Grant Thornton

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2014/2015

A guide to establishing a presence in South Africa

Nelson Mandela
1918 – 2013

Foreword

South Africa celebrates 20 years of democracy in 2014 and over the past two decades has become an important economy both on the African continent and the global stage. In its 2014 Doing Business in South Africa report, the World Bank rated South Africa as one of the easiest economies in the sub-Saharan region for doing business; with a global ranking of 41, the country far outstrips the regional average of 147, reiterating its position as a springboard for investment into the rest of the continent. As a member of the Southern Africa Development Community, South Africa offers investors access to a region with current GDP growth of 6%.

While the South African economy has a marked duality, with an informal economy operating in tandem with its globally recognised sophisticated financial and industrial economy, investors can expect a well capitalised banking system and highly developed regulatory systems. This includes top ranked audit and accounting standards, a well-regulated stock exchange and world-class commercial legislation governing competition policy, copyright, patents and trademarks. The country's modern infrastructure supports the efficient distribution of goods throughout the southern African region and the government has committed to an ongoing infrastructure development programme. The Infrastructure Development Bill was passed by Parliament in March 2014, ensuring that the South African infrastructure grows sufficiently to serve the expanding economy and population.

As with all developing economies, South Africa faces challenges including high levels of unemployment. This is a key priority for the government and forms the basis of the New Growth Path and the National Development Plan, a strategic roadmap which outlines a broad range of interventions that, by 2030, aim to expand economic opportunities for all by improving the country's skills base and infrastructure, eliminating poverty and reducing inequality.

This guide to establishing a presence in South Africa is Grant Thornton's practical pocket guide that outlines the key aspects for business investment in the country. If you are planning on doing business in South Africa, it's vital that you understand the investment environment and have all the information necessary on the legal, accounting and taxation frameworks to ensure that you are doing it right. This reference guide will provide you with the key fundamentals that you need to know.

More detailed information can be found on our website **www.gt.co.za.**

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***Nelson Rolihlahla Mandela (1918 – 2013)** was a South African politician and activist. On April 27, 1994, he was made the first President of South Africa elected in a fully represented democratic election. Mandela was also the first black President South Africa. He served as the President of the African National Congress (ANC) from 1991 to 1997. Internationally, Mandela was the Secretary General of the Non-Aligned Movement from 1998 to 1999.*

Country profile

Area	1, 221 million square kilometres
Population	53 million (2013, mid-year estimate)
Currency	Rand (R1 = 100 cents)
Time	GMT + 2hrs
Dialling code	+27
Official name	Republic of South Africa
Capitals	Cape Town (Legislative) Pretoria (Executive) Bloemfontein (Judicial)
Head of State	President Jacob Zuma
Ruling party	African National Congress (ANC)
	Form of State Federal / unitary hybrid, comprising a central government and nine provincial governments
Legal system	Based on Roman Dutch law and 1996 Constitution
Languages	English is the language of commerce, banking, government and official documentation. There are eleven official languages: Afrikaans, English, IsiNdebele, IsiXhosa, IsiZulu, Sesotho, Northern Sotho, Setswana, SiSwati, Tshivenda and Xitsonga
Total GDP	$384.3 billion (2012)
GDP per capita	$11,021 (2012)
Real GDP growth	2.5% (2012)

Stability marks South Africa as a viable investment option

Stability and normality may not be words that excite but when they apply to a country in which you're considering investing, they're precisely the words that engender confidence. In its latest annual Global Competiveness Report, the World Economic Forum (WEF) ranks South Africa 53rd of 148 economies.

South Africa is now a $400bn economy whose Johannesburg Stock Exchange (JSE) broke the technically important 49,000 point barrier in May 2014. Interestingly, this occurred the day after the national election that marked 20 years of democracy. Critical thinkers point to this as a clear indication of just how normal the country's political life has become, adding to a high level of stability.

With the most efficient infrastructure network in Africa, sub-Saharan Africa is South Africa's second highest export market after Europe and on a par with China, which is itself increasing significantly; China has made no secret of its interest in actively capitalising on and supporting South Africa's economic growth. Not only does this make South Africa a practical and efficient platform as the base to launch an African strategy, it gives investors an export market that is growing at 5.6% according to a recent and comprehensive Goldman Sachs report into the country.

