

Doing Business
in SOUTH AFRICA



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About Andersen Global

Andersen Global

Andersen Global® was established in 2013 as an association of legally separate, independent member firms, with a worldwide presence and comprised of professionals that share a common background and the same vision no matter the location where they are.

Our growth is a byproduct of the outstanding client service delivered by our people, the best professionals in the industry and our objective isn't to be the biggest firm, it is to provide best-in-class client services in seamless fashion across the globe.

Outstanding client service has and will continue to be our top priority.

Our professionals are selected based on quality, like-mindedness, and commitment to client service and each and every one of the professionals that are a part of Andersen Global share our core values.

Andersen Global was established to create an enduring place – ONE FIRM where clients across the globe are afforded the best, most comprehensive tax and legal services provided by skilled staff with the highest standards.

Outstanding client service has and will continue to be our top priority.

Andersen In South Africa

Andersen in South Africa is full-service legal and advisory practice with a deep understanding of the corporate and commercial sectors in which our clients operate. We are headquartered in Johannesburg, with partner and satellite offices in or near all major commercial hubs and mining locations.

Andersen in South Africa is a legal and tax firm, that offers multinational clients a single port of call for legal, tax, and advisory services. The firm delivers a suite of services, including competition and antitrust, company secretarial, corporate, mergers and acquisitions, customs and international trade, employment and labour, environmental health and safety, environmental, social and governance, litigation and dispute resolution, private client services, regulatory, restructuring and insolvency, and tax. With 20 years of experience in groundbreaking and significant projects across the African region as well as globally, our value lies in our immersive approach to working with our clients, offering leading expertise and in-depth industry knowledge in our capacity as corporate legal advisors. Andersen delivers a full range of value-added and cost-effective services to our clients. We take the time to understand the intricacies of each individual and business so that we can tailor our service to each client's unique situation.

2.

Country Highlights

Overview

South Africa is located at the southernmost point of the African Continent. It is bordered by Botswana, Namibia, Mozambique, Zimbabwe, Eswatini and completely surrounds Lesotho. It covers a land area of approximately 1.22 million km² and a coastline length of 2 968km. Major ports are located in Richards Bay, Port Elizabeth (Gqeberha), Saldanha, East London, Cape Town, Durban, and Coega (Ngqura).

South Africa is located at the southernmost point of the African Continent

As of the year 2023, South Africa has the 38th largest economy in the world with a GDP of 447.2 billion USD.

Snapshot Data

- Population: 60.14 million (Last UN estimate) with a growth rate of 1.05% and a population density of 49.80 per km²
- Political System: South Africa is a constitutional democracy with a three-tier system of government and an independent judiciary
- Capital cities: Pretoria (Executive); Cape Town (Legislative); Bloemfontein (Judicial)
- GDP growth: 0.4% in 2023
- Currency – Rand (R or ZAR)
- Foreign Direct Investment: R64 billion Last quarter (2022) - R0.5 billion first quarter (2023)
- Languages: South Africa is a multicultural republic with 11 official languages: English, Afrikaans, Sepedi, Setswana, siSwati, Sesotho, Tshivenda, IsiZulu, IsiXhosa, Xitsonga, IsiNdebele. English is the common standard language in business.



Economy Overview

- The SARB is the central bank in South Africa and plays a vital role in terms of monetary policy and exchange control. Section 224 of the Constitution, 1996, states that *(1) The primary object of the South African Reserve Bank is to protect the value of the currency in the interest of balanced and sustainable economic growth in the Republic, and (2) The South African Reserve Bank, in pursuit of its primary object, must perform its functions independently and without fear, favour or prejudice, but there must be regular consultation between the Bank and the Cabinet member responsible for national financial matters. SARB approval is required for most movement of capital/funds in and out of South African borders. This is usually obtained through authorised foreign exdealers.*
- The South African Economy grew by 0.4% as of Q1 of 2023. After a healthy bounce back of economic activity in 2021, we saw GDP growth at 4.9% but had dropped down to 2% in 2022 (The power crisis played a big role in affecting major industries).
- The key sectors of South Africa's economy are manufacturing, wholesale and retail trade, financial services, transport, mining, agriculture, tourism, and real estate.

