, Taiwan, Tunisia, Uganda, Zambia, Ireland, Pakistan, Russia, Sweden, Norway, United Kingdom, Germany, USA, Korea, Israel, France, Lesotho, Botswana, Mauritius, Namibia, and Zimbabwe. There are also 21 tax information and exchange agreements in force,

with possibly more to follow, especially with low-tax or no-tax jurisdictions. South Africa is also a signatory to the Multilateral Convention on Mutual Assistance on Tax Matters and FATCA as well as to the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (the so-called Multilateral Instrument or MLI). Legislation has been passed to regulate the global minimum tax rules.

REGULATORY ENVIRONMENT

The Competition Commission, Competition Tribunal and Competition Appeal Court deal with merger control, restrictive business practices and abuses and price discrimination by dominant firms. Several cartels have been successfully prosecuted by the Competition Commission with the imposition of severe financial penalties. The Commission has a cartel leniency policy and has published guidelines on the determination of penalties. The criminalisation of cartel conduct took effect from 1 May 2016.

The Takeover Regulation Panel regulates acquisitions and takeovers of all public companies, state owned companies and certain private companies. The Companies Act sets out the fiduciary duties of directors, corporate governance rules, mergers, amalgamations, public offers, schemes of arrangement, significant protections for minority shareholders and "business rescue" (similar to the USA's Chapter 11).

The JSE Limited is the largest securities exchange in Africa and has regulations governing companies listed on it. The Financial Services Board supervises the activities of financial institutions and financial service providers. Banks are regulated by the Registrar of Banks. Telecommunications, broadcasting, medical schemes, short and long term insurance, pension funds, medicines and pharmaceuticals, gambling and lotteries are regulated under separate legislation and regulators. There is also wide ranging environmental legislation which imposes personal liability on directors of contravening firms in certain circumstances.

The Consumer Protection Act and National Consumer Commission provides significant protection for consumers (defined as individuals and entities with turnover or assets under R2 million) and franchisees. The National Credit Act also protects consumers by regulating the extension of credit and enforcement of debts in certain circumstances. The Promotion of Access to Information Act allows access to Government and private firm information in certain circumstances. Personal data is comprehensively protected by the Protection of Personal Information Act (PoPIA).

There are strict anti-corruption laws as well as "know your client" information gathering requirements under the Financial Intelligence Centre Act which established the Financial Intelligence Centre to help combat money-laundering.

INTELLECTUAL PROPERTY

Protection is provided by statute and common law for patents, trademarks, copyright, designs and other intellectual property. There are public registries for trademarks, designs and patents and South Africa is a signatory to the Berne and Paris Conventions and the Patent Cooperation Treaty and is a member of the World Intellectual Property Organisation (WIPO).

TARIFFS AND TRADE

Exports mainly comprise gold, diamonds, platinum, other metals and minerals, machinery and equipment and certain agricultural products. Imports mainly comprise machinery and equipment, chemicals, petroleum products, scientific instruments and certain foodstuffs. China is currently South Africa's largest individual trading partner (for both imports and exports) although the member states of the European Union together are a larger trading partner than China. Other major export partners are Japan, Germany, UK, USA and the Netherlands. Other major import partners are Germany, USA, UK, Japan and Saudi Arabia (oil).

Import tariffs and direct controls such as import permits exist. There is free and virtually unimpeded exchange of goods between member states of the Southern African Customs Union (Botswana, Lesotho, Namibia, South Africa and Eswatini).

South Africa has concluded a trade agreement with the European Union (EU) for a Free Trade Area (FTA) between South Africa and the EU. The EU concluded negotiations on an Economic Partnership Agreement (EPA) on 15 July 2014 with the Southern African Development Community (SADC) EPA Group comprising Botswana, Lesotho, Mozambique, Namibia, South Africa and Eswatini.

A tripartite FTA between SADC, the East African Community and the Common Market for Eastern and Southern African (COMESA) has been launched to lower trade barriers and establish an FTA which would stretch from South Africa to Egypt.

South Africa has benefited from the USA's African Growth and Opportunity Act (AGOA) which allows certain South African products to enter the USA duty free. AGOA is however due to expire on 30 September 2025 and it is unclear if it will be extended. An agreement has been concluded between the members of the SADC (South Africa, Angola, Democratic Republic of Congo, Lesotho, Malawi, Mauritius, Mozambique, Namibia, Seychelles, Eswatini, Tanzania, Zambia and Zimbabwe) providing for the liberalisation of trade and lowering of tariff barriers with the ultimate establishment of an FTA.

South Africa has ratified the treaty creating the African

Continental Free Trade Area (AfCFTA) and has submitted a tariff proposal as part of the Southern African Customs Union.

INVESTMENT INCENTIVES

There are Government programs to support research and development, black owned and small/medium sized businesses, export market research, trade missions and other export marketing initiatives, feasibility studies, manufacturing projects and certain industry specific incentives (eg in the motor manufacturing, tourism and film industries). The Department of Trade, Industry and Competition has a Manufacturing Competitive Enhancement Programme (MCEP) which provides various incentives for the manufacturing sector to raise competitiveness and retain jobs.

South Africa has implemented a "headquarter company" regime to incentivise firms to use South Africa to hold investments in other African countries (or elsewhere). There are certain relatively complicated requirements to qualify including:

- the company must be incorporated or have its place of effective management in South Africa in each year
- each shareholder must hold 10% or more of the equity shares and voting rights in the company (ie the maximum number of shareholders is 10)
- in each year 80% or more of the cost of the total assets of the company must be attributable to an interest in equity and/or a loan to a foreign company in which the headquarter company has at least 10% of the equity and voting rights and/or intellectual property that is licensed to such a foreign company
- in any year and if the gross income exceeds R5 million, at least 50% of the gross income of the company must comprise rental, dividends, interest, royalty or a service fee payable by such foreign company or comprise the proceeds from a disposal of an interest therein.

The headquarter company will be subject to tax on its worldwide income (like other South African residents) but its shareholders will not be subject to dividends tax on any dividend declared by it. Dividends paid by the company to its shareholders will be exempt from income tax in their hands. Similarly dividends received by the headquarter company are exempt from tax where it holds at least 10% of the equity and voting rights in the foreign company. The withholding tax on interest will also not apply to interest paid by a headquarter company to a non-resident lender.

Transfer pricing and thin capitalisation rules do not apply to:

- loans by the headquarter company to investees (if it holds at least 10% of the equity and voting rights in the investee)
- loans from non-residents that are on-lent by the headquarter company to such investees
- intellectual property licensed to the headquarter company and licensed by it to such investees
- interest on loans and royalties on intellectual property licensed from a non-resident may be deducted by the headquarter company to the extent that it earns interest and royalties respectively from a non-resident company in which it has at least a 10% shareholding/voting rights

Other benefits include an exemption from capital gains tax on sales of shares held by the headquarter company, as well as shares in the headquarter company.

If a South African incorporated company is used as a headquarter company, the company may also be registered with the exchange control authorities as a headquarter company under the exchange control rules (which are very similar to the tax rules) and such registration will result in exemption of the headquarter company from the exchange control rules.

The headquarter company will have to make an annual election to be a headquarter company for tax purposes and must also submit an annual report (which need not be onerous or lengthy) to the Treasury.

Industrial Development Zones have been established at the ports of East London and Coega (near Port Elizabeth) in the Eastern Cape Province, Saldanha Bay in the Western Cape, Dube Trade Port near Durban airport and Richards Bay in KwaZulu Natal. Special economic zones with various incentives for firms have been established at Maluti A Phofung in the Free State Province, OR Tambo International Airport in Johannesburg and Musina/Makhado in the Northern Limpopo Province near the border with Zimbabwe. Incentives exist for companies to carry on business in such zones.

Financing at reduced interest rates may be obtained from the State owned Industrial Development Corporation (IDC). Financing and other assistance is also available to small and medium sized businesses from the State owned Small Enterprise Development and Finance Agency (SEDFA). South Africa has been admitted to the European Community Investment Partner program. Projects may also obtain financing from the Development Bank of Southern Africa. Various foreign funders and donors including the World Bank, International Finance Corporation (IFC), Commonwealth Development Corporation and USAID have a presence in South Africa.

LEGAL SYSTEM

The legal system is based on Roman Dutch common law with important influences from English law. The Constitution is the supreme law and entrenches basic freedoms, human rights and the independence of the judiciary. The court system comprises lower Magistrates Courts and the High Courts. Administrative decisions may be reviewed by the courts.

Constitutional matters are dealt with by the Constitutional Court which is empowered to strike down legislation which conflicts with the Constitution. Appeals on non-constitutional matters are heard by the Supreme Court of Appeal in Bloemfontein. Foreign judgements and arbitral awards may be enforced in South Africa.

South Africa has signed the New York Convention and (although its 1965 Arbitration Act needs reform) arbitration has become popular especially for commercial disputes. A local independent body, the Arbitration Foundation of Southern Africa (AFSA), has established a good reputation and track record. AFSA has also been involved in the establishment of Africa ADR, an alternative dispute resolution body for African commercial disputes which provides a cheaper local alternative to arbitrations outside Africa under for example the rules of the International Chamber of Commerce (ICC) and London Court of International Arbitration (LCIA). The International Arbitration Act is intended to establish South Africa as an African dispute resolution forum. An arbitration centre for the resolution of African disputes involving Chinese investors has been established in Johannesburg.

MEMBERSHIP OF INTERNATIONAL AND REGIONAL ORGANISATIONS

South Africa is a member of the Southern African Customs Union (SACU), Common Monetary Area (CMA), Southern African Development Community (SADC), World Bank, International Monetary Fund (IMF), African Union (AU) and its New Partnership for African Development (NEPAD) program, the United Nations and its agencies, the World Trade Organisation (WTO), the British Commonwealth, the G20, IBSA (India, Brazil and South Africa) and BRICS (Brazil, Russia, India, China, South Africa, Saudi Arabia, Egypt, United Arab Emirates, Ethiopia, Indonesia, and Iran).

LABOUR RELATIONS

There are several statutes regulating labour relations, basic conditions of employment and occupational health and safety and protecting the rights of employees (including regarding unlawful discrimination). The Employment Equity Act promotes affirmative action for black people, women of all races and people with disabilities and allows the Minister of Employment and Labour to set sectoral targets for certain employers with heavy penalties for non-compliance. Employers pay skills levies (equal to a percentage of the value of their payrolls) under the Skills Development Levies Act. A Commission for Conciliation, Mediation and Arbitration (CCMA), Labour Court and Labour Appeal Court deals with labour disputes. Expatriates require work permits.

Minimum wages are regulated by the National Minimum Wage Act. As of 1 March 2025, the national minimum wage is R28.79 per hour. Employers are required to make monthly contributions to the Unemployment Insurance Fund and must register with (and pay contributions to) the Compensation Fund to cover occupational injury claims. Employers are required to deduct “Pay As You Earn” (PAYE) or employees tax from employees remuneration and pay it to the tax authorities.



TANZANIA
FB ATTORNEYS

FIRM INFORMATION

Website address : **www.fbattorneys.co.tz**
Languages spoken : **Kiswahili, English, German, Gujerati, Hindi**
Telephone : +255 22 2135994/5
Address : 8th Floor Amani Place, Ohio Street, Dar es Salaam
Contact : Dr. FAyaz Bhojani and Dr. Theophil Romward
Email : fbhojani@fbattorneys.co.tz / tromward@fbattorneys.co.tz

TANZANIA | FB ATTORNEYS

COUNTRY INFORMATION

The United Republic of Tanzania, the largest country in East Africa was formed on 26 April 1964 from the Union of Tanganyika and Zanzibar which were granted independence in 1961 and 1963, respectively. The country has a population of 62 million according to the 2022 national census, an increase of 37% from 2012 (about 60 million in the Mainland and 1.9 million in Zanzibar). In 2050, it is projected that the child population will increase to 59 million. This makes Tanzania amongst the 10 most populous African countries and presents an opportunity for further development if the demographic dividend is capitalised with investments in and for children and youth. Mainland Tanzania covers 945 087 km^2 and Zanzibar 1 658 km^2. The capital city is Dodoma (legislative) while Dar es Salaam is the major commercial city. Other metropolitan centers are Arusha, Mwanza, Mbeya, Mtwara and Kilimanjaro. The Prime Minister, ministers, senior government officials, the judiciary and other government entities have relocated to Dodoma from Dar es Salaam.

POLITICAL SYSTEM

The country is a unitary republic of two states based on a multiparty parliamentary democracy. These two states were the Republic of Tanganyika and the Revolutionary Republic of Zanzibar (together forming the United Republic of Tanzania). All state authority in Tanzania is exercised and controlled by the Government of the United Republic of Tanzania respect of union matters and non-union matters concerning Mainland Tanzania while the Revolutionary Government of Zanzibar exercises authority on non-union matters concerning Zanzibar.

LATEST GDP FIGURES

In June 2020, the Government released revised estimates of Tanzania's First Quarter Gross Domestic Product for the base year 2015. According to the revised GDP in 2024, the value of GDP in absolute terms at current prices was USD18.73 billion compared to USD16.99 billion in the similar quarter of 2023. Further, the value of GDP at constant 2015 prices increased to USD14.27 billion in the first quarter of 2024 from USD13.53 billion in the corresponding quarter of 2023 (equivalent to a growth of 5.6%).

During the period 2023-2024, finance and insurance activities recorded the highest growth (17.1%) followed by information and telecommunications (13.4%), other social services (8.6%), electricity services (7.6%), transport and storage (7.6%), hotel and food services (7.2%), administration and security services (6.6%) and construction (6.4%).

INFLATION RATE

In 2024, the average inflation rate in Tanzania amounted to about 4.04% compared to the previous year.

INVESTMENT CLIMATE

The Government has a favourable policy towards foreign direct investment (FDI) and has made significant efforts to encourage FDI although the number of tax incentives that were being granted has declined, and are only applicable to strategic large scale projects. Generally, foreign investors receive the same treatment as local investors.

The Tanzania Investment Act, 2022 provides some favourable conditions for investors. The Act establishes the Tanzania Investment Centre (TIC) as the Government agency with the objective of promoting and facilitating investment. Benefits available under the Act include the guaranteed repatriation of profits and proceeds of sale of investment, a guarantee against expropriation, guaranteed minimum quotas of up to five expatriate employees and certain tax benefits (which have been decreased from what was previously available). The Act applies to all businesses other than mining and oil exploration and exploitation. However, the benefits in relation to the guaranteed repatriation of dividends and capital and the guarantee against expropriation available under the Investment Act are also extended to investors in mining and oil exploration and exploitation. In addition, the Constitution of the United Republic of Tanzania guarantees the right to private ownership of property and State protection of that property and forbids the nationalisation of private property without due process that guarantees fair and speedy compensation. Similar incentives are offered to investors in Zanzibar through the Zanzibar Investment Promotion Agency (ZIPA).

All land in Tanzania is public land vested in the President who grants rights of occupancy on leasehold (not freehold) basis for specific periods of 33 years, 66 years and 99 years. There is a Central Land Registry in which all land titles are registered. One copy of the title deed is kept at the Land Registry, the other copy being in the possession of the owner. Any mortgages, charges or similar third party rights against the property or the transfer of the right of occupancy are endorsed on the two copies of the title deeds as proof of their existence. There are Zonal Land Registries which are administratively answerable to the Central Land Registry. The Commissioner for Lands is the principal administrative officer and advisor to the Government with respect to land matters and is a Presidential appointee.

