Adams & Adams is a leading African law firm. The firm’s network spans the African continent and includes associated offices through which it operates to serve its local and international client base in various legal fields including commercial, corporate, competition, intellectual property, labour, litigation, procurement and property.

The firm and its partners continue to be recognised internationally for their legal expertise and are often at the forefront of legal developments. The firm’s values are borne out by enduring relationships with thousands of clients over its 106 year existence.
Commercial Law in Africa
An Easy Reference
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Established in 1908, Adams & Adams is firmly rooted in Africa. It is not only a firm in Africa but truly an African firm. We call Africa home.

Our head office in Pretoria, the administrative capital of South Africa, provides the gateway through which our 68 partners, supported by 588 professionals and staff, render a broad range of legal services to clients in Africa and the rest of the world. Through our associate offices and long established networks in the majority of Africa’s 53 countries, we serve our global client base throughout the African continent.

Africa’s economic potential is largely unfulfilled. This is, however, changing as investors both local and from the rest of the world are realising opportunities on the African continent. The 2014 Global Attractiveness Study conducted by EY reveals that Africa has become the second most attractive investment destination in the world – second only to North America. The World Bank’s Africa Pulse Report for 2014 projects that economic growth for Africa will remain above the global average for some years to come, particularly in Sub-Saharan Africa, where growth of more than 5% is expected. We, together with the rest of the world, believe that Africa’s time has come.

Governance is improving. The wave of democratisation of a large number of African states towards the end of the 20th century has seen the rise of political institutions and reinforced broader approaches to governance to include more ambitious goals of political responsiveness and accountability. The African Union’s New Growth Path for African Development (NEPAD) endorses democracy and good governance as essential “conditions for sustainable development”. 
The African Commission on Human and Peoples’ Rights has gained increased acceptance and influence, with the majority of African countries ratifying all its binding legal instruments, including the African Charter on Democracy, Elections and Governance. Investing and operating in Africa is not without challenges, particularly from a legal perspective. Local knowledge of complex legal systems, legislation, courts, applicable processes, prevailing practices and risks can be the difference between success and failure. Over many years, we have gained expertise and built relationships which enable us to guide our clients effectively through these complexities.

This publication provides an informed overview of pertinent legal frameworks in respect of a selection of African countries that we have identified as being the most relevant to our clients.

Adams & Adams
2015
Map of Africa and surrounding islands
GENERAL INFORMATION

The People’s Republic of Angola is located on the west coast of southern Africa, bordered in the north and north-east by the Democratic Republic of Congo, on the east by Zambia, on the south by Namibia, and on the west by the Atlantic Ocean. It also includes the enclave of Cabinda, which is physically separate from Angola proper and is surrounded on its landward side by the People’s Republic of the Congo (Brazzaville) and the Democratic Republic of the Congo.

Area: 1 246 700 km²
Population: 13 million
Capital: Luanda
Currency: New Kwanza (NKz)
GDP: USD 114.1 billion (2010)
Internet domain: .ao
Languages: Portuguese (official language), Kimbundu, Kikongo, Chokwe, Umbundu
Working week: Monday - Friday
Exports: Crude oil; diamonds; refined petroleum products; coffee; timber; cotton
Imports: Machinery and electrical equipment; vehicles and spare parts; medicines; food; textiles and clothing; military supplies

COMPANY LAW

Business vehicles
There are two forms of companies commonly used by foreign investors:

- *Sociedades por quotas* (SpQs), which are similar to private limited companies. SpQs are companies in which the share capital is divided into quotas and the shareholders are jointly and severally liable for their capital investment. SpQs must have at least two shareholders.

- *Sociedades anónimas de responsabilidade limitada* (SARLs), which resemble joint stock companies. SARLs are companies in which the capital is held by its shareholders and divided into shares, with each shareholder owning a number of shares proportionate to their investment. The liability of each shareholder is limited to the amount of their capital share. SARLs must have at least five shareholders.

Incorporation
The following steps should be taken in order to incorporate a company:

- Approval of the new company name by the Companies Registry.
- Execution of a public deed of incorporation before a public notary (provided that
the company’s initial share capital has been deposited in a national bank account).
• Publication of the new company’s by-laws in the Official National Gazette.
• Registration of the new company before the Ministry of Public Administration, Employment and Social Security.
• Registration of the new company before the tax authorities (and payment of the applicable taxes).

This process takes roughly three working days. Following the incorporation of the company, the proper commercial operations certificate (Alvará Comercial) must be obtained from the Ministry of Commerce. In some cases, it may be required to obtain an additional certificate from the Ministry responsible for the activity carried out by the company. The approval time for this second certificate depends on the specific requirements involved, such as whether or not any additional facilities’ inspections are required.

Regulatory Reporting
Both SpQs and SARLs must have Annual General Meetings that must take place within the first three months of each calendar year and, once the annual accounts have been approved, they must be submitted to the commercial registry.

Share capital
For SpQs, the minimum share capital is USD 20 000. At least 30% of the share capital must be paid at the moment of incorporation. Each share must be equivalent to USD 5.

For SARLs, the minimum share capital is USD 1 000. A minimum of USD 1 000 of the share capital must be paid at the moment of incorporation and must constitute at least 50% of the share capital. It is sufficient for 2 shareholders to incorporate such companies. Each share must be equivalent to USD 10.

Management
SpQs must be managed by at least one director (Gerentes). There is no maximum number of directors, whereas SARLs are generally managed by a board of directors (Conselho de administração) with a minimum of three directors. There must be an odd number of directors but there is no maximum number. SARLs may have a sole director (administrador único), provided the company’s share capital does not exceed USD 50 000 and the company’s by-laws provide for this. There are no nationality restrictions from a director’s point of view.

Are local shareholders required?
Whilst 100% foreign ownership is permitted, this will greatly extend the time it will take to incorporate the company. There are also certain sectors including the oil and gas sector, mining sector and certain parts of the transport sector that require a certain percentage of local ownership.

Branch Company
It is possible to establish a branch in Angola. A branch’s holding company will, however, retain full liability and the branch is treated purely as an extension of the parent company. As an alternative, Angola allows for a foreign company to establish a representative
office which can be a natural person or a company in order to promote the foreign company’s business in Angola. Representative offices are commercially limited as business vehicles. There are limitations in respect of a representative office’s capacity to enter into contracts and the number of people who may be employed.

COMPETITION LAW

Legislation
Angola currently has no national competition law or policy in place. However, in certain instances specific sector or industry legislation makes provision for competition related aspects.

Mergers
Further to the paragraph above, competition law is not regulated in Angola and there are, accordingly, no specific merger controls in place.

Restrictive Practices
Although competition in general is not regulated in Angola, certain types of cartel conduct may fall foul of industry or sector specific legislation.

Abuse of Dominance
Single firm conduct is not regulated in Angola. There is, accordingly, no abuse of dominance provisions to contend with.

Sanctions
As Angola has no competition legislation and/or policy in place, there are no specific sanctions in regard to competition law.

CONSUMER PROTECTION

Consumer protection is regulated by Angola’s Consumer Protection Act Law no. 15/03, in conjunction with certain provisions of Angola’s Constitution.

Some of the key provisions relating to consumer protection are as follows:

- A consumer who purchases real estate is entitled to a minimum guarantee of five years in respect of such property.
- All goods and services must comply with and meet the legitimate expectations of consumers.
- A supplier of mobile non-consumable goods must ensure that such good will perform the functions for which it was purchased for a period of not less than one year.
- Should a supplier become aware that its goods pose any threats to the well-being of consumers, such supplier must immediately notify the competent authorities of the nature of the threats posed by the goods. The supplier is also obligated to notify the consumers through notices in the media.
DATA PROTECTION

Data protection is regulated by the Lei de Protecção de Dados pessoais (Personal Data Protection Law) of 2011 (PDA). The PDA regulates how the collection, transfer and use of a data subject’s personal data must be performed, so as to avoid any violation of the data subject’s rights to, among other things, privacy.

Some of the key principles of the PDA:

- The Angolan Data Protection Agency (ADP) (yet to be created) must be notified of the use and processing of a data subject’s personal data.
- Personal data may only be transmitted to a foreign country if such foreign country has, and provides, an unimpeachable level of data protection.
- Non-compliance with the PDA is an offence which, if convicted, is punishable by sanctions (i.e. civil and/or criminal liability) and fines, up to USD 150 000, or both.

DISPUTE RESOLUTION

Court structure
Although the Constitution provides for the creation of a Constitutional Court, it has yet to be officially created and thus the Supreme Court is the highest court and the temporary guardian of the Constitution. The Supreme Court (known locally as Tribunal Supremo) has constitutional jurisdiction, appellate jurisdiction over lower courts as well as original jurisdiction. The lower courts are made up of both provincial courts and municipal courts and specialist courts exist in respect of the military and financial regulations.

Legal Practitioners
The Angolan Bar Association is the professional roll for legal professionals in Angola.

Alternative dispute resolution
Arbitration is a recognised form of dispute resolution and the primary authority is the Voluntary Arbitration Law (VAL), 2003 which governs both domestic and international arbitration. The VAL is not based on the UNCITRAL Model Law. Angola is not a signatory of the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

EMPLOYMENT LAW

Governing legislation
General Employment Law, approved by Law 2/00 of 11 February 2000.

Particulars of employment
Written employment agreements are only required for temporary employment agreements and employment agreements entered into with foreign employees.
Forms of contracts

- Permanent contracts may include a 60-day probation period which the parties by written agreement can either waive or reduce. It may be extended to a maximum of four months for highly skilled employees who perform complex work and to a maximum of six months for employees who perform work of a highly technical complexity or who have management functions for which a high level of academic degree is required.
- Fixed term contracts for a specific period to fulfil temporary needs of the employer must be in writing, foresee the specific reasons which it was granted and its duration may vary between 6-36 months. Probation shall only exist if established in writing, the duration cannot exceed fifteen days for non-qualified employees or thirty days for qualified employees and either party may terminate the employment contract without prior notice, indemnification or justification.

Termination / Dismissal

- Employers can only terminate an employment agreement for reasons related to just cause, collective dismissal, or redundancy due to abolition of work position.
- Must be followed by a hearing, followed by a dismissal with, or without, notice or compensation.

Dispute resolution mechanisms and remedies

- The Labour Chamber of the Provincial Courts has jurisdiction over individual labour disputes. Preliminary mandatory conciliation for individual labour disputes is required by the Provincial Conciliation Body.
- No mandatory conciliation when the dispute relates to nullity of the individual disciplinary dismissal where the allegation is that the employer failed to observe the procedural requirements of such dismissal or it is based on prohibited grounds; or relates to unlawful collective dismissal because the employer failed to prove the existence of the economic, technological or structural reasons or the employer did not follow proper procedure; or the absence of authorisation required for an individual dismissal based on objective grounds – file a law suit with the labour section of the appropriate Court.
- Unfair dismissal – either reinstatement or compensation.

EXCHANGE CONTROL

All foreign exchange transactions are subject to compliance with the exchange control regulations imposed by the Angolan National Bank (BNA). Under such regulations there are limitations on the amount of currency that can be transferred out of Angola.

While there are no restrictions on the amount of foreign currency that may be brought into the country, transferring the Angolan Kwanza out of the country is restricted.

All import, export and re-export of money may only be undertaken by financial institutions duly authorised to exercise foreign exchange by the BNA.
The repatriation of dividends to a foreign country is only allowed if the amount of investment in the Angolan company exceeds USD 250 000. Capital may also be repatriated but only with prior approval from the BNA. Dividends are annually transferable after approval by the BNA.

**TAX LAW**

**Income tax**
Liability for income tax in Angola is determined by the source of the income. Employment income tax is due on any income resulting from personal services rendered in Angola, by employed or self-employed individuals, who are directly or indirectly paid by an Angolan based entity and is subject to a monthly withholding tax, to be made by the employer and paid to the tax authorities on a monthly basis.

**Types of taxable income**
Types of income that are subject to tax include employment income, business and professional income, investment income and capital gains (although some exemptions may apply on interest and capital gains).

**Tax rates**
Resident companies are taxed on their worldwide income at a rate of 35%. The branch of a non-resident company is taxed only on its Angolan revenues at a rate of 35%. Employees are subject to personal income tax at a progressive rate up to a maximum rate of 17%. Independent professionals are subject to tax at a flat rate of 15% on 70% of total income received or at a flat rate of 20% if accounting records are in order.

**Double taxation treaties**
At the date of publication, Angola has not concluded any double tax agreements.
GENERAL INFORMATION

Botswana, formerly a British protectorate, became independent in 1966. It is a landlocked country in southern Africa, bordered by Zimbabwe to the north-east, South Africa to the south-east, and Namibia to the west. The so-called Caprivi Strip of Namibia extends along its northern border.

- Area: 581 730 km²
- Population: 2.0 million
- Capital: Gaborone
- Currency: Pula
- GDP: USD 26.5 billion (2010)
- Internet domain: .bw
- Languages: English, Tswana (official languages)
- Working week: Monday - Friday
- Exports: Diamonds; copper; nickel; beef; soda ash; textiles.
- Imports: Foodstuffs; vehicles and transport equipment; textiles; petroleum products; wood and paper products; metal and metal products

COMPANY LAW

Business vehicles
There are four forms of companies commonly used by foreign investors:

- Close company, which has a minimum of 1 member and a maximum of 5 members, and an appointed accounting officer. These entities are usually aimed at smaller businesses as companies cannot be members.
- Private company, which has a maximum of 25 shareholders.
- A company limited by guarantee (public or private).
- A public company.

Incorporation
The following steps need to be taken in order to incorporate a company:

- Obtain approval of a company name with the Registrar of Companies.
- Submit a completed application using the prescribed form.
- Obtain the consents of a director, the secretary, the shareholders or members to act in the capacity for which they have been named.
- Apply for any trading licenses that are required.

A company can be incorporated in 3 to 6 weeks, once all documentation has been submitted. Companies are no longer required to have a constitution or memorandum of association and articles of association, but may have a constitution, however this is not
compulsory. In the absence of a separate constitution, the rights, duties and obligations prescribed by law will apply to every director and shareholder in the case of a public company and in the case of a private company, the constitution prescribed in the Companies Act will be applicable.

There is no provision in Botswana for the registration of defensive company names.

Regulatory reporting
A public company is required to have financial statements signed by its directors and auditors within 5 months of the balance sheet date and to register them with the Registrar within twenty working days thereafter.

Share capital
A minimum share capital is not required in Botswana and an entity can be incorporated with a share capital of USD 1, provided that there is at least 1 share.

Management
A private company must have 1 or more directors. A public company must have 2 or more directors. At least 1 director must be ordinarily resident in Botswana. Public companies and non-exempt private companies must appoint a secretary who must be ordinarily resident in Botswana. The secretary must be a member of the Botswana Institute of Chartered Accountants (BICA), the Southern African Institute of Chartered Secretaries and Administrators (SAICASA) or a legal practitioner. The sole director or auditor of the company is disqualified from acting as secretary.

Public companies, non-exempt private companies and close companies must have external auditors who must be members of BICA, who are ordinarily resident in Botswana. If a partnership is appointed as auditor, at least 1 of the partners must be ordinarily resident in Botswana.

A private company, other than a close company must have at least 1 director who is ordinarily resident in Botswana.

Are local shareholders required?
There are no nationality or residence requirements for shareholders.

Branch Company
It is possible to establish a branch and the foreign company is required to register as an external company with Registrar of Companies within a period of 1 month of commencing business in Botswana.

COMPETITION LAW
Law
- Competition Act 17 of 2009.
- Competition Regulations 2011.

The Act is enforced by the Competition Authority and the Competition Commission, based in Gaborone
Mergers
A merger is notifiable where the following thresholds are met:
- The turnover or asset value in Botswana of the target firm exceeds USD 1,000,000;
- The target firm would, following implementation of the merger, supply or acquire 20% of goods or services of a particular description in Botswana.

A merger may not be implemented prior to the necessary approval having been obtained from the Competition Authority or prior to the period for the Competition Authority’s review of the merger having lapsed without the Authority having made any determination in relation to the merger.

Restrictive Practices
The Act regulates restrictive practices and specifically prohibits certain horizontal agreements, for example price-fixing, whether direct or indirect; the division of markets; and bid rigging.

Abuse of Dominance
The Act prohibits the abuse of a dominant position.

Sanctions
Penalties will only be imposed in respect of prohibited restrictive conduct, committed intentionally or negligently and the amount may not exceed 10% of the firm’s turnover during the period of the breach (for a maximum period of 3 years).

CONSUMER PROTECTION

Consumer Protection is regulated by the Consumer Protection Act, 1998. This Act makes provision for the establishment of institutions responsible for the protection of consumers’ interests in Botswana. It also sets out the manner in which consumers should lodge their complaints, how investigations ought to be conducted and other provisions relating to the institution of legal proceedings against a supplier of goods and services.

Botswana also has consumer protection regulations which set out various practices forbidden to suppliers. These practices include, but are not limited to the following:
- Unlawful business practices – i.e. intentionally deceiving consumers through speech or conduct.
- Failure to comply with the minimum standards of performance – i.e. not rendering services with reasonable care and skill.
- Failure to comply with the minimum standards and specification – i.e. selling second hand products as if they are new.

If a consumer buys goods and it later turns out that they do not meet the guarantees made by the supplier then:
- If the goods have minor faults the supplier can repair the goods, give the consumer a replacement or give the consumer a refund.
- If the supplier chooses to repair the goods, the supplier has to do so in a reasonable time.
• If the problem is major or cannot be fixed, the consumer may return the goods and choose between a refund or a replacement.

DATA PROTECTION

Currently Botswana does not have any promulgated data protection laws. However, Botswana’s constitution recognises a right to privacy. Some specific statutes may also contain provisions that directly or indirectly relate to data protection.

DISPUTE RESOLUTION

Court structure
Smaller matters are dealt with by the Magistrate’s Courts, Small Claims Courts and Customary Courts, which are all subordinate to the High Court. The High Court is the superior court and has the jurisdiction to determine any criminal and civil case. It has the jurisdiction to hear both appellate matters and matters de novo. The highest and final Court is the Court of Appeal, which is the final arbiter of all legal matters in Botswana.

Foreign litigants
Although there is no rule in place requiring foreign litigants to provide security for costs, any party to proceedings is entitled to demand security for costs; provided that they timeously deliver a notice setting forth the grounds upon which security is claimed and the amount demanded. The judge has the discretion to grant the order or not.

Costs
Successful litigants are permitted to recover their costs. The judge may make such order as to the costs of the case as he may deem fit, including an order that the unsuccessful party shall pay to the opposing party a sum fixed by the judge.

Legal Practitioners
Although the Law Society’s Regulations distinguish advocates from attorneys, the Botswana Law Society acts as a single professional roll for all legal practitioners. The Legal Practitioners Act, 1996, and the Botswana Law Society’s Regulations regulate the conduct of legal practitioners in the courts of Botswana. It is not uncommon for experienced advocates from neighbouring countries, such as South Africa, to obtain rights of appearance in the High Court and act as counsel for large disputes.

Alternative dispute resolution
Arbitration is a recognised form of dispute resolution, and the Arbitration Act of 1959 provides authority for the conduct of arbitrations. Parliament passed the Recognition and Enforcement of Foreign Arbitral Awards Act, 1971, in response to the New York Convention. Foreign arbitral awards, if made in countries which are signatories to the Convention, are enforceable in Botswana, subject to the provisions of the Act. The foremost arbitration institute is the Botswana Institute of Arbitrators.
EMPLOYMENT LAW

Governing legislation

Particulars of employment
A contract must be in writing, signed by both parties and contain certain particulars of employment. If not, it will not be enforceable.

Forms of contracts
Contacts of employment are permitted for unspecified periods of time with probation:
- Not exceeding 3 months in the case of unskilled employees.
- Not exceeding 12 months in the case of skilled employees.
- Where a contract is terminated during a probationary period by either the employer or the employee by not less than 14 days' notice, the contract is deemed to have terminated with just cause and neither party is required to give any reason therefore.

Termination / Dismissal
A dismissal is unfair if it is not effected for a fair reason (valid reason which must be fair) based on the misconduct or incapacity of the employee or is based on the employer's operational requirements and in accordance with a fair procedure. There are exceptions to this general rule where summary dismissal is possible.

Breach of contract of employment:
- By employer – if he fails to pay basic pay or wages.
- By employee – if he is absent from work without the prior consent of his employee.
- Liability flowing from the above breaches – payment of a sum equal to the amount that he would have been liable to pay to the other party to terminate the contract with or without giving notice, as is appropriate.

Dispute resolution mechanisms and remedies
- Mandatory mediation failing which arbitration. Appeals and reviews from decisions of mediators and arbitrators are referred to the Industrial Court (IC) who hear and determine all trade disputes except disputes of interest.
- Where the IC determines that an employee has been wrongfully dismissed or disciplined the IC may make an order of reinstatement with/without compensation or compensation in lieu of reinstatement or reinstatement if dismissal is considered to be unlawful or motivated on the grounds of gender, trade union membership or activity, lodging a complaint or grievance, religious, tribal or political affiliation or compulsory reinstatement if the employment relationship has not broken down irrevocably.
- In the event that an employee does not seek reinstatement, the parties may agree on compensation which shall not exceed the actual pecuniary loss suffered.
EXCHANGE CONTROL
There are no exchange controls in Botswana.

TAX LAW

Income tax
Corporate income tax is levied on the Botswana source taxable income of all companies, other than tax exempt bodies (i.e. pension funds or charities) and small companies that elect to be treated as partnerships or sole proprietorships.

A company, for income tax purposes, includes any body, corporate and association or society (whether or not incorporated or registered), but excludes a partnership. Foreign sourced dividends and interest are deemed to be from a Botswana source and are taxable on accrual, while business profits are taxable only when remitted to Botswana. Non-resident entities carrying on business in Botswana (e.g. branches of foreign companies) are liable for tax in Botswana on the same basis as resident companies.

Types of taxable income
Aside from income tax, Botswana levies capital gains tax (CGT), withholding tax on interest, royalties, dividends and technical service fees, withholding tax on rent paid to both residents and non-residents and tax is withheld on commission and brokerage fees.

Tax rates
For residents, the income tax rate is 22%. The income tax rate for manufacturing and international financial service centre companies is 15% with the rate on branches is 30%.

A 5% withholding tax is payable on rent paid to both residents and non-residents, and a 10% tax is withheld on commission and brokerage fees.

Double taxation treaties
Botswana currently has double taxation treaties with Barbados, France, India, Lesotho, Mauritius, Namibia, Russia, Seychelles, South Africa, Swaziland, Sweden, the United Kingdom and Zimbabwe.
GENERAL INFORMATION

Cameroon is an independent state in West Africa. It is bordered on the west by the Atlantic Ocean and Nigeria, on the east by Chad and the Central African Republic, and on the south by the People’s Republic of Congo, Gabon and Equatorial Guinea.