Establishing a Business

The main business vehicles used for doing business in South Africa are:

- Profit company (includes public company, private company, and personal liability company)
- Non-profit company
- External company (the local branch of a foreign company)
- Trust
- Partnership
- Sole proprietorship

The forms of doing business most commonly adopted by foreign investors are private companies and external companies.

Profit Company

A company incorporated for the purpose of financial gain for its shareholders can be:

- **A State-Owned Company (SOC)** - The Department of Public Enterprises (DPE) is the shareholder representative of the South African Government that has oversight duties for state-owned enterprises in key sectors. Various other departments directly control some companies rather than the DPE and not all state-owned entities are registered as companies.



- **A Private Company (Proprietary Limited/(Pty) Ltd)** - This is a company that is not state-owned and the Memorandum of Incorporation (MOI) of which prohibits any offer to the public of the subscription of any securities of the company. A new private company can be registered through the Companies and Intellectual Properties Commission (CIPC). Registering with a customised or non-standard MOI allows shareholders to impose certain conditions or waive certain requirements, e.g., an audit requirement. It is also possible to have a standard MOI and have it altered at a later stage.
- **A Personal Liability Company (Incorporated/Inc.)** - This is one that meets the requirements of a private company and the MOI which states that it is a personal liability company. The shareholders and the directors are personally responsible for the debts of the company. At the moment, personal liability companies can only be registered annually with the CIPC.
- **A Public Company (Limited/Ltd)** - This is a company whose MOI does not restrict it from offering shares to the public and must have at least three directors. Only public companies can be listed on the Johannesburg Securities Exchange (JSE). Public companies must be audited and produce audited financial statements that are tabled for shareholders annually. Dependent on size, the company may be required to have an audit committee as well as a social and ethics committee.

- **External Company (local branch of a foreign company)** - *An external company is a foreign company, which has been incorporated outside of South Africa, that intends to or is conducting business or non-profit activities within the country. A foreign company cannot offer securities to the South African public unless specific provisions of the Companies Act 2008 are followed.

A company must have share capital. There is no required minimum or maximum amount. Shares issued in accordance with the Companies Act may not have a nominal par value.

International Trade

South Africa has been a member of the Southern African Development Community (SADC) since 1994, the World Trade Organization (WTO) since 1995, and is a member state of the G20 and Brazil, Russia, India, China and South Africa (BRICS) economic bloc.

There is duty-free trade zone between South Africa and the other four countries (Botswana, Lesotho, Namibia, and Eswatini) that comprise the Southern African Customs Union (SACU).

Trade Agreements

- **African Continental Free Trade Agreement (AfCFTA)** - The world's largest Free Trade area with 55 countries in the African Union (AU) and eight Regional Economic Communities (REC). AfCFTA is one of the flagship projects of Agenda 2063: The Africa We Want, the

African Union's long-term strategy for transforming the continent into a global powerhouse.

- **Free Trade Agreement with SADC** - Consisting of 16 member nations, the SADC's objective is to achieve economic development and enhance the standard and quality of life for the people of Southern Africa.
- **FTA with European Union** - In 1999, the European Union and South Africa signed a Trade, Development, and Cooperation Agreement (TDCA). However, in 2016 the EU and South Africa (together with members of the SADC) signed a new Southern Africa Economic Partnership Agreement (SADC EPA) regulating trade between the two regions and thus replacing the TDCA.





- Preferential trade agreement between European Free Trade Association, the United Kingdom, and Mercosur
- **Tripartite Free Trade Agreement** - A proposed trade agreement that links SADC, the East Africa Community (EAC), and the Common Market of Eastern and Southern Africa (COMESA) into a Free Trade area.