It is worth noting that, for four consecutive years, the Word Economic Forum has ranked the JSE first in regulation of securities exchanges, an unexpected indication of the quality of the country's business infrastructure, institutions, efficiency, and market sophistication. Above all, it speaks to South Africa's international business sensibility; it is a member of the G-20 and experienced at taking its place at international tables while actively contributing to growing economic stability in its region.

Excellent economic and financial management teams are among the hallmarks of the country's success. Adding to investor confidence is the fact that South Africa's local investment community is well-developed with access to capital, while the market has a high level of participation from foreign investors. Name almost any large multi-national and you will find it active and, indeed, thriving in South Africa. Importantly, the country has the support of organisations like the IMF, which is all too aware of the significance of its success to the stability of the region.

Whilst increasing employment is high on South Africa's list of priorities and is innovatively supported by both government and business, the rise of the African middle class is an important demographic shift.

Trade agreements

Southern African Customs Union (SACU)

- South Africa is a member of the SACU which allows for duty and quota-free access to the markets of member states.
- The SACU comprises of Botswana, Lesotho, Swaziland, Namibia and South Africa.
- SACU entered into a free trade deal with the four-nation European Free Trade
- Association on 1 July 2006 but its negotiations with the United States for a free trade agreement have stalled.

The Southern African Development Community (SADC)

- SADC members include Angola, Botswana, Democratic Republic of Congo (DRC), Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe.
- The SADC Trade Protocol was developed as part of a strategy to stimulate industrial development, boost trade and investment and to liberalise intra-regional trade in goods and services among member states.
- The SADC Free Trade Agreement was fully implemented in 2012 which will make more than 90% of the trade in this region duty-free.

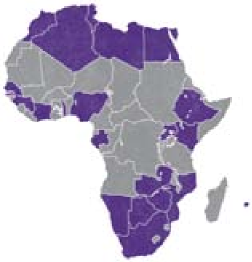
East African Community (EAC)

- The EAC has its own customs union that rationalises investment and investment incentives through promoting the community of Burundi, Kenya, Rwanda, Tanzania and Uganda as a single investment area.
- With a population of more than 120 million, the EAC is one of the largest single-bloc regional markets in Africa which is made even bigger by a series of mutually beneficial partnerships with regional blocs such as SADC, boasting a combined population well over 400 million.

The African Growth and Opportunity Act (AGOA)

- The African Growth and Opportunity Act (AGOA) provides duty-free access to the USA market for almost all products exported from more than 40 eligible sub-Sahara African countries, including South Africa.
- AGOA covers over 7 000 products, including mineral fuel (coal), machinery, vehicles, agricultural products, fruit and vegetables, iron, steel and certain automotive components.
- A survey of 80 of the largest 600 US companies operating in South Africa has revealed that they have created more than 150 000 jobs and contribute to a combined yearly revenue of over R233-billion to South Africa alone through AGOA.
- The AGOA Act expire as US law in 2015 but submissions by the South African government and other interested parties are currently under way to extend it by another 15 years.
- President Barak Obama in a 2013 visit to South Africa made a commitment to try and help extend AGOA.

Grant Thornton: helping you do business in Africa



Our African footprint

Because of growing consumerism and international trade, Africa has become an incredibly attractive proposition for foreign investors worldwide. In Africa, Grant Thornton member firms operate in Algeria, Botswana, Côte d'Ivoire, Egypt, Ethiopia, Gabon, Guinea, Kenya, Libya, Mauritius, Morocco, Mozambique, Namibia, Nigeria, Senegal, South Africa, Togo, Tunisia, Uganda, Zambia and Zimbabwe.

International business centre

Based in Johannesburg is Grant Thornton's accredited International Business Centre (IBC) which serves as a gateway to expert resources across the global organisation to provide seamless services across borders. Every IBC is committed to helping clients on their international journeys – whether in taking the first steps, entering new markets, or understanding tax liabilities across multiple jurisdictions.

Asia Business Services – Africa

Working hand-in-hand with Grant Thornton member firms in Asia the Africa desk offers a suite of services to help Asian companies expand beyond their borders. Our Africa Asia Group comprises skilled multicultural professionals who have on-the-ground experience both in Africa and Asia. Our team is dedicated to assisting your company in finding the right business partners and ventures.