Investments on the Dar es Salaam Stock Exchange (the DSE) are open to foreign investors but the injection of foreign

capital is capped at 60% of the listed shares. However, in the case of a public issue and with the prior written approval of the Capital Markets and Securities Authority, an issuer may allot securities in excess of the prescribed limit to residents of the East African Community and foreign investors, in that order of priority, if Tanzanians do not take up the securities.

FORMS OF BUSINESS

Principal forms of business organisation are a sole proprietor, partnership, company and registered branch of a foreign company.

FORMATION OF COMPANIES

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

A foreign investor can set up a place of business in Tanzania by either registering a branch of a foreign company or by incorporating a local company. A company can be incorporated as an independent entity or a subsidiary of a parent company incorporated in a foreign jurisdiction. Companies require a minimum two shareholders but may be 100% foreign owned except in certain sectors such as shipping agencies, insurance, telecommunications, TV and radio stations and certain primary mining licences which are restricted to citizens of Tanzania or require a specified percentage of local participation.

Business licences must be obtained for all forms of business undertaken for gain. Certain businesses like banks, insurance companies, contractors, tour operators, hotels, mining, oil and gas and professionals must have specific sector licences issued by the respective regulatory authorities in addition to business licences. In other sectors such as oil and gas sector, the companies sign agreements (normally production sharing agreements (PSAs)) for upstream petroleum operations with the National Oil Company and the Government of Tanzania.

EXCHANGE CONTROLS

Tanzania enjoys a liberal foreign exchange control regime where residents can establish and maintain foreign currency bank accounts with local banks with limited regulation of international transfers. Transfer of funds overseas requires proof of the reason for the remittance and, at times, proof that relevant taxes on the funds have been paid. The Bank of Tanzania regulates the establishment of foreign currency accounts abroad and dealings relating to gold.

TAXATION

The Income Tax Act, Cap. 332 [R.E. 2019] regulates the assessment and collection of income tax. Other tax statutes include the Value Added Tax Act 2014, the East African Community Customs Management Act, 2004 and the Stamp Duty Act, [R.E. 2019]. The main taxes are:

- corporate income tax - 30% (25% for newly listed companies for three years)
- individual income tax - maximum rate of 30%
- VAT - 18%
- tax on the disposal of an investment asset by an individual - resident - 10% and non- resident - 20%
- stamp duty on conveyancing - 1%.

There are various capital deductions on buildings, plant and machinery, agriculture or livestock farming, manufacturing and tourism, mining prospecting as well as oil and gas exploration.

Tanzania has double taxation treaties currently in force with Canada, Denmark, Finland, Italy, Norway, South Africa, Sweden and Zambia. Agreements with Kenya and Uganda are signed but awaiting ratification.

MONETARY POLICY

Tanzania's monetary policy is formulated by the Bank of Tanzania using instruments such as the Refinancing Policy, Minimum Reserve Policy, Open Market Policy, foreign exchange interventions and others. The attainment of monetary policy objectives is facilitated by a continued application of market oriented policies in the financial sector, the public sector, the industrial sector, the agricultural sector and the external payments regulatory regime

LEGAL SYSTEM

Tanzania's legal system is sourced from English common law, statutes, case law, Islamic law and customary law. English common law applies only in the absence of statutory law and where commercial law has been enacted, the common law does not apply. Islamic law is applied only in matters of marriage and succession to Tanzanians of Islamic faith while customary law applies generally to matters of ancestral land ownership and inheritance.

The judicial system is made up of the Court of Appeal of Tanzania which extends to Zanzibar, the High Court of Tanzania, Courts of Resident Magistrates, District Courts, Primary Courts and special tribunals. Zanzibar has its own High Court and subordinate courts. A Commercial Court was established as a division of the High Court of Tanzania in 1999 to quickly decide commercial disputes. This Court has had reasonable success in expeditiously resolving

commercial disputes.

Tanzania has supportive business and commercial laws, such as the law guaranteeing private property rights (which is also enshrined in the Constitution), laws authorising business enterprises (the Companies Act, 2002 and the Business Names Registration Act), laws governing contracts, the sale of goods, leases, payment and credit instruments, secured transactions, bankruptcy and unfair trade practices, among others.

Tanzanian courts will uphold the judgments of foreign courts or foreign arbitral awards on a reciprocal basis. Tanzania has reciprocal enforcement of judgments agreements with the United Kingdom, Swaziland, Zimbabwe, Somalia, Seychelles, Zambia, New South Wales, Mauritius, Sri Lanka, Botswana and Lesotho.

INTELLECTUAL PROPERTY

The Copyright and Neighboring Rights Act No. 7 of 1999 provides for the protection of copyright and other rights in literary, artistic works, folklore and other related matters. The Trade and Service Marks Act No. 12 of 1986 provides for the registration and protection of trade and service marks and related matters. The Patent (Registration) Act No. 1 of 1987 provides for the protection of inventions and innovation for the facilitation of the acquisition of technology on fair terms through the grant and regulation of patents, utility certificates and innovation certificates.

BANKING

The Bank of Tanzania is responsible for establishing conducive monetary policies to ensure low and stable inflation. The Banking and Financial Institutions Act No.5 of 2006 (BFIA) consolidates the law relating to banking and aims to harmonise the operations of all financial institutions in Tanzania, to foster sound banking activities, regulate credit operations and provide for other matters incidental to or connected with those purposes.

INSURANCE

The Insurance Act No.10 of 2009 came into force on 1 July 2009 and established the Tanzania Insurance Regulatory Authority (TIRA) which is vested with the powers to regulate the insurance market in Tanzania and promote and maintain an efficient, fair, safe and stable insurance market for the benefit and protection of insurance policyholders.

KEY STRATEGIC GROWTH INITIATIVES BY GOVERNMENT/PRIVATE

The National Strategy for Growth and Poverty Reduction (NSGRP) has identified Private Sector Development (PSD) as an important source of Tanzania's economic growth. The strategy stipulates that domestic firms including Small and Medium sized Enterprises (SMEs) will be supported and encouraged to be innovative, pay attention to product development, quality and superior marketing strategies that make them competitive and capable of responding to global market conditions.

PUBLIC PRIVATE PARTNERSHIPS

The Public Private Partnership Act promotes private sector participation in the provision of public services through public private partnership projects involving investment capital, managerial skills and technology. All Public Private Partnership projects (both solicited and unsolicited) must be procured through an open and competitive bidding process in accordance the Public Private Partnership Act, Cap. 103.

ECONOMIC EMPOWERMENT

The Government has implemented the National Economic Empowerment Policy of 2004 by providing (through various funds and programs) soft loans and advice on forming cooperatives (SACCOS) and Village Community Banks (VICOBA) in order to promote income generation, employment and poverty reduction. It provides training to entrepreneurs, advice on savings and investments and conducts studies aimed at developing entrepreneurship skills as well as initiating and improving economic activities. In addition, the Government promotes the participation of people in development activities through the Tanzania Social Action Fund (TASAF).

In line with the National Economic Empowerment Policy, the National Economic Empowerment Act No. 16 of 2004 has been enacted in order to establish the National Economic Empowerment Council for the promotion and facilitation of ownership of income generating activities and assets by Tanzanians, to provide a legal and Institutional framework for the Council, to establish the National Economic Empowerment Fund and to provide for the control of the financial affairs of the Council and the Fund and other incidental matters.

TREATIES AND BILATERAL AGREEMENTS

Tanzania has entered into bilateral treaties for the promotion and protection of Foreign Direct Investment (FDI) with Denmark, Finland, Germany, India, Italy, Netherlands, Norway, Sweden, Switzerland, United Kingdom and Zambia.

Tanzania is a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, the Centre for Settlement of Investment Disputes (ICSID) and Multilateral Investment Guarantee Agency (MIGA).

MEMBERSHIP OF INTERNATIONAL AND REGIONAL ORGANISATIONS

Tanzania is a member of the United Nations Organisation, the African Union, the East African Community (EAC) and the Southern African Development Community (SADC).

ROAD AND TRANSPORT

Transport in Tanzania is mainly by road supplemented by a series of railway networks. Tanzania's road network is currently of better quality with tarred roads connecting all major regions across the country. Tanzania has an abundance of coastal and lake waterways around its borders. The active ports are Dar es Salaam, Tanga, and Mtwara. There are also the minor ports of Kilwa, Lindi and Mafia on the Indian Ocean.

WATER

Tanzania has sufficient water resources to meet most of its present needs. They include surface and underground sources.

ENERGY AND GAS

Electricity generation, transmission and distribution in Tanzania are provided through the Tanzania Electric Supply Company (TANESCO). TANESCO operates 8 natural gas power plants, 7 hydropower plants, 2 heavy fuel oil plants, and 7 small gas oil power plants, as of 2022. Although electricity generation and distribution have been liberalised, TANESCO (a 100% Government owned entity) is responsible for 90% of the electricity supply. Biomass-based fuels particularly fuel-wood (charcoal and firewood) accounts for more than 90% of the primary energy supply. Commercial energy sources i.e., petroleum and electricity, account for about 8% and 1.2% respectively of the primary energy used. Coal, solar and wind account for less than 1% of energy used.

According to the Tanzania Investment Centre (TIC), there are numerous deep-sea blocks that are yet to be explored for oil and gas and Tanzania's National Oil Company has invited oil and gas companies and other specialised investors to participate in the exploration of hydrocarbons in Tanzania. Successful applicants are invited to negotiate a Production Sharing Agreement (PSA). The opportunities include a deep offshore sedimentary basin comprising seven blocks, each with an average size of 3000 sq. km, that are located between 2000 meters to 3000 meters of water depths from 20° 30'E to 41°40'E and 7°30' to 9°00S. The deep offshore blocks have good coverage of modern regional 2D seismic data.

TELECOMMUNICATIONS

Tanzania has the second largest telecommunications market in East Africa after Kenya. Tele-density has risen from 1% in 2001 to 99% in February 2024 representing a subscriber base of 67.72 million mobile subscribers.

The Electronic and Postal Communications Act No. 3 of 2010 sets out the procedure for regulating the communications industry and requires the registration of all detachable SIM cards and built-in SIM card mobile telephones. The objective is to enhance national security, to protect consumers from misuse of communication services and to enable consumers to be identified when they use value-added services such as mobile money transfers (another mobile service which is growing steadily). The Act also requires existing licensees of network facilities, network services, application services or content services to offer their shares to the public and subsequently list on the Dar es Salaam stock exchange (DSE) within three years from the commencement of the statute. The listing of such shares must however comply with the listing requirements of the Capital Markets and Securities Authority. Regulations governing the listing of mobile company operators have not yet been issued.

From July 2016, all mobile operators (including amongst others telecommunication companies and suppliers) must float 25% of their paid up share capital to local Tanzanians on the DSE.

However, the Finance Act, 2020 has amended the Electronic and Postal Communications Act and removed the requirement to list shares on the DSE for certain entities, including those owned by the Government. Specifically, licensees holding the below licences are not required to offer their shares to the public:

- Network facilities or network services license wholly owned by the Government
- Network facilities or network services license in which the Government owns 25% shares or more
- Network facilities licence for lease of towers.

AGRICULTURE

Tanzania has good arable land and agriculture is the most important sector of the economy, accounting for over 14.2% of the Gross Domestic Product (GDP). Coffee, tea, sisal, cotton and tobacco are the principal exports accounting for as much as 50% of total exports. Mining, tourism,

transportation, manufacturing and fishing are playing an increasingly important role in the economy. Agriculture is still dominated by subsistence farming. Food crops make up about 85% of the sector with livestock accounting for 3%. Major food crops include cassava, millet, maize, sorghum, rice, wheat, pulses (mainly beans) potatoes, bananas and plantains.

TOURISM

There has been a significant increase in tourism with arrival numbers exceeding one million tourists per year. Popular tourist destinations include the Ngorongoro Carter, the popular Kilimanjaro, Serengeti and Lake Manyara national parks and Zanzibar. Southern tourist destinations are also becoming popular including the Selous Game Reserve and the Ruaha and Katavi national parks. Smaller national parks include Mikumi, Gombe and Tarangire. Tanzania's national parks and reserves constitute about 25% of Tanzania's land area.

MINING

Mining is an important sector of the economy. Tanzania is among Africa's top gold producers (beside South Africa, Ghana and Mali) and is estimated to have gold reserves of more than 1000 tonnes. Tanzania boasts a variety of other minerals including tanzanite, silver, copper, diamonds, rubies, sapphires, base metals, platinum, coal, uranium, agro-minerals, chemicals, graphite and other industrial minerals including soda ash, kaolin, granites, marble and quartzite. Salt is found along the coast and inland lakes, along with vermiculites, limestone, silica sands, phosphate, gypsum and mica.

The Mining Act No.14 of 2010 regulates prospecting, mining, processing and dealing in minerals, the grant, renewal and termination of mineral rights and the payment of royalties, fees and other charges. The tenure of a Special Mining Licence (SML) is the estimated life of the ore body indicated in the feasibility study report, or such period as the applicant may request (whichever period is shorter). Other Mining Licences (ML) last for 10 years subject to renewal and the tenure of a Prospecting Licence is 9 years (initial grant for 4 years, first renewal for 3 years and 2 years for second renewal).

The Mining Act was amended in July 2017 and now provides that for any mining operations under an ML or SML, the Government should have not less than a 16% non-dilutable free carried interest shares in the capital of the mining company depending on the type of minerals and the level of investment. Additionally, the Mining (Local Content) Regulations require that an indigenous Tanzanian company should have at least 5% equity participation in a foreign company for such foreign company to qualify for a ML.

In October 2016, the Government promulgated the Mining (Minimum Shareholding and Public Offering) Regulations under the Mining Act requiring that all mining companies who are holders of SMLs must float 30% of their paid up share capital to local Tanzanians on the Dar es Salaam Stock Exchange (DSE) in accordance with the Capital Market and Securities Act. This requirement may, upon application by the SML holder, be waived by the Minister for Mining following the SML holder's failure to secure the minimum local shareholding due to an unsuccessful public offer. The minimum shareholding requirement also does not apply where an SML holder has entered into an agreement with the Government which provides for non-dilutable Free Carried Interest (FCI) shares to the Government in the mining company's capital and an economic benefits sharing arrangement.

The Mining Local Content Regulations (2018/19) requires giving preference to locally obtainable goods and services, employing Tanzanians and local Tanzanian companies being given first priority in the provision of goods and services in the mining sector. A non-indigenous Tanzanian company which intends to provide goods or services to a contractor, subcontractor, licensee, corporation or other allied entity within Tanzania should incorporate a company and operate it in Tanzania and provide the goods and services through a joint venture with an indigenous Tanzanian company. In the joint venture, an indigenous Tanzanian company should hold an equity participation of at least 20%.

In 2023, the Minister for Minerals promulgated the Mining (Corporate Social Responsibility) Regulations. The Regulations require mineral right holders, on an annual basis, to prepare a credible corporate social responsibility plan jointly agreed by the relevant local government authorities (LGAs) of the area in which the mining operations take place. The development projects that are identified by the relevant LGAs should be deliberated upon by the Ward Development Committees with the involvement of the mineral right holder and then submitted to the District/Municipal/City Council, as the case may be, for further scrutiny and verification by October each year. Besides, the implementation of the Corporate Social Responsibility (CSR) plan should allocate resources in the ratio of 40% and 60% for local areas in which the mining operations take place and the District/Municipal/City Councils, respectively.