Foreign Direct Investment Policy

South Africa's foreign direct investment policy is relatively open and looks to drive economic growth, improve international competitiveness, and access foreign markets.

Any foreign investors should also take into consideration South Africa's Broad-based Black Economic Empowerment

(B-BBEE) framework (a socio-economic program endorsed by the Constitution of South Africa, providing for the promotion of businesses, firms owned and/or controlled by historically disadvantaged individuals).

South Africa's exchange control regulations, governs the flow of capital into and out of the country. These regulations are administered by the Financial Surveillance Department of the SARB.

Other regulatory approvals may be required and attention must be made to various bodies regulating transactions in South Africa. These bodies include the Take Over Regulation Panel to regulate, amongst others, the transactions of regulated companies, and the Competition Commission to regulate anti-competitive practices and implement measures to increase market transparency.

All Nationals in South Africa and foreign nationals with a valid work permit issued by the Department of Home Affairs are allowed to work in South Africa. Being heavily unionized, South Africa has approximately 24 trade union federations with 3.11 million members representing 25.3% of the formal workforce. As of March 1, 2023, the national minimum wage is R25.42 for each ordinary hour an employee works.

The following are the primary laws governing employment relations:

- Labour Relations Act, 66 of 1995
- Basic Conditions of Employment Act, 75 of 1997
- Employment Equity Act, 55 of 1998
- Skills Development Act, 97 of 1998

Labour Relations Act (LRA)

The purpose of the LRA is to: regulate the organizational rights of trade unions; to promote and facilitate collective bargaining at the workplace and at the sectoral level; to regulate the right to strike and the recourse to lockout in conformity with the Constitution; to promote employee participation in decision-making through the establishment of workplace forums; to provide simple procedures for the resolution of labour disputes through statutory conciliation, mediation and arbitration (for which purpose the Commission for Conciliation, Mediation and Arbitration is established), and through independent alternative dispute resolution services accredited for that purpose; to establish the

Labour Court and Labour Appeal Court as superior courts, with exclusive jurisdiction to decide matters arising from the Act; to provide for a simplified procedure for the registration of trade unions and employers' organisations, and to provide for their regulation to ensure democratic practices and proper financial control; to give effect to the public international law obligations of the Republic relating to labour relations; to amend and repeal certain laws relating to labour relations; and to provide for incidental matters.

Basic Conditions of Employment Act (BCEA)

The purpose of the BCEA is to give effect to the right to fair labour practices referred to in section 23(1) of the Constitution by establishing and making provision for the regulation of basic conditions of employment, and thereby to comply with the obligations of the Republic as a member state of the International Labour Organisation, and to provide for matters connected therewith.

Employment Equity Act (EEA)

To provide for employment equity; and to provide for matters incidental thereto. Recognising that as a result of apartheid and other discriminatory laws and practices, there are disparities in employment, occupation and income within the national labour market; and that those disparities create such pronounced disadvantages for certain categories of people that they cannot be redressed simply by repealing discriminatory laws. Therefore, in order to promote the constitutional

right of equality and the exercise of true democracy; eliminate unfair discrimination in employment; ensure the implementation of employment equity to redress the effects of discrimination; achieve a diverse workforce broadly representative of our people; promote economic development and efficiency in the workforce; and give effect to the obligations of the Republic as a member of the International Labour Organisation,

Skills Development Act (SDA)

The purpose of the SDA is to provide an institutional framework to devise and implement national, sector, and workplace strategies to develop and improve the skills of the South African work force; to integrate those strategies within the National Qualifications Framework contemplated in the South African Qualifications Authority Act, 1995; to provide for. Learnerships that lead to recognised occupational qualifications; to provide for. M6 financing of skills development by means of a levy-grant scheme and a National Skills Fund; to provide for and regulate employment services; and to provide for matters connected therewith.