Contact details for both services can be found on the back panel or **www.gt.co.za**

Government trade and investment agencies

A key objective of the South African government's Department of Trade & Industry (DTI) is to build mutually beneficial regional and global relations to advance South Africa´s trade, industrial policy and economic development objectives. It does this by focusing on increasing levels of international trade, foreign direct investment and economic co-operation on regional, continental and international levels and is a good source of information and support for all new investors.

The Department of Trade & Industry can be contacted on **+27 (12) 394-9500** or **www.thedti.gov.za**

Contact information for all regional trade and investment agencies can be found on our website **www.gt.co.za**

Regulatory requirements

Types of business entities based on the Companies Act, 2008

- The new Companies Act, which came into effect on 1 May 2011, provides for two categories of companies, namely for profit and not for profit companies.
- Close corporations continue to exist but no new close corporations can be registered post the implementation date of the Act.

For profit companies

- State-owned companies (name ends in "SOC Ltd").
- Public companies (name ends in "Ltd").
- Private companies (name ends in "(Pty) Ltd" or "Proprietary Limited").
- Personal liability companies (name ends in "Incorporated" or "Inc").
- For profit companies may be incorporated by one or more persons, except for a state-owned company which may also be incorporated by an organ of state.

Not for profit companies

- A not for profit business (name ends in "NPC").
- Not for profit companies may be incorporated by three or more persons acting together, an organ of state or by a legal entity.

Annual financial statements

- Annual financial statements must be prepared within six months of the financial year end and annual returns must be filed within 30 business days after the anniversary date of incorporation.
- The annual financial statements of state-owned companies and public companies must be audited at all times.
- Annual financial statements of private companies and personal liability companies only require to be audited if:
  - the company holds assets for another party in excess of R5 million; or
  - the public interest score is 350 or more; or
  - the public interest score is 100 or more and the annual financial statements are internally compiled; or
  - it is required by the memorandum of incorporation or by a shareholder's or director's resolution or in terms of an agreement.
- In certain instances an independent review of the annual financial statements will be required.
- The annual financial statements of non-profit companies only require to be audited if:
  - the company holds assets for another party in excess of R5 million; or
  - it was incorporated by the state, an international entity, foreign state entity or foreign company; or
  - it was incorporated to perform a statutory, regulatory or public function.
- If an audit is not required, the company must have its annual financial statements independently reviewed.

Public interest score

- Every company must calculate its public interest score for each financial year. This is determined as the sum of:
  - a number of points equal to the average number of employees during the financial year; and
  - one point for every R1 million in third party liability at year end; and
  - one point for every R1 million in turnover; and
  - one point for every individual who directly or indirectly has a beneficial interest in any of the company's securities.

External companies

- An "external company" is defined as a foreign company that is carrying on business, or non-profit activities, as the case may be, within South Africa, if such a company is party to one or more employment contracts within South Africa, or is engaging in a course or pattern of activities within South Africa over a period of at least six months, which would lead a person to reasonably conclude that the company intended to continually engage in business or non-profit activities within South Africa.
- An "external company" must register with the Commission within 20 business days after it first begins to conduct business, or non-profit activities, within South Africa.
- The following must accompany Form CoR 20.1 (Registration of External Company) during the registration process:
  - the filing fee
  - a certified copy of the company's Memorandum of Incorporation, or similar document filed in the jurisdiction in which the external company is registered, together with a translation of the document if required
  - the certificate of incorporation or comparable document issued by the jurisdiction in which the company was incorporated, together with a translation of the document if required
  - the address of its principal office outside South Africa and the names of its directors at the time the form is filed
  - the address of its registered office in South Africa and the name and address of the person within South Africa who has consented to accept service of documents on behalf of the external company.

Domesticated companies

A "domesticated company" is defined as a foreign company whose registration has been transferred to South Africa and which will thereafter exist as a company in terms of the Companies Act as if it had been originally so incorporated and registered.

Tax

Basis of taxation

- South African residents are taxed on their worldwide income.
- Non-South African residents are taxed on their South African sourced income.
- A company will be a South African resident if it is incorporated in South Africa or if it has its place of effective management in South Africa.
- An individual will be a South African resident if he or she is ordinarily resident here or is physically present here for a specified number of days over a five year period.
- Any person who is deemed to be a resident of another state through the application of a double tax agreement will not be treated as a South African resident.

Agreements to avoid double tax

- South Africa has entered into double tax agreements with most of its trading partners.
- In terms of these arrangements a foreign resident will be taxable in South Africa only if it conducts business through a permanent establishment in South Africa (note there are a few exceptions such as withholding taxes).