Area: 475 440 km²
Population: 19.2 million
Capital: Yaoundé
Currency: CFA Franc
GDP: USD 44.6 billion (2010)
Internet domain: .cm
Languages: French, English (official languages)
Working week: Monday - Friday
Exports: Crude oil; petroleum products; lumber; cocoa beans; aluminium; coffee; cotton
Imports: Machines and electrical equipment; foods; fuel

COMPANY LAW

Business vehicles
There are two forms of companies commonly used by foreign investors:
• A private limited company.
• A public limited company.

Incorporation
The following steps need to be taken in order to incorporate a company:
• All companies must be registered with the Registre du Commerce et du Credit Mobilier (RCMM).
• Once a company has been registered with the RCCM it acquires its own separate legal personality.
• From the date of registration, the company is considered to be a corporate body.
• Authorisation to invest in Cameroon is required.
• There are certain consents, permits, licenses and/or approvals that are required, depending on the company’s intended activities.
• A company name reservation is not necessary and defensive company name registrations are not possible in Cameroon.
• It takes between two and four months to incorporate a company.

Regulatory Reporting
Companies are required to file their annual financial statements yearly and monthly VAT filings are required.
Share capital
The minimum share capital required to incorporate a company is USD 1 852.

Management
A private limited company must be managed by 1 or more natural persons, whether or not they are shareholders of the company. They must be appointed by the shareholders in the articles of association or in a subsequent instrument. The decision must be taken by a majority vote by the shareholders holding more than 50% of the registered share capital. Such decisions must be notarized and the maximum term is 4 years, renewable. The timeframe for such appointments, including the legalization procedures, is between thirty to sixty days.

Local representatives (i.e. directors, company secretaries and auditors) are required.

The directors of the company (i.e. board) are in charge of the management of the company, and as such are accountable to the shareholders.

Are local shareholders required?
Local shareholders are not required, however, for certain sectors such as mining, oil and gas there is a requirement for local shareholders to be given a minimum number of shares.

Branch Company
It is possible to establish a branch in Cameroon. The branch may be an establishment of a foreign company or a natural person.

Subject to international agreements or laws to the contrary, the branch will be governed by the laws of the country of origin. The branch must be registered in the Trade and Personal Property Credit Register.

A company in existence or to be created must be associated with a branch, not more than 2 years after the branch is set up, unless the obligation is waived by the Minister in charge of trade in the country of origin. A notarised resolution from the parent company authorising the opening of a branch of that company in a foreign country will be required for this purpose.

COMPETITION LAW

Law
• Law No 98/013 (Competition Act).
• Decree No 2005/1363/PM (Competition Decree).

Competition Law is enforced by the National Competition Committee, based in Yaoundé.

Mergers
A merger is notifiable where the following thresholds are met:
• The joint turnover of the parties exceeds ±USD 740 000, or;
• The parties’ combined market share exceeds 30%.
A merger may not be implemented prior to notification thereof.

**Restrictive Practices**
The Act regulates restrictive practices and certain agreements or arrangements are strictly prohibited, for example, price setting and bid rigging.

**Abuse of Dominance**
The Act prohibits the abuse of a dominant position. Firms with a 30% market share are considered to be dominant.

**Sanctions**
The Act provides for the imposition of a financial penalty of 50% of the entity's profit or 20% of the entity's turnover during the year preceding the year in which the contravention was committed.

**CONSUMER PROTECTION**
Currently Cameroon does not have any promulgated consumer protection laws. However, Cameroon may have some specific statutes which contain provisions that directly or indirectly relate to consumer protection under certain circumstances.

**DATA PROTECTION**
Currently Cameroon does not have any promulgated data protection laws. However, Cameroon's constitution recognises a right to privacy. Some specific statutes may also contain provisions that directly or indirectly relate to data protection.

**DISPUTE RESOLUTION**

**Court structure**
Each region has a Magistrate’s Court and a High Court. Appeals from these courts are heard by Provincial Courts of Appeal who, unlike the Common Law Court of Appeal, may re-examine the facts of a dispute. The Supreme Court gives final judgment on appeals from the provincial Courts of Appeal and is the final level of appeal in civil, penal, commercial and labour matters. Unlike the Courts of Appeal, the Supreme Court may only review the application of the law.

**Time in which matters can be heard**
The Cameroonian judicial system is acknowledged to move notoriously slowly, with cases potentially dragging on for years.

**Legal Practitioners**
There is a split bar in Cameroon where solicitors are registered with the Law Society of Cameroon and barristers with the Cameroon Bar Association (Ordre des avocats au barreau du Cameroun, Yaounde).
Alternative dispute resolution
Arbitration is a recognised form of dispute resolution in Cameroon and is the preferred form of dispute resolution for most commercially focused enterprises. Cameroon is one of sixteen states who are members of the Organisation for the Harmonisation of Business Law (OHADA). The OHADA states adopted the Uniform Act, 1999 on Arbitration which sets out the basic rules applicable to any arbitration within those states. The Uniform Act, 1999 is based on the UNCITRAL model law and supersedes the national laws on arbitration within the OHADA. The GICAM Arbitration Centre (Centre d’arbitrage du Groupement interpatronal du Cameroun) is based in Douala and is the foremost arbitration institute.

EMPLOYMENT LAW

Governing legislation

Particulars of employment
An employment contract may be recorded in a form that is convenient. The maximum probation period is 6 months, except for managerial staff for whom the period may be extended to 8 months.

Forms of contracts
• A contract for an unspecified duration.
• A fixed term contract limited to a maximum term of two years and renewable to one additional term.
• A company seeking to hire a foreign employee must obtain approval from the Ministry of Labour and Social Welfare.

Termination / Dismissal
• An employment contract of unspecified duration may be terminated at any time by the will of either party subject to the condition that previous written notice was given to the other party setting out the reason for the termination. Such notice shall not be set off against the worker’s leave period.
• Whenever an employment contract of unspecified duration is terminated without notice or without the full period of notice being observed, the responsible party shall pay the other party compensation equal to the remuneration with the inclusion of any bonuses and allowances which the worker would have received for the period of notice not served; provided that the contract may be terminated without notice in cases of serious misconduct (subject to the findings of the court regarding the gravity of the misconduct).
• Employment contracts of specified duration may not be terminated prior to its expiry save in the case of gross misconduct, force majeur or by the written consent of both parties.
• Any wrongful termination of the contract may entail damages. In all cases of dismissal, it shall be up to the employer to show that the grounds for dismissal alleged by him are well founded.
• Unless otherwise agreed, the provisions regarding notice and termination shall not apply to probationary hiring contracts which shall be terminable without notice and without either party claiming compensation.

Dispute resolution mechanisms and remedies
Any individual dispute arising from an employment contract or from a contract of apprenticeship shall fall within the jurisdiction of the Court dealing with the labour disputes in accordance with the legislation on Judicial organisation.

EXCHANGE CONTROL

There are exchange controls in Cameroon and there are specific licenses and registrations which are required. Exchange control is regulated by the Commission Bancaire de l’Afrique Centrale (COBAC).

Foreign investors are free to transfer funds out of Cameroon representing normal and current payments for supplies and services effectively performed, particularly in the form of royalties and sundry remunerations.

TAX LAW

Income tax
Taxation in Cameroon is applied both directly and indirectly while customs duties are prescribed at different rates on various goods under the Cameroon Tax Code. A non-resident is taxed on Cameroon sourced income, whilst residents are taxed on their worldwide income.

Types of taxable income
The types of taxable income in Cameroon include income tax, withholding taxes on dividends, interest and annuities (residents), withholding taxes on management, professional and training fees, royalties, rents, lease, dividends, interest, pensions, payments to sportsmen or entertainers and capital gains tax (CGT).

Tax rates
The income tax rate for all companies is 35%.

Dividends and interest (residents and non-residents) are taxed at the rate of 16.5%, royalties (non-residents) at 15% and CGT at 16.5%.

Double taxation treaties
Cameroon currently has double taxation treaties with Canada, Central African Republic, Chad, Congo, Equatorial Guinea, France, Gabon, and Tunisia.
**GENERAL INFORMATION**

The Arab Republic of Egypt, traditionally known as Egypt, is located in north-eastern Africa. It is bordered by the Mediterranean Sea to the north, by Israel and the Red Sea to the east, by Sudan to the south and Libya to the west.

**Area:** 1 001 450 km²  
**Population:** 80.5 million  
**Capital:** Cairo  
**Currency:** Egyptian Pound  
**GDP:** USD 500.9 billion (2010)  
**Internet domain:** .eg  
**Languages:** Arabic (official language), French, English.  
**Working week:** Sunday – Thursday  
**Exports:** Crude oil and petroleum products; cotton yarn; raw cotton; textiles; metal products; chemicals  
**Imports:** Machinery and equipment; food; fertilisers; wood products; durable consumer goods; capital goods

**COMPANY LAW**

**Business vehicles**

There are three forms of companies commonly used by foreign investors:

- **Joint stock companies (JSC),** which are utilised in instances where there is major investment involved. JSCs have more organised management structures and more stringent corporate governance requirements than other forms of companies.
- **Limited liability companies,** usually formed for small projects that do not require major financing.
- **Partnerships limited by shares (PLS)** are partnerships that require 1 or more partners to assume unlimited liability. The partners’ liabilities are limited to their respective capital contributions in the form of shares.

**Incorporation**

The following steps need to be taken in order to incorporate a company:

- A company name must be reserved with the General Authority for Free Zones and Investment (GAFI).
- The founding documents for the company, which includes the prescribed application forms and the articles of association, must then be submitted to GAFI.
- The articles of association must be registered and a certificate of incorporation obtained as well as an operation certificate from the Chamber of Commerce Office.
- The Companies Department then publishes a notice of incorporation in the Investment Gazette.
The approximate timeframe for incorporating a company in Egypt is seven days.

A JSC must have a minimum of three shareholders and no maximum is prescribed. Limited liability companies and PLS require a minimum of two shareholders and up to a maximum of 50.

**Regulatory Reporting**
In the case of JSC, the company must keep accounts and publish its semi-annual or annual audited accounts and financial statements, duly audited by a qualified Egyptian auditor.

**Share capital**
The minimum share capital required for a JSC is approximately USD 35,000 if the company does not offer its shares to the public and approximately USD 70,000 if the company intends to offer its shares to the public. With a limited liability company the number of equity capital is USD 7,000. The equity capital should be fully paid upon incorporation. The nominal value of a share cannot be less than approximately USD 14. In respect of a PLS, the minimum share capital required is approximately USD 35,000.

A JSC must have at least 10% of its share capital paid in at incorporation, and subsequently increased to 25% within 3 months following incorporation. A limited liability company’s full share capital must be paid upon incorporation.

The nominal value of the issued share capital of a JSC must not be less than approximately USD 0.14 or more than approximately USD 140.

**Management**
A JSC must have a minimum of three directors who are chosen by the general assembly for a period of three years in the manner determined in the statutes of the company.

A PLS is managed by one or more joint partners called partner managers.

A limited liability company is managed by one or more directors of which at least one director must be of Egyptian nationality. The Director must be named in the articles of association but need not be a shareholder.

**Are local shareholders required?**
In JSC and limited liability companies there are no nationality restrictions.

**Branch Company**
It is possible to establish a branch in Egypt. A foreign company may only register a branch office in Egypt if the company has a written contract with an Egyptian private or public entity to perform work in Egypt. A branch office may engage in commercial, financial, industrial and contractual activities within the scope of the contracts entered into.

Foreign companies are permitted to establish representative, liaison, scientific or technical offices for the purposes of carrying out market surveys or studying the feasibility of production without entering into any commercial operations in Egypt.
COMPETITION LAW

Law
The executive Regulations on Protection of Competition and Prohibition of Monopolistic Practice Law no. 3 of 2005.

The Act is enforced by the Authority for the Protection of Competition and the Prohibition of Monopolistic Practices, based in Giza.

Mergers
The Act requires parties whose annual turnover exceeds USD 14 million to notify the authority upon their acquisition of assets, rights, shares, establishment of unions, mergers, amalgamations, appropriations or joint management of 2 or more parties.

Although a merger may be implemented prior to notification, failure to notify constitutes a contravention of the Act.

Restrictive Practices
The Act regulates restrictive practices and prohibits anti-competitive agreements between competitors and/or clients and suppliers - in particular, agreements relating to the fixing of prices, division of markets and co-ordination in respect of tenders.

Abuse of Dominance
The Act prohibits the abuse of a dominant position, by a firm whose market share exceeds 25%.

Sanctions
Contravening the provisions relating to restrictive practices and abuse of dominance may result in the imposition of a fine of at least one hundred thousand pounds and not exceeding three hundred million pounds.

Failing to notify the Authority of a merger may result in the imposition of a fine of at least USD 14 000 and not exceeding USD 140 000.

CONSUMER PROTECTION

Consumer protection is regulated by Egypt’s Consumer Protection Law, 2006 (CPAL). In terms of the CPAL consumers have certain essential rights and a consumer may not enter into any contract or be involved in any activity which may prejudice such rights. The CPAL further places certain obligations on suppliers, which obligations include, but are not limited to, the following:
• That the supplier affixes its identifying data on all correspondence that it sends to consumers.
• To provide consumers with correct information concerning the nature and characteristics of products that it wishes to sell to consumers.
• To inform the relevant authorities of any defect that it may discover in the products set out in the market. If the product is likely to cause harm, the supplier must send
out notices to consumers alerting them to the fact that they should stop using the products, and to replace such products at no extra cost.

Lastly, Egypt is a member of the Common Market for Eastern and Southern Africa (COMESA) which has been established to primarily regulate competition law amongst the different economies of its member states and to ensure that a fair and effective regional competition law framework exists. COMESA also has powers regarding consumer protection matters and promotes transparency among economic operators in the region. As such the key aspects of consumer protection dealt with in the COMESA Regulations will also impact consumer protection in Egypt.

DATA PROTECTION

At present Egypt does not have any official data protection legislation. Rather, data protection is regulated, to the extent that same is required, by means of various other legislative provisions.

These provisions vary from sector to sector and set out obligations relating to, among other things, employee information, information on money laundering investigations, capital markets data and banking secrecy provisions.

DISPUTE RESOLUTION

Court structure
The highest judicial power is the Supreme Constitutional Court, with jurisdiction over the constitutionality of laws and regulations, jurisdictional disputes between the legal bodies or authorities, disputes arising through contradictory rulings and the interpretation of laws. The First Degree Courts (Mahkmat El Daragah El Aoulah) have competence over misdemeanours and civil disputes which are not in excess of USD 700. The Court of Appeal (Mahkmat El Esti’anaf), is the court of first instance for capital crime punishments and also serves to review decisions issued by any first degree court. The Court of Cassation (Mahkmat El Naqd) is approached when there is a breach of law. This court does not re-examine the facts of the case, but was created so as to ensure uniformity in the interpretation and the application of the law.

Security by foreign litigants
Security for costs is not available, except when an injunction or interim order is requested.

Costs
The unsuccessful party is liable to pay court fees and costs for the most part. The court fees may be substantial and are determined as a percentage of the final award. Payment of costs is enforced by the court against the unsuccessful party. In 2009, the Ministry of Justice raised court costs to prevent frivolous proceedings.
Legal practitioners
All lawyers must belong to the Egyptian Bar Association in order to perform any function of a lawyer. There is no distinction between the functions performed by barristers/advocates and solicitors/attorneys.

Alternative dispute resolution
Arbitration has established itself as a prominent tool to resolve commercial disputes. Arbitrations are governed by the Egyptian Arbitration Act, which was promulgated in 1994. The Cairo Regional Centre for International Commercial Arbitration (CRCICA) is the foremost arbitration institution and it offers arbitration, mediation and conciliation services. It has developed rules to regulate the proceedings.

EMPLOYMENT LAW

Governing legislation
Labour Law No. 12 of 2003; Article 674-698 of Law No 13/1948 (Egyptian Civil Code).

Particulars of employment
An employment agreement must be in writing, provide for a probation period (maximum period is 3 months) and a detailed description of the essential duties and liabilities of the parties.

Forms of contracts
• Contracts for an unspecified period.
• Contracts for a specified period or specific work terminates on expiry of the period or completion of the work.

Termination / Dismissal
• If a contract is for a period of more than 5 years, the worker may terminate it without indemnity upon the lapse of 5 years after notifying the employer 3 months before its termination.
• If in a contract for specific work completion entails a period exceeding 5 years, the worker shall not terminate the contract before completing the work. If the contract concluded for accomplishing specific work expires and the parties continue to act in terms of the contract following completion of the work, it shall be considered as a renewal of the contract for an indefinite period.
• If a period for the completion of the original work and the works for which the contract is renewed exceed 5 years, the worker may not terminate the contract before completion of the work.
• If the contract is for an indefinite period, either party may terminate on condition of giving 2 (employees working less than 10 years) or 3 months (employees working more than 10 years) written notice.
• If the employer terminates the contract without notice or before the end of the notice period, he shall be liable for an amount equivalent to the worker’s wage for that period or part thereof.
• The worker may terminate the contract if the employer defaults on any of the substantial obligations ensuing from law, the individual or collective labour
contract, or the establishment’s articles of association, or if the employer or their representative commits a hostile act against the worker or their family member.

- A worker’s resignation must be in writing. He or she may withdraw same in writing within 1 week from the date that the employer notifies him or her of its acceptance in which case the resignation shall be null and void.

Dispute resolution mechanisms and remedies
The Ministry of Manpower and Migration have several offices located in every district of each governorate called labour offices responsible for carrying out work site visits and dealing with complaints.

EXCHANGE CONTROL

There are no strict exchange control regulations that apply in Egypt. Banking laws grant all natural persons and legal entities the absolute freedom to maintain currency and conclude transactions in foreign currency, including the transfer of such currencies from and into Egypt, provided that such transactions are executed through banks or other entities authorised to deal in foreign currency.

Entities authorised to deal in foreign exchange include banks licensed to operate in Egypt, which are permitted to buy foreign currency for their own account and on behalf of third parties. Banking law permits the establishment of foreign exchange dealers that are authorised to buy and sell foreign currency for their own account.

TAX LAW

Income tax
Resident companies are taxed on their worldwide income whilst non-resident companies are taxed on their Egyptian source profits. Foreign tax paid overseas may be deducted from Egyptian income tax payable, but the deduction may not exceed the total tax payable in Egypt.

Types of taxable income
The types of tax payable in Egypt include company tax, dividends and capital gains tax unless shares sold are listed on the Egyptian stock exchange.

Withholding tax is payable on dividends, interest, royalties and technical service fees.

Property tax and stamp duty are also payable.

Tax rates
An income tax rate of 25% applies to all companies, except for those that are engaged in the exploration and production of oil and gas which are taxed at a rate of 40.55%.
Dividends received from an Egyptian company are not taxable, whereas dividends received from abroad are included in ordinary tax payable with a deduction allowed for foreign taxes.

Royalties and interest paid to a non-resident is subject to a 20% withholding tax.

There are no specific withholding tax rules governing technical service fees, although the tax authorities may treat such payments as royalties for withholding tax, at a rate of 20%. The majority of property in Egypt is subject to real estate tax at a rate of 10% on the annual rental value, after allowing a 30% deduction from rental value to cover related costs for residential property.

Stamp duty is charged at various rates and fixed charges.

**Double taxation treaties**
Egypt currently has double taxation agreements with Armenia, Austria, Belgium, Bulgaria, Canada, China, Croatia, Cyprus, Czech Republic, Denmark, Finland, France, Georgia, Germany, Hungary, India, Indonesia, Iraq, Italy, Japan, Korea, DPR, Korea, Republic, Lebanon, Macedonia, Malaysia, Malta, Morocco, Netherlands, Norway, Oman, Poland, Romania, Senegal, Serbia, Singapore, Slovakia, Slovenia, Spain, Sudan, Sweden, Switzerland, Syria, Thailand, Tunisia, Turkey, United Arab Emirates, the United Kingdom, the United States of America and Uzbekistan.
GENERAL INFORMATION

The Republic of Ghana is an independent republic in West Africa. Ghana is bordered by Burkina Faso to the north, Togo to the east and the Ivory Coast to the west. The Gulf of Guinea of the Atlantic Ocean lies to the south of Ghana.

Area: 238 533 km²
Population: 24.3 million
Capital: Accra
Currency: Cedi
GDP: USD 38.24 billion (2010)
Internet domain: .gh
Languages: English (official language)
Working week: Monday - Friday
Exports: Cocoa; gold; timber; manganese; bauxite; aluminium; diamonds; tuna
Imports: Capital equipment; petroleum; consumer goods; food; intermediate goods

COMPANY LAW

Business vehicles
There are three forms of companies commonly used by foreign investors:
• Company limited by shares.
• Company limited by guarantee.
• Unlimited liability company.

Incorporation
The following steps need to be taken in order to incorporate a company:
• Particulars of the proposed company are required to be filed with the Ghanaian Companies Registry. These include the company name, registered address, object and nature of the company, the directors, the particulars of the company secretary, auditors and shareholders.
• Following filing of the particulars at the Companies Registry and the payment of the prescribed fee in addition to a percentage of the company’s stated capital, applications will take between 10 to 15 working days to be processed.
• The company’s constituting documents must be presented to the Registrar of Companies, and if it is in line with the Ghanaian Companies Act, it will be registered and certified under the Registrar’s seal.

Once the above requirements have been complied with, a certificate to commence business will be issued.
Foreign investors intending to invest in Ghana are required to register with the Ghana Investment Promotion Centre (GIPC). Registration ensures that the company has complied with various mandatory legal requirements in respect of laws pertaining to foreign investment in Ghana.

**Regulatory Reporting**
Before commencing business, further information on the company must be provided which includes particulars of the company and a declaration of compliance pertaining to the minimum capital of the company.

Unlimited liability companies must file annual returns for the first time after eighteen months of incorporation.

**Share capital**
If the company is wholly foreign owned, the minimum equity capital investment required is USD 300 000. A non-trading company which is wholly foreign owned, requires a minimum equity capital investment of USD 50 000. A joint venture with a Ghanaian national requires a minimum equity capital of USD 10 000.

**Management**
A company must have a company secretary and the company secretary may be a corporate entity but should be locally based. Furthermore, the company should have a minimum of two directors in place, one of whom must be resident in Ghana at all times. Local nationality is, however, not required. The appointed auditors must also be qualified Ghanaian auditors.

**Are local shareholders required?**
Foreigners are allowed 100% ownership of companies provided minimum share capital investments are met.

**Branch Company**
Establishment of external companies are allowed. The following need to be filed with the Registrar of Companies, within one month of establishing a place of business:
- Certified copy of the charter, statutes, regulations, memorandum and articles, or other instrument constituting or defining the constitution of the company.
- A statement in duplicate in the prescribed form providing the required particulars regarding the company.