Maternity Leave

An employee is entitled to at least four consecutive month of maternity leave. An employee may commence maternity leave at any point from 4 weeks before the expected birth unless otherwise agreed or on a date from which a medical practitioner or midwife certifies that it is necessary for the employees health or that of her unborn child. The payment of maternity benefits will



be determined by the Minister subject to the provisions of the Unemployment Insurance Act of 1966.

Unemployment Benefits

The purpose of the Unemployment Insurance Act is to establish an unemployment insurance fund to which employers and employees contribute and from which employees who become unemployed or their beneficiaries, as the case may be, are entitled to benefits and in so doing to alleviate the harmful economic and social effects of unemployment.

- *Employment visas:* General work visa, Critical Skills visa, and Intra-company transfer visa
- *General Work Visa:* General Work Visas are issued to foreigners where it has been proven beyond reasonable doubt that South African citizens and permanent residents with the relevant qualifications or skills and experience are not available for appointment.
- *Critical Skills Visa:* The Critical Skills Work Visa will enable the Department and the government to achieve the objectives of programmes such as National Development Plan (NDP), Industrial Policy Action Plan (IPAP) and New Growth Plan (NGP). The Department of Home Affairs has amended the Immigration legislation that came with various changes, which led to the introduction of Critical Skills Work Visa (CSWV). The Critical Skills Work Visa emanates from the merger of

the former Exceptional Skills and Quota Work visas. The latter was issued in line with the Quota List of 2009, which had skills categories, requirements, and the quota of skills targeted in the Republic of South Africa. The Critical Skills work visa is issued in accordance with the critical skills list. The list was developed in conjunction with the occupations in high demand and the scarce skills lists of the Department of Higher Education and Training (DHET). The main objective of the critical skills work visa is to assist the government to realise the achievement of the National Infrastructure Project, the Strategic Infrastructure Projects and Key National Strategic Projects in support of the Department of Trade and Industry.

- *Intra-Company Transfer:* This is a permit issued to foreigners being transferred by their own Company to an affiliate company in South Africa. Occasionally, multinational companies may decide to transfer an existing employee from a foreign branch in South Africa. These employees must apply for intra-company transfer work visas. In such cases, no proof of steps taken to obtain the services of a South African/permanent residents will be required.

5.

South African Tax Regime



The system of taxation in South Africa is based on a combination of direct and indirect taxation. Direct taxes are imposed on natural persons (individuals) and legal persons (trusts, companies, closed corporations, and deceased estates) and include income tax, donations tax, estate duty, capital gains tax, and dividends tax. Indirect taxes are generally taxes on consumption, and they include: value added tax (on the consumption of certain goods and services); customs and excise duty (on the import and export of goods and services); transfer duty (on the acquisition of fixed property), and securities transfer tax (on the transfer of shares).

The system is residence based and South African residents are taxed on their global income while non-residents are taxed on

their South African sourced income. You are deemed to be a South African tax resident when you are ordinarily resident in South Africa or upon meeting the physical presence test. Any other persons (companies, trusts, or partnerships) are deemed to be South African tax residents by virtue of being formed, incorporated, or established in South Africa.

Individual Taxes

Income tax is the government's main source of income and is levied in terms of the Income Tax Act, of 1962. It is based on residents' worldwide income, with appropriate relief to avoid double taxation. Non-residents are taxed on South African sourced income. Tax is levied on taxable income that consists of gross income, less qualifying exemptions, and allowable deductions as per the Income Tax Act of 1962.

The system of taxation in South Africa is based on a combination of direct and indirect taxation.

Corporate Taxes

This tax is payable by South African resident companies at 28% of their income. The year of assessment of a company is the same as its financial year. Small business corporations benefit from a graduated tax rate on their taxable income and can write off certain investment expenditures in the year in which it was incurred

Capital Gains Tax

Capital Gains Tax (CGT) was introduced in October 2001. It forms part of the income tax system and includes in taxable income, capital gains made on the disposal of certain assets. A company should include 80% of the total capital gain in its taxable income for the year, giving rise to a maximum effective tax rate on the sale of capital assets of 22,4%. Individuals must include 40% of their total capital gains in their taxable income giving rise to a maximum effective rate of 18%.