OIL AND GAS

Tanzania has increasingly drawn attention as a leading destination in terms of oil and natural gas exploration in East Africa. The Petroleum Act 2015 regulates upstream, midstream and downstream petroleum activities, establishes the Petroleum Upstream Regulatory Authority (PURA) and a National Oil Company and provides for securing the accountability of petroleum entities.
In 2012 and 2013, Tanzania led the region in new discoveries of natural gas with 57 trillion cubic feet of proven natural gas

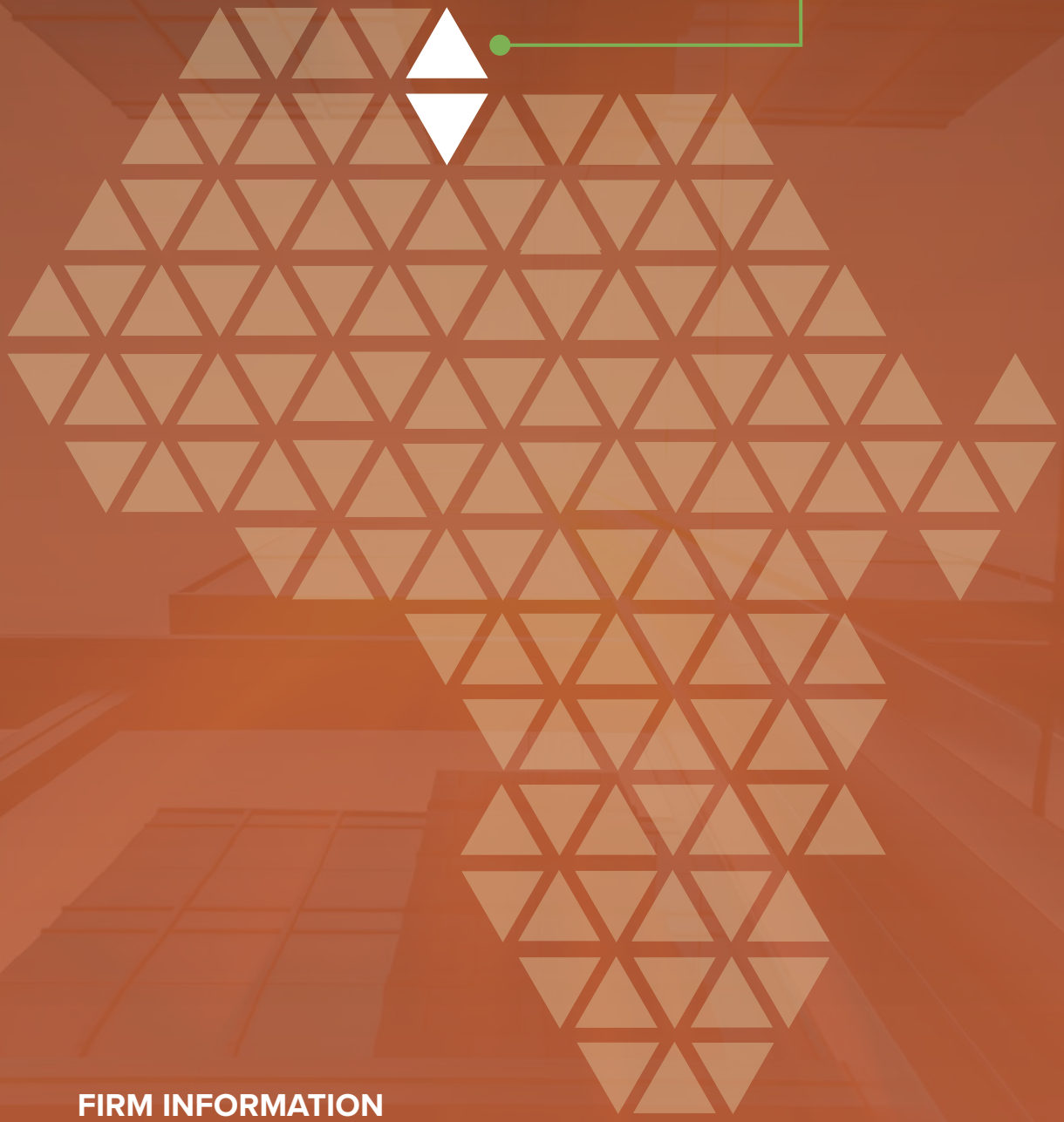
reserves in August 2013. Following these discoveries, there is increased expectation of an oil find but the Government is focused on natural gas and its exploitation. Commercial opportunities in exploration include bidding for blocs advertised by the Ministry of Energy from time to time, the direct application for blocks, farming into existing Production and Sharing Agreements (PSAs), power generation and upstream services as well as material and services suppliers. There are active downstream activities in relation to natural gas and oil. Open areas being promoted by the Tanzania Petroleum Development Company (TPDC) include the Rufiji basin, inland rift basins of Lake Tanganyika, Lake Rukwa, Lake Nyasa and the Ruhuhu Karoo basin.

In 2017, the Government promulgated the Petroleum (Local Content) Regulations. These Regulations require giving preference to locally obtainable goods and services, employment of Tanzanians and giving preference to local companies. For foreign companies to be able to service Tanzania's petroleum sector, they should form a joint venture with a local company, with the local company holding at least a 25% equity participation. For purposes of these Regulations, a local company is a company or subsidiary company incorporated under the Companies Act which is 100% owned by a Tanzanian citizen or a company that is in a joint venture partnership with a Tanzanian citizen or citizens whose participating share is not less than 15%. The Regulations provide for further options insofar as local companies or individuals' participation is concerned. In the same year, the Petroleum (Bulk Procurement) Regulations were promulgated detailing the procedures for importing petroleum products into Tanzania.

A major natural gas pipeline from the natural gas fields in Mtwara to Dar es Salaam has been constructed by the Government. This will increase access to natural gas by industries, offices and homes. A petroleum export pipeline (known as the East African Crude Oil Pipeline (EACOP)), of over 1400km will be constructed from Kabaale, Uganda to Tanga, Tanzania. This will be one of the largest projects in the country involving the Government of Uganda and the private sector. The Intergovernmental Agreement (IGA) between the Government of Tanzania and the Government of Uganda provides a general framework for cooperation insofar as the transportation and export of crude oil through Tanzania is concerned. Host Government Agreements (HGAs) between EACOP and the two Governments have also been signed.



TUNISIA
MEDLAR LAWYERS & LEGAL ADVISORS



FIRM INFORMATION

Website address : **www.fbattorneys.co.tz**
Languages spoken : **English, Kiswahili**
Telephone : +255788 646 651
Address : 8th Floor Amani Place, Ohio Street, Dar es Salaam
Contact : Dr Theophil Romward and Alyshah Bharwani
Email : trowmward@fbattorneys.co.tz / abharwani@fbattorneys.co.tz

TUNISIA | MEDLAR LAWYERS & LEGAL ADVISORS

COUNTRY INFORMATION

Located on the Mediterranean coast of North Africa, Tunisia has a prime geo-strategic position given its geographical proximity to Europe and historical links with certain neighbours like Algeria and Egypt as well as other continents such as Asia and the United States of America. The country has a population of a little more than 12 million as of January 2024, relatively young and widely educated, the active population represents a little more than 4 million people amongst which about 1 million are active women. Tunisia is well known as a country where women's rights are protected. Women are highly educated and active in all professional sectors and occupy high ranking public official positions. They represent about 16% of the total members of the Parliament elected in March 2023. Arabic is the official language and French is widely used in education, the press and in business. English is widespread especially in business. Tunisia's currency is the Tunisian Dinar (TND). Due to foreign exchange regulations (see below), the local currency is not fully convertible yet. A significant upgrade and amendment of the foreign exchange code is expected to occur to allow full convertibility of Tunisian Dinars in the near future.

POLITICAL SYSTEM

Tunisia has been going through a democratic transition since 14 January 2011. The country has issued two constitutions. The first one was prepared by the National Constituent Assembly on 27 January 2014 and established an unstable parliamentary regime which led to political crisis. On 25 July 2022, a referendum was held which led to the adoption of a new constitution establishing a presidential regime. The Assembly of the People's Repre-sentatives (the new parliament) whose members were appointed through a democratic vote, is in place since March 2023. Presidential elections were held on 6 October 2024 and President Kais Said was elected.

LATEST GDP FIGURES

In 2023, Tunisia had a gross domestic product (GDP) of about USD 46.53 billion (its per-capita GDPs is estimated at USD 3895.4. The agricultural sector accounts for 9.5% of the GDP, industry 23.5% and services 62.1%.

INVESTMENT CLIMATE INTERESTS AND CREATION OF SECURITY

The upgrade of the foreign investment legal framework in Tunisia started by the enactment of Investment Law on September 30, 2016, and was reinforced by the law N°2019-47 dated on May 29th, 2019, relating to improving the investment climate. Decree Law N° 2022-68 dated October 2022 set forth a series of specific rules intended to enhance the development of both private and state-owned projects (all together the "Foreign Investments Laws"). The objective of the Foreign Investments Laws is to promote investment. The latest changes to the Foreign Investments Laws aim to encourage projects which qualify as "public interest projects" and also facilitate the development of agricultural and energy projects and the extension of existing industrial and/or innovative projects. This includes the possibility of declassifying agricultural land and support for public private partnerships. In this context the Ministerial Council has established a draft decree for the development of a multi facilities project "la Cité des Aghlabides "in Kairouan to provide a specific legal and incentive framework for the project's management.

The reforms of the Tunisian investment laws did not abolish the distinction between offshore and onshore projects. In all cases, the investment law established rule free investment and its provisions apply to resident and non-resident investors in all economic activities based on the Tunisian activities' classification ("la nomenclature d'activités tunisienne"). The Tunisian investment law also established the rule of national treatment so foreign investors will be treated no less favorably than Tunisian investors.

Investments are either:

- Offshore when at least 66% of the capital is held by Tunisian or foreign non-residents by means of a convertible currency import and the company is fully exporting. Residents in Tunisia can invest within a limit of 34% in the capital of companies established in Tunisia and created under the offshore status.
- Onshore which cover all other companies that do not meet the offshore requirements stated above. All non-resident investors benefit from a transfer guarantee automatically if they meet the following two cumulative conditions:
- the investment must be made in compliance with the regulations governing the activity in which the investor has invested
- the financing of the investment must be done by means of the import of currencies materialised through a digital investment form via the electronic platform hosted by the Central Bank of Tunisia ("fiche d'investissement ").

START-UP ACT

Like other countries in Africa (such as Senegal) or in Europe (such as France) who have recently and successfully put in place an attractive legal framework for young promot-ers/ companies operating in innovative or high added value sectors, Tunisia has promulgated a Start-up Act by law 2018-

20 dated 17 April 2018 to encourage the young private sector to launch their innovative projects under a special legal framework providing for tax and foreign currency incentives as well as other benefits (such as a range of financing instruments). The total number of start-up labels awarded in Tunisia in 2024 is 1018. The start-ups operate in diversified sectors such as market places, EdTech, FinTech, health, AI, wellbeing and agri-business. Exports represent about half of the start-up companies' turnover mostly achieved in Europe and Africa.

PERMITS FACILITATION

The Government also actively encourages foreign direct investment (FDI) in key industry sectors such as IT, energy (in particular renewable energy), automotive, aerospace and aeronautics, textile manufacturing and tourism. In this context, Decree N° 2018-417 of 11 May 2018 dealt with the exclusive list of economic activities subject to authorisation and the administrative authorisations for the implementation of projects (as amended by the Presidential Decree N° 2022-317 of 8 April 2022):

- simplified the administrative procedures relating to launching projects in many crucial sectors like accommodation and projects involving tourist hotels, apartment-hotels, vacation villages, motels and guest houses)
- removed authorisations in many other sectors like projects for the self-production of electricity from renewable energies and real estate developments.

New legislation is expected to be enacted in the near future to reduce certain administrative permits in various sectors.

COMMERCIAL ACTIVITIES AND FRANCHISING

In line with the strategy of improving the investment climate, law N° 2019-47 dated 29 May 2019 was published to unify rules for specific economic sectors. This law removed the requirement for a trade card ("carte de commerçant") which was cumbersome to obtain for subsidiaries that exclusively distribute the products of their parent company (these distributed products must however be manufactured in Tunisia).

Since the promulgation in 2009 and 2010 of franchising statutes and implementation regulations, various sectors (such as retail) have been exempted from requiring prior administrative approval to open their franchise in Tunisia. As a result, many franchises now have the ability to operate like any other business.

RENEWABLE ENERGY

In order to encourage renewable energy projects and the extension of industrial projects, the possibility of changing land zoning from agricultural to industrial before project implementation ("le changement de vocation des terres agricoles") (which used to be a long and complex procedure) has been significantly facilitated by Decree Law N° 2022-68 dated October 2022.

The State has also authorised foreign direct investment in certain traditional State monopoly activities (such as electricity production and distribution). The private sector may now participate in self-generation projects involving renewable energies connected to the national network of high and medium voltage. Public and private entities operating in the industrial, agricultural or services sectors can also produce electricity from renewable energies for self-consumption purposes, and companies can be created for the purpose of the production and sale of electricity from renewable energies within certain limits. Such public and private entities benefit from the right to sell the electricity produced to self-consumers whose subscribed power exceeds a minimum level set by the Minister of Energy. They also have the right to transport the electricity produced through the national electricity grid to consumption centres and the right to sell surpluses to a public body subject to certain maximum rates and within the framework of a standard contract approved by the Minister of Energy.

INVESTMENT INCENTIVES AND AUTHORITIES

The Investment Law issued on 30 September 2016 was completed by a series of decrees enacted in 2017 to establish the authorities (notably the Conseil Supérieur d'Investissement (Higher Investment Council and the Instance Tunisienne d'Investissement (ITI) (Tunisian Investment Authority)) to supervise the award of incentives and to analyse the eligibility of projects for incentives. A management unit was also created within the Ministry of Investment to enable the review of project authorisations (if necessary) for conducting economic activities. The implementation decrees of the Investment law also provided for various investment rewards/premiums and incentives ("primes et incitations") such as a reward for increased value add and competitiveness, a regional development premium based on a regional development index in certain activities for the realisation of direct investment operations or expenditure on infrastructure works and a sustainable development reward for investments made to fight pollution and protect the environment.

The law also provides for certain incentives for projects of national interest such as a deduction of profits from the corporate tax base for up to ten years, an investment premi-um of up to one third of the investment cost (including

expenses) for infrastructure works "intra-muros". Projects of national interest are projects meeting one of the four objectives of the Investment law which have an investment cost greater than or equal to fifty million Dinars or that are creating a minimum of 500 jobs over three years.

FORMS OF BUSINESS

The main business entities in Tunisia are limited partnerships (called société à responsabil-ité limitée (which can now be founded by a single shareholder) and joint-stock corporations (called sociétés anonymes)(SA).

INCORPORATION OF A COMPANY

The Government has been actively working on making the creation of companies in Tunisia easier. A new law was published relating to the National Registry of Enterprises commonly referred to in Tunisia as RNE (Law N° 2018-52 of 29 October 2018). Every company has a unique identification number which corresponds to its tax identity number. No other numbers are used to identify enterprises in Tunisia. The first step to create a company is to book a name with the RNE, which can be done online. The creation of a company cannot be accepted without completing the effective beneficiary form which is a new notion intro-duced in the Tunisian legal system for companies. Other additional steps are required to be followed with tax and social administration, but the existence of a unique window ("Gui-chet unique") to handle basically all steps for the creation of a company, highly facilitates the process.