The registration process will take approximately 10 to 14 days.

**COMPETITION LAW**

**Law**
Ghana currently has no national competition law or policy in place. However, in certain instances specific sector or industry legislation makes provision for competition related aspects.
Mergers
Further to the paragraph above, competition law is not regulated in Ghana and there are, accordingly, no specific merger controls in place.

Restrictive practices
Competition is not regulated in Ghana and restrictive practices are therefore not regulated.

Abuse of dominance
Owing to the lack of competition regulation in Ghana, there are no abuse of dominance provisions to contend with.

Sanctions
As Ghana has no competition legislation and/or policy in place, there are no specific sanctions with regard to competition law.

CONSUMER PROTECTION
Currently Ghana does not have consumer protection legislation. However, a draft consumer protection bill has been discussed in parliament and is expected to be promulgated soon.

When in force, the act will aim to protect consumers from unfair trade practices which adversely affect the health, safety and economic interests of consumers. An independent consumer protection authority will also be established in order to enforce the legislation and also to coordinate all consumer activities.

Some of the key features of the anticipated legislation are as follows:
• The statute will make provision for a specialised court which will only deal with consumer protection related issues and thereby ensuring a speedy redress to certain disputes.
• There will be hotlines and emergency lines for quick information and response flow on certain consumer related issues.

DATA PROTECTION
Since the promulgation of the Data Protection Act, 2012 (Act 843) (DPA) data protection in Ghana is now regulated by the standard provisions of the DPA. A Data Protection Commission (DPC) has also been established. The DPC is responsible for monitoring the processing of data information, and ensuring that such processing does not violate the provisions of the DPA.

Some of the key principles of the DPA are:
• Personal data information may only be processed if such processing has been registered with and authorised by the DPC.
• Personal data information is allowed to be transmitted to a foreign country, provided that such foreign country is registered with the DPC.
• The data subject as well as the DPC must be notified of any data breach committed.

DISPUTE RESOLUTION

Court structure
The Ghanaian judicial system is structured into Superior Courts and Lower Courts. The Superior Courts comprise (in descending order of jurisdiction) of the Supreme Court, the Court of Appeal and the High Court, with the Lower Courts comprising of the Circuit Courts, District Courts and Juvenile Courts. The District Court is governed by the District Court Rules, the High Court is governed by the High Court Civil Procedure Rules and the Court of Appeal by the Court of Appeal Rules. The Supreme Court is governed by C.I. 16 of 1999.

Security by foreign litigants
An application has to be made for an order of security for costs and the applicant is likely to be successful if it can show that the plaintiff resides outside the jurisdiction and is unlikely to be able to pay the costs of the defendant. However, where a plaintiff has assets in Ghana the court is unlikely to make such an order.

Costs
The court has a discretion to order costs of and incidental to the legal proceedings and may determine the total extent of costs payable after considering a wide range of factors.

Legal practitioners
There is a single professional roll for all lawyers in Ghana who practice as both barristers/advocates and solicitors/attorneys. All lawyers have rights of appearance before all trial courts and tribunals in Ghana.

Alternative dispute resolution
Arbitration is a recognised form of dispute resolution and the Alternative Dispute Resolution Act was brought into effect in 2010, largely reflecting the UNCITRAL Model Law. The National Arbitration Institute is the Alternative Dispute Resolution Centre and there are private arbitration bodies such as the Ghana Arbitration Centre as well as registered associations such as the Association of Certified Mediators and Arbitrators.

EMPLOYMENT LAW

Governing Legislation

Particulars of employment
A contract of employment must be in writing for workers employed for 6 months or longer and a written statement of particulars must be given to an employee within 2 months of commencement of employment.
Forms of contracts
- A monthly contract of employment.
- A weekly contract of employment.
- A contract of employment determinable at will.
- The Act does not refer to the use of fixed term contracts, there is no provision for a maximum duration of probation save for a reference to reasonable duration determined in advance but probation periods and conditions are generally provided for in collective agreements.

Termination / Dismissal
- A termination is unfair if the employer fails to prove that the reason is fair or made in accordance with a fair procedure.
- A fair termination is possible in cases of incompetence or lack of qualification in relation to the work for which the employee is employed, or the proven misconduct of the employee, or redundancy, or a legal restriction is imposed on the employee prohibiting him from performing the work for which he is employed.
- Provision is made for a definition of unfair labour practice.

Dispute resolution mechanisms and remedy
- The National Labour Commission exercises adjudicating and dispute settlement functions in complete independence. In settling an industrial dispute, the Commission shall have the same enforcing powers as the High Court and enjoy the same privileges and immunities in regard to its proceedings.
- Unfair termination – Reinstatement, re-employment or compensation.
- Unfair labour practice:
  - An order forbidding the person to engage or continue to engage in such activity.
  - Where this involves the termination of employment or of the conditions of his employment, an order requiring the employer to take such steps to restore the position of the employee and to pay the employee a sum specified as compensation for any loss of earnings attributed to such contravention.
  - Where this involves the making of a contribution to a trade union, an order that the trade union refund the contribution.

EXCHANGE CONTROL

Until 2006, Ghana operated a strict foreign exchange control regime which was replaced by the Foreign Exchange Act of 2006 (the Act), which has introduced a more liberal regime.

Under the Act, exchange controls (which were previously exercised by the Bank of Ghana) are now operated by authorised dealer banks, which are only required to report their foreign exchange dealings to the Bank of Ghana.

Repatriation of funds or dividends and payments in foreign currency to or from Ghana between a resident and a non-resident, or between non-residents, must be made through an authorised dealer bank. There are no exchange control or currency regulations, as long as the transaction is effected through these banks.
TAX LAW

Income tax
The Internal Revenue Act 2000 was passed in 2001 to administer direct taxes.

Ghanaian income tax is defined as the total of a person’s assessable income from business, employment and investment less allowable deductions.

Types of taxable income
Residents are taxable on their worldwide income whilst non-residents are taxable only on income derived from Ghana.

In addition, non-residents are subject to a range of withholding taxes on certain types of payments deriving from Ghana.

Tax rates
The income tax rate is 25%.

Petroleum income tax may not exceed 50%, capital gains tax is taxed at 15%. Dividends are taxed at 8%, royalties are taxed as ordinary income for residents whilst rent on properties is taxed at 8%.

Double taxation treaties
Ghana currently has double taxation agreements with Belgium, Denmark, France, Italy, Netherlands, Serbia, South Africa, and the United Kingdom.
GENERAL INFORMATION

The Republic of Kenya lies on the Equator in East Africa. It is bordered by the Indian Ocean and Somalia to the east, Ethiopia and South Sudan to the north, Uganda to the west and Tanzania to the south.

Area: 580,367 km²
Population: 40 million
Capital: Nairobi
Currency: Kenyan Shilling
GDP: USD 65.9 billion (2010)
Internet domain: .ke
Languages: Swahili, English (official languages)
Working week: Monday - Friday
Exports: Coffee; tea; horticultural products; hides and skins
Imports: Machinery and transportation equipment; consumer goods; petroleum products; iron and steel

COMPANY LAW

Business vehicles
There are several forms of companies commonly used by foreign investors:
• Company limited by shares.
• Company limited by guarantee.
• Unlimited company.

All three forms of companies can be private or public. Private companies are required to have at least two shareholders. Public companies are required to have at least seven shareholders.

Incorporation
The following steps need to be taken in order to incorporate a company:
• A name must be reserved to incorporate a company in Kenya.
• An application must be made to the Registrar of Companies to search and reserve the proposed company name.
• In addition, a memorandum and articles of association will need to be submitted along with a statement of nominal capital, particulars of the directors and company secretary, a notice of the location of the registered office and a declaration of compliance.
• Payment of stamp duty to a designated account is required which is calculated based on nominal capital.
• The Registrar will then issue a certificate of incorporation.
The approximate time-frame for incorporating a company is three to four weeks.

**Regulatory reporting**
Every company is required to hold a general meeting for a newly incorporated company. The first general meeting must be held within eighteen months of its incorporation. A general meeting must be held yearly, provided that not more than fifteen months lapses between general meetings. Every company is required to file a return with Registrar of Companies at least once a year following its annual general meeting.

**Share capital**
A non-trading company that provides services, which is also wholly foreign owned requires a minimum equity capital investment of USD 50 000.

**Management**
Private companies must have at least 1 director. There are no requirements or restrictions regarding nationalities of directors in the company’s management structure.

However, if a director is not Kenyan, his nationality must be indicated in all official documents of the company.

Each company must have a company secretary who must be a qualified and registered certified public secretary.

**Are local shareholders required?**
There are no formal requirements in local participation in equity or management. Foreign shareholders are required to satisfy the minimum requirement for equity capital either in cash transferred through Kenya’s banking system or its equivalent in the form of goods, plant and machinery and other tangible assets imported exclusively for the company. The imported goods must be accompanied by a destination inspection report issued by an accredited inspection company stating the value and conditions of the goods.

**Branch Company**
A foreign company which establishes a place of business in Kenya is required to file certain documents with the Registrar of Companies within 30 days of its establishment of a place of business in Kenya. This should be done in advance, since the certificate of compliance (issued on formation) will be a pre-requisite for obtaining entry permits and other statutory registrations.

**COMPETITION LAW**

**Law**
- Competition Act 12 of 2010.

The Act is enforced by the Competition Authority and its decisions can be appealed to the Competition Tribunal, based in Nairobi.
Mergers
A transaction must be notified to the Competition Authority if it constitutes a merger as defined in the Act. There are currently no thresholds for mandatory notification; however the guidelines provide that where the combined turnover or asset value of the merging firms is less than USD 1 140 000, the merger may be considered for exclusion from the requirement of notification.

The Act expressly prohibits the implementation of a merger prior to approval and payment of the full or 20% of the purchase price is deemed to constitute implementation. Should the merger be implemented without the necessary approval, the merger will be deemed invalid and parties are liable on conviction to imprisonment not exceeding 5 years and/or a fine not exceeding USD 110 400.

Restrictive practices
The Act regulates restrictive practices and certain vertical and horizontal restrictive practices are expressly prohibited:
- Price-fixing, whether direct or indirect.
- The division of markets.
- Distorting, restricting or preventing competition.
- Collusive tendering.

Abuse of dominance
The Act prohibits the abuse of a dominant position.

Sanctions
The Act provides for the imposition of the following sanctions in respect of the pre-implementation of a merger, cartel conduct and/or abuse of a dominant position:
- Imprisonment not exceeding five years.
- A fine not exceeding USD 110 400 or both.

CONSUMER PROTECTION

The President of Kenya signed the Consumer Protection Act, 2012 (CPA) into operation during 2013. The main objectives of the CPA are to provide for the protection of consumers and to prevent unfair trade practices in consumer transactions.

The following key aspects are specifically addressed by the CPA:
- The quality of goods and services – goods and services should not be sub-standard, suppliers should not make misrepresentations concerning the pricing of the goods and services, and that suppliers should provide warranties in respect of damaged or injurious goods.
- Consumer accountability – suppliers are required to publicly disclose the nature and/or defect, if any, in their products.
- Product recall – suppliers who supply consumers with sub-standard and/or dangerous products may be required to recall such products from the market.
- Agreements concluded over the internet – the supplier is required to disclose certain information to the consumer (it is not yet clear from the act what exactly
needs to be disclosed). The consumer should also be provided with an opportunity to accept or decline the agreement.

The CPA makes provision for the establishment of the Kenyan Consumer Protection Advisory Committee which is in charge of, among other things, advising consumers of their rights, investigating complaints and accrediting consumer organisations.

Lastly, Kenya is a member of the Common Market for Eastern and Southern Africa (COMESA) which has been established to primarily regulate competition law amongst the different economies of its member states and to ensure that a fair and effective regional competition law framework exists. COMESA also has powers regarding consumer protection matters and promotes transparency among economic operators in the region. As such the key aspects of consumer protection dealt with in the COMESA Regulations will also impact consumer protection in Kenya.

DATA PROTECTION

Kenya does not currently have any data and privacy protection laws. However, the Data Protection Bill, 2012 is currently in the process of being finalised (as part of Kenya’s Connected Kenya Master Plan (2012 – 2017)) and will, among other things, provide for the establishment of the Commission of Administrative Justice to oversee compliance with the provisions of the Data Protection Bill.

In the event of non-compliance with its provisions, fines of up to USD 1000, and/or a term of imprisonment not exceeding 2 years could be imposed.

For the time being, data protection issues are addressed by the Constitution of Kenya as well as various other legislation provisions which provide that:
- Every person has the right to privacy, which include not having information relating to their family, private affairs, or private communications unnecessarily revealed.
- Customers have the right to personal privacy and protection against unauthorised use of personal information.
- The Communications Commission of Kenya may establish mechanisms by which a customer will be able to receive conspicuous notices indicating that their personal data information could be used, or is intended to be used, without authorisation, or that it is used or intended to be used for purposes not consented to.
- A data controller is prohibited from selling or offering for free, to a third party, any information collected by such data controller without the prior consent of the data subject concerned.

DISPUTE RESOLUTION

Court structure
There are two levels of courts in Kenya, Superior Courts and Subordinate Courts. The Superior Courts include the High Court, the Court of Appeals and, at the apex, the
Supreme Court. The Subordinate Courts are made up of the Resident Magistrate Court, Kadhi Courts, Court Martials, Tribunals and the District Magistrate Courts.

Security by foreign litigants
A court may order that security for costs be provided by a plaintiff residing outside Kenya or where a plaintiff does not have sufficient immovable property within Kenya. Service of legal proceedings can be effected on a foreigner provided the cause of action arose in Kenya and the foreigners is lawfully in Kenya on his or her own volition.

Costs
Costs are awarded at the discretion of the court which can decide who should bear the costs and to what extent, after considering a range of factors.

Legal practitioners
There is a single professional roll in Kenya which is made up of advocates. An advocate is, according to the Advocates Act, a person whose name is duly entered upon the Roll of Advocates or upon the Roll of Advocates having the rank of Senior Counsel. The Law Society of Kenya is Kenya’s premier bar association and is established in terms of the Law Society of Kenya Act.

Alternative dispute resolution
Arbitration is a recognised form of dispute resolution in Kenya. The Arbitration Act, 1995 largely reflects the UNCITRAL Model Law and the Civil Procedure Act, 2010 introduced many provisions related to arbitration and the general shortening of civil proceedings. The Chartered Institute of Arbitration (Kenya Branch) is the foremost institute of arbitration in Kenya.

EMPLOYMENT LAW

Governing legislations
- Employment Act, 2007
- Labour Institutions Act, 2007
- Labour Relations Act, 2007
- Occupational Safety and Health Act, 2007

Particulars of employment
An employment contract must be furnished to an employee within 2 months of commencement. Employment contracts for a period of 3 months and longer must be in writing.

Forms of contracts
- A contract for an unspecified period of time.
- Probation period shall be for a maximum of 6 months but may be extended for a further period of up to 6 months, be in writing and expressly state that it is for probation, terminable on not less than 7 days’ notice or payment of 7 days wages in lieu of notice.
• Contract for specified period of time must state the definite period of time, usually three months and more, and can only be prolonged for a period of up to one month.
• Contract for a specific task (piece-work employment).
• Contract for casual employment (paid daily and not engaged for a longer period than 24 hours). A deeming provision results in the conversion of a casual employee to a permanent employee.

Termination / Dismissal
• For a dismissal to be fair, the reason must be valid and fair related to the employee’s conduct, capacity or compatibility, or based on the employer’s operational requirements and in accordance with a fair procedure. Summary dismissal occurs when an employer terminates the employment without notice or with less notice and is only applicable for gross misconduct but must be followed by a fair procedure.

Dispute resolution mechanisms and remedy
Dispute mechanisms are governed through the Industrial Court Act 2011.
Remedy for wrongful dismissal and unfair termination:
• The wages which the employee would have earned had he been given lawful notice.
• Where dismissal terminates the contract before the completion of any service upon which the employee’s wages became due, the proportion of the wage due for the time period for which he had worked and any other loss consequent upon the dismissal and arising between the date of dismissal and the date of expiry of the notice period.
• The equivalent of a number of months’ wages or salary not exceeding twelve months.
• Reinstatement; or re-engaging the employee.

EXCHANGE CONTROL

There are no exchange control restrictions in Kenya. Foreign investors and companies may freely transfer profits after complying with their tax obligations, provided there is written evidence of an underlying business transaction and the bank handling the repatriation is a licensed bank in Kenya and is satisfied as to the genuineness of the transaction in the case of remittances in excess of the equivalent of USD 10 000.

For any amount equivalent to USD 500 000 or more, the bank undertaking the remittance is required to notify the Central Bank of Kenya first. Commercial banks are also required to report to the Financial Reporting Centre, established under the Proceeds of Crime and Anti-money Laundering Act of 2009, in this regard, all cash transactions exceeding USD 10 000 or its equivalent in any other currency must be reported.
TAX LAW

**Income tax**
Resident companies and non-resident companies are taxed on all income accruing from Kenya. Income tax is imposed on a company’s gross income less allowable deductions. Expenses claimed must be wholly and exclusively in the production of income.

**Types of taxable income**
Aside from income tax there are various types of withholdings taxes.

**Tax rates**
Resident companies are taxed at a rate of 30% (with some exceptions) and foreign companies are taxed at a rate of 37.5%.

No withholding tax are imposed on dividends if the recipient is a qualifying Kenyan financial institution, or if the resident recipient company controls 12.5% or more of the capital of the payer, or otherwise the rate is 5% for dividends paid to residents of Kenya and on listed shares for citizens of the Eastern African Community. The tax rate for other non-resident is 10%.

Interest received from financial institutions is subject to 15% tax, while the withholding tax on interest on bearer certificates is 25% and withholding tax on interest from bearer bonds is 10%. Royalties paid to a resident are subject to a 5% withholding tax and the rate is 20% if paid to a non-resident.

**Double taxation treaties**
Kenya currently has double taxation agreements with Canada, Denmark, Norway, Sweden, India, Zambia, United Kingdom, Germany, France, Tanzania and Uganda.
GENERAL INFORMATION

The Kingdom of Lesotho, formerly a British protectorate known as Basotholand, became an independent nation in 1966 and is now a constitutional monarchy. Lesotho is a land-locked country located in Southern Africa and completely surrounded by South Africa.

Area: 30,355 km²
Population: 2 million
Capital: Maseru
Currency: Maloti
GDP: USD 3.31 billion (2010)
Internet domain: .ls
Languages: English, Sesotho (official languages)
Working week: Monday - Friday
Exports: Clothing; footwear; wool; mohair; livestock; food
Imports: Food; building materials; vehicles; machinery; medicines; petroleum products

COMPANY LAW

Business vehicles
There are several forms of companies commonly used by foreign investors:
• Private or public limited liability companies.
• Single shareholding companies.
• Non-profit companies.
• External companies (being branches of foreign companies).

Private limited liability company is the most common entity. The new Companies Act allows a private limited liability company to be registered with only 1 shareholder (with a maximum of fifty shareholders).

Incorporation
• A new regulatory filing regime and filing forms have been introduced in terms of the new Companies Act.
• The new Companies Act also provides for the electronic filing of documents. However, this process is still in its development phase.
• It is envisaged that after the final implementation of the new Companies Act, the company registration process will take a few days at a cost of approximately USD 750 which includes all fees payable to the Registrar of Companies, but excludes VAT, licensing and related fees.
Regulatory reporting
A company’s financial accounts must be audited by a registered Basotho auditor, but can also be done by a South African auditor.

Share capital
There is no longer a minimum share capital for companies.

Management
Under the new Companies Act, directors now face personal liability for breaches of duties owed to shareholders. A special resolution by shareholders is required to approve any major transactions.

A company must have a public officer that is resident in Lesotho, for income tax purposes.

Are local shareholders required?
At least 51% of the shares of a company must be held by Lesotho citizens if specific trading licenses are needed or where there is intention to acquire land title by lease from the State (under the leasehold land tenure system which applies in Lesotho).

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

COMPETITION LAW

Law
Lesotho currently has no national competition law or policy in place. However, in certain instances specific sector / industry legislation makes provision for competition related aspects.

Mergers
Further to the paragraph above, competition law is not regulated in Lesotho and there are, accordingly, no specific merger controls in place.

Restrictive practices
Competition is not regulated in Lesotho and restrictive practices are therefore not regulated.

Abuse of dominance
Owing to the lack of competition regulation in Lesotho, there are no abuse-of-dominance provisions to contend with.
Sanctions
As Lesotho has no competition legislation and/or policy in place, there are no specific sanctions with regard to competition law.

CONSUMER PROTECTION
Currently Lesotho does not have any promulgated consumer protection laws. However, Lesotho may have some specific statutes which contain provisions that directly or indirectly relate to consumer protection under certain circumstances.

DATA PROTECTION
Currently Lesotho does not have any promulgated data protection laws. However, Lesotho’s constitution recognises a right to privacy. Some specific statutes may also contain provisions that directly or indirectly relate to data protection.

DISPUTE RESOLUTION
Court structure
The judicial system consists of the High Court, the Court of Appeal and the subordinate courts. Subordinate courts include Resident Magistrate’s Courts and chiefs administer customary and tribal laws. There is no trial by the jury. Military courts have jurisdiction only over military cases and their decisions are final.

Costs
Generally, a successful party is entitled to have a cost order in its favour against the unsuccessful party. The Court seemingly has a wide discretion regarding costs.

Legal practitioners
The legal profession is divided into 2 branches, that is, advocates and attorneys. The Legal Practitioners Act of 1967 regulates the profession as well as the Law Society Act 1983.

Alternative dispute resolution
There are neither arbitration institutes nor an act to govern arbitration in Lesotho. The most recognised form of alternative dispute resolution in Lesotho is thus mediation.
EMPLOYMENT LAW

Governing legislation
- Labour Code, Order No 24 of 1992
- Labour Code (Amendment) Act, No 3 of 2000
- Labour Code (Amendment) Act, No 5 of 2006

Particulars of employment
A contract of employment may be either oral or in writing, express or implied.

Forms of contracts
- An indefinite contract.
- A contract for 1 period of fixed duration which shall automatically terminate on that date with no notice.
- A contract to perform specific work which terminates on completion of the work; if an employer terminates before its completion he would be liable for all wages and other remuneration that would have been owing up to date of completion of the contract.
- Probation cannot exceed four months; may only be extended with written leave of the Labour Commissioner, terminable on one week’s notice either during or immediately at its end and excluded to refer a claim for unfair dismissal.