Dividends Tax

Dividends tax is borne by a shareholder on dividends declared by a South African company at a rate of 20%, unless another rate applies in terms of a double tax agreement or any other exemption to dividends tax applies (such as a dividend between from one South African company to another). Generally, the dividends tax is required to be withheld by the company declaring the dividend when the dividend is paid.

Donations Tax

Donations tax is levied at a rate of 20% on the total value of any property disposed of by a South African resident (moveable, immovable, and intangible) by way of donation.

Estate Duty

Estate Duty is a duty on the transfer of wealth, payable on the death of a person. For the purposes of Estate Duty, the Estate consists of all property of the deceased

- including deemed property, such as life insurance policies. However, the estate of a deceased non-resident consists only of his or her South African assets. The duty, at a rate of 20% on the first R30m and 25% on the excess above R30m, is calculated on the dutiable amount of the estate. Certain admissible deductions are allowed against the total value of the estate.

Value Added Tax

Value-added tax (VAT) increased from 14% to 15% from April 1, 2018 and it is levied on all goods and services subject to certain exemptions, exceptions, deductions, and adjustments provided for in the Value-Added Tax Act, 1991 VAT is levied on the supply of all goods and services rendered by vendors throughout the business cycle. It is the government's second-biggest source of income. VAT is also levied on the importation of certain goods and services into South Africa. It is levied at the standard rate of 15%, but provision for exemptions of certain goods or services exists. The VAT system distinguishes between three types of supplies:

- Standard rated supplies: supplies of goods and services subject to the VAT rate at the time of supply - 15%
- Exempt supplies: supplies of certain services not subject to VAT
- Zero-rated supplies: supplies of certain goods or services subject to VAT at 0%

Customs and Excise Duty

Ordinary Customs Duty is levied on imported goods classifiable in Schedule No. 1 Part 1 of the Customs and Excise Act, 1964. An importer or exporter must register with the South African Revenue Service to obtain a customs code. Goods imported into or exported from South Africa are liable for VAT and customs duty, subject to the availability of rebates and refunds. Direct exports (SA seller supplies goods) are subject to 0% VAT and indirect exports (e.g. the client of a SA seller arranges for delivery of the goods to the client's customer in the country to which the goods are exported) are subject to 15% VAT. South Africa is a member of the World Customs Organisation (WCO) and therefore, uses the Harmonised Commodity Description and Coding System (HS) for the classification of goods on importation. Goods can be imported free of duty where the rate of duty is indicated as Free. Other types of rates include:

- Specific rates e.g. cents per kilogram or cents per litre
- Ad vole ram rates
- Compound rates e.g. 30% or 500 cents per unit

Transfer Duty

Transfer duty is imposed on the transfer of immovable property and is payable when property is acquired at progressive marginal rates. No transfer duty is chargeable if the transaction is subject to VAT.

An importer or exporter must register with the South African Revenue Service to obtain a customs code

Securities Transfer Tax (STT)

Securities Transfer Tax is levied at a rate of 0.25%. The Uncertificated Securities Tax Act, of 1998 was replaced by the Securities Transfer Tax Act, of 2007, and provisions are applicable in respect of every transfer of any security on or after July 1, 2008.

Withholding Taxes

Certain payments made by South African residents to non-residents are subject to withholding taxes. They generally apply to payments made to non-residents in respect of royalties, interest, dividends, payments for fixed property based in SA and remuneration to non-resident entertainers and sports persons.

Double Taxation Agreements

South Africa has a wide network of double taxation agreements aimed at preventing double taxation of income accruing to South African taxpayers from foreign sources, or of income accruing to foreign taxpayers from South African sources.



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