FOREIGN EXCHANGE CONTROL REGULATIONS

Foreign capital transactions are governed by the Law N° 76-18 dated 21 January 1976 (as subsequently amended) and by Central Bank of Tunisia Circulars which are enacted from time to time (collectively "Forex Regulations"). Such control is exercised over investments made in companies operating in regulated sectors. Also, transactions involving payment of hard currency abroad are subject to the Forex Regulations unless they are classified as "current transactions ". A new Code is expected to be promulgated shortly in order to consolidate all exceptions as and progressively liberalise the Forex Regulations in particular to facilitate investments by foreign entities in Tunisia in various sectors and the extension or development of local operators' activities abroad.

TAXATION

Corporate Tax
As a general rule, companies are subject to a flat tax rate of 15% on net profits. The rate is 10% for agriculture and fishing companies. Profits generated from exports are subject to corporate income tax at a rate of 10% for legal entities and are partially deductible from taxable profits for natural persons. Dividends distributed by a company to non-residents are taxable at the rate of 10% (25% for certain residents). Furthermore, investments made by a company in some categories of entity which enjoys tax incentives are deductible from taxable income. Since 1994, remuneration paid by a company to its directors is taxed. Fully exporting companies are exempt from registration duties.

Value-added tax
Value-added tax (VAT) is an indirect tax introduced in Tunisia in 1988 and applies to all industrial, handicraft and services businesses except agriculture. VAT paid on purchases is deductible from the VAT collected on sales turnover. The rates are:

- 7% on sensitive products of a social, medical, and educational nature
- 7% on capital goods having no locally made counterparts. The conditions and procedures for accessing a 7% rate, as well as the lists of the relevant equip-ment, are regulated by Government decree
- 19% on capital goods with locally made counterparts, raw materials, semi-finished goods and non-food consumer goods.

Real property, inheritance, and donation taxes
The transfer of real property located in Tunisia is subject to various registration fees:

- 5% tax for transfer
- 3% tax for unregistered property
- 1% land conservation authority duty.

The land registration tax is another indirect tax levied at a rate of 5% of the value of real property acquired. Inheritance and donations tax are calculated at rates ranging from a fixed duty to 35% depending on the circumstances.

Withholding Taxes
Interest is subject to a:

- 20% withholding tax when paid to a non-resident (the rate is set at 25% if it concerns individuals established in Tunisia and resident in a state or territory with a privileged tax regime as defined in the relevant law); and
- 10% withholding tax when paid to a non-resident bank (unless the rate is re-duced under a tax treaty).

Royalties are subject to a 15% withholding tax when paid to a non-resident (unless the rate is reduced under a tax treaty). However the rate is raised to 25% if it concerns a resident of states in territories with a privileged tax regime.

Other taxes
Stamp duty is levied on most contracts, agreements, and documents subject to registration. Administrative and private documents relating to business are also subject to this tax. Its rate depends on the nature of the relevant transaction.

Social Security contributions are set at 25.75% of the monthly gross salary of the employee divided as follows:
- 9.18% is paid by the employer on behalf of the employee and
- 16.57 % paid by the employer.

Consumption taxes vary depending on the item. For example, the fuel consumption tax is 8,190 Dinar/100 Kg. Local municipality tax (TCL) ranges from 0.1% to 0.2% depending on the activity. Professional training tax is payable at 1% of all salaries paid to employees of manufacturing industries and 2% for other industries.

Training Professional Tax
According to the Tunisian Labor Code (Articles 364 and 365), each company is required to pay a training professional tax (TFP) based on its payroll (at a rate of 1% for manufacturing companies and 2% for other economic activities). Agricultural enterprises, exporting companies and those subject to a flat tax on patents, are exempt from this tax. This tax is intended for the ongoing training and skills enhancement of the company's personnel. Companies can be reimbursed for expenses incurred for approved training.

A ministerial order from the Minister of Finance and the Minister of Employment and Youth Integration dated 10 February 2009, set out areas for the use of advances on training professional tax, the criteria and amounts for financing related training activities as well as the maximum amounts for the utilisation of drawing rights for financing such training activities.

LEGAL SYSTEM AND DISPUTE RESOLUTION

Tunisia has a court system influenced by French civil law. Civil disputes are heard by First Instance Courts, may be appealed to the Courts of Appeal, and later brought to" cassation" at the Court of Cassation (the supreme court). It is important to note that cassation is not a third level of litigation. The highest Court ensures that decisions comply with the law. Court litigation is more popular in local commercial disputes especially when the parties are small to medium size enterprises and when there is no arbitration convention conclud-ed between the parties. In sophisticated transactions involving confidential commercial information, the parties would tend to adopt arbitration dispute resolution mechanisms to avoid bringing their cases before courts. Even if these parties are of Tunisian nationality, they very often agree on institutional arbitration like the International Chamber of Com-merce (ICC) in Paris or in Tunis (noting that the seat of the arbitration would determine the court of appeal that would be competent).

Employment disputes are heard by the labour chambers that do not require the presence of an attorney and has simplified procedures.

If the State is party to an international commercial contract which does not involve assets related to the exercise by the State of its sovereignty, then the State is authorised to accept arbitration clauses in the contract.

INTELLECTUAL PROPERTY

Intellectual property protection covers patents, trademarks, industrial designs, copyright (literary and artistic property) and layout designs of integrated circuits.

Since 28 November 1975, Tunisia has been a member of the World Intellectual Property Organisation (WIPO). The country is a signatory to a number of international as well as regional conventions on intellectual property such as the:

- Berne Convention for Protection of Literary and Artistic Works
- UNESCO Convention for copyright
- Paris Convention for the Protection of Industrial Property
- Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods
- Geneva Universal Copyright Convention
- Arab Convention on the protection of intellectual property rights
- Association Agreement between Tunisia and the EU
- Geneva International Convention for the Protection of vegetal patents.

Tunisian intellectual property laws are consistent with international standards and aim to provide adequate protection to owners.

Tunisia has recently acceded to the Protocol Amending the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), adopted in Geneva on 6 December 2005. This accession was approved by Organic Law No. 2024-30, adopted by the Assembly of the People's Representatives on 5 June 2024. The adoption of the TRIPS Protocol Amendment will enable Tunisia to develop its pharmaceutical industry sector and addresses several issues related to the system of compulsory licenses such as the prohibition on the export and import of pharmaceutical products (protected by patents) and their use only in the local market as well as granting licenses exclusively in cases of national emergency or extreme urgency.

DATA PROTECTION

A data protection statute promulgated in 2004 is subject to a draft amendment (Law N° 2004-63) since 2016. The recent political changes may be the principal reasons for the delays. The regulatory authority however remains significantly pro-active in this field and renders its advice on a regular basis to clarify the practical aspects of the law considering new and existing technologies.

CYBERCRIME LAW

On 6 February 2024, Tunisia enacted a new law against cybercrime. This law approves Tunisia's accession to the Council of Europe's Convention on Cybercrime which was adopted in Budapest on 23 November 2001. The convention was ratified by Tunisia through Decree No. 2024-98 of 6 February 2024.

In the same context, Tunisia adopted Decree-Law No. 2022-54 on 13 September 2022, concerning the fight against offences related to information and communication systems. This decree-law serves as a means of preventing and prosecuting offences related to information and communication systems, as well as those concerning the collection of electronic evidence. It also aims to support international efforts in this area within the framework of international, regional, and bilateral agreements ratified by Tunisia.

ESS LAW

Tunisia has enacted a law (Law N°2020-30 dated 30 June 2020) dedicated to the social and solidarity economy (ESS Law) to set forth an economic model which includes a range of activities aiming to achieve social purposes. The purpose of this new legislation is to enhance, through the grant of incentives to agricultural cooperative companies or similar structures operating in the agricultural and fishing sectors, social and territorial stability and provide decent conditions of life and work.

This legal framework has been completed recently by Decree Law N° 2022-15 of 20 March 2022, relating to community companies. The purpose of this Decree-law is to institue a legal regime specific to community companies, which are based on collective initiative and the common good.
The total number of community companies created in Tunisia since the publication of the Decree-Law is 77, including 61 local companies and 16 regional companies (statistics made by the RNE/ updated number on August 15,2024). Most of the community companies are created in the agricultural sector but other companies operate in the industrial, tourism, textiles and leather sectors.

LABOUR RELATIONS

Employment relations in Tunisia are governed by the Labour Code of 1956 and collective bargaining agreements. Labour contracts may be for a definite or an indefinite period. A definite period contract may specify that it is valid for either a limited period or for a specific task. If the fixed term employment contract is still effective after the agreed expiration date, it becomes a contract for an indefinite period. A labour contract may be terminated by agreement between the contracting parties or because of resignation or dismissal of the employee. In the latter case, the employee is entitled to severance package that differs on a case-by-case basis.

The Labour Code sets standards regarding other employment conditions, such as the minimum age of labour (16 years) the maximum number of work hours per week (48 hours), the minimum wage level, starting from 1 May 2024, is set at 491.504 Dinars for a 48 hour work week. For a 40 hour work week, it has been increased to 417.558 Dinars. Regional labour inspectors are responsible for the enforcement of such regulations. Worker health and safety standards are regulated and enforced by the Social Affairs Ministry. Social security payments in respect of Tunisian employees are paid by the employer who contrib-utes 25.57% of the employee's wage and deducts 9.18% from the employee's wages to be paid on the employee's behalf.

FOREIGN EMPLOYEES

The law providing incentives to foreign investors has wide provisions permitting expatriate personnel. For example, foreign managers acting in their capacity as employers are not required to hold a work contract and their company or enterprise may, with a simple declaration to the appropriate authorities, hire up to four expatriate technicians who may choose either a foreign social security system or the Tunisian system.

TRADE UNIONS

The right of workers to form unions and perform strikes is secured by article 41 of the newly adopted constitution of 2022 and the Labour Code. The right of unions to strike is conditional upon the fulfilment of certain conditions, such as giving ten days advance notice and receiving the support of the Central Labour Federation (UGTT). However, the military and all armed forces (like the police and customs, border protection officials) as well as judges are not allowed to strike in terms of the constitution. Tunisian law protects the right to organise and to bargain collectively. Working conditions (such as wages) are fixed through the negotiation of approximately forty-five collective bargaining agreements, which determined standards applicable to entire economic sectors. The Government must confirm the collective bargaining agreements and cannot modify them. After Government confirmation, the agreements are published.

MEMBERSHIP OF INTERNATIONAL AND REGIONAL ORGANIZATIONS

Tunisia is a member of the World Trade Organization (WTO), the United Nations (UN), the United Nations Conference on Trade and Development (UNCTAD), the World Intellectual

Property Organization (WIPO), the African Union (AU), the International Monetary Fund (IMF), a shareholder in the European Bank for Reconstruction and Development (EBRD) among other international and regional organizations. Tunisia adhered to COMESA (the Common Market for Eastern and Southern Africa) in July 2018 and such adherence became effective upon its approval by Law n° 2019-33 as of 10 April 2019.

TUNISIA WITHIN THE AFRICAN CONTINENT

Tunisia is making significant efforts to strengthen its ties with Africa, particularly through its engagement with both the AfCFTA (African Continental Free Trade Area) and COMESA (Common Market for Eastern and Southern Africa).

Tunisia's membership of COMESA, began in July 2018. Organic Law No. 2024-12 enacted on 22 February 2024, approves an agreement between the Government of Tunisia and COME-SA concerning the hosting of COMESA meetings, workshops, and activities in Tunisia. This agreement exempts COMESA's activities from VAT in Tunisia and marks a pivotal moment in the country's regional economic relations. Since its publication, the law has already yielded positive results in the relationship between Tunisia and COMESA.

In this context, two workshops have already taken place in Tunis. One titled "The COMESA Free Trade Area and Regulations on the Elimination of Non-Tariff Barriers (NTBs) held in May 2024 addressed key topics such as the COMESA Free Trade Area (FTA), trade facilitation tools and NTB regulation. Participants received training on monitoring and reporting NTBs, and a National NTB Work Programme for Tunisia was developed. The workshop aimed to raise awareness among Tunisian stakeholders about trade opportunities within the COMESA FTA, enhance their understanding of NTB management and support Tunisia's active involvement in regional integration initiatives. Tunisia also hosted COMESA Investment Forum (CIF 2024) in June 2024. The forum offered a platform for promoting trade and investment within the COMESA region, bringing together high-level political leaders, business executives, investors and industrialists from across the region.

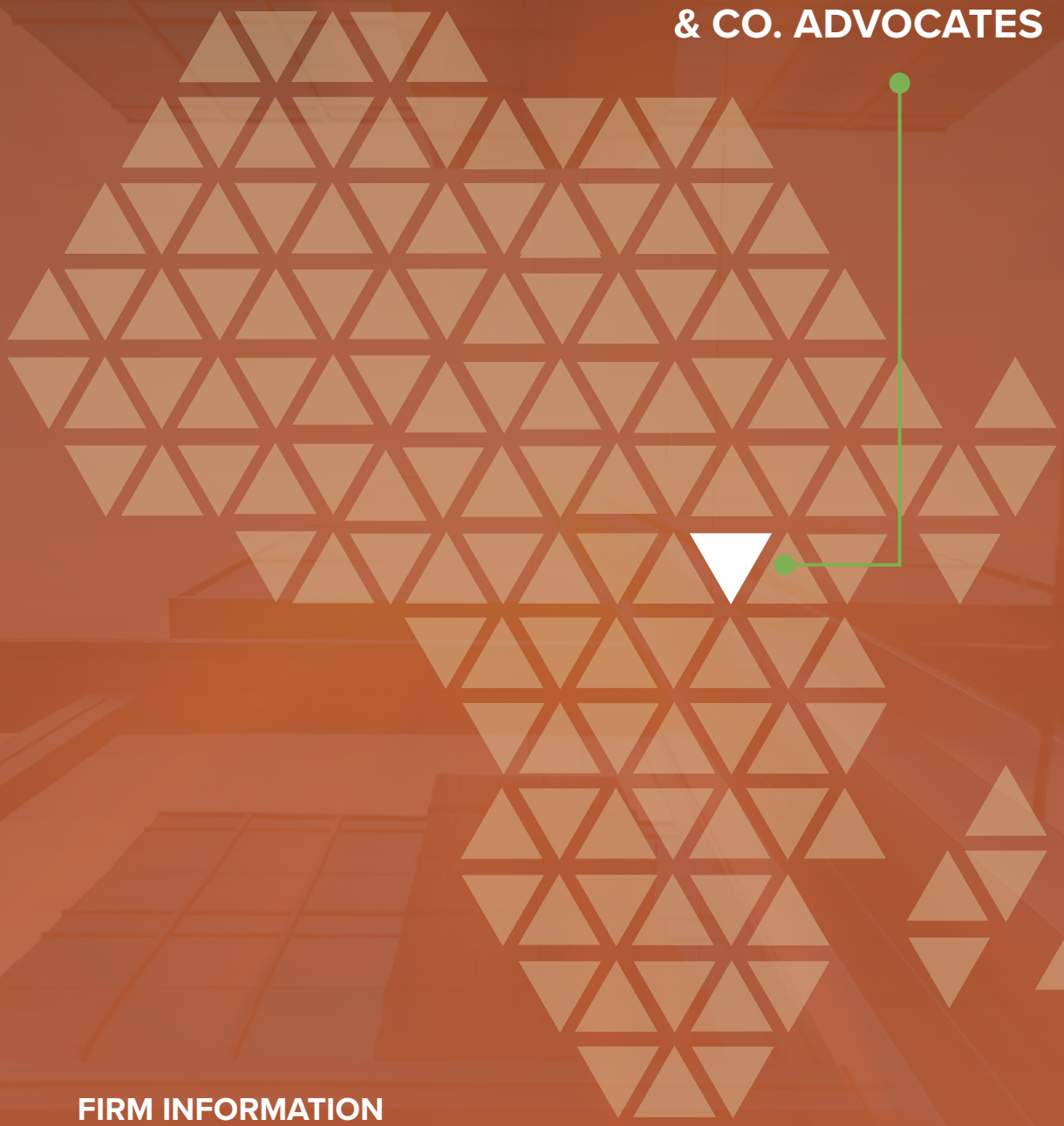
Equally significant is Tunisia's engagement with the AfCFTA, launched in January 2021 by the African Union. This initiative aims to boost intra-African trade by lowering tariff and non-tariff barriers, thereby fostering a single market for goods and services and promoting socio-economic development. The AfCFTA seeks to cover 54 African countries with a combined population exceeding 1.3 billion and a GDP of USD3.4 trillion.