Termination / Dismissal
- A dismissal is fair if there is a valid reason for the termination related to the employee’s capacity; or his conduct; or based on the employer’s operational requirements and in accordance with a fair procedure.
- Obligations of an employer:
  - Furnishing an employee with a written statement for the reason for the dismissal either before, at the time of, or within four weeks of the dismissal which shall be admissible in evidence in legal proceedings; failing which it is regarded as an offence punishable with a fine.
  - When an employer has not given a written statement or if the material details of the statements are incorrect, a Court may declare the reasons for the dismissal invalid and award two weeks’ wages to the employee in addition to possible other relief.

Dispute resolution mechanisms and remedies
- Preliminary mandatory conciliation and mandatory arbitration concerning dismissals for reasons relating to the employee’s conduct or capacity is to be solved by an arbitrator, followed by review of an award on application by either party in the Labour Court (LC). The LC has exclusive jurisdiction in disputes concerning unfair dismissal if the reason is for participation in a strike, as a consequence of a lock-out or related to the employer’s operational requirements; unfair labour practices and in disputes concerning the application/interpretation of any provision of the Code or any other labour law; must be referred within six months of termination.
- Remedy: either reinstatement or compensation.
EXCHANGE CONTROL

Lesotho is part of the Rand Common Monetary Area. Exchange controls apply and are subject to the provisions of the Exchange Control Order and Exchange Control Regulations administered by the Central Bank of Lesotho, which functions in conjunction with the South African Reserve Bank.

The commercial banks in Lesotho are appointed as authorised dealers and foreign exchange is subject to certain limits. Lesotho is also a member of the Preferential Trade Area (PTA), the Southern African Development Community (SADC), the British Commonwealth, the United Nations (UN) and the Southern African Customs Union (SACU).

TAX LAW

Income tax
Income tax is regulated by the Income Tax Act of 1993, together with regulations promulgated under the Act.

Types of taxable income
Withholding tax is deducted at source at the standard rate on dividends, interest, royalties, natural resource payments and charges for management or administrative services.

Withholding tax is payable at 10% of the gross amount of any payment to a non-resident under a Lesotho-source services contract.

Capital gains tax applies, but is subject to certain exemptions. Value added tax is payable on most goods sold and services rendered at the rate of 14%. Basic foodstuffs are zero-rated.

Tax rates
Residents: The first USD 4000 (approximate) is taxed at 25%. Any excess will be taxed at 35%. Non-residents are taxed at a rate of 25%.

Double taxation treaties
Lesotho has signed double taxation agreements with the United Kingdom, South Africa and Mauritius.

DTA negotiations are taking place with Botswana and the Seychelles. The government has also approved negotiations with Namibia, Swaziland, India, China, United States of America and Australia.
GENERAL INFORMATION
The island of Mauritius lies in the Indian Ocean, off the east coast of Southern Africa and east of Madagascar.

Area: 1860 km²
Population: 1.3 million
Capital: Port Louis
Currency: Mauritian Rupee
GDP: USD 17.5 billion (2010)
Internet domain: .mu
Languages: French, English (official languages)
Working week: Monday - Friday
Exports: Clothing; textiles; sugar; cut flowers; molasses; fish
Imports: Manufactured goods; capital equipment; foodstuffs; petroleum products; chemicals

COMPANY LAW
Business vehicles
There are several forms of companies commonly used by foreign investors:
• Domestic Companies.
• Global Business Category 1 Company (GBL1).
• Global Business Category 2 Company (GBL2).
• Protected Cell Companies.

Only one shareholder is required to incorporate a company. However, within 6 months of incorporation, the sole shareholder or director must nominate a person to be the secretary. A public company may have more than 25 shareholders but a private company may not have more than 25 shareholders.

Companies can be limited by share, guarantee or both.

Registration and formation
The following steps need to be taken in order to incorporate a company:
• The Registrar of Companies will not register a company or register a change of name of a company, unless the name is available and has been reserved.
• A form must be completed and signed and upon confirmation that the name is available (which takes approximate in one to two days), payment has to be made in order to receive the notice of name reservation.
• Upon receiving the notice of name reservation, the application for incorporation of a company can be submitted, which is to be accompanied by consent from every director, secretary and shareholder of the proposed company. Where the proposed company has a constitution, certified copies of the constitution must also be submitted.

The approximate timeframe for incorporation of a company will range from three days to two weeks, depending on the complexity of the structure. Domestic companies will be incorporated within one day.

**Reporting requirements**

Companies must keep records that explain the transactions and the financial position of the company. All companies, except for domestic companies with a turnover of less than USD 1,500,000 and GBL2 companies, must have their financial statements audited and filed with the Registrar of Companies. GBLs must also file an annual report and financial statement with the Financial Services Commission (FSC). The FSC must also be notified if a person becomes the owner of 20% or more of the company’s shares.

**Share capital**

There is no minimum share capital requirement (except for certain financial services businesses), but at least one share must be issued and paid out.

**Management structure**

There must be at least one resident director who is a natural person. For GBL2 companies, a corporate director or a foreign director can be appointed. The Registrar of Companies’ consent form should be completed and signed by the director and filed with the Registrar. In the case of a company holding a global business license, a copy of the forms together with the director’s documents will also need to be filed with the FSC.

Each company, other than a small private company or GBL2 company, must have 1 or more company secretaries.

Small private companies and a GBL2 companies do not need to appoint an auditor.

**Are local shareholders required?**

There are no restrictions on foreign entities or individuals holding shares in a company in Mauritius. However, the Prime Minister’s approval is required for foreign shareholders in companies holding immovable property or long-term leases of immovable property.

**Branch Company**

It is possible to establish a branch in Mauritius. The branch of the foreign company must register within 1 month of establishing a place of business in Mauritius. Registration is obtained from the Registrar of Companies upon submission of the prescribed documents, including the certificate of notice of reservation of name and an authenticated copy of the certificate of incorporation of the company and of its constitution. This process will take approximately 2 weeks.
COMPETITION LAW

Law
• Competition Act 25 of 2007.

The Act is enforced by the Competition Commission, based in Port Louis.

Mergers
A merger is notifiable where the following thresholds are met:
• The target firm would, following implementation of the merger, supply or acquire 30% of goods or services of a particular description in Mauritius.
• Prior to the merger, either party supplies or acquires 30% of goods or services of a particular description in Mauritius.
• There are reasonable grounds upon which the Commission believes that the merger is likely to result in a substantial lessening or prevention of competition.

A merger may be implemented prior to notification, subject to the Commission’s power of divestiture.

Restrictive practices
The Act regulates restrictive practices. Horizontal agreements are deemed collusive where it involves price fixing, the sharing of markets or sources of supply or bid rigging and it results in a substantial lessening or prevention of competition. Vertical agreements are prohibited where they involve resale price maintenance or where a party thereto is a monopolist.

Abuse of dominance
The Act prohibits the abuse of a dominant position (the Act refers to monopoly situations).

Sanctions
Where a firm has breached the cartel provisions, the Commission may direct that the agreement be terminated or amended and/or impose a penalty not exceeding 10% of the turnover during the collusive period for a maximum period of 5 years.

CONSUMER PROTECTION

Mauritius has a Consumer Protection Act in force.
Some of the aspects regulated by it are:
• Price and supplies control.
• Product advertisement and promotion.
• Export control.
• Price labels.
• Maximum recommended retail prices of certain products.
Currently, a bill is being discussed in Parliament which will regulate certain aspects pertaining to product warranty and after-sales services. The bill will also set out certain provisions relating to the quality and reliability of products sold to consumers.

Lastly, Mauritius is a member of the Common Market for Eastern and Southern Africa (COMESA) which has been established to primarily regulate competition law amongst the different economies of its member states and to ensure that a fair and effective regional competition law framework exists. COMESA also has powers regarding consumer protection matters and promotes transparency among economic operators in the region. As such the key aspects of consumer protection dealt with in the COMESA Regulations will also impact consumer protection in Mauritius.

DATA PROTECTION

The Data Protection Act, 2004 (DPA) regulates the processing of personal information in Mauritius. As a general rule one may not process a natural person’s personal information without consent or any other valid legal basis for such processing.

Some of the key principles under the DPA:

• An organisation which has a database containing personal information must register same under the DPA.
• One cannot transfer personal information to countries outside Mauritius without the prior written consent in terms of the DPA.

DISPUTE RESOLUTION

Court structure
Mauritius has a single-structured judicial system consisting of two parts: the Supreme Court and the subordinate Courts. The subordinate courts consist of the Court of Rodrigues, the District Courts, the Intermediate Court and the Industrial Court, whilst the Supreme Court has various divisions exercising jurisdiction as the Bankruptcy Court, the Court of First Instance in civil and criminal matters, the Court of Appeal (to hear and determine civil and criminal appeals from the subordinate Courts), the Court of Civil Appeal and the Court of Criminal Appeal (to hear and determine appeals from the decisions of the Supreme Court sitting as Court of first instance). The Commercial Division of the Supreme Court has jurisdiction to deal with all matters of bankruptcy, insolvency, matters arising out of the Companies Act; banking, insurance, bills of exchange, offshore, industrial property, patents and disputes between traders of a commercial nature.

Security by foreign litigants
Foreign litigants are generally obliged to pay security for costs and have to comply with all the requirements expected from local litigants. Importantly, they must be present for all hearings.

Costs
A successful litigant may claim costs but this will depend on the court. The costs recovered by a successful party can be disappointingly low.
Legal practitioners
There is a split bar of barristers who join the Bar Council and solicitors who join the Law Society. The conduct of legal practitioners is governed by the Law Practitioner’s Amendment Act, 2011, the Mauritius Bar Council Act and the Law Society Act 2005 and Rules of Mauritius Law Society.

Alternative dispute resolution
Arbitration is a recognised form of dispute resolution in Mauritius and is currently regulated by the International Arbitration Act, 2008. Recognised arbitration institutes include the Mauritius International Arbitration Centre and the Mauritian Chamber of Commerce and Industry. Mauritius is a signatory of the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

EMPLOYMENT LAW

Governing Legislation

Particulars of employment
An employer who employs more than ten workers must provide workers engaged for more than 1 month with a written contract within 2 weeks of entering into an agreement.

Forms of contracts
Contracts for an unspecified period of time: fixed term; or part-time.

Termination / Dismissal
- An employment contract may be terminated for reasons related to a worker’s misconduct/poor performance (only possible if the employer cannot in good faith take any other course of action and the worker is given a fair hearing) or alleged misconduct which is the subject of criminal proceedings or reasons of an economic, technological, structural or similar nature or the worker is absent from work without good and sufficient cause for 3 consecutive days on a second or subsequent occasion or on expiry of a termination notice given by the employer stating the reason.
- If an employment contract is for a specific period of time, the contract will be automatically renewed unless either party sends a termination notice. If an employment contract is for specific work, the contract terminates upon completion of the specific work.
- Where a worker is ill-treated by his employer; or the employer fails to pay the remuneration due under the contract; or the employer unilaterally modifies the essential conditions of the contract, the worker may claim that the employer terminate the contract.

Dispute resolution mechanisms and remedies
A complaint to the permanent Secretary of the Ministry responsible for Labour and Employment Relations in respect of any matter arising out of his employment who will
issue a notice enforcing compliance that the employer can challenge within 7 days of receipt before Court. Compensation for dismissal is linked to the length of employment.

Points of significance
- Workers of the same category working the same hours must be paid on an equal basis.
- If a worker’s permanent place of residence is more than 3kms from his place of work, the employer covers transport costs which are refunded to the worker.
- The right to receive pay slips is mandatory.
- The right to leave is open to the worker after 12 months of consecutive employment.
- Workers are entitled to a year end bonus if still in employment at 31 December.

EXCHANGE CONTROL

Exchange control was abolished in July 1994.

TAX LAW

Income tax
Income tax is levied on a company’s profits, which consist of business profits and passive income. Normal business expenses are deductible in calculating taxable income.

Mauritius residents are taxed on Mauritius-source income and foreign income remitted to Mauritius. Non-residents are taxed only on Mauritius-source income. Taxable income includes employment income, pensions, profits from trade and profession, rent and interest.

Types of taxable income
Dividends paid by a Mauritius-resident company are exempt from income tax.

Foreign dividends are taxable but a credit can be claimed for underlying and withholding tax. No tax is imposed on capital gains in Mauritius and there is no withholding tax on dividends.

Tax rates
Company tax is 15%. A GBL1 company is entitled to claim credit for the greater of the actual foreign tax incurred or deemed foreign tax credit equivalent to 80% of the Mauritius tax payable, giving a maximum effective tax rate of 3%.

An alternative minimum tax is imposed, which is equal to the lower of 7.5% of accounting profits or 10% of dividends declared for the relevant year.

Employers are required to make pay-related social security contributions equal to 6% of the employee’s monthly basic salary. Interest is at 10%, unless specifically exempted. Royalties are taxed at 15%, no rate applies to specified non-residents. Technical service fees are taxed at 10%, unless specifically exempted.
Double taxation treaties
Mauritius has concluded 36 double taxation treaties and several treaties are being negotiated. The treaties currently in force include those with Barbados, Belgium, Botswana, Croatia, Cyprus, Democratic Socialist Republic of Sri Lanka, France, Germany, India, Italy, Kuwait, Lesotho, Luxembourg, Madagascar, Malaysia, Mozambique, Namibia, Nepal, Oman, Pakistan, People’s Republic of Bangladesh, People’s Republic of China, Rwanda, Senegal, Seychelles, Singapore, South Africa, State of Qatar, Swaziland, Sweden, Thailand, Tunisia, Uganda, United Arab Emirates, the United Kingdom and Zimbabwe.
GENERAL INFORMATION

The Republic of Mozambique is located on the south-east coast of Africa, bordered in the north by Tanzania; on the west by Malawi, Zambia and Zimbabwe; on the south-west and south by South Africa and Swaziland; and on the east by the Indian Ocean.

Area: 799 380km²
Population: 22.0 million
Capital: Maputo
Currency: Meticais
GDP: USD 22.19 billion (2010)
Internet domain: .mz
Languages: Portuguese (official language)
Working week: Monday - Friday
Exports: Aluminium; prawns; cashew nuts; cotton; sugar; citrus; timber; bulk electricity
Imports: Machinery and equipment; vehicles, fuel, chemicals, metal products; foodstuffs; textiles

COMPANY LAW

Business vehicles
There are two main types of companies commonly used by foreign investors:
- *Sociedade por Quotas* (equity is referred to as quota).
- *Sociedade Anónima de Responsabilidade Limitada* which is loosely equivalent to a joint stock company.

Incorporation
The following steps need to be taken in order to incorporate a company:
- An application to reserve a name is required which must be approved by the Mozambican Legal Entities Registry Office. A company name can be reserved for a period of 90 days (which is renewable for a further period of 90 days upon request and payment of the relevant fee).
- The registration process has 3 stages:
  - Signature of the articles of association of the company by means of executing either a public deed signed before a Notary or a private document with notarization of the signatures.
  - Publication of the articles of association in the Official Gazette (*Boletim da República*).
  - Registration of the articles of association with the Registrar of Companies.
• Resolutions approving the incorporation of the company passed by shareholders that are legal entities must be submitted together with the articles of association.
• A license for the specific activity of the company may also be required. The application for the license must be filed together with a plan and detailed description of the property where the company will carry out business, as well as the relevant lease agreement.
• Sectors such as mining, oil and gas, civil construction, healthcare and laboratories, educational, media and telecommunications and banking and insurance have more complex licensing processes due to specific requirements such as financial capacity, minimum technical staff and minimum share capital.

The time frame for the incorporation of an entity is between 30 and 45 days.

**Regulatory reporting**
An annual tax return reflecting the balance of tax due must be submitted by 31 May each year, with supporting documents filed by the end of June.

**Share capital**
There are no minimum share capital requirements.

- **Quota Companies**: the quota holders of a quota company may set the capital at a level that is sufficient for the company to carry on its activity. The capital must correspond to the sum of the nominal values of each of the quotas and must be expressed in Mozambican currency.
- **Share Companies**: the value of the share capital must always be adequate to achieve the corporate objective and must always be expressed in Mozambican currency.

**Management**
The corporate bodies for both a quota and share company would include the general assembly (the board of directors). An audit committee or sole auditor may be appointed. A share company would also require a supervisory body and/or person.

The company is managed by one or more directors who may be from outside the company. At least one resident director and company secretary is required.

**Are local shareholders required?**
Local shareholders are not required and 100% foreign ownership is permitted.

**Branch company**
Foreign investors may establish branches in Mozambique in the form of agencies or delegations. A branch is more appropriate for a short duration (i.e. to execute a specific contract and the activities permitted under the license granted are restricted to contracts). This procedure can be very bureaucratic.

Foreign entities that wish to carry out commercial activity in Mozambique must apply to the Ministerio da Industria e do Comercio for the licensing of branches, subsidiaries, delegations, agencies, or other forms of representation that are legally established in Mozambique.
COMPETITION LAW

Law
• Law No 10/2013.

The Act will be enforced by the Competition Regulatory Authority (a body which is yet to be formed) and sector regulatory bodies.

Mergers
Where the applicable thresholds are met, a merger is notifiable to the Competition Regulatory Authority. The thresholds are, however, yet to be determined by the Council of Ministers.

Failure to notify a merger where the thresholds are met (or upon request by the Competition Regulatory Authority where a merger falls below the thresholds) may result in the imposition of a penalty not exceeding 5% of all merging parties’ annual turnover for the preceding financial year.

Restrictive Practices
The Act regulates both horizontal and vertical restrictive practices. In the case of the former, a number of agreements, concerted practices or decisions which are specifically prohibited, for example: the adoption of uniform or agreed conduct, the division of markets, price fixing, and restricting or preventing access to the market.

Abuse of Dominance
The abuse of a dominant position by either a single firm or a number of firms is strictly prohibited by the Act.

Sanctions
The Competition Regulatory Authority may impose a penalty not exceeding 5% of the firm’s annual turnover for the immediately preceding financial year for any breach of the Act.

CONSUMER PROTECTION

Consumer protection is regulated by the Consumer Rights Law No. 22/2009 (CRL). The primary purpose of the CRL is to set out the rights of consumers as well as the reciprocal obligations of suppliers.

Some of the key areas regulated by the CRL are the following:
• Manufacturing and importation of goods.
• Distribution and sale of goods and/or services.
• Public administrative duties.
• Protection of consumers’ economic interest.
• Agreements concluded between consumers and suppliers.
DATA PROTECTION

Currently Mozambique does not have any specific data protection laws. However, there are various constitutional privacy protection provisions which are interpreted in conjunction with the Mozambique Civil Code’s provisions so as to provide an effective personal data protection framework.

Data protection issues will thus be addressed in line with the following principles:

- The use of computerised means for recording and processing individually identifiable data in respect of political, philosophical or ideological beliefs, of religious faith, party or trade union affiliation or private lives, is prohibited.
- Access to data bases or to computerised archives, files and records for obtaining information on the personal data of third parties, as well as the transfer of personal data from one computerised file to another that belongs to a distinct service or institution, is prohibited except in cases provided for by law or by judicial decision.

DISPUTE RESOLUTION

Court structure
The Mozambican legal system is made up of the Administrative Court, Constitutional Council and the Judicial Courts. The Administrative Court is tasked with holding public power accountable and reviews the legality of administrative acts and public spending.

The Constitutional Council reviews the constitutionality of Mozambican legislation and will consider the constitutionality and legality of the Mozambican Executive. The Judicial Courts include the Supreme Court and the Appeal Regional Court which are known as the Superior Courts, and District Court and Courts of the Province which are known as Lower Courts.

Time in which matters can be heard
Litigation in Mozambique can be a lengthy and expensive process and it can take a number of years for a judgment to be obtained.

Legal practitioners
There is a single bar for legal practitioners, the Mozambique Bar Association (Ordem dos Advogados de Moçambique).

Alternative dispute resolution
Arbitration is a recognised form of dispute resolution in Mozambique and is currently regulated by the Law on Arbitration, Conciliation and Mediation which is based on the UNCITRAL Model Law. The Centre for Commercial Arbitration, Conciliation and Mediation (CACM) is Mozambique’s only arbitral institution. Mozambique is a signatory of the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.
EMPLOYMENT LAW

**Governing legislation**

**Particulars of employment**
Certain contracts of employment must be in writing.

**Forms of contracts**
- Fixed term contracts in excess of ninety days must be in writing justifying the grounds of the fixed term and establish a link between the justifications relied upon and the terms set.
- A written contract entered into for the performance of temporary duties in certain specified instances.
- A contract may only be entered into for a period of up to two years, which may be renewed twice by agreement and shall be deemed to be a permanent contract if it exceeds the maximum periods of duration or the number of renewals permitted.
- Permanent contracts whose duration is not indicated must be in writing.
- Private employment agency in respect of a temporary employment contract must be in writing, are only allowed in certain permitted circumstances and with the prior authorisation of the Minister of Labour.
- User contracts which relate to a fixed term contract for services entered into between a private employment agency and a user enterprise must be in writing and state the reasons for using temporary labour; if not, it will be void and the employment relationship between the user enterprise and the employee shall be considered to be permanent.
- **Probation period** –
  - Permanent employment contracts shall not exceed 180 days for intermediate and high level technicians and employees who hold leadership and management positions and for all other employees shall not exceed ninety days;
  - A fixed term employment contract shall be ninety days for periods longer than 1 year; thirty days for terms between six months to one year; 15 days for terms up to six months and fifteen days for unspecified term contracts when the term is expected to be ninety days or more;
  - During the probation period either party may denounce the contract without having to show just cause and without having any right to compensation but is required to give a minimum of seven days advance written notice.

**Termination / Dismissal**
Either by expiry; by mutual agreement; cancellation by either party; or rescission by either party on just cause.

**Dispute resolution mechanisms and remedies**
The Centre for Commercial Arbitration, Conciliation and Mediation is the only arbitral institution able to handle legal and commercial disputes.
EXCHANGE CONTROL

The Mozambican Central Bank controls all foreign direct investment and inward and outward payments. In addition, remittance of profits and repatriation of proceeds from the sale of and liquidation of an investment in Mozambique is permitted for duly approved foreign investment projects.

Foreign investors with approved investments are entitled to transfer abroad up to the whole amount of the profits accruing in each financial year, provided that their tax obligations have been satisfied. Remittances may only be affected through the local banking system upon presentation of tax clearance from the Ministry of Finance.

TAX LAW

Income tax
A company is deemed to be a resident if its head office or place of effective management is in Mozambique, or if the business is registered in Mozambique.

A resident company is taxed on its worldwide income and a non-resident company is taxed only on its Mozambique-source income.

Types of taxable income
Capital gains or losses are included in ordinary income and taxed at the company rate. Capital gains derived from the sale of shares of a resident company by a non-resident company without a permanent establishment in Mozambique are fully taxed.

Dividends, interest, royalties and technical services fees paid to residents and non-residents are subject to withholding tax (rate may be reduced under a tax treaty).

Tax rates
The company tax rate is 32%, although a penalty rate of 35% may be applied to unsubstantiated payments. Dividends tax of 20% is levied on both residents and non-residents.