Tax rates

- South African companies are currently taxed at a rate of 28%.
- Dividends Withholding Tax (WHT) is levied on dividends declared at a rate of 15%.
- The dividend tax of 15% will generally be withheld by the company paying the dividend or a paying intermediary, and the net dividend will be paid to the shareholder.
- South African branches of foreign companies are taxed at a rate of 28%. No dividend withholding tax is imposed on the remittance of branch profits.
- Capital gains earned by companies are effectively taxed at 18.6%.
- Non-residents of South Africa may pay capital gains tax (CGT) on the disposal of:
- Immovable property or any interest or right to or in immovable property and
- any asset of a permanent establishment through which the non-resident is carrying on a trade in South Africa.
- Individuals are taxed on a sliding scale with the highest marginal rate being 40%.
- Capital gains earned by individuals are taxed at an effective rate of 13.3%. There are certain exemptions.

Key income tax issues

- Interest paid to foreign lenders is not taxable unless they have a permanent establishment in South Africa. From 1 January 2015 interest may be taxable in South Africa, at the withholding tax rate of 15%. This withholding tax is a final tax.
- Certain DTA's will reduce the rate, with some DTA's reducing the rate to 0%
- There is a withholding tax on royalties paid offshore of 12% (may be reduced through the applicable double tax agreement); on 1 January 2015 this will be increased to 15%.
- Withholding tax on service fees will be introduced from 1 January 2016, at the rate of 15%. This applies to non-residents providing services within South African. The withholding tax on services may also be reduced per various Double Taxation Agreements, and in certain cases the rate is 0%.
- Transfer pricing rules apply and are enforced.
- Three provisional tax payments are made each year.

Transfer pricing

- The Commissioner for the South African Revenue Service may adjust the consideration in respect of any international transaction between connected parties to reflect on arm's length price.
- This is to ensure that there is a fair return on the activities conducted, the products contributed and the risks assumed in South Africa.
- If prices between connected parties from different jurisdictions do not reflect an arm's length price, the South African taxpayer's taxable income could be increased.
- Transfer pricing adjustments will result in additional tax, interest and penalties.
- Although a Transfer Pricing Policy document is not required by law, it is advisable to prepare and maintain such policy documents to defend prices if they are ever challenged.
- The general arm's length provisions will be used to determine whether a company is thinly capitalised.

Other taxes

- Businesses must register as an employer with the South African Revenue Service (SARS) and Pay As You Earn (PAYE) must be withheld on a monthly basis from remuneration paid to employees. Social security taxes are also collected through the PAYE system.
- Value-Added Tax (VAT) is levied at a rate of 14% on taxable supplies made by vendors.
- An importer/exporter has to register with SARS to obtain a customs code number. Customs duties are payable on various goods imported into South Africa. Importers need to ensure that they are using the correct tariff classification of the imported goods and apply for import permits where required on certain goods.
- Securities Transfer Tax of 0.25% is levied on the transfer of shares but is not levied on the new issue of shares.

Exchange control

Investment

- There is no exchange control over non-residents.
- South African subsidiaries or branches of foreign companies are, however, treated as a resident and thus subject to the controls.
- Investment may be in the form of share capital only or share and loan capital.
- Where a portion of the investment is in loan capital, exchange control approval is required, but this is usually a formality.

Local borrowings

- These can be restricted - the maximum is determined in terms of a formula and is linked to the amount of owners' funds (share capital, loans and accumulated profits). The restriction commences with a foreign holding of 75% or more. The borrowing restrictions have been removed for most companies but are applicable with regard to transactions involving immovable property and certain 'financial' transactions, including the purchase of shares.
- The limits may be temporarily increased in certain circumstances.

Dividends or branch profits

- Freely remittable provided the remittances will not cause the subsidiary or branch to become over borrowed locally.

Interest

- Interest on a loan from the holding company is remittable provided that the rate of interest is reasonable in relation to the currency of the loan and the loan was previously authorised.
- The interest rate will be reduced where the foreign shareholder lends the funds.
- South African sourced interest is generally exempt from tax when received by non-residents.
- A withholding tax, at the rate of 15%, on interest paid to non-residents must be made in respect of all payments that became due and payable after 1 January 2015. The rate may be reduced by an applicable Double Tax Agreement.