Since March 2023, Tunisia has created a national committee to oversee AfCFTA negotiations with 93 export transactions already conducted under this framework. Key initiatives include establishing the African Center for Digital Trade, proposing to host the African Regional Intellectual Property Organization (ARIPO) and launching a trade corridor between Tunisia, Libya, and Sub-Saharan Africa.

Tunisia has issued 93 certificates of origin as part of the AfCFTA agreement, facilitating exports of chemical products, agricultural food items and semi-automatic machinery to countries such as Cameroon, Ghana, Tanzania, and Mauritius. These certificates are crucial for exporters to enjoy reduced customs duties, which will take full effect from 1 January 2026.



UGANDA
KATENDE, SSEMPEBWA & CO. ADVOCATES



FIRM INFORMATION

Website address : **www.kats.co.ug**
Languages spoken : **English**
Telephone : +256 414 233 770/233 908
Address : Plot 20, Kampala Road. 2nd Floor, Radiant House.
Contact : Sim Katende
Email : sim@kats.co.ug

UGANDA | KATENDE, SSEMPEBWA & CO. ADVOCATES

COUNTRY INFORMATION

The total area of Uganda is about 241 000 square kilometres of which about 44 000 are covered by fresh water bodies. Its population is approximately 37.58 million. The official language is English. Swahili and Luganda are also spoken. The capital city and seat of Government is Kampala. Other major towns include Entebbe and Jinja, the second industrial town of Uganda and the source of the river Nile.

POLITICAL SYSTEM

A multiparty democracy since 2006.

LATEST GDP FIGURES

USD 49.3 billion.

INFLATION RATE

3.0%.

INVESTMENT CLIMATE

Uganda strongly encourages private investment, both foreign and domestic. The Government has pursued a steady policy of improving the investment climate by reducing bureaucracy, streamlining the legal framework, fighting corruption and stabilising the economy. The last point in particular has become a trademark for Uganda. The central bank has reduced its key lending rate to 9.75% as of October 2024 with the goal of supporting economic growth while maintaining inflation control.

The Government of Uganda's strategy with respect to macroeconomic policy is to modernise the economy by relying on markets and the efforts of private entrepreneurs, while the Government provides the necessary legal, policy and physical infrastructure for private investments to flourish. This strategy has been endorsed by donors and is already showing positive results. The central objective is to provide sustainable, rapid and broad-based growth by guaranteeing security, the rule of law and structural reform.

Uganda's fiscal incentive package provides for generous capital recovery terms, particularly for investors whose projects entail significant investment in plant and machinery and whose investments are medium/long term. In addition, Uganda offers a zero rate of import duty on plant and machinery as well as a uniform corporate tax of 30%. Provisions allow for assessed losses arising out of company operations (including the loss from the investment allowance) to be carried forward. Such losses are allowed as a deduction in determining the tax payer's chargeable income in the following year of income. Uganda also has a fully liberalised foreign exchange regime with no restrictions on the movement of capital in and out of the country. With the discovery of oil there are many opportunities in industries related to oil in the upstream, midstream and downstream markets.

FORMS OF BUSINESS

- Private or public limited liability company
- Foreign company (i.e. a branch of a foreign company)
- Partnership (limited)
- Trusts
- Sole trader.

FORMATION OF A COMPANY

Companies, both local and foreign must be registered. A local company is one which is incorporated and registered in Uganda or a company whose major shareholding is held by Ugandans and the majority of its business is conducted in Uganda. Foreign companies and branch offices are required to register as foreign companies. Both local and foreign companies must be registered with the Uganda Registration Services Bureau (URSB). The URSB has implemented electronic services for business name searches, name reservations, certifications, annual returns filing, company registration, business name registration, and application status checks.

REQUIREMENTS FOR INCORPORATION OF A LOCAL COMPANY

A local company is one that is incorporated and registered in Uganda. The information required for the incorporation of a local company is as follows:

- At least three proposed names of the Company's business and the proposed principal place of business
- the full names, address, age, nationality, position and other occupations of all members. The statutory minimum number of members for a limited liability company is one
- the primary or principal objectives of the company
- the share capital of the company and the capital contribution of each member to the company. The official stamp duty is set at 0.5% of the nominal share capital. Normally we recommend that the initial share capital is

only One million Ugandan Shillings (UGX) (about USD 300) as this significantly reduces the cost of incorporation by minimising stamp duty. The share capital can be increased as and when the requirement arises
- the name of at least two directors of the company. Other directors can be appointed in due course by company resolutions.

REGISTRATION OF A FOREIGN COMPANY

Foreign companies establishing a place of business in Uganda are required to register as foreign companies in terms of the Uganda Companies Act. The information required for registering a foreign company is as follows:

- several certified copies of a company's Memorandum and Articles of Association
- a complete list of all the directors and the secretary of the company, their names, postal addresses, nationalities, passport copies and business occupations
- a statement of all subsisting charges created by the company
- a list of the shareholders of the company
- a letter from the Registrar of Companies in the company's home country confirming that the company is registered in the home country
- the name and postal address of someone resident in Uganda authorised to accept on behalf of the company service of court process and any notices required to be served on the company
- the full address of the principal/registered office of the company
- Official registration and processing fees.

VISA REQUIREMENTS

Under Ugandan immigration regulations, the requirement to obtain a visa to visit Uganda varies according to the visitor's country of origin. Ugandan visa policy is based on the principle of reciprocity i.e. all countries that require visas for Ugandans are also subject to visa requirements in Uganda.

Visitors from the following countries do not require visas: East African citizens and nationals of COMESA member countries, Antigua and Barbuda, Barbados, Belize, Botswana, Burundi, Comoros, Cyprus, Democratic Republic of Congo, Eritrea, Fiji, Gambia, Ghana, Grenada, Ireland, Jamaica, Kenya, Lesotho, Madagascar, Malawi, Malaysia, Malta, Mauritius, Mozambique, Rwanda, Seychelles, Sierra Leone, Singapore, Solomon Islands, Soth Sudan, St. Vincent & The Grenadines, Swaziland, Tonga, Trinidad and Tobago, Tanzania, Vanuatu, Zambia and Zimbabwe

Visitors from other countries must obtain visas from Uganda's diplomatic and consular missions abroad. Visas can also be obtained on arrival at Entebbe Airport or any other entry point in cases where foreign nationals cannot access a Uganda diplomatic and consular mission abroad, provided one satisfies the entry requirements. It is however advisable to get a visa before embarking on a trip to Uganda to avoid unnecessary paperwork at point of entry.

CATEGORIES OF TAXES IN UGANDA

Both direct and indirect taxes apply in Uganda. Direct taxes are levied on individual and corporate income. Indirect taxes are levied on certain transactions such as the sale and purchase of land, goods and services.

Taxation of Individuals
Income tax is calculated on the individual's net assessable income after making allowance for deductible expenses. The sources of assessable income for individuals include employment, business and property. The annual income threshold is UGX 2 820 000 (approx. USD 900) below which no income tax is chargeable for an individual). Different tax rates apply depending on whether the individual is a resident or non-resident of Uganda for tax purposes.

Income Tax Annual Rates for Residents (UGX per annum)
- UGX 0 to 2 820 000 – Nil
- Exceeding 2 820 000 but not exceeding 4 020 000 - 10% of the amount by which chargeable income exceeds UGX 2 820 000
- Exceeding 4 020 000 but not exceeding 4 920 000 - UGX 120 000 plus 20% of the amount by which chargeable Income exceeds UGX 4 020 000
- Over 4 920 000 - UGX 300 000 plus 30% of the amount by which chargeable income exceeds UGX 4 920 000. Where the chargeable income of an individual exceeds UGX 120 000 000 an additional 10% is charged on the amount by which chargeable income exceeds UGX 120 000 000.

Income Tax Annual Rates for Non-Residents (UGX per annum)
- UGX 0 to 4020 000 - 10%
- Exceeding UGX 4 020 000 but not exceeding UGX 4 920 000 - UGX 402 000 plus 20% of the amount by which chargeable Income exceeds UGX 4 020 000
- Over UGX 4 920 000 - UGX 582 000 plus 30% of the amount by which chargeable income exceeds UGX 4 920 000. Where the chargeable income of an individual exceeds UGX 120 000 000, an additional 10% is charged on the amount by which chargeable income exceeds UGX 120 000 000.

Pay as You Earn (PAYE) Tax and Taxation of Employment Benefits
PAYE is not a separate tax. It is an instalment income tax system under which employers are required to deduct tax instalments from their employees' salary or other employment income. The instalments so deducted are remitted to the Uganda Revenue Authority (URA) and based on the PAYE tax return lodged by the employer. The employer offsets the

total amount deducted from the individual employee against the employees' tax liability at the end of the tax year. Every employer must therefore register for PAYE as well as be familiar with the rules relating to filing of PAYE returns and the computation of PAYE.

Taxation of Companies and other Business Entities
A corporate tax is levied on companies, partnerships and sole proprietorships. Any income arising out of any trade, profession, vocation or adventure in the nature of trade is taxable under special rules applicable to business entities unless otherwise specified as being exempt under the tax code.

The income of all companies accruing or derived from Uganda is taxable. A company is liable to pay tax separately from its shareholders. The sources of a company's income on which tax can be levied include profits and gains from any business carried on for whatever period of time. Other sources include dividends from shares in other companies and interest from the use of the company's property. The income tax rates are:

- Resident Companies - 30%
- Branch tax - 30%
- Branch profit Remittance tax - 15%
- Capital Gains tax - 30%
- Mining Companies - 25-45%
- Non-resident Company providing shipping, Air Transport or Telecommunications Services in Uganda-2%.

Taxation of Partnerships
Income tax assessments for a partnership can be made either in respect of the individual partners or in the partnership's name. The profits of a partnership, including a firm carrying on a trade or profession, are taxable at a rate of 30%.

Taxation of Sole Proprietorships
A sole proprietor is taxed in the same way as an individual.

Taxation of Trusts
The income tax rate applicable to trusts is 30% of the chargeable trust income for the relevant year of income. A trust is exempt from income tax where income of the trust is paid directly to the beneficiary without passing through the hands of the trustee or where a trustee relies on the argument that a share or part of the assessable income accrues or arises for the benefit of the beneficiary.

Value Added Tax (VAT)
VAT is a consumer expenditure tax. It is payable by individuals, corporate entities and other businesses and enterprises alike. The business sales turnover threshold for VAT is UGX 150 000 000 (approx. USD 40 000) per year or UGX 37 500 000 (approx. USD 10 000) per three consecutive months. Individuals and firms whose business sales turnover is below the thresholds are not required to register for VAT. Individuals and firms with business sales turnover of above the thresholds must register for VAT. It does not matter whether the business is profitable or not. All VAT registered persons are entitled to an input tax credit i.e. a refund of the VAT spent on all the inputs (raw materials) used to generate income by the business.

Stamp Duty
Stamp duty is a direct tax levied on specified documents and transactions under the Stamps Act. These include legal documents and transfers and specified agreements.

Taxation of Rental Income
Rental income of an individual is segregated from other income and is taxed at a rate of 20% of gross rental income in excess of UGX 2 820 000 per year.

Excise Duty
Excise duties are imposed on various goods and services in Uganda which are considered luxurious such as soft drinks, cigarettes, alcoholic drinks and spirits. There is no uniform rate for excise duty; rather, the law prescribes different tax rates for the different excisable goods and services.

Customs Duty
Customs duty is charged in respect to specified goods that originate from a country other than a member State of the Preferential Trade Area for Eastern and Southern African States, and which are imported into the Republic of Uganda. The rates of this import duty vary depending on the nature of the goods provided. However, the customs duty rates vary from 0% to 60% depending on the item imported.

Presumptive Tax
This applies to Small and Medium Enterprises whose annual gross turnover is between UGX 50 million and UGX 150 million, subject to certain thresholds. The tax rates payable depends on the location of the business. However, a resident tax payer with a turnover of less than UGX 150 million may on an application to the Commissioner be taxed at 30% on chargeable income.

Withholding Tax
Dividends and interest (save for interest on government securities) are subject to a withholding tax of 15% for both residents and non-residents. Interest payments on government securities to a resident person are charged at 20%. Dividend payments from companies listed on the stock exchange to individuals are charged 10%. However, interest paid abroad by a resident in respect of debentures issued by a foreign company for the purposes of raising loan capital to carry out business in Uganda is exempt. A 6% withholding tax is imposed on any payment to a person in Uganda from the Government of Uganda, a government institution, a local authority, any company controlled by the Government of Uganda or any person designated in a notice issued by the Minister of Finance of an amount in aggregate exceeding one million UGX for the supply of goods or materials of any kind or any service. The Minister of Finance has powers to exempt companies from paying withholding tax. In addition, non-residents are subject to 15% withholding

taxes on royalties, management fees, entertainers and sports personnel income, natural resource payments and equipment leases on income earned from Uganda.

KEY INDUSTRY SECTORS

The following investment opportunities are available:

- Uganda has a burgeoning oil sector. Uganda has approximately 3.5 billion barrels of oil and 350 billion cubic feet of gas in the Albertine Grabben region in the western part of the country. There are many opportunities in ancillary industries
- agriculture is one of the leading sectors. Uganda is one of the leading producers of coffee and bananas and a major producer of cereals, tea, vegetables and fruits. Agriculture value addition is a priority area
- Uganda has many high mineral potential areas which are inadequately explored. Minerals such as limestone for cement, gold, tin, tungsten are available for mining and value addition
- opportunities in the production of edible oils
- building and construction industry. Given the rate at which the Ugandan population is increasing, there is a need for affordable housing. Opportunities include the provision of low cost housing in urban and semi-urban areas, housing and mortgage finance and construction equipment and building materials
- opportunities in the production of electronics
- opportunities in the information and communication technology sector. Uganda has a supportive regulatory framework for developing ICT infrastructure
- opportunities in the tourism sector include tour operations, water sports and related activities, accommodation, conferences and incentives travel, national park concessions, privatisation and joint ventures with existing players
- there is great potential in the following financial services areas: fintech, merchant banking, development banking, commercial banking, discount houses, insurance services, leasing, mortgage financing, building societies, micro-financing services and specialised training institutions
- opportunities in pharmaceuticals.