Interest and royalties are taxed at a rate of 20% on both residents and non-residents. Technical service fees are taxed at 20% (applicable to non-residents).

Double taxation treaties
Currently Mozambique has double taxation agreements with Italy, Mauritius, Portugal, UAE, South Africa, Macau, Vietnam, Botswana and India.
GENERAL INFORMATION

The independent Republic of Namibia, which gained independence from South Africa in 1990, is situated on the south west coast of Africa, bordered by the Atlantic Ocean to the west; South Africa to the south and south east; Botswana to the east and Angola to the north. The Caprivi Strip extends Namibia to the Zambezi River, forming a border with Zambia.

Area: 824 268 km²
Population: 22 million
Capital: Windhoek
Currency: Namibian Dollar
GDP: USD 14.64 billion (2010)
Internet domain: .na
Languages: English (official language), Afrikaans, German, Khoekhoe (Nama), Herero, Ovambo.
Working week: Monday - Friday
Exports: Diamonds; copper; gold; zinc; lead; uranium; cattle; processed fish; karakul skins
Imports: Foodstuffs; petroleum products and fuel; machinery and equipment; chemicals

COMPANY LAW

Business vehicles
There are two forms of companies commonly used by foreign investors:
• Private or public limited liability companies.
• Close corporations.

Registration and formation
The following steps need to be taken in order to incorporate a company:
• Reservation of a company name involves a company name search and reservation at the Registrar of Companies within the Ministry of Trade and Industry. If the proposed name is acceptable, it will be reserved for sixty days.
• Fees and revenue stamps at the Receiver of Revenue will need to be paid.
• An attorney will register the company with the Registrar of Companies and obtain a certificate of incorporation and a certificate of business commencement.
• The funds for the initial capital deposit must be paid into a bank account.
• The company must apply to receive a fire and health inspection in order to obtain a certificate of fitness prior to the commencement of business operations.
• The company will then receive the certificate of fitness from the local municipality.
A business would have to register for tax, workmen’s compensation and with the social security commission. Trading licenses are not required. It takes between ten and fifteen business days to incorporate a company in Namibia.

Defensive name registrations are possible and will take between 5 and 10 business days. A defensive name registration is valid for 2 years.

**Reporting requirements**
Annual returns must be signed by the managing director and company secretary, and submitted to the Registrar of Companies.

**Share capital**
There are no minimum requirements for start-up capital for a private company.

**Management structure**
The minimum number of directors required is 2 for public companies and 1 for a private company. Directors are appointed by resolution.

The company secretary and the auditor must be local.

**Are local shareholders required?**
Local shareholders are not required, however, there may be local shareholder requirements specifically where licenses in respect of national asset utilisation are concerned.

**Is it possible to establish a branch and, if so, what is the procedure?**
It is possible to establish a branch in Namibia and takes between ten and fifteen business days to finalise.

The requirements for the formation, reporting and structuring of a close corporation is much less onerous than that of a private or public company.

**COMPETITION LAW**

**Law**
- Competition Act 2 of 2003.

The Act is enforced by the Competition Commission, based in Windhoek and the Namibian High Court.

**Mergers**
A merger is notifiable where the following thresholds are met:
- The merging parties’ combined annual turnover exceeds USD 1,7 million.
- The annual turnover of the acquiring firm together with the target firm’s assets exceeds USD 1,7 million.
- The annual turnover of the target firm together with the acquiring firm’s assets exceeds USD 1,7 million.
• The annual turnover of the target firm exceeds USD 860,000; or
• The target firm’s assets exceed USD 860,000.

A merger may not be implemented prior to the necessary approval having been obtained from the Competition Commission.

Restrictive Practices
The Act regulates both horizontal and vertical restrictive practices. In addition to prohibiting such practices where they are likely to result in a substantial lessening or prevention of competition, certain practices are specifically listed.

Abuse of Dominance
The Act prohibits the abuse of a dominant position.

Sanctions
Following a determination that a firm has breached a provision of the Act, the Competition Commission may approach the Namibian High Court for the imposition of a penalty in an amount deemed appropriate by the Court but which may not exceed 10% of the firm’s annual global turnover.

CONSUMER PROTECTION

Currently Namibia does not have any promulgated consumer protection laws. However, Namibia may have some specific statutes which contain provisions that directly or indirectly relate to consumer protection under certain circumstances.

DATA PROTECTION

Namibia does not currently have any laws regulating data protection. Accordingly, they simply apply best practice, based on section 13(1) of the Namibian Constitution which provides as follows:

“No person shall be subject to interference with the privacy of their homes, correspondence or communications save as in accordance with law and as is necessary in a democratic society in the interest of national security, public safety or the economic well-being of the country, for the protection of health or morals, for the prevention of disorder or crime or for the protection of the rights or freedoms of others.”

DISPUTE RESOLUTION

Court structure
The Supreme Court of Namibia is the highest court in Namibia and has both appellate and original jurisdiction. The High Court has original jurisdiction to hear and adjudicate upon all civil disputes and criminal prosecutions, including cases which involve the interpretation, implementation and upholding of the Constitution. The High Court
also has jurisdiction to hear and adjudicate upon appeals from Lower Courts. Lower Courts comprise of the Magistrate’s Court and Community Courts which are both created by statute. The courts are regulated by the Magistrate’s Court Act, Act 2 of 2014 (Government Gazette 27 March 2014 No. 5431), High Court Act and Supreme Court Act.

Time in which matters can be heard
The likely time from commencement of proceedings to hearing will be 8 to twelve months.

Security by Foreign litigants
Foreign litigants are normally required to provide security where they are instituting formal proceedings. There are no additional requirements for foreign litigants to institute proceedings.

Costs
Successful litigants may recover costs dependent upon taxation by the Taxing Master.

Legal practitioners
All practitioners are referred to as legal practitioners and are admitted to the High Court of Namibia but de facto there is a bar and side-bar. The Legal Practitioners Act provides further details.

Alternative dispute resolution
Arbitration is a recognised form of dispute resolution and is governed by the Arbitration Act, 1965. There are no recognised arbitration institutes.

EMPLOYMENT LAW

Governing legislation
Labour Act 11 of 2007 which encompasses the Basic Conditions of Employment.

Particulars of employment
The contract of employment need not be in writing. Basic conditions of employment are built into the employment relationship by operation of law, save for where the employee is afforded more favourable rights than those provided for in the Act such as remuneration, hours of work, leave, accommodation and termination of employment.

Termination / Dismissal
- A dismissal must be both procedurally and substantively fair. There are 3 types of individual dismissals based on an employee’s misconduct; incapacity or poor workmanship.
- There are specific prohibited grounds of fair and unfair discrimination and the employer is required to satisfy the onus of establishing that the discrimination was not unfair.
- In the case of a business sale through either a share sale or asset transfer, employees do not automatically transfer to the buyer as this is usually provided for in the sale agreement. The Act is specific in dealing with dismissals arising from collective
termination or redundancy and the grounds for collective termination are listed as re-organisation or transfer of the business or the discontinuance or the reduction of the business for economic or technological reasons. The focus of collective dismissal is on the needs of the employer.

Dispute resolution mechanisms and remedy
- The Labour Act established conciliation and arbitration tribunals which comprise of individual conciliator or arbitrator who hear complaints. The office of the Labour Commissioner is the governing body of the tribunals. Appeals or reviews of an arbitration award are heard by the Labour Court which acts as a division of the High Court of Namibia.
- In respect of disputes concerning discrimination a referral must be made to the Labour Commissioner who will designate a conciliator to resolve the dispute through conciliation and if unresolved, will follow through to arbitration. But where a person alleges that a fundamental right and protection which includes the right not to be discriminated against has been infringed or is threatened such person may approach the Labour Court directly for the enforcement of that right or protection or any other appropriate belief.
- Remedy for unfair dismissal from employment: Reinstatement or re-employment or compensation

EXCHANGE CONTROL

Namibia forms part of the South African Rand Common Monetary Area which results in the Namibian Dollar and South African Rand being freely exchangeable on a one for one basis in Namibia.

Namibia’s foreign exchange transactions must be conducted in accordance with South African exchange control policies and regulations, although the Bank of Namibia sets its own policies and regulations. Exchange control is administered by the Bank of Namibia in conjunction with the South African Reserve Bank.

Insofar as non-residents are concerned, there are no restrictions that apply to foreign funds that are introduced into Namibia as share capital. However, share certificates must be endorsed as Non-Resident and the introduction of loan funds from abroad is subject to specific exchange control approval prior to the funds being introduced.

TAX LAW

Income tax
Income tax is levied under the Income Tax Act of 1981 on both individuals and companies, with the exemption of petroleum income derived from exploration areas, which is governed by the Petroleum Taxation Act of 1991.
Types of taxable income
Types of taxable income include income tax and withholding taxes on dividends, royalties and interest.

Tax rates
The tax rate for domestic companies and foreign companies is 33%. Registered manufacturing companies are taxed at 18% for domestic and non-resident companies. Diamond mining companies are taxed at 50% (i.e. 50% + 10% surcharge) for domestic and non-resident companies whilst other mining companies are taxed at 37.5%. Oil and gas mining companies are taxed at 35% (plus additional profits tax).

There is no capital gains tax in Namibia. Domestic companies are exempt from paying taxes on dividends received. There are withholding taxes on dividends, royalties and interest for a non-resident company. Management, directors, entertainment and consultancy fees for non-resident companies are taxed at 25%.

Double taxation treaties
Currently Namibia has double taxation agreements with Botswana, France, Germany, India, Malaysia, Mauritius, Romania, Russia, South Africa, Sweden and the United Kingdom.
GENERAL INFORMATION

Nigeria is an independent republic on the west coast of Africa, on the Gulf of Guinea. It is bordered by Benin to the west, Niger to the north, Cameroon to the east, and the Atlantic Ocean to the south.

Area: 923 768 km²
Population: 152.2 million
Capital: Abuja
Currency: Naira
GDP: USD 369.8 billion (2010)
Internet domain: .ng
Languages: English (official language)
Working week: Monday - Friday
Exports: Petroleum and petroleum products; cocoa; rubber
Imports: Machinery; chemicals; transport equipment; manufactured goods; food and live animals

COMPANY LAW

Business vehicles
There are five primary forms of companies commonly used by foreign investors:
• Public companies limited by shares
• Public unlimited companies
• Private companies limited by shares
• Private unlimited companies
• Guarantee (not for profit) companies

The minimum number of shareholders for a private company limited by shares is two, while the maximum number of shareholders is 50. In order for a foreign entity to trade in Nigeria it is mandatory that such entity incorporate a company. This is done at the Corporate Affairs Commission (CAC) situated in the country’s capital Nairobi, and is evidenced by a CAC certificate upon the completion of the process. Unlimited liability companies are formed for certain professions which are not permitted to have limited liability.

Registration and formation
The following steps need to be taken in order to incorporate a company:
• A name must be reserved for incorporation. This is done by registering a company name at the CAC. The process takes approximately seven days.
• The memorandum and articles of association of the company, the incorporation forms containing the notice of registered office address, particulars of directors, statement of authorised share capital any other document required by the CAC will
need to be submitted. An availability of name form showing that the proposed name of the company is available at the CAC Register will also be required. Furthermore, a statement by a legal practitioner confirming compliance will also need to be submitted.

The approximate timeframe will depend on the type of business being set up. A private or public company limited by shares typically takes between 2 to 3 weeks to set up.

**Reporting requirements**
Annual general meetings (AGM) are required in Nigeria. AGM’s must be held within nine months of the financial year end and not more than 15 months after the previous meeting.

**Share capital**
The minimum share capital to incorporate a private limited liability company is approximately USD 55. However, where foreigners will hold shares in the company, there is a minimum investment requirement of approximately USD 55 000 in order for the company to be eligible to apply for a business permit and expatriate quota approval.

**Management structure**
The minimum number of directors for any company is 2. Directors can be appointed by the shareholders at incorporation; or by other directors to fill a casual vacancy subject to the ratification of the appointment by the shareholders at the AGM. The appointment of the directors can be done in three to five days.

A Nigerian resident must be appointed as the secretary of the company and all companies. Qualified Nigerian auditors are also required.

**Are local shareholders required?**
Foreigners are allowed to wholly own companies, however certain legislation stipulates mandatory indigenous participation in certain sectors, such as oil and gas and inland water trading. Companies with foreign shareholders are required to apply for a business permit from the Citizenship and Business Department of the Ministry of Interior to enable such company to carry on business in Nigeria.

**Is it possible to establish a branch and, if so, what is the procedure?**
A branch can be established. A representative office is not authorised to carry on business activities. The process is the same as for trading entities and takes between 2 to 3 weeks to register.

**COMPETITION LAW**

**Law**
Nigeria currently has no national competition law or policy in place. However, in certain instances specific sector or industry legislation makes provision for competition related aspects.
Mergers
Further to the paragraph above, competition law is not regulated in Nigeria and there are, accordingly, no specific merger controls in place.

Restrictive Practices
Competition is not regulated in Nigeria and restrictive practices are therefore not regulated.

Abuse of Dominance
Owing to the lack of competition regulation in Nigeria, there are no abuse-of-dominance provisions to contend with.

Sanctions
As Nigeria has no competition legislation and/or policy in place, there are no specific sanctions with regard to competition law.

CONSUMER PROTECTION

There are various piecemeal legislative provisions in Nigeria which have both a direct and indirect impact on consumer protection. In addition to such legislative provisions there is also the Consumer Protection Council Act, 1992 (CPCA) which is specifically aimed at the enforcement of consumer rights by providing consumers with the appropriate avenues to seek redress.

Some of the key provisions of the CPCA are as follows:

• Consumers who have suffered a loss, injury or damage as a result of the use of any product or service have the right to lodge a complaint against the supplier responsible for such product or service.
• Should a manufacturer or distributor of a product become aware, after such a product has been placed on the market, of an unforeseen hazard arising from the use of such product, such manufacturer or distributor is obligated to notify immediately the general public of such risk or danger and cause such product to be withdrawn from the market.

DATA PROTECTION

In 2010, the Cyber Security and Information Protection Agency Bill was tabled in Parliament. In terms of which a cyber-security and information protection agency will be established, which will be charged with protecting computer systems and networks, and liaise with the relevant law enforcement agency for the enforcement of cybercrimes laws and related matters. However, to date, no substantial progress has been made in this regard.
However, for the time being, data protection is regulated by the general provisions relating to the protection of privacy as set out in the Constitution of the Federal Republic of Nigeria as well as other relevant legislative provisions. In this respect the following principles apply:

- Every person is entitled to respect for ‘his private and family life, his home and his correspondence’.
- The collection and maintenance of information on individual Consumers must be protected against improper or accidental disclosure.

DISPUTE RESOLUTION

Court structure
Nigeria is a federation of 36 states, each with its own House of Assembly and laws. The highest court is the Supreme Court of Nigeria which sits above the Court of Appeal; both of these courts have federal jurisdiction. The Federal High Courts and the High Courts of States have concurrent jurisdiction, and the Sharia Court of Appeals and Customary Court of Appeals hear appeals from the lowest courts which are known as Customary, Area and Sharia Courts. The Magistrate’s and District Courts hear smaller matters.

Security by foreign litigants
It is no longer an inflexible or rigid rule that a plaintiff resident abroad should provide security for costs. Courts must rather exercise discretion with regard to all the circumstances of the case.

Costs
The Judge has the discretion to make any order as to costs that he deems fit. In principle, the successful party is entitled to be indemnified for legitimate expenses which he has necessarily incurred by the institution of proceedings, either wholly or partially.

Legal practitioners
There is a single professional roll for all legal professionals that include both barristers and solicitors.

Alternative dispute resolution
The Arbitration and Conciliation Act, 1990 provides authority for the conduct of arbitrations and is modelled closely upon the UNCITRAL model law and its rules. The Constitution empowers the Chief Judge of each state to make practice directives for the incorporation of ADR into the civil procedure, which has resulted in certain states emphasizing ADR in the pre-trial stages. The Nigerian branch of the London based Chartered Institute of Arbitrators, the Chartered Institute of Arbitrators Nigeria, and the Lagos Regional Centre for International Commercial Arbitration have all handled high profile arbitrations, while the Lagos Chamber Arbitration Centre (LAC), the Society of Construction Industry Arbitrators (SCIarb), the Maritime Arbitrators of Nigeria, and the Negotiation and Conflict Management Group (NCMG) all also handle arbitrations. Nigeria is a party to the 1958 New York Convention on the Recognition and Enforcement of Arbitral Awards.
EMPLOYMENT LAW

Governing Legislation
• Labour Act.
• Trade Union Amendment Act, 2005.

Particulars of employment
A contract of employment must be given within 3 months of commencement.

Termination / Dismissal
• A termination is lawful where the tenure of such contract expires without a new contract being entered into by conduct or in writing; or either party dies; or a written notice is served and either party could equally elect to pay compensation in lieu of notice. No reason needs to be provided.
• Dismissal occurs where the employee’s conduct undermines a relationship of confidence which must exist between the parties. What determines the wrongfulness of a termination/dismissal of an employment contract is whether the terms and conditions of the written contract were adhered to by the parties in effecting the termination/dismissal of such contract, not whether there was a fair hearing.

Dispute resolution mechanisms and remedy
• Only trade disputes can be referred to the Industrial Arbitration Panel. The National Industrial Court handles issues and disputes concerning labour and employment.
• Unlawful termination: The compensation of such period or salary that the terminating party would have paid in lieu of giving lawful notice. Wrongful dismissal without notice: The amount the injured party would have earned had he continued with the performance of the contract until lawfully terminated.

Points of significance
• Vicarious liability of the employer exists in respect of all work undertaken by the employee on the employer’s behalf should such work cause injury or loss to a third party. As such, employers demand an acceptable guarantor’s indemnity or fidelity guarantee to cover vicarious and unauthorised conduct.
• Employers must ensure monthly remittance of an employee’s income tax and make monthly deductions of 7.5% of his salary and a 7.5% contribution to his retirement savings account.
• Employers must provide life assurance cover, medical examination at his expense and make a 1% monthly contribution of the total monthly payroll into a compensation fund.
• Strikes deemed to be about conflicts of interest or economic issues including strike action to protest against the government social economic policy are prohibited and criminalised.
EXCHANGE CONTROL

There are certain exchange control regulations in Nigeria. A foreign investor may invest in any enterprise or securities with foreign currency or capital imported into Nigeria through an authorised dealer (a licensed bank).

An investor will be issued with a Certificate of Capital Importation (CCI) by the authorised dealer through which the capital is imported into Nigeria.

The CCI typically entitles the foreign investor to open a foreign currency domiciliary account with any authorised dealer for investment purposes, open a special non-resident Nigerian Dollar (Naira) account to which could be credited all receipts from the capital inflows, proceeds from sale of securities, dividends and interests.

Furthermore, to invest in securities in Nigeria out of the balances in the Naira account and repatriate the capital, capital gains, dividends and income received by way of interests through authorised dealers which are subject to deductions of taxes.

TAX LAW

Income tax
Resident companies are taxed on their worldwide income. Non-resident companies are taxed on profits derived from Nigeria, to the extent that profits are not attributable to operations outside of Nigeria.

Types of taxable income
Income tax, capital gains tax, tertiary education tax, petroleum profits tax and dividends tax are payable.

Tax rates
Both resident and non-resident companies are taxed at 30% except for petroleum profits tax, which for resident petroleum companies is at a rate of 85%.

CGT is at a rate of 10% on resident and non-resident companies and individuals. Dividends are taxed at 10%. Interest and rent are taxed at 10% on both resident and non-resident companies and individuals.

Royalties are taxed at 10% on royalties earned by resident companies and 5% on royalties earned by resident individuals and non-resident individuals and companies. There is a tax of 10% on consultancy fees and management fees.

Directors are taxed at 10% on director’s fees earned by resident individuals.

Double taxation treaties
Nigeria has entered into double taxation agreements with the United Kingdom, France, Belgium, Pakistan, Canada, Romania, Netherlands, Czech Republic, Slovakia, Poland, Philippines, Japan, China, South Africa and Italy (shipping and air transportation only).
GENERAL INFORMATION

The Republic of South Africa ceased to be a member of the British Commonwealth of Nations and became an independent republic in 1961. After 1994 it rejoined the Commonwealth. South Africa lies at the extreme southern tip of the African continent, bordered to the north by Namibia, Botswana and Zimbabwe, and on the northeast by Mozambique.

Area: 1,219,090 km²
Population: 50 million
Capital: Pretoria (administrative)
          Cape Town (legislative)
Currency: Rand = 100 cents
GDP: USD 527.5 billion (2010)
Internet domain: .za
Languages: 11 official languages: English, Afrikaans, Ndebele, North Sotho, Sesotho, Swazi, Tswana, Tsonga, Venda, Xhosa, Zulu
Working week: Monday - Friday
Exports: Gold; other minerals and metals; foods; chemicals; manufactured goods
Imports: Machinery; transport equipment; chemicals; textiles; scientific instruments; petroleum products

COMPANY LAW

Business vehicles
There are four forms of companies commonly used by foreign investors:
- Private companies.
- Personal liability companies.
- Public companies.
- Non-Profit companies.

A private company is prohibited from offering its shares to the public and is restricted in the transfer of its shares. A private company is owned by its shareholders who contribute to the company via share capital.

A public company is largely similar to a private company, with the main difference being that a public company can freely offer its shares to the public, which facilitates the raising of capital for the company.

The transferability of the shares is not restricted. Due to their public nature, public companies have greater transparency requirements.
Personal liability companies are similar to private companies, however do not attain limited liability and are mainly used by professions which are prohibited from restricting their liability.

Non-profit companies are companies whose purpose is not to make a profit and are aimed at altruistic ventures.

**Incorporation**
The following steps need to be taken in order to incorporate a company:

- The incorporation of a private company requires the reservation of a company name. This may be done simultaneously with the registration procedure and may be completed electronically. If a proposed name is rejected, the company may still be registered with its registration number as the name of the company at incorporation.
- A notice of incorporation and a memorandum of incorporation (MOI) will need to be filed with the Companies and Intellectual Property Commission (CIPC). Although a standard MOI is available, a tailored MOI can also be prepared.
- Where applicable, written consent of auditors to act for the company will also need to be submitted.
- Lastly, a notice of the company’s registered office and the submission of a register of directors is required.

**Regulatory Reporting**
Secretaries and auditors are not required for private companies.

A company will need to submit annual returns. No audited financial statements are required for most private companies. However, for public companies and private companies which have a high public interest score (determined in accordance with the Regulations promulgated under the Companies Act, 2008), such entities must file their annual financial statements with the CIPC.

**Share capital**
A private company must have share capital, but there is no minimum or maximum amount. Shares issued in accordance with the Companies Act do not have a nominal or par value.