Royalties

- License agreements must be approved by the Department of Trade & Industry.
- Acceptable rates vary from 2% to 4% for manufacture of consumer goods and up to 6% for capital goods. Minimum and/or upfront payments (even if recoupable) are not allowed, unless there is immediate benefit, for example, training.
- The payment is subject to a withholding tax of 12% (unless the rate is reduced or eliminated in terms of a double tax agreement).

Management and technical fees

- These may be paid to the holding company/head office if reasonable.
- Usually no withholding tax is withheld in respect of management fees.
- Exchange control approval is not required, provided the fee is supported by a proper invoice. A fee that is calculated as a percentage of turnover will not be allowed.

Imports

- Foreign currency is made freely available for import of goods. There is a limited array of goods for which an import permit is required, but the vast majority of products may be imported without a permit. Payment is usually only permitted against proof of import, i.e. by presenting customs-stamped documentation (though it is possible to pay in advance of shipments).
- Foreign currency is also made freely available to pay for foreign services (other than as stated above).

Forward foreign exchange cover

- Obtainable for foreign liabilities and assets.

Immigrants and expatriates

- Concessions are made to new immigrants and expatriates.
- Expatriates may freely remit their savings abroad, after paying tax on their earnings.

Investment incentives

South Africa offers various attractive investment incentives, targeted at specific sectors or types of business activities. For more information visit The Department of Trade & Industry at **www.thedti.gov.za**

- **Automotive Investment Scheme (AIS)** – AIS has been designed to grow and develop the automotive sector through investment in new and/or replacement models and components that will increase plant production volumes, sustain employment and/or strengthen the automotive value chain.
- **Business Process Outsourcing and Off-Shoring Investment Incentive (BPO&O)** – The BPO&O investment incentive comprises an investment grant and a training support grant towards costs of company-specific training.
- **Capital Projects Feasibility Programme (CPFP)** – The CPFP is a cost-sharing grant that contributes to the cost of feasibility studies likely to lead to projects that will increase local exports and stimulate the market for South African capital goods and services.
- **Clothing and Textile Competitiveness Programme (CTCP)** – This programme provides a cost-sharing grant incentive to both local- and foreign-owned entities.
- **Co-operative Incentive Scheme (CIS)** – The CIS is a matching cash grant for registered primary co-operatives.
- **Critical Infrastructure Programme (CIP)** –The CIP is a cost sharing cash grant for projects designed to improve critical infrastructure in South Africa.
- **Enterprise Investment Programme (EIP)** – The EIP was launched by the government in July 2008, to provide sector-specific financing in order to encourage growth in manufacturing, tourism and related sectors. The EIP is applicable for a period of 6 years until 2014.
- **Export Marketing and Investment Assistance (EMIA)** – The Department of Trade & Industry offers SA exporters incentives and financial assistance with primary export market research, outward selling missions, inward buying missions, showcasing products and services at international exhibitions.
- **Film Incentive** – A rebate scheme is available to foreign and local film and television production companies.

- **Foreign Investment Grant (FIG)** – The FIG compensates qualifying foreign investors for costs incurred in moving qualifying new machinery and equipment from abroad to South Africa.
- **Industrial Development Zones (IDZ)** – These purpose-built industrial estates are linked to international ports that leverage fixed direct investments in value-added and export-orientated manufacturing industries.
- **Manufacturing Competitiveness Enhancement Programme (MCEP)** – Is one of the key action programmes of the Industrial Policy Action Plan (IPAP) 2012/13 – 2014/15. The MCEP will provide support to companies upgrading their production facilities, processes, products and people in the short to medium term.
- **Manufacturing Investment Programme (MIP)** – The MIP is a reimbursable cash grant for local- and foreign-owned manufactures who wish to establish a new production facility; expand an existing production facility; or upgrade an existing facility in the clothing and textiles sector.
- **National Exporter Development Programme (NEDP)** – The purpose of the NEDP is to increase exports, particularly of those products and services that add value and contribute to employment and the green economy.
- **Production Incentive (PI)** – Under the PI applicants can use the full benefit as either an upgrade grant facility or an interest subsidy facility, or a combination of both.
- **Research and Development Tax Incentive Programme (R&D)** – This incentive consists of a deduction of 150%, in respect of eligible expenditure on suitable scientific or technological R&D and an accelerated depreciation of assets.
- **Section 12i Tax Allowance Incentive (12i TAI)** – This incentive has been designed to support greenfield and brownfield investments, therefore focusing on investment in manufacturing assets and training of personnel.
- **Support Programme for Industrial Innovation (SPII)** – SPII is designed to promote technology development in South Africa through the provision of financial assistance for the development of innovative products and/or processes.
- **Tourism Support Programme (TSP)** – The TSP is a reimbursable cash grant that aims to support the development of tourism enterprise that will stimulate job creation and increase the geographic spread of tourism investment, outside of the traditional tourism destinations of Durban, Cape Town and Johannesburg.