INTELLECTUAL PROPERTY

Intellectual property is protected in Uganda.

A registered trademark is valid for seven years from the filing date of the application and may be renewed for another ten-year period upon payment of the prescribed renewal fee.

A utility model is an exclusive right granted by the Government for an innovation/invention, which is either a product or process that offers a new technical solution to a problem. Their term of protection is 10 years.

A patent may be granted for an invention that is novel, Inventive and is industrially applicable. The term of protection for patents is 20 years. For the patent to remain in force the patent holder is required to pay annual maintenance fees.

For natural persons, copyright is protected for the lifetime of the author and 50 years after his death. For Corporations and Companies, copyright is protected for 50 years after the date of the first publication. Anonymous work or works of unknown authors are protected for 50 years. Computer programs are protected for 50 years after the program becomes available to the public.

Industrial design rights are granted for five years renewable for two more consecutive five-year terms. Industrial design protection does not protect the technical features of the product.

INTERNATIONAL INTELLECTUAL PROPERTY TREATIES

Uganda subscribes to various international treaties and conventions including:

- Beijing Treaty on Audio-visual Performances October 8, 2012
- The Nairobi Treaty on the Protection of the Olympic Symbol (21 October 1983)
- the Convention Establishing the WIPO (18 October 1973)
- the Paris Convention for the Protection of Industrial Property (14 June 1965)
- the Agreement on Trade-Related Aspect of Intellectual Property Rights (January 1995)
- the Banjul Protocol on Marks Within the Framework of the African Regional Industrial Property Organisation (ARIPO) (21 November 2000)
- the Harare Protocol on Patents and Industrial Designs Within the Framework of the ARIPO (25 April 1984)
- the Lusaka Agreement on the Creation of the ARIPO (8 August 1978)
- The Nice Agreement on International Classification of Goods and Services 1957 (Uganda is not a party to this agreement, however, it has adopted use of Nice Classification)
- The Berne convention for the protection of literary and artistic works 1886
- Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled (23rd July, 2018)
- Patent cooperation treaty (9th February 1995)
- Patent law treaty (2nd June 2000).

LEGAL SYSTEM

The Ugandan legal system is based on English common law with a written Constitution which guarantees basic human rights. The Supreme Court of Appeal is the highest court.

The High Court of Uganda has unlimited original jurisdiction to hear and determine any proceedings under any law.

INTERNATIONAL ORGANISATIONS AND AGREEMENTS

Membership of international organisations includes the Common Market for Eastern and Southern Africa (COMESA), the Preferential Trade Area, the East African Community and the Commission for East African Co-operation (which comprises Kenya, Uganda and Tanzania). Uganda has, in addition to double taxation agreements, signed bilateral trade and investment promotion agreements with the United Kingdom, Italy, Kenya, Tanzania, South Africa, Egypt, India, China, Germany and the Netherlands.

TELECOMMUNICATIONS

There are currently over ten mobile operators in the country including Uganda Telecommunications Corporation Limited (UTEL), Mobile Telephone Network Uganda (MTN Uganda), Lyca and Airtel Uganda. Email access is widely available throughout Kampala and other major towns. The Uganda Communications Act 2013 requires any person who wishes to establish a telecommunications station, provide telecommunications services or construct, maintain or operate telecommunications apparatus to obtain a licence the Uganda Communications Commission.

LABOUR RELATIONS

There are several labour laws in Uganda including but not limited to, the Employment Act and its regulations, Labour Unions act, Labour Disputes (Arbitration and Settlement) Act (LADASA), The occupational safety and health Act and the Workers' Compensation Act. Uganda has two national trade union centres, namely the National Organisation of Trade Unions (NOTU) and Central Organisation of Free Trade Unions (COFTU). The legal regime in Uganda provides for resolution of labour related disputes by the Labour office and the Industrial Court.

ZAMBIA CORPUS LEGAL PRACTITIONERS

FIRM INFORMATION

Website address : **www.corpus.co.zm**
Languages spoken : **English**
Telephone : +260 211 372 300/01/04
Address : Piziya Office Park, Stand No. 2374, Thabo Mbeki Road, Lusaka Zambia
Contact : Charles Mkokweza
Email : CMkokweza@corpus.co.zm

ZAMBIA | CORPUS LEGAL PRACTITIONERS

COUNTRY INFORMATION

Zambia has a population of approximately 19.6 million (2022 estimate). Lusaka is the capital city. Other major cities include Kitwe, Ndola, Livingstone and Chipata.

GROSS DOMESTIC PRODUCT (GDP)

GDP projected growth for 2019 dropped to 2% against a budgeted 4% with a real GDP growth of -4.5% forecast for 2020.

INFLATION RATE

Inflation increased to 15.6% by September 2024 from 13.1% in December of 2023. The Government is targeting to reduce inflation to the 6-8% target band in the medium-term. To moderate inflationary pressures, the Bank of Zambia tightened monetary policy, raising the Policy Rate to 13.5% from 11% and the statutory reserve ratio to 26% from 17%.

POLITICAL SYSTEM

Zambia has a multiparty democracy. It is a unitary state headed by a President who is elected by universal suffrage for a term of five years. He chooses his cabinet from Parliament. All laws are subject to the Constitution which contains all the fundamental freedoms of a modern democracy.

INVESTMENT CLIMATE

Zambia has one of the most liberal business environments in Southern Africa and encourages private investment in all major productive sectors including agriculture, mining, manufacturing, tourism and energy. It has introduced new economic policy measures and liberalised trade and investment conditions. Export processing zones have been established and applications for zoning are being encouraged. There are currently no exchange controls. Reforms made in the past decade include the abolition of exchange controls, the deregulation of interest and foreign exchange rates, the removal of price controls and consumer subsidies, the reform of land tenure, the reduction of tariffs, a privatisation programme for many state-owned enterprises and the strengthening of financial markets through merchant banking and the introduction of a securities exchange. After tax profits, dividends and capital may be repatriated without restriction.

The Government encourages foreign investment through the Zambia Development Agency (ZDA). The ZDA screens all investments for which incentives are requested and usually makes its decision within 30 days.

Currently the main drivers of economic growth are mining, agriculture, livestock, fisheries, energy, transport & logistics, tourism, manufacturing, information & communication technology, and science, technology & innovation. Investment opportunities exist in various sectors including textile mills, collieries, services, fertiliser and chemicals manufacturing. Zambia also has opportunities for investment in agro-industry and the tourism industry.

Investment incentives are available depending on the category in which the investor falls. Five categories of investors are recognised depending on the size of their investment within a particular industry. The Government provides incentives in terms of the Zambia Development Agency Act in the form of allowances, exemptions and concessions aimed at increasing levels of investment and international trade as well as increased domestic trade.

In terms of investment promotion, total investment worth USD8.61 billion was recorded by the ZDA in 2022 from 355 registered investment projects. Of the total registered investment in 2022, USD6.41 billion was Foreign Direct Investment (FDI) while USD2.20 billion was Domestic Direct Investment (DDI), representing 74.45% and 25.55% of the total projected investment, respectively.

Zambia's active participation in the Southern Africa Development Community (SADC) Trade Protocol (with fourteen African countries) as well as the Common Market for Eastern and Southern Africa (COMESA) with 21 African member states, offers preferential tariff access to a total market of over 600 million people.

Zambia has a stable political climate which promotes security and stability for investors. Having eight neighbouring countries makes it a focal point for the export of manufacturing and agricultural commodities within the region. By virtue of its central location Zambia is a communications hub with road networks that connect it with the surrounding countries and the various ports within the region. The Government is also working towards turning Zambia into an information and communication technology (ICT) hub for the region. To achieve this, it has set out various objectives, including a commitment to improving ICT infrastructure through the development of an optic fibre infrastructure backbone to facilitate internet broadband connectivity through the establishment of community telecenters, particularly in rural areas.

FORMS OF BUSINESS

The following forms of enterprise may be established under statute and common law.

Statute
- Company limited by shares
- Company limited by guarantee
- Unlimited liability company
- Statutory corporations
- Societies (being associations of persons)
- Co-operative societies.

Common Law
- Agencies, licences and distributors
- Partnerships
- Trusts
- Business Names
- Franchises.

FORMATION OF A COMPANY

The incorporation of a company is effected through the Companies Registry. The operation of certain businesses may require licences from one or more licensing authority depending on the sector including telecommunications, mining, oil marketing and professional services (such as accounting, valuation and architecture). Establishing a business in Zambia involves the following:

- check name for uniqueness at the Patents and Companies Registration Agency (PACRA)
- open a bank account
- register the company at PACRA
- register with the local Zambia Revenue Authority (ZRA) office (direct tax division) to obtain a tax payer's identification number
- file a VAT registration form with ZRA to obtain a VAT tax number
- register with the National Pension Scheme Authority for Social Security
- register the company with the Workers Compensation Control Board
- register with ZRA for "Pay As You Earn" tax payments on behalf of employees
- obtain a trading license and a fire certificate from the local council.

EXCHANGE CONTROLS

The Bank of Zambia does not apply any exchange controls. The exchange rates are determined entirely by market forces of supply and demand for foreign currency and there are no restrictions on externalising profits, dividends or royalties.

SECURITIES

The Lusaka Stock Exchange (LuSE) was established with preparatory technical assistance from the International Finance Corporation (IFC) and the World Bank in 1993. LuSE opened on 21 February 1994. The formation of LuSE was part of the Government's economic reform program aimed at developing the financial and capital market in order to support and enhance private sector initiatives. It was also expected to attract foreign portfolio investment and recognition of Zambia and the region as an emerging capital market with potentially high investment returns. Another important role of LuSE was to facilitate the divestiture of Government ownership in parastatals and create a broad shareholding ownership by the citizenry through a fair and transparent process. The LuSE has made great strides and is now not only a platform for trading shares and bonds but also a means of raising capital. Market capitalisation closed at ZMW88 711 135 712.50 by the end of December 2023 while the All-Share index closed at 10828.18 points by the end of December 2023.

TAXATION

Residents and non-residents are taxed on income sourced in Zambia as well as certain types of foreign income.

Resident companies pay corporation tax at a rate of 35% but mining companies are subject to a rate of 30% if the income of the mining company does not exceed 8% of the gross sales of the company. If the income of the company exceeds 8% of the gross sales of the company, then the corporate tax will depend on the assessable income. There is a 5.5% mineral royalty tax on companies mining base metals and industrial minerals. The tax rate is 6% with respect to precious metals and gemstones. Banks pay tax at a rate of 35%. Electronic communication businesses pay tax at 35% for the first 250 000 Kwacha and 40% above 250 000 Kwacha.

Generally, dividends are subject to tax at the rate of 15% but the rate is 0% for dividends paid to individuals by a company listed on the Lusaka Stock Exchange. A 15% tax is payable on management or consultancy fees paid to a resident and 20% if paid to a non-resident. The same rates apply to tax payable on royalties.

The standard rate of tax with respect to interest is 15%. The rate is 20% with respect to payments made to a non-resident or haulage contractor.

The standard rate of tax with respect to the payment of royalties is 15% if the recipient is a resident and 20% for a payment to non-residents. The standard rate of tax for rent from a source within Zambia is 10%.

Value Added Tax is payable at a standard rate of 16% (certain supplies are zero rated or exempt).

There are double tax treaties with Denmark, Finland, France, Germany, India, Ireland, Italy, Japan, Kenya, the Netherlands (this treaty is currently under review), Norway, South Africa, Mauritius, Seychelles, Sweden, Switzerland, Tanzania, Uganda, the United Kingdom, Canada, China, Romania and Botswana.

Following the 2024 budget announcement, the following are some of the main tax changes that will come into effect on 1 January 2025:

- Introduction of an Advance Income Tax at 15% on remittances exceeding USD2000 or its equivalent. This will be for transactions made without a valid Tax Clearance Certificate. The Advance Income Tax will also apply on noncompliant exporters
- Upward revision to 20% from 15% of the corporate income tax rate applicable to profits realized from export of non-traditional products and value addition to copper cathodes
- Introduction and revision upwards of Selected Goods Surtax applicable on imports of specified products which are locally manufactured
- Introduction of an automatic annual adjustment of excise duty on tobacco and tobacco products, fuel and used motor vehicles indexed to the average inflation rate for the preceding year, which shall be capped at 20%
- Introduction of excise duty at the rate of 10% on the betting amount
- Increase in excise duty on non-alcoholic beverages to K1 per litre from the current 60 Ngwee
- Revision upwards by 20% the bands for presumptive tax on operators of motor vehicles for transportation of persons.

IMPORT/EXPORT

Zambia's main export commodities as at quarter 2 2024 include copper, copper articles, ores, slag, ash, minerals fuels, oils, salt, sulphur, iron and steel. Its main imports include mineral fuels, oils and oil products, nuclear reactors, boilers, mechanical appliance and parts, vehicle parts and accessories, fertilisers and plastics and plastic articles.

LEGAL SYSTEM

Zambia has a dual legal system. It applies local laws and English common law concurrently. English law (which includes statutes in force in England on 17 August 1911), common law and doctrines of equity are applied as long as there is a "lacuna" in local law. Further, the English law must be in substantive conformity with local laws. Where there is a conflict between local laws and English law, local laws prevail. There are also specific English statutes passed after 17 August 1911 which apply. International treaties to which Zambia is party do not automatically apply. Parliament has to enact enabling legislation in order for an international treaty to have force in Zambia.

INTELLECTUAL PROPERTY

Intellectual property rights are protected. Statutes cover patents, trademarks, registered designs, merchandise marks, article works and copyright. The statutes incorporate the provisions of various relevant international conventions such as the Berne Convention.

FINANCIAL SERVICES/INSURANCE

The Banking and Financial Services Act regulates banking and financial services and provides safeguards for investors and customers. The Central Bank enforces regulatory requirements. The Insurance sector is regulated under the Insurance Act.

KEY STRATEGIC GROWTH INITIATIVES BY GOVERNMENT/PRIVATE SECTOR

In 2004 the Government introduced the Private Sector Growth Initiative to reform and create an appropriate environment for a vibrant private sector. Growth in the private sector has further been enhanced by the Government through Public-Private Partnerships (PPP). Most construction, including the rehabilitation and maintenance of infrastructure, is being contracted to the private sector.

In 2022, the Government launched the Public Private Dialogue Forum (PPDF). The forum provides a structured, participatory and inclusive platform for public-private sector engagement on policy matters with a focus on leveraging partnerships and synergies to accelerate socio-economic development in Zambia. The PPDF aims to harness trade and investment opportunities for the private sector on the local, regional, continental and international markets, while promoting value chains and value addition for various commodities and products to create jobs and wealth for Zambians.

Launched in 2022, the Eighth National Development Plan (8NDP) focuses on:

- Economic transformation and job creation through an industrialised and diversified economy, enhanced citizenry participation in the economy and competitive job creation
- Environmental sustainability through enhanced mitigation and adaptation to climate change and sustainable environment and natural resources management
- Good governance through an improved policy and governance environment and improved rule of law, human rights and constitutionalism.

TREATIES AND BILATERAL AGREEMENTS

The most recent cooperation agreement is between Zambia and the Democratic Republic of Congo to facilitate the development of value chains in electric battery and clean energy sector.

Zambia also signed the Lobito Corridor MoU with Angola and the Democratic Republic of Congo. Zambia will develop the new Zambia-Lobito rail line, connecting northwest Zambia to the Lobito Atlantic Railway and the port of Lobito in Angola. This will open rail access from the Atlantic Ocean to the Indian Ocean.