**Management**
Private companies are managed by one or more directors who form the board of directors. The board of directors of a public company must comprise of at least three directors. The board of directors may delegate their power to non-board members for the effective management of the company.

The Companies Act sets out a number of categories of people who are ineligible or disqualified from acting as board members. However, foreign nationals are not restricted from acting as board members.

A company has to appoint a local public officer, for tax requirements.
Are local shareholders required?
There is no requirement that shareholders must be local.

Branch company
A foreign company not wishing to incorporate a subsidiary in South Africa may set up a branch. The key requirements and characteristics of a branch are that the foreign company must register as an external company within twenty business days after it first begins to conduct business, or non-profit activities within South Africa.

COMPETITION LAW

Law
• Competition Act 89 of 1998.

The Act is enforced by the Competition Commission, the Competition Tribunal (in Pretoria) and the Competition Appeal Court (in Cape Town).

Mergers
A merger is notifiable where the following thresholds are met:
• The merging parties’ combined annual turnover or assets exceeds USD 56 million.
• The annual turnover of the acquiring firm together with the target firm’s assets exceeds USD 56 million.
• The annual turnover of the target firm together with the acquiring firm’s assets exceeds USD 56 million.
• The target firm’s annual turnover or asset value exceeds USD 7 million.

Mergers may not be implemented prior to approval.

Restrictive practices
The Act regulates both horizontal and vertical restrictive practices. In addition to prohibiting such practices where they are likely to result in a substantial lessening or prevention of competition, certain practices are specifically listed.

Abuse of dominance
The Act prohibits the abuse of a dominant position. Firms with a 35% market share are presumed to be dominant.

Sanctions
A contravention of the Competition Act may result in the imposition of a penalty of up to 10% of the firm’s turnover.

CONSUMER PROTECTION

Consumer Protection is regulated by the Consumer Protection Act, 2008 (CPA). The CPA applies to, among other things:
• Every transaction occurring with the Republic of South Africa
• The promotion or supply of any goods or services within the Republic of South Africa

However, the CPA will not apply if the consumer is a juristic person (i.e. a company, close corporation, body corporate, partnership, association or trust) whose asset value or, annual turnover equals or exceeds USD 172 920.

Consumers have various rights under the CPA, including the following:
• The right to privacy
• The right to equality in the consumer market
• The right to choose
• The right to fair and honest dealing
• The right to disclosure and information
• The right to fair value, good quality and safety
• The right to fair and responsible marketing
• The right to fair, just and reasonable terms and conditions

The CPA also has specific provisions applicable to:
• Franchising agreements
• Business names
• Lease agreements
• Promotional competitions
• Marketing
• Warranties
• Cooling of periods

Failure to comply with the provisions of the CPA can result in the imposing of administrative fines of up to 10% of the perpetrator’s annual turnover or USD 86 460, whichever is the greater, or imprisonment for up to ten years.

DATA PROTECTION

The President of South Africa signed the Protection of Personal Information Act, 2013 (POPI) on 19 November 2013. However, POPI did not come into force on that day. Certain sections (relating to establishments of the Information Protection Regulator and the drafting of regulations) commenced on 11 April 2014. The remaining sections are still pending and, when they come into force, there will be a one year phase in period during which organisations can implement compliance with POPI.

POPI sets out eight conditions for the lawful processing of personal information namely:
• Accountability
• Processing limitation. Purpose specification
• Further processing limitation
• Information quality
• Data subject participation
• Security safeguards
• Openness
These principles are very similar to the OECD principles and those contained in the EU Directives.

Processing of personal information must be lawful and justifiable. This means that personal information may only be processed if:

- The data subject consents to the processing.
- The processing is necessary in terms of a contract to which the data subject is a party.
- The processing complies with an obligation imposed by law.
- The processing protects a legitimate interest of a data subject.
- Processing is necessary to fulfil a public law duty obligation.
- Processing is necessary for pursuing the legitimate interests of the responsible party or a third party to whom information is supplied.

As a general rule one may not transfer personal information to a third party in a foreign country unless:

- The recipient of the information is subject to a law, binding corporate rules or a binding agreement which provide adequate level of personal data protection.
- The data subject consent to the transfer.
- The transfer is necessary for the conclusion of a contract that is in the interest of the data subject.
- The transfer is for the benefit of the data subject and it is impracticable to obtain the data subject’s consent (and if it was practicable to obtain the consent, the data subject would have given the consent).
- The transfer is necessary for the performance of a contract between the data subject and the responsible party. POPI further regulates aspects relating to direct marketing, the processing of special personal information (i.e. relating to religion, race, ethnic, political persuasion, health, criminal behaviour etc.), and the processing of personal information relating to children.

DISPUTE RESOLUTION

Court structure
The Constitutional Court is the highest court in all constitutional matters, and deals exclusively over constitutional matters and related issues. The Supreme Court of Appeal is the highest court of appeal, except in constitutional matters, and its decisions are binding on all lower courts. The Magistrate’s Courts are lower courts dealing with less serious criminal and civil cases.

Security by foreign litigants
Foreign plaintiffs and applicants may, subject to a court’s discretion, be required to furnish security for costs when instituting formal proceedings in South Africa, in the event that a defendant or respondent so demands. Foreign litigants acting as respondents or defendants in formal proceedings are not required to furnish security for costs.

Costs
Successful litigants are generally entitled to recover legal costs, the determination of which involves the exercise of judicial discretion.
Legal practitioners
The legal profession in South Africa has a split bar consisting of advocates (the bar) and attorneys (the side-bar), and no dual practice is permitted. The attorneys’ and advocates’ professions each have their own regulatory systems and admission requirements.

Alternative dispute resolution
Arbitration in South Africa is governed by the Arbitration Act 42 of 1965, which provides for resolution of disputes by arbitration tribunals and the enforcement of awards. The Act applies only to arbitrations pursuant to written agreements, unless other legislation provides otherwise. Recognised arbitration institutes include the Arbitration Foundation of South Africa, the Association of Arbitrators, the Commission for Conciliation, Mediation and Arbitration, and the Africa ADR. South Africa acceded to the New York Convention, and subsequently enacted The Recognition and Enforcement of Foreign Arbitral Awards Act 40 of 1977 to give effect to the New York Convention.

EMPLOYMENT LAW

Governing legislation
• Labour Relations Act, 66 of 1995, as amended.
• Basic Conditions of Employment Act, 75 of 1997, as amended.
• Employment Equity Act, 55 of 1998, as amended.

Particulars of employment
Contracts of employment must be in writing and comply with section 29 of the BCEA.

Forms of contracts
• Permanent contracts - probation clauses are not mandatory. If included, the period should be reasonable to determine the employee’s suitability. During probation, his performance must be assessed, if found below standard the employer has an obligation to assist him by giving reasonable counselling, training etc. to render a satisfactory service. Probation may be extended or terminated.
• Fixed term contracts are differentiated between employees earning below, or in excess of, the earnings threshold determined by the Minister of Labour from time to time. Regarding the former, the contract must be in writing, state the reasons for fixing the term and he may only be employed on a fixed term for longer than 3 months if the work is of a limited duration or the employer can demonstrate any other justifiable reason failing which the employee is deemed to be permanent.
• Part-time employees earning below the earnings threshold must be treated no less favourably than a full time employee unless there is a justifiable reason.
• Where an employee of a temporary employment service (TES) works for the client of a TES for 3 months or less, the employee will be regarded as providing a temporary service and the employee of the TES. Where an employee works for the same client for more than 3 months, the employee will be deemed to be the employee of the client and employed on an indefinite basis unless the work qualifies as a temporary service.
Termination / Dismissal
• A dismissal will be regarded as unfair if not effected for a fair reason based on the employee’s conduct or capacity; or the employer’s operational requirements and in accordance with a fair procedure.
• Provision is made for unfair labour practices and automatically unfair dismissals and remedies in the LRA and for unfair discrimination and affirmative action and remedies in the EEA.

Dispute resolution mechanisms and remedy
• Dismissal disputes must be referred to the CCMA within 30 days from date of dismissal. Failing conciliation, unfair dismissal disputes for misconduct or incapacity may be referred to arbitration within 30 days; reviewable on application by either party to the Labour Court.
• Remedies: reinstatement; re-employment or compensation.

EXCHANGE CONTROL

South Africa has exchange control systems in place which regulates the transferring of capital (goods or money) in and out of South Africa.

Exchange control is regulated by the Exchange Control Regulations of 1961 (promulgated in terms of the Currency and Exchanges Act 9 of 1933) (Excon Regulations) together with certain orders, rules and rulings, promulgated in terms of the regulations.

The National Treasury has delegated the administration of exchange control to the South African Reserve Bank (SARB), which is responsible for the day to day administration and regulation of exchange control. SARB has, in turn, delegated some of its powers in relation to exchange control matters to certain banks, which are known as authorised dealers in foreign exchange.

A transaction dealing with the in or outflow of capital from South Africa may require exchange control approval from SARB. Exchange control approval is required for, inter alia, dealings in non-resident owned securities and an outward transfer of capital.

The Excon Regulations further provide that no person may acquire or dispose of a controlled security without the permission of SARB. A controlled security is any security which is registered in the name of a non-resident or of which a non-resident is the owner, or in which a non-resident has an interest. The control over the acquisition or disposal of controlled securities is exercised by placing the endorsement “non-resident” on all securities owned by non-residents or in which non-residents have an interest. The purpose of this form of control is to ensure that the proceeds of any sale are remitted abroad or to the relevant non-resident.

South African residents, for purposes of exchange control, is any person (i.e. natural person or legal entity) who has taken up permanent residence i.e. domiciled or registered, in South Africa, irrespective of whether that person is of South African nationality or not.
A non-resident is a person whose normal place of residence is outside of the common monetary area (i.e. South Africa, Lesotho, Swaziland and Namibia).

**TAX LAW**

**Income tax**
South Africa has a national tax system predominantly governed by the Income Tax Act (ITA). Residents of South Africa are taxed on a residence basis whilst non-residents are taxed on a source basis.

Any income accruing from a South African source is taxable within South Africa, and residents are taxed on their worldwide income, with relief granted in some instances for taxes paid in other jurisdictions.

**Types of taxable income**
The following taxes are payable:
Capital gains Tax (CGT), corporate income tax, dividends tax, donations tax, estate duty, excise duty, income tax, securities transfer tax, transfer duty and value added tax (VAT).

**Tax rates**
Resident companies are taxed at 28% whilst non-resident companies which trade in South Africa through a branch is subject to tax of 33% on income.

Dividend withholding tax is 15% and donations tax is 20%. CGT is not taxed separately from normal income but rather as an integral part of income tax.

**Double taxation treaties**
South Africa is currently party to approximately 80 double taxation treaties.

**Indirect taxes**
The principle source of indirect taxation revenue in South Africa is VAT, levied in terms of the Value Added Tax Act.

At present, the standard rate of VAT is 14%. The VAT Act makes provision for certain goods and services to be either zero rated or exempt from VAT. Additional indirect taxes include transfer duty levied on the sale of immovable property, payment of securities transfer tax on the transfer of beneficial ownership of shares of companies incorporated in South Africa or listed on the South African Stock Exchange.
GENERAL INFORMATION

The Kingdom of Swaziland is a former British protectorate which became independent in 1968. Swaziland is a landlocked country bordered on the north, west and south by South Africa, and on the east by Mozambique.

Area: 17 364 km²  
Population: 1.4 million  
Capital: Mbabane  
Currency: Lilangeni  
GDP: USD 6 billion (2010)  
Internet domain: .sz  
Languages: English, Swazi (official languages)  
Working week: Monday - Friday  
Exports: Soft drink concentrates; sugar; wood pulp; cotton yarn; citrus and canned fruit; refrigerators  
Imports: Motor vehicles; machinery; transport equipment; foodstuffs; petroleum products; chemicals

COMPANY LAW

Business vehicles
There are two forms of companies commonly used by foreign investors:

- Private limited liability company.
- Public limited liability company.

Companies must be registered with the Companies Registry. Prior to commencing operations a trading license from the ministry of trade and enterprise is required. Business licenses are required for most activities.

Private and public companies must have a minimum of two shareholders. A Private company has a maximum of 50 shareholders whereas a public company has no maximum.

Registration and formation
The following steps need to be taken in order to incorporate a company:

- Reservation is required of a unique name at the Companies Registry which entails the submission by the founder of a letter to the Registrar of Companies proposing three company names.
- Payment need to be made for the name reservation and registration fees at the Swaziland Revenue Authority (SRA).
• A tax clearance certificate for company directors (each founder must obtain an income tax clearance certificate) must be provided.
• One will then register the required documents with the Company Registrar, submitting the memorandum and articles of association, which must be prepared by an attorney (however standard forms are available).
• One will then need to request and obtain a trading license and pay the trading license fee.

It takes approximately 10 working days to incorporate a company in Swaziland. Defensive company name registrations are not possible in Swaziland.

**Reporting requirements**
Unlike public companies, private companies have no reporting requirements.

**Share capital**
The minimum capital requirement is approximately USD 9.

**Management structure**
The minimum number of directors required for a company is two. For appointment of a director, a company resolution, identity document of the incoming director, tax number, physical and postal addresses will be required. This process takes approximately two days.

Local representatives of the company will be required for the directors, company secretary and auditors.

**Are local shareholders required?**
Local shareholders are not required.

**Is it possible to establish a branch and, if so, what is the procedure?**
Branches may be established in Swaziland. Notarised copies of the foreign company’s memorandum and articles of association, certificate of incorporation, a list of directors and shareholders (including their addresses) are required.

**COMPETITION LAW**

**Law**
• Competition Act 8 of 2007.
• Competition Regulations 2010.

The Act is enforced by the Competition Commission, based in Mbabane and the High Court of Swaziland.

**Mergers**
The Act stipulates that the Competition Commission must be notified of any proposed transaction qualifying as a merger, regardless of the amounts involved and, as such, there are no thresholds for notification.
A merger may not be implemented prior to the necessary approval having been obtained from the Competition Commission

**Restrictive Practices**
The Act regulates both horizontal and vertical restrictive practices and specifically prohibits certain horizontal agreements, for example price-fixing; the division of markets; and bid rigging.

**Abuse of Dominance**
The Act prohibits the abuse of a dominant position.

**Sanctions**
Where a firm is found to have contravened any provisions relating to merger notifications, restrictive practices or abuse of dominance, the Act provides for the imposition of a fine in an amount not exceeding USD 20 600 and/or imprisonment for a period not exceeding 5 years.

**CONSUMER PROTECTION**
Currently Swaziland does not have any promulgated consumer protection laws. However, Swaziland may have some specific statutes which contain provisions that directly or indirectly relate to consumer protection under certain circumstances. An example of such legislation would be Swaziland’s Competition Act which is also aimed at protecting the welfare of consumers.

Swaziland is a member of the Common Market for Eastern and Southern Africa (COMESA) which has been established to primarily regulate competition law amongst the different economies of its member states and to ensure that a fair and effective regional competition law framework exists.

COMESA also has powers regarding consumer protection matters and promotes transparency among economic operators in the region. As such the key aspects of consumer protection dealt with in the COMESA Regulations will also impact consumer protection in Swaziland.

**DATA PROTECTION**
Swaziland does not currently have any promulgated data protection laws. However, draft data protection legislation is currently being discussed in Swaziland. The key focus points of the discussions pertaining to Swaziland’s draft data protection act are

- The establishment of a data protection authority.
- Regulation of transfer boarder control.
- The illegitimate and unlawful monitoring of individuals.
At present it is unclear when this draft data protection act will be finalised and come into operation.

**DISPUTE RESOLUTION**

**Court structure**
The highest court in Swaziland is the Supreme Court, which is the final court of appeal and has supervisory and review jurisdiction over all courts of Swaziland. The High Court deals with matters with a constitutional bearing and has full jurisdiction in civil and criminal cases. Special courts, with equal jurisdiction to the High Court, are the Industrial Court and the Industrial Court of Appeal, which deal with labour matters. Magistrate’s Courts form the lower courts.

**Costs**
The court is empowered by the High Court Rules to make such order as to the costs of the case as the court may deem fit, including an order that the unsuccessful party shall pay to the opposing party a sum fixed by the Judge or court as and for costs.

**Security by foreign litigants**
Rule 47 of the Swaziland High Court Rules provides for the furnishing of security for costs. A party entitled and desiring to demand security for costs from another shall, as soon as practicable after the commencement of proceedings, deliver a notice setting forth the grounds upon which such security is claimed, and the amount demanded.

When it comes to foreigners, security for costs is not a right which the other party is entitled to as the Court has a discretion whether or not to order security to be lodged in any given case; a discretion which is to be exercised by having regard to all the relevant facts as well as consideration of equity and fairness to both parties.

**Legal practitioners**
There is a distinction between advocates and attorneys in Swaziland but both are affiliated to the Law Society of Swaziland and are regulated by the Legal Practitioners Act, 1964.

**Alternative dispute resolution**
Arbitration is a recognised form of dispute resolution in Swaziland and the foremost institute is the Conciliation Mediation and Arbitration Commission (CMAC).

**EMPLOYMENT LAW**

**Governing legislation**
Particulars of employment
The employment agreement must be in writing in a prescribed form and should be provided within 6 weeks of commencement. The maximum probationary period permitted is 3 months, unless the employee is engaged in supervisory, technical or confidential work in which case the probation period shall be fixed, in writing, between the employer and the employee at the time of engagement.

Forms of contracts
• Contracts for an unspecified period.
• Contracts for a fixed period.
• Casual work.

Termination of employment / Dismissal
• During any period of probationary employment, either party may terminate the contract of employment between them without notice.
• No employer shall terminate the services of an employee unfairly. There are specific instances where termination of an employee’s services are deemed to be unfair as well as instances where it will be fair for an employer to terminate the services of an employee.
• When the conduct of an employer towards an employee is proved by that employee to have been such that the employee can no longer reasonably be expected to continue in his or her employment and accordingly leaves his or her employment, whether with or without notice, then the services of the employee shall be deemed be unfairly terminated by that of his employer.

Dispute resolution mechanisms and remedies
An Employee who has a dispute should file a complaint with the Labour Commissioner and the Labour Commissioner shall seek to settle the complaint by such means as may appear to be suitable to the circumstances of the case, failing settlement; the Labour Commissioner is required to submit a full report to the Industrial Court.

Important regulations to take note of
The Industrial Relations Act creates the Commission for Conciliation Arbitration and Mediation. However, where one would assume that a party can refer a dispute to the Commission first instead of the Industrial Court, it appears that the parties to a dispute in respect of which the Industrial Court has jurisdiction can consent to arbitration under the auspices of the Commission meaning that the parties are still required to first approach the Industrial Court in the event that Conciliation is not successful instead of approaching the Commission.

EXCHANGE CONTROL
Swaziland participates in the Rand Monetary Area together with Namibia, Lesotho and South Africa.
Within this area, there is no exchange control on the transfer of funds. Transactions outside the Rand Monetary Area are subject to exchange control, which are monitored by the Central Bank of Swaziland in conjunction with the South African Reserve Bank and authorised dealers.

Currency used for the purchase of imports, the repatriation of capital, as well as the payment of dividends, interest, royalties and fees require prior approval from the Central Bank of Swaziland.

**TAX LAW**

**Income tax**
Income tax is levied under the Income Tax Order of 1975 on both individuals and companies on all income on a source or deemed source basis.

The taxable income of a non-resident is calculated in the same manner as that of a resident. Non-residents are subject to withholding taxes at source on certain forms of income.

**Types of taxable income**
Swaziland has the following types of taxes:
- Income tax.
- Withholding taxes on interest royalties and fees.
- Companies are exempt from paying dividends tax. There is no capital gains tax in Swaziland.

**Tax rates**
The tax rate for domestic companies and foreign companies is 27.5%.
A company issued with a development approval order (up to 10 years) is taxed at 10%.
Withholding taxes on royalties, interest and fees for both resident and non-resident companies is taxed as ordinary income.

**Double taxation treaties**
Swaziland currently has double taxation agreements with Mauritius, South Africa, and the United Kingdom.
GENERAL INFORMATION

The United Republic of Tanzania comprises Tanganyika, on the African mainland, and the islands of Zanzibar and Pemba. Tanganyika lies on the east coast of Africa and is bordered by Kenya and Uganda to the north; Rwanda, Burundi and Democratic Republic of the Congo to the west; and Zambia, Malawi and Mozambique to the south. The islands of Zanzibar and Pemba lie off the east coast of Tanganyika.

Area: 947 300 km²
Population: 41.9 million
Capital: Dodoma (largest city Dar es Salaam)
Currency: Tanzanian shilling
GDP: USD 62.2 billion (2010)
Internet domain: .tz
Languages: wahili, English (official languages)
Working week: Monday - Friday
Exports: Raw cotton; cashew nuts; gold; coffee
Imports: Industrial raw materials; construction materials; consumer goods; transport equipment; crude oil

COMPANY LAW

Business vehicles
There are three forms of companies commonly used by foreign investors:
- A company limited by shares.
- A company limited by guarantee.
- An unlimited company.

Companies may be private or public. The minimum number of shareholders required for incorporation is two and the maximum is 50, excluding persons who become shareholders by virtue of being employees of the company. The minimum number of directors required for a company is two.

Private companies may enter into any types of commercial activities; however, they are prohibited from making any invitation to the public to purchase its shares or debentures. In the event that it is wound up and its assets are insufficient to cover its liabilities, the liability of its shareholders is limited to the amount left unpaid on their shares.
Incorporation
The following steps need to be taken in order to incorporate a company:

- An application needs to be submitted for clearance of the proposed company name at the Business Registration and Licensing Authority (BRELA).
- The following information is then filed with the Business Registration and Licensing Agency: memorandum and articles of association, regulatory forms, name of the local company to be incorporated, names of the initial shareholders, names and addresses of the initial directors and the physical address of the proposed registered office.
- Application need to be made to the Tanzania Revenue Authority of a taxpayer identification number (TIN).
- A business licence from the regional trade office (depending on the nature of the business) will be required. Businesses such as banks, insurance companies, contractors, hotels and most professions must have specific licenses in addition to the business licenses.

After obtaining name clearance the process of incorporation takes approximately 7 working days.

Regulatory Reporting
All companies need to submit annual returns which must be done in the prescribed form. Audited balance sheets form a part of the returns. Foreign companies are required to file only audited balance sheets of their companies.

Share capital
A limited private company has a share capital and is formed or incorporated for purposes of carrying on business to derive a profit. Currently, the minimum required authorised capital for a private company other than banks, insurance companies and other financial institution is approximately USD 15.

Management
The minimum number of directors required for a company is 2 of any nationality. The company secretary similarly does not need to be local.

Are local shareholders required?
Subject to the exchange control restrictions and sector specific laws, ownership of a company by foreigners and companies is generally not restricted. Most business activities are open to foreign investors. In a few sectors such as shipping agencies, insurance, telecommunications and broadcasting, ceilings have been placed on foreign shareholdings by licensing authorities.