Finance

Banking system

The South African banking system is well developed and effectively regulated, comprising a central bank – the South African Reserve Bank – as well as domestic and foreign institutions providing a full range of services – commercial, retail and merchant banking, mortgage lending, insurance and investment.

Regulations

South Africa has adopted anti-money laundering laws to help it comply with its international obligations to fight organised crime and terrorism. The latest and most comprehensive legislation detailing money laundering controls include the Financial Intelligence Centre Act 38 of 2001 (FICA).

Customer identification is a crucial element of any effective money laundering control system. Banks are required to obtain certain information and supporting documentation from new customers before new accounts may be opened. The information and documents required vary depending on whether you are a customer in a personal capacity or part of an entity, whether you are a citizen of South Africa or a foreign national permanently resident in South Africa, a close corporation, listed company, a trust or other legal entity.

Capital markets

As one of the world's 20 largest exchanges by market capitalisation ($1,007bn at end-2013) and the largest exchange in Africa, the Johannesburg Stock Exchange is also ranked first in the world in terms of regulation of securities exchanges by the World Economic Forum's Global Competitiveness Survey.

The exchange offers five financial markets; Equities and Bonds and Financial, Commodity and Interest Rate Derivatives. There are almost 400 companies listed across its main board and AltX, the alternative exchange for smaller capped, high-growth companies.

In July 2013, the JSE implemented a new trading platform while at the same time moving the trading system from London to Johannesburg which has resulted in trades now being executed up to 400 times faster than under the previous system. The change allows for increased liquidity and more algorithmic traders.

Broad-based black economic empowerment

All South African companies are affected by the country's Broad-Based Black Economic Empowerment (B-BBEE) regulations. These regulations are aimed at promoting economic participation by South African citizens who are African, Coloured or Indian persons; who were prejudiced by historical policies.

B-BBEE is governed by the Broad-Based Black Economic Empowerment Act 53 of 2003, which promotes codes of good practice that result in black economic empowerment when implemented by South African companies. Implementation of the codes of good practice is not compulsory, but companies that choose not to implement the codes face several economic challenges for non-compliance.

Government is obliged to consider a company's B-BBEE status when transacting with the private sector; a poor B-BBEE status may result in withholding of a tender, a license or a concession. In the private sector, because the B-BBEE status of a company is partly dependant on the status of its suppliers, purchasing decisions are often linked to B-BBEE status.

Compliance with the codes requires that the company meets minimum targets for participation of black people in the company's ownership, employees, training spend and purchases from B-BBEE compliant suppliers. In addition, contributions can be made for the development of black enterprises and socio-economic development.

A company's B-BBEE status is certified annually by accredited B-BBEE Verification professionals, and demonstrated by a B-BBEE certificate. B-BBEE certificates are based on contributions made in a financial year, and the employee and ownership status as at the date of measurement. A B-BBEE certificate is valid for 12 months from date of issue.

Labour

The lack of available skills is a constraint to business growth globally according to research from the Grant Thornton International Business Report (IBR). Three in every ten (30%) businesses around the world are struggling to recruit the right people but in South Africa, the lack of availability of a skilled workforce is affecting 36% of businesses. In a country with 25% unemployment, on balance, 22% of businesses report that they expect to increase employment over the next 12 months.

The South African government has committed itself to taking concrete steps to raise the skills profile of the labour market in such strategies as New Growth Path, National Skills Accord, Basic Education Accord and the Youth Employment Accord.

Labour relations

South Africa's labour legislation, following the 1994 elections, is among the most progressive in the world, promoting economic development, social justice, labour peace and democracy in the workplace. It sets out to achieve this by providing a framework for regulating the relationship between employees and their unions on the one hand and employers and their organisations on the other hand.