Zambia has signed bilateral reciprocal promotional and protection of investment protocols with most COMESA and SADC member states. In November 2001 COMESA signed a Trade and Investment Framework Agreement with the United States. On 2 October 2000, Zambia became a beneficiary of the African Growth and Opportunity Act (AGOA). Zambia signed the Eastern and Southern Africa (ESA) Interim Economic Partnership Agreement (IEPA) with the European Union on 30 September 2008. The provisions of the trade in goods chapter and related annexes of the ESA IEPA now apply to Zambia.

MEMBERSHIP OF INTERNATIONAL AND REGIONAL ORGANISATIONS

Zambia is a member of 44 international and regional organizations, including the United Nations, World Trade Organization, African Union, COMESA and SADC.

ROAD AND TRANSPORT

Zambia has a total classified road network of 67 671 km of public roads, with 40 454 km from the classified network as the Core Road Network (CRN). Road communications within Zambia and with neighbouring countries to the north, east and south are good.

In line with the 'Link Zambia-8000' project (which was launched several years ago to connect outlying areas of Zambia to all of the ten provinces) construction has begun on the Pedicle and Serenge-Mpika roads, the Ndola-Lusaka dual carriageway and the Chingola to Kasumbalesa road.

In an effort to improve the railway network and reduce the heavy load on the roads, the Government took over the management of the main railway system in Zambia with the intention of developing and rehabilitating its infrastructure. Progress has been made in rehabilitating four major rail networks and the refurbishing of livestock wagons and passenger coaches. The Government has also passed a statutory instrument to compel transporters of heavy cargo to move 30% of bulk cargo from road to railway.

The key railway lines run from Livingstone on the border with Zimbabwe through Lusaka and the Copperbelt into the Democratic Republic of the Congo and Angola. The Tanzania-Zambia railway extends from Kapiri Mposhi to Dar es Salaam in Tanzania. The Livingstone route runs through Zimbabwe to the ports of Durban and Cape Town in South Africa. Operations on the Chipata-M'chinji railway line have commenced and will enhance regional trade through the Nacala Corridor to Mozambique.

The country's major international airport is the Kenneth Kaunda International Airport in Lusaka and this is serviced regularly by a number of international airlines. Local airlines service regional routes in central and southern Africa and domestic charter companies support air travel within Zambia.

ENERGY

Zambia's energy sector is endowed with enormous resources which include coal, hydropower, woodlands and forests as well as other renewable energy forms such as solar and wind. There has been a steady increase of investment in the energy sector especially with respect to power generation. The installed generation capacity in Zambia is 3356.6 MW. The installed capacity comprises of 83% of hydro, 9% of coal, 5% of heavy fuel oil and 3% solar PV. The mining sector remains the largest consumer of power at 51% of total generated electricity, followed by the domestic sector at 33%.

Kariba North Bank Power Station is the biggest underground Hydro Power Station in Zambia with an installed capacity of 1080 MW, consisting of 6 generating units rated at 180MW each. Another 120 megawatts at the Itezhi-Tezhi Hydro Power Plant, and 151 megawatts at Kalungwishi are being developed by the private sector and will further enhance Zambia's power generation capacity. Maamba Collieries Limited, a power plant in Sinazongwe, supplies 300 megawatts thermal power to the grid. The Government has pledged to continue extension and rehabilitation works.

The Government recently introduced net metering, a program that allows consumers to generate their own electricity and feed excess power back into the grid. The Government introduced this program in order to promote the adoption of renewable energy sources among customers and to reduce the overwhelming demand that's currently on the grid.

The Government through its investment vehicle, the Industrial Development Corporation, and with the support of the World Bank Group's Scaling Solar Program (Scaling Solar) has targeted the development of up to 600 MW of solar photovoltaic (PV) power. Scaling Solar has been designed to enable African Governments and utilities to execute quick, simple, professional and competitive tenders to procure high quality, privately designed, built, owned and operated solar

PV power plants under long-term contracts at competitive tariffs. At present, the Government has completed the development of two grid-connected solar photovoltaic electricity generation plants with a capacity of approximately 50 MW each which are now supplying power into the grid.

The Government's policy in the petroleum sector is to ensure a stable supply of fuel in all parts of the country. To this end, the Government has embarked on a nationwide program of building provincial fuel depots. Some of the fuel depots were commissioned in 2015 including the Ndola fuel depot which was undergoing rehabilitation, the Solwezi fuel depot and the Mongu fuel depot. The Government is identifying additional sites in the remaining provinces. The Government is also reviewing the petroleum supply chain and financing options to reduce costs. The Government has embarked on discussions at a bilateral level with oil producing countries for the supply of crude and finished products to streamline procurement.

TELECOMMUNICATIONS

Domestic and international telecommunications infrastructure is well established. Telecommunications are regulated by the Zambia Information and Communication Technology Authority (ZICTA). There are cellular phone services available through ZICTA and a number of other privately-owned companies. A microwave network carries telecommunications from Lusaka to all provincial capitals in the country.

TRADE AND INDUSTRY

Metals currently dominate Zambia's exports. However, in an effort to diversify the economy away from copper, the Government has directed its efforts at increasing non-traditional exports by an annual target rate of 30%. These include horticultural, floricultural and other agricultural products, processed foods, manufactured products, gemstones and processed metal products.

Recognising that small and medium sized enterprises (SMEs) hold the greatest potential for job creation, the Government has continued to further enhance medium to long term financing for SMEs by supporting initiatives such as the Alternative Investment Market launched by the Lusaka Stock Exchange. Such initiatives will allow SMEs to raise funds from the stock market at an affordable cost and tap into technical and managerial skills through new equity partners.

The Government has also granted a number of tax concessions over the past five years to spur growth in the manufacturing sector. The Government remains committed to the growth of the manufacturing sector through the promotion of Multi-Facility Economic Zones (MFEZ) and industrial parks such as those at Chambishi, Lusaka South, Lusaka East, Lumwana, Ndola (sub Saharan gemstone exchange) and Roma. The MFEZs and industrial parks house heavy and light industries including copper smelting, copper cable and other copper related products, agro processing, the manufacture of household appliances, bars, wires, electric cables, motor parts and explosives, horticulture, fisheries, and processing activities as well as the provision of services such as conference facilities and hotel accommodation.

INFORMATION AND COMMUNICATIONS TECHNOLOGY

Investments in this sector have increased since the Government launched its information and communications technology policy in 2007. More investments are expected in the sector when new optic fibre infrastructure is completed.

MINING

The Zambian economy has been heavily reliant on the mining of copper and cobalt and despite the positive steps taken to diversify the industrial and manufacturing base, this reliance remains. The other important metals produced have been zinc and lead. Zambia is internationally recognised as a major producer of copper and cobalt. Apart from copper, cobalt, lead and zinc, Zambia is endowed with reserves of gold, uranium, nickel, iron and manganese. Gemstone deposits include emeralds, amethysts, aquamarine, rubies, garnets and diamonds that are still unexploited.

As part of a policy to promote diversification to other minerals such as gemstones, gold, nickel, manganese and iron, the Government is promoting the exploration of oil and gas. The entire country will also be mapped to update the geological database to support future investment in the mining sector. The Eighth National Development Plan (8NDP) promotes the exploration and exploitation of minerals such as gold, gemstones and manganese as well as petroleum resources to diversify beyond copper. For the country to tap into regional and global markets and value chains, local beneficiation and value addition to minerals is encouraged. The plan also aims to increase Zambia's annual copper production to 3 million tonnes by 2032. This achievement would rank Zambia as the second-largest copper producer globally, compared with ninth in 2023.

AGRICULTURE

While the country's main economic driver continues to be copper, the Government has continued to expand the agricultural sector. The Government's strategic focus is to achieve food security and promote crop diversification as well as increase productivity and value addition. During the 2022/23 farming season, the country recorded a decrease

in the harvest from the 2022/23 harvest of 3.3 million metric tonnes of maize to 1.7 million metric tonnes. The decrease in the harvest was attributed mainly to drought.

Zambia has excellent potential for development in the agricultural sector, being well endowed with good soil (60 million hectares of good arable land, of which only 15% is in use) and underground water. Climatic conditions are suited to a wide variety of crops including wheat, soya, beans, coffee, cotton, tobacco, sugar and paprika. Zambia also has prime livestock breeding areas with about ten million hectares of land available for ranching. It also has rich forestry reserves consisting mainly of pine and eucalyptus. More growth and investment is accordingly expected in the agricultural sector.

Annual national fish consumption currently stands at 185 000 metric tonnes. However, annual national production is 170 000 metric tonnes with almost 56% from capture fisheries. . According to the Eighth National Development Plan (8NDP), The Government aims to increase production and productivity in the agriculture sector. To this end, the Government aims to create an enabling environment for private sector growth in the agriculture sector by providing a stable trade policy with emphasis on easing of restrictions on exports of agricultural commodities and facilitating access to finance. To support increased production in the sector, research and development will be prioritised, particularly in the development of improved varieties and breeds of crops including tree crops, livestock and fish.

LABOUR RELATIONS

Numerous laws regulate labour relations in Zambia including the Constitution of Zambia (Amendment) Act No.2 of 2016, the Industrial and Labour Relations Act Chapter 269 of the Laws of Zambia (as amended in 2017), the Employment Code Act No. 3 of 2019 (as amended in 2020), the Employment Code (Exemption) Regulations, the Minimum Wages and Condition of Employment (General) (Amendment) Order, the Occupational Health and Safety Act No 36 of 2010, the Workers Compensation Act 10 of 1999, the National Pension Scheme Act No. 40 of 1996 (as amended in 2015), the National Health Insurance Act No.2 of 2018 and the Factories Act chapter 441. The legislative framework provides a guideline on labour related issues in the country, including trade unions and collective bargaining, laws against child labour, discrimination and safe workplace practices.





ZIMBABWE SCANLEN AND HOLDERNESS LEGAL PRACTITIONERS

FIRM INFORMATION

Website address : **www.scanlenandholderness.com**
Languages spoken : **English, Shona, Ndebele, Afrikaans and Zulu**
Telephone : +263 242 702561-8
Address : 13th Floor, Cabs Centre, 74 Jason Moyo Avenue, Harare, Zimbabwe
Contact : George Gapu and Tapiwa John Chivanga
Email : gapug@scanlen.co.zw and chivangat@scanlen.co.zw

ZIMBABWE | SCANLEN AND HOLDERNESS LEGAL PRACTITIONERS

COUNTRY INFORMATION

Zimbabwe is a landlocked country spanning 390 757 square kilometres. It has a population of approximately 16.1 million people as per the recent 2022 census. More than 60% of the population is based in rural areas.

ECONOMIC INDICATORS

Zimbabwe's economic development continues to stagnate. Experts have established that its Real GDP grew by approximately 5.5% in 2023, which was itself preceded by a 6.5% growth in 2022. Zimbabwe receives most of its forex inflows from agricultural and mining exports. However the country continues to experience macroeconomic volatility stemming from monetary policy instability and substantial exchange rate distortions. Resultantly, the country's economic potential remains hampered.

In efforts to counter its economic woes, the Reserve Bank of Zimbabwe introduced a new currency on 5 April 2024, termed the Zimbabwe gold (ZiG). It replaced the Zimbabwe dollar. The currency is backed by gold reserves. . It is increasingly gaining traction as the currency of exchange but most transactions continue being in the United States Dollar. Traders are wary of the new currency's potential volatility given the country's history with local currencies.

Zimbabwe is however set to experience a slower GDP growth of 2% for 2024 mainly due to below average agricultural output caused by drought arising from the El Niño weather phenomenon. Additionally, mining output is also expected to remain subdued because of lower international mineral prices.

INFLATION RATE

Inflation continued to wreak havoc in the economy on the backdrop of a volatile local currency and an aggressive parallel market for foreign currency between 2023 to early 2024. From December 2023 to February 2024 alone, annual inflation increased from 26.5% to 47.6% whilst the official exchange rate depreciated by approximately 788% in 2023. This has since significantly reduced with the introduction of the new local currency, the Zimbabwe Gold (ZiG).

INVESTMENT CLIMATE

Zimbabwe is actively trying to attract foreign direct investment as it emerges from years of rapid economic decline. The Government continues to promote investments in key sectors which are mining, agriculture, manufacturing, tourism, ICT and infrastructure development. Private sector growth is still viewed as being critical in enabling the realisation of the country's full economic potential. The country has immense economic development potential but it remains a challenging business environment. Its economic potential lies in its untapped natural resources, skilled labour and high literacy rate. Its geographical location also positions it as a potential central hub for businesses across the Southern African region.

Zimbabwe is actively trying to promote the ease of doing business in the country. On 7 February 2020 the Zimbabwe Investment and Development Agency Act (Chapter 14:38) was gazetted. It establishes the Zimbabwe Investment and Development Agency (ZIDA) which was launched in December 2020 and is responsible for promoting and facilitating investment in the country. ZIDA remains a key authority in facilitating foreign investment into the country. Within the ZIDA is a One Stop Investment Services Centre which brings together various Government departments which play a role in investment regulation. The Act provides for non-discrimination between local and foreign investors in the establishment, acquisition and conduct of business. In line with Government's thrust to promote the ease of doing business, the new Act is expected to speed up the establishment of businesses by investors.

Investment opportunities are opening up with the privatisation of some state-owned enterprises in the iron and steel industry, road and rail transport, communications, agriculture, power supply and other sectors. The country is actively looking for development partners in power generation, water supply and sanitation projects, road construction and railways development. In 2024, the country has seen significant road dualisation and upgrades particularly across major roads linking the major cities as well as on the major road networks in the capital city, Harare.

The indigenisation law has been amended and seriously watered down to allow 100% ownership of businesses by foreign investors. Having initially removed the indigenisation requirement except for companies operating in the diamond and platinum sectors, the Government has since December 2022, removed the indigenisation requirement for all minerals entirely.

There are many investment opportunities particularly in the mining and agricultural space. Looking at mining, Zimbabwe has experienced a large influx of foreign investors in the lithium mining sector. Zimbabwe holds the biggest lithium reserves in Africa (and is placed at sixth place globally). Experts estimate that 20% of world lithium demand can be met by Zimbabwe, if it fully exploits its reserves. From 2022 to 2024, it is estimated that approximately USD10 billion has been invested in and/or earmarked for various lithium related projects.

Investors can also invest in agriculture through contract farming in crops like tobacco and cotton. Vast swathes of prime agricultural land are available to private operators on concession from Government. Most of the farms in Zimbabwe are now owned by Government after the Land Reform programme in 2000. The farms are largely occupied by locals who received offer letters from Government. Government is actively promoting investment through joint ventures between investors and holders of offer letters in order to boost agricultural production. There are several joint ventures currently being implemented across the country.

Having reintroduced its local currency, the Zimbabwe Dollar, as the sole currency of trade in September 2019, Zimbabwe once again changed currencies after experiencing high inflation and economic instability. The Government introduced a new currency called the Zimbabwe Gold (ZiG) in April 2024. The currency continues to trade with the United States Dollar along with a plethora of other foreign currencies including the South African Rand. Prices can be charged in either local currency or foreign currency but buyers have the option of paying in either currency at a fixed exchange rate. This has brought some stability to the market. To promote the stability of the local currency, Government is cracking down heavily on parallel market foreign currency dealers.