Branch Company
A foreign company is allowed to conduct business in Tanzania after being certified by the Companies Office that, it has complied with the requirements of Tanzanian company law.

The following documents have to be filed with BRELA:

- Certified copies of memorandum and articles of association, charter or statute.
- Notice of the location of the registered office in the country of origin.
• List and particulars of directors of the company.
• Persons resident in the country who are the representatives of the company.
• A statement of all subsisting charges created by the company, not being charges comprising solely of property situated outside Tanzania.
• A statutory declaration made by a director or secretary of the company, stating the date on which the company’s place of business in Tanzania was established, the business that is to be carried on and, if different from the registered name of the company, the name under which that business is to be carried on.
• A copy of the most recent accounts and related reports of the company.

COMPETITION LAW

Law
• Fair Competition Act 8 of 2003.

The Act is enforced by the Fair Competition Commission and Fair Competition Tribunal, based in Dar es Salaam.

Mergers
A merger is notifiable where the following threshold is met:
• The merging parties’ combined annual turnover or asset value exceeds USD 460 750.

A merger may not be implemented prior to the necessary approval having been obtained from the Fair Competition Commission.

Restrictive Practices
The Act regulates both horizontal and vertical restrictive practices. In addition to prohibiting such practices where they are likely to result in a substantial lessening or prevention of competition, certain practices are specifically prohibited, for example, bid rigging, price fixing and the division of markets.

Abuse of Dominance
The Act prohibits the abuse of a dominant position.

Sanctions
Following a determination that a firm has breached a provision of the Act, the Fair Competition Commission may impose a penalty of not less than 5% but not exceeding 10% of the firm’s annual turnover.

CONSUMER PROTECTION

Consumer protection is regulated by the Fair Competition Act, 2003 (FCA). The FCA’s primary purpose is to regulate competition law in Tanzania. However, the FCA is also replete with certain fundamental consumer rights.
From a consumer protection perspective the FCA regulates, among other things, the following aspects:

- Misleading and deceptive conduct.
- Unfair business practice.
- Manufacture’s obligations toward consumers.
- Warranties.
- Product safety and product recall.
- Implied conditions in contracts.

**DATA PROTECTION**

Tanzania does not currently have any promulgated data protection laws. However, there are constitutional privacy protection provisions as well as legislation regulating the interception and monitoring of communications which, jointly provides a fairly regulated framework of personal data protection issues.

For purposes of data protection and privacy the most relevant legislative provisions provide that:

- Every person is entitled to respect and protection of his person, the privacy of his own person, his family and of his matrimonial life, and respect and protection of his residence and private communication.
- Licensed communications services providers are prohibited from disclosing any information received from their customers.
- If a licensed communications services provider discloses a data subject’s personal data, without any legal basis, he commits an offence and shall, on conviction, be liable to a fine of not less than USD 2,800, or to imprisonment for a term not less than twelve months, or to both.

**DISPUTE RESOLUTION**

**Court structure**

There are 2 forms of Magistrate’s Courts in Tanzania; the lower form, known as a Primary Magistrate’s Court, and the higher form, the District Magistrate’s Court. The High Court of Tanzania has jurisdiction over all civil and criminal matters in Tanzania as well as having appellate, extended, revision and supervisory jurisdiction over all subordinate Courts. Specialised divisions of the High Court exist in the form of the Commercial, Labour and Land divisions of the High Court. The Court of Appeal of the United Republic of Tanzania is the superior court of Tanzania and has the jurisdiction to confirm, reverse or vary any decision made by the High Court. Although in statute, a Special Constitutional Court exists, it has never convened.

**Security by foreign litigants**

Where it appears to a court that a plaintiff resides out of Tanzania and does not possess sufficient immovable property within Tanzania, the court on its own accord, or on the application of any defendant, may order the plaintiff to give security for the payment of all costs incurred and likely to be incurred by any defendant.
Costs
In most cases, the successful party is awarded costs. The court may order that security for costs be provided. The amount and time for payment are set by the court. Factors that the court will consider when awarding costs depend on the complexity of the matter, and its nature and importance.

Alternative dispute resolution
Arbitration is recognised in Tanzania but is considered to be underdeveloped. There are 2 principal arbitration bodies, both with their own set of arbitral rules: Tanzania Institute of Arbitrators (TIA) and the National Construction Council (NCC). The Arbitration Act, 2002 is the statutory authority for arbitration and the Civil Procedure Code contains a set of arbitration rules. The New York Convention came into force in Tanzania on 12 January 1965.

EMPLOYMENT LAW

Governing legislation

Particulars of employment
A contract shall be in writing if the contract provides that the employee is to work outside the United Republic of Tanzania.

The employer may provide a written statement to the employee stipulating the particulars of employment. The maximum probationary period permitted is 6 months.

Forms of contracts
- Unspecified period of time.
- Specified period of time for professionals and managerial cadre.
- For a specific task.

Termination of employment / dismissal
- The provisions of unfair termination of employment do not apply to employees with less than 6 months employment with the same employer.
- Termination of employment includes:
  - A lawful termination of employment under the common law.
  - A termination by an employee because the employer made employment intolerable for the employment.
  - A failure to renew a fixed term contract on the same or similar terms if there was a reasonable expectation of renewal.
  - A failure to allow an employee to resume work after taking maternity leave.
  - A failure to employ an employee if the employer has terminated the employment over a number of employments for the same or similar reasons and has offered to re-employ 1 or more of them.
- Termination of employment is unfair if the employer fails to prove that the reason for the termination was valid and fair related to the employee’s conduct, capacity or compatibility or based on the employer’s operational requirement and in accordance with a fair procedure.
Dispute resolution mechanisms and remedies
A dispute must be referred to the Commission for Mediation and Arbitration Act No. 7 established under section 12 of the Labour Institutions Act, 2004.

EXCHANGE CONTROL

There are certain exchange control regulations which apply in Tanzania but most restrictions were eliminated under the Foreign Exchange Act of 1992 in order to attract investment and simplify international transactions.

Exchange control regulations are largely dependent on the operations and activities concerned.

For example, in respect of capital transactions (foreign source loans) the relevant transaction documentation must be submitted for approval and the issuance of a Debt Record Number to the Bank of Tanzania.

All transactions in foreign currency are regulated by the Foreign Exchange Act which permits any person, resident or not, to hold any amount of foreign currency, to sell any amount of specified foreign currency to an authorised dealer and to open and maintain a foreign currency account with an authorised dealer.

In terms of the Investment Act of 1997, investors are guaranteed unconditional transferability through any authorised dealer in freely convertible currency of net profits, foreign loan service, royalties, fees and technology transfer fees, emoluments of foreign personnel and repatriation of capital, after taxes, on sale of investment. Generally, the repatriation of foreign currency from the country is not restricted.

TAX LAW

Income tax
Taxable income is obtained by adjusting income according to specific tax rules. All expenditures incurred wholly and exclusively in the production of income from any business or investment generally are deductible. Capital expenditures is subject to specific deprecation rates.

Types of taxable income
The types of tax payable include dividends tax, capital gains tax, corporate tax and branch remittance tax on foreign companies.

Tax rates
The company taxation rate is 30%. However, newly listed companies on the Dar es Salaam Stock Exchange that have issued at least 30% of their share capital to the public are subject to a 25% rate for 3 consecutive years from the date of listing. A company that has tax losses for 5 consecutive years is liable to a minimum tax at 0.3% on turnover for the fifth year.
Dividends received by a Tanzanian company from another resident company in which it holds at least 25% of the shares are subject to a 5% withholding tax, otherwise the rate is 10%. CGT is included in business or investment income and taxed at a rate of 30%. Withholding tax on dividends paid to a non-resident or a non-controlling resident are subject to a 10% withholding tax.

The tax rate is 5% where the dividends are paid to a resident company controlling 25% or more of the distributing company’s shares and where dividends are paid to a resident or non-resident by a company listed on the Dar es Salaam Stock Exchange.

The withholding tax rate on interest paid to a resident or a non-resident is 10%, with an exemption available for certain interest paid to resident financial institutions. Withholding tax on royalties paid to residents and non-resident is 15%. Withholding tax on technical service fees paid by a resident mining company to a resident company is 5% and the rate is 15% if paid to a non-resident.

Double taxation treaties
Tanzania currently has double taxation agreements with Canada, Denmark, Finland, India, Italy, Norway, South Africa, Sweden and Zambia.
GENERAL INFORMATION

Uganda, an independent republic within the British Commonwealth, is situated in East Africa. It is a landlocked country bordered by South Sudan in the north, Democratic Republic of Congo in the west, Rwanda, Tanzania and Lake Victoria in the south, and Kenya in the east.

Area: 241,038 km²
Population: 33.4 million
Capital: Kampala
Currency: Ugandan Shilling
GDP: USD 41.7 billion (2010)
Internet domain: .ug
Languages: English (official language), Swahili, Luganda
Working week: Monday - Friday
Exports: Coffee; cotton; tea; gold; fish products; horticultural products
Imports: Petroleum; cereals; medical supplies; capital equipment; vehicles

COMPANY LAW

Business vehicles
There are three forms of companies commonly used by foreign investors:
- Companies limited by shares.
- Companies limited by guarantee.
- Unlimited liability companies.

Companies limited by shares can be a private company limited by shares or a public limited liability company.

The company must have a registered business address within Uganda. This may be filed at the time of submitting documents for the incorporation of the company or within twenty one days from the date of incorporation of the company.

Incorporation
The following steps need to be taken in order to incorporate a company:
- A name reservation form will need to be submitted to the Uganda Registration Services Bureau (URSB) where payment will need to be made. Availability of the name is by way of a search and approval of the name in the Company Registry by the Registrar of Companies to verify the suitability of the selected name.
- A signed declaration of compliance before a commissioner of oaths and proof of payment of the registration fee and the stamp duty needs to be submitted to the URSB.
• The registration documents are filed at the office of the Registrar, where a certificate of incorporation will be issued.
• A tax identification number from the Register for Taxes at the Uganda Revenue Authority must be obtained.
• Trading licenses will need to be obtained from the National Social Security Fund.
• Inspection of the business premises may be carried out by the licensing officer.
• A company seal must be made.

The approximate timeframe for the incorporation of a company in Uganda is 1 month.

**Reporting requirements**
Submission of an annual tax return and monthly filings in respect of VAT is required.

**Share capital**
The currency allowed for shares is Ugandan shillings. There is currently no minimum authorised share capital for companies.

Shares can be paid for in cash or other valuable consideration. Return of allotment of shares must be filed with the Registrar of Companies within sixty days from the date of such allotment.

**Management structure**
The directors are elected into office by the shareholders. The directors then have a duty to appoint the management team of the company to run it profitably for the shareholders.

Some or all the directors can be involved in its management especially small and family owned companies. The minimum number of directors is 2 and maximum number is fifty for private companies. There is no maximum number of directors for public companies.

Local directors are not required; however, the company secretary must be resident in Uganda.

**Are local shareholders required?**
Local shareholders are not required.

**Is it possible to establish a branch and, if so, what is the procedure?**
It is possible to establish a branch in Uganda. Foreign companies establishing a place of business in Uganda are obliged to register as foreign companies.

**COMPETITION LAW**

**Law**
Uganda currently has no national competition law or policy in place. Draft legislation has been prepared, namely the Competition Bill of 2004, however it has not yet been tabled before Parliament.
Mergers
Further to the paragraph above, competition law is not regulated in Uganda and there are, accordingly, no specific merger controls in place.

Restrictive practices
Competition is not regulated in Ghana and restrictive practices are therefore not regulated.

Abuse of dominance
Owing to the lack of competition regulation in Uganda, there are no abuse-of-dominance provisions to contend with.

Sanctions
As Uganda has no competition legislation and/or policy in place, there are no specific sanctions with regard to competition law.

CONSUMER PROTECTION

Currently Uganda does not have any promulgated consumer protection laws. However, Uganda may have some specific statutes which contain provisions that directly or indirectly relate to consumer protection under specific circumstances. An example of this would be the Bank of Uganda’s Financial Consumer Protection Guidelines published under Uganda’s banking legislation, which, among other things, sets out a consumer’s rights when concluding transactions with banking institutions in Uganda.

Lastly, Uganda is a member of the Common Market for Eastern and Southern Africa (COMESA) which has been established to primarily regulate competition law amongst the different economies of its member states and to ensure that a fair and effective regional competition law framework exists.

COMESA also has powers regarding consumer protection matters and promotes transparency among economic operators in the region. As such the key aspects of consumer protection dealt with in the COMESA Regulations will also impact consumer protection in Uganda.

DATA PROTECTION

Currently Uganda does not have any data protection laws. This matter is largely regulated by the provisions of the Constitution of the Republic of Uganda, which sets out a person’s general right to privacy, as well as other legislative provisions that address this issue indirectly in a piecemeal manner.

In light of the above the following are the most relevant provisions pertaining to the regulation of data protection:
• A person may not access information where the release of such information is likely to interfere with the right to the privacy of any other person.
• An information officer must refuse access to health records, the disclosure of which would constitute an invasion of personal privacy.
• An information officer can refuse a request for access information if its disclosure would involve the unreasonable disclosure of personal information about a person, including a deceased individual.

DISPUTE RESOLUTION

Court structure
The Supreme Court stands out at the top of the judicial pyramid as the final court of appeal, has unlimited civil and criminal jurisdiction on appeal and has original jurisdiction in respect of presidential election petitions. The Court of Appeal is the second highest court in the land and handles appeals from the High Courts. It only has original jurisdiction when sitting as a Constitutional Court, otherwise, it has unlimited civil, criminal and constitutional jurisdiction in appellate matters. The High Court is the third court in the order of hierarchy and has unlimited original jurisdiction, which means that it can try any case of any value or crime of any magnitude; and also has appellate jurisdiction in respect of matters heard in the Magistrate’s Courts. Below Magistrate’s Courts, who hear smaller civil matters, are the subordinate courts which include Qadhis Courts for customary matters.

Costs
The court has the discretion to make any order against the defendant which the court shall deem reasonable.

Legal Practitioners
There is a single bar. Private practitioners are referred to as advocates, while advocates in the public sector are called state attorneys.

Alternative dispute resolution
Arbitration is a recognised form of dispute resolution and is regulated by the Arbitration and Conciliation Act (chapter 4). The Centre for Arbitration and Dispute Resolution (CADER) is the foremost arbitration institute.

EMPLOYMENT LAW

Governing legislation
Employer Act, 2006; Employment Act regulations of 2011.

Particulars of employment
A contract of service, other than a contract which is required by the Act to be in writing, may be made orally, and except as otherwise provided by the Act, shall apply equally to oral and written contracts. The maximum length of a probationary period is 6 months, but it may be extended for a further period of not more than 6 months with the agreement of the employee. A contract for a probationary period may be terminated by
either party by giving not less than fourteen days’ notice of termination, or by payment, by the employer to the employee of 7 days wages in lieu of notice.

**Forms of contracts**
- Fixed term contracts.
- Contracts for an unspecified period of time: casual work; piece-work; and task work.

**Termination of employment / dismissal**
Termination shall be deemed to have taken place in the following instances:
- Where the contract of service is entered by the employer with notice.
- Where the contract of service, being a contract for a fixed term or task, ends with the expiry of the specified term or the completion of the specified task and is not renewed within a period of 1 week from the date of expiry on the same terms or terms not less favourable to the employee.
- Where the contract of service is entered by the employee with or without notice, as a consequence of unreasonable conduct on the part of the employee towards the employer.
- Where the contract of service is ended by the employee, in circumstances where the employee has received notice of termination of the contract of service from the employer, but before the expiry of the notice.
- An employer may not terminate a contract of service without notice or with less notice than that to which the employee is entitled by any statutory provision or contractual term.
- An employer is entitled to dismiss summarily, and the dismissal shall be deemed justified, where the employee has, by his or her conduct indicated that he or she has fundamentally broken his or her obligations arising out of the contract of service.

**Dispute resolution mechanisms and remedies**
Any complaints shall be referred to a Labour Officer. A Labour Officer may institute civil or criminal proceedings before the Industrial Court in respect of a contravention or alleged contravention of the Act or regulations made under the Act.

**EXCHANGE CONTROL**
Uganda does not have exchange control regulations, but it is a requirement that foreign currency transactions are conducted through a local bank.

**TAX LAW**

**Income tax**
The Ugandan tax system is residence based. Every corporate entity (excluding exempted entities) that has chargeable income for the year of income is subject to corporate income tax. Ugandan tax residents are subject to income tax on their world-wide income, whereas non-residents are subject to tax on income from a source in Uganda.
Types of taxable income
Types of taxes include income tax, withholding taxes (dividends, interest, royalties, management/professional fees, repatriated income on branches) and capital gains tax (CGT).

Tax rates
The basic income tax rate in Uganda is 30%. Mining companies and petroleum companies are subject to a corporate income tax calculated according to a specified formula. Small business taxpayers, with a turnover of between approximately USD 2 000 and USD 20 000, are taxed on a turnover basis. CGT are aggregated with business income and taxed at the corporate income tax rate of 30%.

Dividends paid to resident and non-resident companies are subject to 15% withholding tax, with an exemption available for resident companies controlling at least 25% of the voting rights of the company declaring the dividend.

Interest paid to residents and non-residents is subject to a 15% withholding tax. In the case of resident recipients, this is not a final tax. Interest payments on government securities are subject to a final 20% withholding tax. There is no withholding tax on royalty payments to resident companies, but royalties paid to non-residents are subject to a final 15% withholding tax. Management or professional fees paid to a resident company are subject to 6% withholding tax on the gross amount. A 6% tax is payable on the value of imported goods, which may be set off against the final tax liability of the importer. A 15% withholding tax applies to payments to non-residents including natural resource payments, management charges and Ugandan-sourced service contracts. A 15% withholding tax is payable on the “repatriated income” of branches.

Double taxation treaties
Uganda has entered into double tax agreements with Denmark, India, Italy, Mauritius, the Netherlands, Norway, South Africa, the United Kingdom and Zambia.
ZAMBIA

GENERAL INFORMATION

Zambia, an independent republic, is a landlocked country in southern central Africa, bordered to the north by Democratic Republic of Congo and Tanzania; to the east by Malawi and Mozambique; to the south by Zimbabwe, Botswana and Namibia, and to the west by Angola.

Area: 752 618 km²
Population: 13.5 million
Capital: Lusaka
Currency: Zambian Kwacha
GDP: USD 20 billion (2010)
Internet domain: .zm
Languages: English (official language), Bemba, Lozi, Tonga, Nyanja
Working week: Monday - Friday
Exports: Copper; cobalt; tobacco; flowers; cotton
Imports: Machinery; transportation equipment; foodstuffs; fuel; petroleum products; electricity; fertilizer; clothing

COMPANY LAW

Business vehicles
There are four primary forms of companies commonly used by foreign investors:
• Private limited company.
• Public company.
• Company limited by guarantee.
• Unlimited company.

Incorporation
The following steps need to be taken in order to incorporate a company:
• Companies in Zambia are registered at the Patents and Companies Registration Agency (PACRA), a semi-autonomous executive agency of the Zambian Ministry of Commerce.
• The incorporation process entails the reservation of the proposed company name, completion and submission of the necessary application forms, together with the supporting documents.
• The following are the requirements for registering a foreign company:
  • The constitution, statutes, regulations, memorandum and articles, or other instrument relating to a foreign company must be submitted.
  • The issue and sealing of the certificate of registration marks the end of the process for registration.
• Once registered, the company must obtain a corporate tax number from the Zambia Revenue Authority and register with the National Pension Scheme Authority for Social Security.
• Business licenses are required, in certain sectors.

This process can take between 2 to 4 weeks, however the process can take 7 days if all documents are in order when filing the application.

**Regulatory Reporting**
A foreign company is required, within 3 months after each financial year, to lodge with the Registrar, a prescribed form together with annual accounts and an auditor’s report regarding the operations and assets of the company in Zambia.

**Share capital**
A minimum of approximately USD 800 in paid up share capital is required.

**Management**
A minimum of 2 and not more than 9 local directors must be appointed as directors of the company.

More than half of the directors, including the managing director and at least 1 executive director must be resident in Zambia. At least 1 documentary agent is required (a firm, corporate body registered in Zambia or an individual who is a resident in Zambia).

**Are local shareholders required?**
There are no nationality requirements in respect of shareholders.

**Is it possible to establish a branch?**
A branch of a foreign company is regarded as a foreign company if it establishes a place of business or owns immovable property in Zambia. The application for a branch should include a certified copy of the company’s articles of association or regulations and the written consent of the local director and documentary agent. If all documents are in place registration can be completed within 7 to 10 days. A branch must nominate at least 1 locally resident director or branch manager to take statutory responsibility for branch affairs. The formation procedures, financial statements and corporate tax obligations are similar to a local company.

**COMPETITION LAW**

**Law**

The Act is enforced by the Competition and Consumer Protection Commission and the Competition and Consumer Protection Tribunal.
Mergers
A merger is notifiable where the following thresholds are met:
• The merging parties’ combined turnover or asset value exceeds 50 million fee units (which equates to USD 170 000).

A merger may not be implemented prior to the necessary approval having been obtained from the Competition and Consumer Protection Commission.

Restrictive Practices
The Act regulates both horizontal and vertical restrictive practices. In addition to prohibiting such practices where they are likely to result in a substantial lessening or prevention of competition, certain practices are specifically prohibited, for example, bid rigging, price fixing and the division of markets.

Abuse of Dominance
The Act prohibits the abuse of a dominant position.

Sanctions
Where a firm is found to have contravened the provisions relating to the notification of mergers, restrictive practices and abuse of dominance, the Competition and Consumer Protection Commission may impose a penalty not exceeding 10% of the firm’s annual turnover.

Where a person is found to have contravened any other provision of the Act (where no specific sanction is provided for), the Competition and Consumer Protection Commission may impose a penalty not exceeding 100,000 fee units (which equates to USD 350 000) and/or imprisonment for a period not exceeding 1 year.

CONSUMER PROTECTION

Consumer protection is regulated by various legislative provisions including, but not limited to, the following acts:
• The Competition and Consumer Protection Act, 2010.
• Weights and Measures Act
• Food and Drugs Act and the Public Health Act.

The legislation regulating consumer protection is primarily aimed at unfair market trading and would typically regulate the following aspects:
• Misleading of consumers.
• Compromises in the standard of honesty and good faith which enterprises are reasonably expected to meet.
• Undue influence and harassment of consumers (so as to get the consumers to buy goods).
• Manner in which consumable goods are being produced (i.e that it should be in a clean environment).
• Protection of the public against hazards products as well as fraud.
Provision is also made for product recalls and it is an offence to make false and/or misleading statements pertaining to any warranties in respect of the products being sold to consumers.

Lastly, Zambia is a member of the Common Market for Eastern and Southern Africa (COMESA) which has been established to primarily regulate competition law amongst the different economies of its member states and to ensure that a fair and effective regional competition law framework exists. COMESA also has powers regarding consumer protection matters and promotes transparency among economic operators in the region. As such the key aspects of consumer protection dealt with in the COMESA Regulations will also impact consumer protection in Zambia.

DATA PROTECTION

Zambia does not have comprehensive privacy laws that regulate the collection and use of a data subject’s personal data. However, data protection is, to some degree, addressed in Zambia’s Electronic Communication laws, which, among other things, prohibits:

- Anyone from interfering with a data subject’s private communications.
- Using a data subject’s personal data without their and/or the data controller’s knowledge.
- Using such personal data for purpose other than what was originally agreed to.

DISPUTE RESOLUTION

Court structure
The Supreme Court is the appellate court for both civil and criminal matters and has largely appellate jurisdiction (it can hear matters relating to election petitions and eligibility as a court of first instance).

The High Court is both an appellate court, as well as a court with original jurisdiction in civil and criminal matters.

The Industrial Relations Court has jurisdiction over industrial relations related (employment) matters only. Lower Courts include the Subordinate Court, the Small Claims Court and Local Courts.

Security by Foreign litigants
Although there is no rule in place requiring foreign litigants to provide security for costs, any party to proceedings is entitled to demand security for costs, provided that they timeously deliver a notice setting forth the grounds upon which security is claimed. The judge has to consider whether the foreign litigant has sufficient property of a fixed nature in Zambia which could cover any costs that may arise.

Costs
Successful litigants are, as a general rule, awarded costs in the matter. However, the final discretion for whether or not costs are to be awarded is left to the court. In matters
where the court may deem fit, parties have been seen to bear their own costs. The apportionment of costs is left to the sole discretion of the court in the exercise of its wisdom.

Legal Practitioners
There is no split or single bar in Zambia. There is, instead, a single professional roll for all legal practitioners or advocates in Zambia. The statutory authority for legal practitioners is the Law Association of Zambia Act, the Legal Practitioners Act and the Legal Practitioners Practice Rules.

Alternative dispute resolution

EMPLOYMENT LAW

Governing legislation
The Industrial and Labour Relations Act, as amended by the Industrial and Labour Relations Amendment Act, no 8 of 2008; Employment Act, chapter 268 of the Laws of Zambia

Particulars of employment
The contract may be express or implied, oral or written. There is no regulation on a probationary period and therefore there appears to be no limitation.

Forms of contracts
• Written contracts.
• Oral contracts.

There is no regulation of fixed term contracts which means there is no limitation.

Termination of employment / dismissal
• Either party to an oral contract may terminate the employment on the expiration of notice given to the other party of his intention to do so, and where the notice expires during the currency of a contract period, the contract shall be thereupon terminated.
• Notice to terminate employment may be either verbal or written and may be given at any time and the day on which the notice is given shall be included in the period of notice.
• An employer shall not terminate the service of an employee on grounds related to the conduct or performance of an employee without affording the employee an opportunity to be heard on the charges laid against him.
• A written contract of service shall be terminated by the expiry of the term for which
it is expressed to be made; or by the death of the employee before such expiration; or in any other manner in which a contract of service may be lawfully terminated or deemed to be terminated whether under the provisions of this Act or otherwise.

Dispute resolution mechanisms and remedies
Any aggrieved party may report a dispute to a Labour Officer who shall thereupon take such steps as may seem to him to be expedient to effect a settlement between the parties and, in particular, shall encourage the use of collective bargaining facilities where applicable.

EXCHANGE CONTROL

Balance of payments regulations are monitored by the Bank of Zambia and apply to financial service providers licensed under the Banking and Financial Services Act. These include the import or export of goods or services exceeding USD 20 000 or the equivalent in foreign currency, a financial service provider designated under the National Payment Systems Act and a foreign investor and a local investor who invests outside Zambia.

The Bank of Zambia monitors the outflows and inflows of funds.

In relation to outflows, the bank monitors:

- The value of any imported goods.
- The value of any imported services, including management services.
- Any amounts remitted out of the country whether unrequited (gratuitous) or otherwise.
- Loans granted to non-residents.
- Trade credits from non-residents.
- Investments made in the form of equity and debt securities outside the country by persons resident in Zambia.
- Profits or dividends paid to non-residents in respect of investments made in Zambia.
- Payments of interest or principal on an investment on private external debt.

In relation to inflows, the bank monitors:

- The value of goods or services exported.
- Profits or dividends received in respect of investments abroad.
- Borrowings from non-residents.
- Investments in the form of equity from abroad.
- Investments in the form of debt securities from abroad receipts of both principle and interest on loans to non-residents.

In relation to international transactions, the bank monitors the value of:

- Imported or exported manufacturing services or goods to or from non-residents.
- The net cost-effect of telecommunication services.
- International transport, courier and postal services.
• International accommodation and other hospitality services to or from non-residents international money transfers in and out of Zambia.

TAX LAW

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

Types of taxable income
Taxes payable include income tax, value added tax (VAT), property transfer tax and tax on turnover for small businesses.

Tax rates
The income tax rate is 35% on adjusted company profits (except for telecommunication companies, which are taxed at 40%).

There is a property transfer tax of 5% on transfers of shares or property.

A 3% presumptive tax on turnover for small businesses is payable.

Foreign management or consultant’s fees, royalties, interest, rents, commissions are subject to withholding tax of 15%.

Double taxation treaties
Zambia has double taxation agreements with Canada, China, Denmark, Finland, France, Germany, India, Ireland, Italy, Japan, Kenya, Mauritius, Netherlands, Norway, Poland, South Africa, Sweden, Switzerland, Tanzania, Uganda and the United Kingdom.
GENERAL INFORMATION

Zimbabwe is a landlocked independent republic located in the southern part of the African Continent, bordered by Zambia to the northwest, Mozambique to the north and east, South Africa to the south, Botswana to the southwest, and with Namibia sharing a border post on the western tip of Zimbabwe.

Area: 390 757 km²
Population: 12.5 million
Capital: Harare
Currency: Zimbabwean Dollar
GDP: USD 4.4 billion (2010)
Internet domain: .zw
Languages: English (official language), Shona, Ndebele
Working week: Monday - Friday
Exports: Tobacco; gold; chromium; ferro alloys; cotton; platinum
Imports: Machinery and transport equipment; chemicals; fuels; food products

COMPANY LAW

Business Vehicles
There are two forms of companies commonly used by foreign investors:
- Private Limited companies.
- Public limited companies.

A public company may seek Zimbabwean Stock Exchange and offer shares to the public. The minimum number of shareholders is one and there is no maximum.

Private companies may not offer shares to the public and are not generally required to file annual financial reports with the Registrar of Companies. The minimum number of shareholders is one and the maximum is 50.

Incorporation
The following steps should be taken in order to incorporate a company:
- A name for the company must be reserved with the Chief Registrar of Companies. The reservation shall be valid for 30 days and may be extended for another thirty days. The process of reserving a company name takes approximately two weeks.
- Once the company name has been reserved, a memorandum and articles of association are required to be filed together with details of the registered office of the company.
Details regarding directors and shareholders including their full names, identity numbers, nationality, and residential address are required.

It takes approximately two to four weeks for this process to occur.

**Regulatory reporting**

It is required in Zimbabwe to hold Annual General Meetings (AGM). An AGM must be held each year, within six months of the financial year end and within fifteen months of the previous annual AGM. A public company must file its annual financial report with the Registrar of Companies, where it is open to public scrutiny. Public companies are required to be audited.

**Share capital**

The minimum share capital required to incorporate a company is USD 2 000.

**Management**

The minimum number of directors required for a company is two. Directors are appointed in the first instance as per the memorandum and articles of association and, thereafter by shareholders at the AGM. Companies are required to have at least 1 resident director. The company's secretary must also be a resident.

A public officer who is a Zimbabwean resident must also be appointed.

**Are local shareholders required?**

The Zimbabwean government introduced the Indigenisation and Economic Empowerment Act in 2007. In terms of the Act, all businesses, including public companies with an annual turnover above USD 500 000, must have a minimum 51% share ownership by indigenous Zimbabweans.

**Branch company**

Foreign companies are allowed to form branches in Zimbabwe. Approval by the Minister of Justice is required for this by way of an application. Once approved by the Minister, a branch license will be issued by the Registrar of Companies.

A foreign representative office can also be formed in Zimbabwe. The application process is similar to that of a branch office mentioned above. The representative office is however, not permitted to conduct any business to make profit.

**COMPETITION LAW**

**Law**

- Competition Act (Chapter 14:28).

The Act is enforced by the Competition and Tariffs Commission, based in Harare.
Mergers
A merger is notifiable where the following thresholds are met:
• The merging parties’ combined annual turnover or net asset value in Zimbabwe exceeds USD 1.2 million.

A merger may not be implemented prior to the necessary approval having been obtained from the Commission. Failure to notify or implementing the merger prior to obtaining the necessary approval can result in the imposition of administrative penalties of up to 10% of the annual turnover of either or both parties.

Restrictive Practices
The Act regulates restrictive practices and specifically prohibits price fixing, the division of markets and bid-rigging.

Abuse of Dominance
The Act prohibits the abuse of a dominant position.

Sanctions
Contraventions of the provisions relating to restrictive practices may result in the imposition of a fine not exceeding level 12 (USD 2 000) and/or imprisonment for a period not exceeding 2 years.

CONSUMER PROTECTION
Currently Zimbabwe does not have any dedicated consumer protection legislation. However, a Consumer Protection Bill is currently being discussed by the Zimbabwean authorities. In the meantime, consumers are protected by means of piecemeal legislation such as the Consumer Contracts Act, the Control of Goods Act and the Competition Act.

The legislation referred to above regulates, among other things, the following aspects:
• Unfair agreements – contracts must be written in a language that is easily comprehensible by consumers.
• Liability to consumers – a supplier cannot exclude liability for latent defects in respect of new goods which it supplies to consumers, or if the goods do not comply with the description and or samples provided to the client.
• Refunds – suppliers cannot refuse to refund consumers or, alternatively to comply with a consumer’s request to have defective goods replaced or repaired.

Lastly, Zimbabwe is a member of the Common Market for Eastern and Southern Africa (COMESA) which has been established to primarily regulate competition law amongst the different economies of its member states and to ensure that a fair and effective regional competition law framework exists. COMESA also has powers regarding consumer protection matters and promotes transparency among economic operators in the region. As such the key aspects of consumer protection dealt with in the COMESA Regulations will also impact consumer protection in Zimbabwe.
DATA PROTECTION

Data protection is regulated by the Access to Information and Protection of Privacy Act, 2003 (AIPP). The AIPP prescribes the manner in which personal data information must be collected and managed as well as the personal data information security measures to be applied.

Some of the key principles of the AIPP are:

- The right of access to information does not extend to non-Zimbabwean citizens or non-permanent residents, mass media services that are not registered in terms of the AIPP, or foreign states and their agents.
- No personal data information may be disclosed to an applicant if the disclosure will result in the unreasonable violation of a data subject’s personal privacy.
- A data subject must consent (and can object) to the use of personal data information relating to him.

DISPUTE RESOLUTION

Court structure
The Magistrate’s Court and the High Court are both courts of first instance. The jurisdiction of the Magistrate’s Court is limited to disputes under USD 10 000 and the High Court is the court of first instance for all matters where the claim is above that threshold. The Supreme Court hears appeals from the High Court, and the Constitutional Court is the highest court hearing matters relating to constitutional rights.

The courts operate according to the terms of the Magistrate’s Court Act, the High Court Act and the Constitution. These documents can be accessed at www.parlzim.gov.zw

Security by foreign litigants
Foreign litigants are normally required to provide security where they are instituting formal proceedings.

Costs
Successful litigants may recover costs on the party and party scale, which would be around 50% of the costs incurred or on a legal practitioner and client scale which would be all the costs incurred.

Legal practitioners
There is a single professional role for all practicing legal professionals although it is a de facto bar.

Alternative dispute resolution
Arbitration is a recognised form of dispute resolution and is governed by the Arbitration Act which can be accessed at www.parlzim.gov.zw. The Commercial Arbitration Centre and Africa Institute of Mediation & Arbitration are the 2 established arbitration bodies. Zimbabwe is a signatory of the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.
EMPLOYMENT LAW

Governing legislation

Particulars of employment
An employment contract may or may not be in writing, there is no regulation prescribing same. A contract of employment may provide in writing for a single, non-renewable probationary period of not more than 1 week in the case of casual workers; or 3 months in any other case: during which notice of termination of the contract to be given by either party may be 1 week in the case of casual work or 2 weeks in any other case.

Forms of contracts
• A contract for an unspecified period of time.
• Fixed term contracts.
• Casual work contracts.
• Seasonal work.

Termination of employment / dismissal
An employee is unfairly dismissed if the employer fails to show that he dismissed the employee in terms of an employment code; or if in the absence of an employment code the employer fails to show that, when dismissing the employee, he had good cause to believe that the employee was guilty of:
• Any act, conduct or admission inconsistent with the fulfilment of the express or implied conditions of his contract.
• Wilful disobedience to a lawful order given by the employer.
• Wilful and unlawful destruction of the employer’s property.
• Theft or fraud.
• Absence from work for a period of 5 or more working days without leave for a reasonable cause.
• Habitual and substantial neglect to his duties.
• Gross incompetence or inefficiencies in the performance of his work.
• Lack of skill which the employee expressly or entirely held himself out to possess.
• An employee is deemed to have been unfairly dismissed if the employee terminated the contract of employment without notice because the employer deliberately made continued employment intolerable for the employee; or if on termination of an employment contract or fixed duration, the employee had a legitimate expectation to be re-engaged and another person was engaged instead of the employee.

Dispute resolution mechanisms and remedies
All disputes shall be referred to a Labour Officer who shall attempt to settle it through conciliation or if agreed between the parties, by reference to arbitration.
EXCHANGE CONTROL

There are exchange control regulations in Zimbabwe. Exchange controls are administered by the Reserve Bank of Zimbabwe.

The Reserve Bank shifts a significant amount of responsibility onto authorised dealers. Buying and selling of foreign currency using international cross rates is limited to authorised dealers and licensed Bureaux de Change.

Corporate and individuals can conduct a Bureau de Change business with a license. Local and foreign owned corporate who are registered in Zimbabwe can open up to 5 different Foreign Currency Accounts (FCA).

Individual FCA’s can be held by all resident individuals including employees of the government, NGO, embassies, international organisations and the private sector. Non-residents can open non-resident transferable FCA’s with authorised dealers.

TAX LAW

Income Tax
A company is tax resident in Zimbabwe if it is incorporated, formed or established in Zimbabwe or has its place of effective control in Zimbabwe. Zimbabwean resident companies and private companies are taxed on non-exempt income from a source within Zimbabwe. Income from a foreign source are liable to tax if it falls within the specific provision relating to deemed source.

Types of taxable income
Types of tax payable include dividends tax, capital gains tax (CGT), surtax (an AIDS levy which forms part of corporate tax) and withholding tax.

Tax rates
Corporate tax rate is payable at 25%. However, exceptions apply to certain sectors such as holders of special mining leases, with a tax rate of 15% and manufacturing companies that export more than half of their goods out of Zimbabwe are taxed at 20%. Companies that own, construct and operate projects in Zimbabwe are not taxed within the first 5 years of operation. They are the taxed at a rate of 15% for the second 5 years and 25% thereafter.

Dividends from a foreign source are liable to tax, any withholding tax deducted in a foreign country can be credited up to the amount of payable tax in Zimbabwe. Dividends from securities of the Zimbabwe Stock Exchange (ZSE) listed companies are taxed at a rate of 10% and at a rate of 15% for dividends of non-ZSE listed companies.
Interest accrued from a local Zimbabwean bank account by a resident is taxed at a rate of 15%. The tax payable is reduced to 5% if the interest is earned from a fixed term deposit.

Royalties paid to non-residents are subject to a 15% withholding tax.

**Double taxation treaties**
Zimbabwe has double taxation agreements with Bulgaria, Canada, France, Germany, Malaysia, Mauritius, Netherlands, Norway, Poland, Serbia, South Africa, Sweden, Switzerland and the United Kingdom.
Commercial Harmonisation in Eastern Africa
EAC Common Market

The East African Community (EAC) is a regional intergovernmental organisation entered into force on 1 July 2010 with the following members: Burundi, Kenya, Rwanda, Tanzania and Uganda. The protocol was signed on 20 November 2009.

The establishment of the East African Community Common Market (EACM) is in terms of the provisions of the EAC and provides for the free movement of goods, labour, services, and capital which aim to significantly boost trade and investments and make the region more productive and prosperous.

The protocol provides for the institutional framework for the EACM, approximation and harmonisation of policies, laws and systems, safeguard measures, measures to address imbalances, monitoring and evaluation, regulations, directives and decisions, annexes, amendment of the protocol, settlement of disputes, entry into force and depository and registration.

The annexes provide guidance for the (EACM). To date the following annexes are in place:
- Free movement of persons.
- Free movement of workers.
- Right of establishment.
- Right of residence.
- Schedule of commitments on the progressive liberalisation of services.
- Schedule on the removal of restrictions on the free movement of capital.

A monitoring process began in the member states in 2012, regarding the implementation of the EACM. To date, two reports have been before the Council of Ministers, expressing concern over delay in the protocols implementation. The Council accordingly issued a directive, in terms of which all member states have now established a National Implementation Committee in the member territories.
MONETARY UNION PROTOCOL

The East African Community Monetary Union Protocol was created to harmonize monetary and fiscal policies and establish a common central bank for the EAC. To date, it has been ratified by Burundi, Rwanda and Tanzania. The rationale behind the Monetary Union Protocol is for the establishment of a monetary union, with reduced currency risk and thus creating incentives for trade.

OHADA

The Organisation pour l’Harmonisation en Afrique du Droit des Affaires (OHADA) aims to harmonise commercial law of its member states by the development of common and simple rules in line with the member states’ economic climates. Furthermore, OHADA aims to implement the appropriate judicial procedures and encourages the use of arbitration for the settlement of disputes.

The member states of OHADA are: Benin, Burkina Faso, Cameroon, Comoros, Republic of Congo, Ivory Coast, Gabon, Guinea Bissau, Guinea, Equatorial Guinea, Mali, Niger, Central African Republic, Democratic Republic of Congo, Senegal, Chad and Togo. With the exception of Guinea, all the current members of OHADA are also members of the Franc Zone. Furthermore, OHADA represents a common legal background in that all the OHADA members, with the exception of Cameroon who has a common law system, all the member states have a civil law system.

OHADA issues unified legislation called Uniform Acts. These Acts are directly applicable to all member states and supersede the previous national legislation on the same topic. Currently there are eight Acts on various areas of law including company law, commercial law, securities, insolvency and arbitration. In relation to company law, the Acts regulates the different stages of business transactions, from starting up a company to obtaining credit, protecting investors and resolving bankruptcy.

Amongst the institutional achievements of OHADA is the creation of its supranational Common Court of Justice (CCJA) which will aim to achieve a uniform judicial interpretation of the OHADA founding treaty, any regulations thereto and the Uniform Acts.

SADC

The main objectives of the Southern African Development Community (SADC) is to “achieve development, peace and security, and economic growth, to alleviate poverty, enhance the standard and quality of life of the peoples of Southern Africa, and support the socially disadvantaged through regional integration, built on democratic principles and equitable and sustainable development.”

The member states of the SADC are Botswana, Democratic Republic of Congo, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, United Republic of Tanzania, Zambia, and Zimbabwe.
The SADC Treaty establishes a series of institutional mechanisms, including the following:

- **Summit of Heads of State or Government** is responsible for the overall policy direction and control of functions of the community, ultimately making it the policy-making institution of the SADC.
- **Council of Ministers** oversees the functioning and development of the SADC and ensures that policies are properly implemented.
- **Standing Committee of Officials** is a technical advisory committee to the Council of Ministers. It consists of one Permanent or Principal Secretary, or an official of equivalent rank from each Member State from a ministry responsible for economic planning or finance.
- **The SADC Tribunal** ensures adherence and proper interpretation of the provisions of the SADC Treaty and subsidiary instruments, and adjudicates upon disputes referred to it.
- **The SADC Organ on Politics Defence and Security** is managed on a Troika basis and is responsible for promoting peace and security in the SADC region.
- **SADC National Committees** have been assembled to provide input at national level in the formulation of regional policies and strategies, as well as to coordinate and oversee the implementation of programmes at national level.

The SADC seeks to achieve regional integration and to eradicate poverty. The Protocols are legally binding documents committing the member states to the objectives and specific procedures stated within it. In order for a Protocol to enter into force, two-thirds of the Member States need to ratify or sign the agreement, giving formal consent and making the document officially valid.

A provision for any disputes arising from the application or interpretation of a Protocol is made by referring grievances to the SADC Tribunal if they cannot be resolved amicably through regular diplomatic channels.

Currently, the SADC has 26 Protocols, including those that have not yet entered into force.
COMESA

The Common Market for Eastern and Southern Africa (COMESA) is a regional body, governed by the Treaty Establishing the Common Market for Eastern and Southern Africa. It is aimed at promoting, inter alia, economic co-operation between member states, and to this end a free trade association was established during 2000.

COMESA has 19 member states, namely: Burundi, Union of Comoros, Democratic Republic of the Congo, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Libya, Madagascar, Malawi, Mauritius, Rwanda, Sudan, Swaziland, Seychelles, Uganda, Zambia and Zimbabwe.

Of particular importance is COMESA’s Competition Commission, which became operational on 14 January 2013. The Competition Commission regulates certain aspects of competition between firms in member states, for example, anti-competitive business practices and mergers.

The Competition Commission Regulations provide for compulsory notification of mergers where both the acquiring and target firm operate in 2 or more member states. The financial thresholds for notification are currently set at zero, which means that all mergers will have to be notified to the Competition Commission. The Competition Commission has, however, recently published guidelines in which the Commission puts forth its view that a merger will only be notifiable if:

- At least 1 merging party operates in 2 or more Member States (an undertaking “operates” in a Member State if it has annual turnover in that Member State exceeding USD 5 million).
- A target undertaking operates in a Member State.
- It is not the case that more than two-thirds of the annual turnover in the Common Market of each of the merging parties is achieved or held within 1 and the same Member State.

It is, however, important to note that although the Guidelines refer to a minimum annual turnover in a Member State of USD 5 million prior to a merging party being considered as operating in that Member State, the monetary notification threshold is still set at zero – thus, should a merging party’s annual turnover be less than USD 5 million, the monetary threshold will still be met (as it is set at zero) but notification will not be required as a result of neither merging party ‘operating’ within a Member State.
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