FORMS OF BUSINESS

- Private business corporations
- Partnership
- Trading trust
- Co-operatives
- Private limited liability companies
- Public liability companies
- Sole proprietorship
- Company limited by guarantee
- Joint venture.

FORMATION OF A COMPANY

Companies and Private Business Corporations are registered and regulated by the Companies and Other Business Entities Act (Chapter 24:31) which came into force on 13 February 2020. Companies registered under the old Companies Act were required to re-register by 13 February 2023 but this time period has been extended as the modalities around reregistration are still underway. Listed public companies are in addition regulated by the rules of the Zimbabwe Stock Exchange Listing Rules. There is a central registry of companies in Harare and a branch registry in Bulawayo. The registration process of companies is often avoided by buying existing shelf companies from law firms.

EXCHANGE CONTROLS

Exchange control laws are in force. Exchange control approval is required in respect of foreign payments and incurring foreign obligations. Exchange control approval is also required for non-residents seeking to hold shares in local companies for unlisted entities. Dividend remittances in respect of projects approved by the Zimbabwe Investment and Development Agency are allowed at 100% of current after-tax revenue profits. Zimbabwe recently introduced a new currency name the ZiG (Zimbabwean Gold). It still makes use of a multi-currency regime with the United States Dollar being the predominate currency in use. Authorised dealers are required to comply with a priority list when allocating available foreign currency. Priority is given to productive sectors of the economy. .

TAXATION

The Zimbabwean tax system is based on source as opposed to residency. This entails that, income derived or deemed to be derived from sources within Zimbabwe is subject to tax.

The corporate tax rate is 25% as of the 1st of January 2024. Value added tax (VAT) of 15% is also levied on the sale of goods or services.

Tax concessions are applied to export businesses established in designated export processing zones (Special Economic Zones). These businesses are exempt from paying corporate tax for the first five years of operation. Thereafter, the applicable rate is 15%.

Capital gains realised on the disposal of specified assets (including immovable property and unlisted shares acquired on or after 22 February 2019) are subject to capital gains tax at the rate of 20% after applicable deductions. For assets acquired before 22 February 2019, the capital gains tax rate is 5% with no deduction made before levying this rate. Gains realised on the disposal of listed marketable securities are subject to withholding tax at the rate of 1.5% if held for at least 6 months or 2% if held for less than 6 months (increased from 1% effective 1 January 2022).

A special capital gains tax at a rate of 20% was introduced from 1 January 2024 on entities acquiring a mining title or any interest therein. This tax has been criticised for its retrospective effect. Subject to exceptions, this tax applies on the transfer of titles acquired within 10 years from 1 January 2024, subject to certain conditions.

It is important to note that, with effect from 1 January 2022, taxpayers are required to render separate income tax returns for income earned in foreign currency and income earned in the local currency. This law was recently affirmed in 2024 by the Supreme Court of Zimbabwe which held that one is obliged to pay separate taxes for income earned in foreign

currency and income earned in the local currency.

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

IMPORT/EXPORT

Import controls exist. The Government has removed the import duty on equipment and raw materials meant for local industry to promote productivity. Duty on imported commercial motor vehicles has also been reduced to boost the transport and business sector. To encourage certain productive sectors of the economy, the Government will suspend duty on various inputs used in these industries. The Government has also provided for a rebate of duty on raw materials, intermediate products, equipment and machinery as the Commissioner of the Zimbabwe Revenue Authority may approve when such goods are imported solely for use in a Special Economic Zone.

LEGAL SYSTEM

The legal system is based on Roman-Dutch common law as modified by statute. Zimbabwe has a new Constitution which came into force in 2013. The highest court in the land is the Constitutional Court followed by the Supreme Court, the High Court and the Magistrate's Court. The Supreme Court is the highest court in respect of non-constitutional issues. There are also specialised courts such as the Administrative Court and Labour Court. There is a division of the High Court established to deal specifically with commercial matters whose objective is to expedite the resolution of such matters (in six months). Zimbabwean superior courts have introduced an electronic filing system and the effect has been that no hard copies can be filed with the courts. The courts have gone paperless and court hearings can be held virtually.

INTELLECTUAL PROPERTY

Protection is provided by the Patents Act and Trademarks Act. The country also has a Copyright Act. There are public registries for trademarks, industrial designs and patents. Zimbabwe is a signatory to the Berne and Paris Conventions.

FINANCIAL SERVICES/INSURANCE

There are several international and locally owned banks operating in the country. There are also several building societies established to provide mortgage finance. There are many insurance and reinsurance companies operating in Zimbabwe. The law allows individuals and businesses to operate local currency accounts and foreign currency accounts. Individuals can withdraw cash from the bank subject to withdrawal limits imposed by the central bank. Lending rates for the productive sector have been pegged at below 20%. Pensioners above 60 years of age are exempt from bank charges.

KEY STRATEGIC GROWTH INITIATIVES BY GOVERNMENT/PRIVATE SECTOR

The Government is making significant investments in infrastructural developments in power generation, road infrastructure (entailing the dualisation of major roads) and the construction of bridges. It is also working on upgrading airports and is committing significant funds towards these developments. The Government is actively seeking private partners in these areas. The Government moreover is actively promoting the beneficiation of minerals produced in Zimbabwe and the building of cross linkages in different sectors of the economy in order to promote economic growth and infrastructural development. The Government has introduced several tax incentives and disincentives to promote the local beneficiation of minerals. To promote agriculture and investor confidence, Government is compensating commercial farmers who were dispossessed of their land and in some instances it is restoring the farms to these farmers.

TREATIES AND BILATERAL AGREEMENTS

Zimbabwe has signed bilateral investment treaties and international agreements whose objective is to guarantee protection to investors. The agreements include the Overseas Private Investments Corporation (OPIC) and Multilateral Investment Guarantee Agency (MIGA), International Convention on Settlement of Disputes (ICSID), the New York Convention on the Enforcement of Arbitral Awards, and the United Nations Convention on International Trade Law (UNCITRAL). Zimbabwe signed a Bilateral Investment Promotion and Protection Agreement (BIPPA) with South Africa in November 2009 and has signed 54 other BIPPAS with countries like China, Germany, Netherlands, Switzerland, Russia and Yugoslavia. Several other Bilateral Investment Treaties await ratification. Government wants to use the BIPPAS to increase investor confidence in the country. Zimbabwe is a member of the Common Market for Eastern and Southern Africa (COMESA) Customs Union and Southern African Development Community (SADC) agreement on tariffs and trade. Zimbabwe has double tax avoidance treaties with South Africa, Mauritius and Seychelles and wishes to enter into such agreements with other countries to promote the residence basis of taxation agreed amongst SADC countries in terms of the SADC Tax Convention.

MEMBERSHIP OF INTERNATIONAL AND REGIONAL ORGANISATIONS

Zimbabwe is a member of SADC, COMESA, the African Union, United Nations, World Bank and International Monetary Fund.

ROAD AND TRANSPORT

The road and rail infrastructure had deteriorated significantly due to lack of investment by the Government. The country is actively working on upgrading the infrastructure by dualising roads and reviving and upgrading the rail network. Starting in 2023 and more significantly in 2024, the Government has invested heavily in upgrading the major roads connecting the major cities throughout Zimbabwe and major arteries across the capital city, Harare. This has been done in conjunction with a dedicated Authority called ZINARA which was formed to spearhead the process and private sector partners which have been engaged by the Government. A technical partner is being sought for the railways authority to help in reviving the rail network.

WATER

The Government is investing significant sums to support local authorities in the provision of water supplies and it has decentralised water services to local authorities. Water supplies are erratic in most cities and towns and many people resort to borehole water supply for domestic and commercial purposes. Potable water supply is also a persistent problem in rural areas during the dry seasons. Government is supporting projects to increase water supply and will commit substantial sums to dam construction and the rehabilitation of existing infrastructure. Government is keen to invest in water harvesting projects to increase irrigation capacity. There is rapid expansion of irrigation services across the country taking advantage of old and new water reservoirs in the country. This is expected to boost agricultural production. The country however has one of the highest levels of water development for irrigation in the Southern African region but this is not at full potential as a result of the Government's previous lack of investment in the systems and general maintenance.

ENERGY

Energy supplies remain critically low and power shortages and cuts are affecting manufacturing industries, agriculture, commerce and domestic consumption. Power supplies are below 50% of the national demand. Private sector partners are being sought for independent power supplies while the Government is actively looking to develop alternative power supply sources. The Government is committing significant sums to upgrading existing power supply plants and building new ones. In the second half of 2013 the Government introduced the compulsory blending of fuel with ethanol by all petroleum companies. The ethanol is produced locally. With effect from 1 January 2018, power generation projects will be exempt from corporate income tax for the first five years of operation. Thereafter a corporate income tax of 15% will apply. Most service stations are selling fuel in foreign currency only and this has eased demand on the product. Zimbabwe faces dire electricity shortages characterised by continuous load shedding. Recently, the Government commissioned an additional 600 MW at the Hwange power station but this remains inadequate to meet demand.

TELECOMMUNICATIONS

The Government mobilised USD98 million for the State-owned telecommunications corporation (Tel-One) to be used in increasing connectivity for its customers, broadening the core network and upgrading its mobile broadband. Government is also opening up airwaves to new radio and television stations. Mobile telephone companies operating in Zimbabwe have rapidly expanded their ground coverage to virtually the entire country. To operate in this sector, any controlling interest in a telecommunications company must be held, directly or indirectly, by one or more individuals who are citizens of Zimbabwe and ordinarily resident in Zimbabwe. A controlling interest means the majority of shares in the company or shares representing more than half the share capital of the company, shares of a value in excess of half the share capital of the company or shares entitling the holders thereof to a majority or preponderance of votes in the affairs of the company. The Government recently announced that it will licence the satellite company, Starlink, to operate in Zimbabwe. This is expected to make the internet more readily accessible to a greater portion of the population and make data more affordable. This will however bring tight competition to internet service providers already operating in the country.

KEY INDUSTRY SECTORS

The main industry sectors are agriculture, mining, telecommunications, and financial services.

TRADE AND INDUSTRY

Industrial capacity utilisation is very low. Government is actively trying to ramp up capacity utilisation. The Zimbabwe National Industrial Development Policy and the Local Content Strategy are deliberate policy tools being applied in this regard. Sectors targeted for support in the 2020s were pharmaceuticals, tyre production, hides/leather processing and steel production. The main trading partner remains South Africa. The industrial sector remains depressed

due to a scarcity of capital on the local market, antiquated equipment and the absence of foreign direct investment and lines of credit from external sources.

INFORMATION AND COMMUNICATIONS TECHNOLOGY (ICT)

A ministry focusing specifically on ICT has been established. In 2019 the country witnessed a mobile penetration rate of 84.8% and an internet penetration rate of 57.2%. A Smart Zimbabwe 2030 Master Plan is being developed by Government. This is an all-inclusive guideline articulating how the country will develop, deploy and manage ICTs across all sectors. Private sector players are required to complement the Government efforts. The mobile telephone and data companies in the country are expanding their fibre optic link networks.

MINING

Mining is one of the largest contributors to the country's gross domestic product (GDP). Several investment agreements have been signed in platinum, gold, lithium, chrome and diamond mining. In addition to the gold and chrome which the country has traditionally produced, platinum and diamonds are fairly recent discoveries which are dominating the sector. A new Minerals Exploration and Marketing Cooperation Act is being proposed. The Mines and Minerals Act will also be amended to compel holders of mining rights to "use them or lose them". Miners will also be obliged to establish funds to meet the costs of reversing environmental degradation caused by their mining operations. The law will make directors of companies personally liable for criminal acts committed by the company making them susceptible to imprisonment. Government plans to rationalise mining fees in line with regional standards in order to attract FDI into the sector.

One of the more interesting opportunities in Zimbabwe is lithium mining. The country holds the largest lithium reserves in Africa (and is at sixth place globally). Experts estimate that 20% of world lithium demand can be met by Zimbabwe if it fully exploits its reserves. It is estimated that from 2022 to 2024 approximately USD10 billion has been invested and/or earmarked for investment in various lithium related projects.

AGRICULTURE

The country produces grain crops such as maize and wheat as well as cotton, tobacco and sugarcane. Farmers who benefited from the land reform programme at the turn of the century are dependent on Government and lending institutions for financial support and are largely hampered by the lack of collateral. Government has refined 99 year leases to make them bankable as collateral for loans and to enhance security of tenure but these are not being readily issued by Government. Their bankability is also doubtful. Farmers pay levies to Government for the land and those who fail to pay the levies may have their land repossessed. The Government is devoting considerable resources to the sector. In 2016 the Government introduced considerable financial support for agriculture through a scheme called "command agriculture" in which inputs will be given to farmers in return for agreed quantities of produce. This scheme is still in place and benefiting even large scale agricultural operators.

TOURISM

In 2020 the sector was hit hard by the Covid 19 pandemic with its associated travel restrictions. This persisted into 2021 with another nationwide lockdown being introduced at the beginning of the year. The Government moved to implement rapid vaccination of the population and targeted to vaccinate everyone in the resort town of Victoria Falls in order to foster herd immunity against Covid 19. The Government promotes the tourism sector through the Zimbabwe Tourism Authority. Government recognises the sector as one of the main drivers of the local economy post Covid 19. Experts estimate that Zimbabwe's tourist arrivals are projected to rise to approximately 2.78 million by 2028, up from around 2.55 million in 2023.

TRADE AND INVESTMENT

The Government has set up several corporations to promote investment in industry. The Small and Medium Enterprises Development Corporation was set up to specifically assist the establishment of small businesses and a bank to support infrastructural development has been established. A central one-stop investment authority has been established to promote foreign direct investment and remove bottlenecks in the regulatory system.

LABOUR RELATIONS

Zimbabwe has a huge pool of labour with over 80% of the population unemployed in the formal sector. Labour relations are regulated by a labour law with a dedicated court and other structures set up to deal exclusively with labour issues. In 2023, Government amended the Labour Act (Chapter 28:01). Some of the main substantive changes to the Act are in respect of the following issues:

- Gender-based violence harassment, as well as, General harassment: these were introduced as forms of unfair labour practices in the workplace. The Act makes a conviction in respect of such forms of harassment a valid

basis for dismissing an employee
- Forced Labour: although the constitutional and employment laws already prohibited forced labour, the amendment clarifies what the term forced labour does and does not encompass
- Equal Pay for Equal Value Work: the Act expands on the requirement that male and female employees shall be paid equal remuneration for equal value work without discrimination on the grounds of sex or gender
- Termination of Employment Contracts: prior to the amendment, the law provided for termination on notice subject to following certain procedures. Termination on notice has now been abolished. Termination can now only occur where the employee resigns or retires, or where the termination is by mutual agreement, in writing, or dismissal following disciplinary proceedings if the employee commits an act of misconduct
- the Act now provides that women are entitled to paid maternity leave without having served any previous period of employment. Previously one had to have worked for at least one year before qualifying for maternity leave. In addition, there is no longer a limit as to how many times a woman can go on maternity leave.

The amendment also dealt with limitations on the frequent renewal of fixed term contracts so as to limit the casualisation of labour. Labour relations are generally very regulated. Companies in various sectors fall under National Employment Councils (NECs) where industry specific labour standards are set.





LEXAFRICA

Alliance of Leading Law Firms

Alliance of Leading Law Firms | **Alliance des Cabinets de Premier Plan** |
Aliança dos Principais Escritórios de Advocacia

Website: www.lexafrica.com | **Email**: LEXenquiries@werksmans.com