The Labour Relations Act (LRA), Act 66 of 1995 with the subsequent amendments sets out the rights of employers and employees and their organisations more clearly than before. This provides parties with more certainty with regard to the exercise of these rights. The Act also favours conciliation and negotiation as a way of settling labour disputes.

For more information on labour legislation and a selection of basic guides to labour relations in South Africa visit the Department of Labour at **www.labour.gov.za**

Residence and immigration

The South African Department of Home Affairs (DHA) is the relevant department of state mainly responsible for the implementation, control and management of the policy and legislation relating to persons who wish to work in South Africa or settle permanently.

The day-to-day administration of all aspects of these policies is carried out by the various regional and district offices, which are located in most cities and towns of South Africa. There are various categories of temporary work permits and permanent residence permits, such as those listed below.

Temporary residence permit

The Immigration Act No. 13 of 2002, as amended by The Immigration Act No.19 of 2004 has affected the following permit rules:

- **General work permit**
  May be issued to an applicant, in possession of a written and time specific work offer, in line with his/her skills and qualifications.
- **Exceptional skills permit**
  May be granted to "an individual of exceptional skills or qualifications" to whom an offer of employment for a specific duration has been made and where certain requirements have been complied with.

- **Intra-company transfer permit**
  May be issued to a foreign national who is employed abroad by a company which also operates a branch/subsidiary or affiliate business in South Africa. The applicant must, by virtue of his/her employment, be required to conduct work in South Africa, for a period not exceeding two years.
- **Corporate permit**
  Applications can be made by a prospective employer together with supporting documentation substantiating the need to employ a certain number of employees for a particular occupation over a specific period of time. This type of permit caters predominantly for the mining, agricultural and forestry industries which employ the bulk of the migrant labour employed in South Africa.
- **Quota permit**
  The issuing of this permit is based on the published quota list of scarce skills and can be obtained through a South African foreign mission before entering the country. Applicants also need to meet the proper qualification and experience requirements. Quota permits may be applied for from any Department of Home Affairs office.
- **Business permit**
  Foreigners who are contemplating investing in the South African economy by establishing a business or by investing in an existing business in the country must apply for a business permit. This process entails establishing a presence in South Africa through employing, training and building capacity for at least five South African citizens or permanent residents. It also involves a minimum investment of R2.5 million (share capital investment) as well as being a perceived benefit to the South African economy. A chartered accountant must certify that the applicant is able to meet the Department of Home Affairs' capitalisation requirements.
- **Medical treatment permit**
  Covers medical treatment at a private or public hospital or health facility, or any other bona fide treatment institution.
- **Relatives permit**
  May be issued to a foreign national who is a member of the immediate family within two degrees of kinship to a South African citizen or permanent resident, provided that the South African citizen or permanent resident provides the 'prescribed' financial assurances.
- **Exchange permit**
  This category of temporary residence permit is designed to cover persons participating in programmes of cultural, economic, or social exchange organised by an organ of state or a public higher educational institution, in conjunction with an organ of a foreign state.
- **Study permit**
  Applicants wishing to study in South Africa require confirmed admission to the tertiary institution on the basis that their admittance does not prejudice a South African student. The length of the study permit will be determined by the duration of the course.
- **Retired person's permit**
  A retired person may apply for temporary residence in this category, provided that he or she can prove that he or she has the right to a pension, or irrevocable retirement annuity with a minimum value of R20 000 per month, or a prescribed financial net worth of R7.5 million.

Permanent residence permits

- **Direct residence**
  This applies to a foreign national who has been the holder of a work permit (includes a corporate permit) for a period of five years and has received an offer of permanent employment or is the spouse of a South African citizen or permanent resident.
- **Permanent offer of employment**
  The applicant must have received a permanent offer of employment. The applicant's occupation and work permit must comply with the quota list published in the Government Gazette. The prospective employer must submit a certification by a chartered accountant stating that the job description exists and is intended to be filled by the foreign national applicant.
- **Extraordinary skills or qualifications**
  This encompasses a foreign national who has demonstrated to the Department of Home Affairs extraordinary skills or qualifications not available in South Africa.
- **Business category (establishing a business in South Africa)**
  This applies to a foreign national who intends to establish or invest in an established business in South Africa. A chartered accountant must certify that the applicant is able to meet the Department of Home Affairs' capitalisation requirements.
- **Relative category**
  May be issued to a foreign national who is a member of the immediate family of a South African citizen or permanent resident within the first degree of kinship i.e. a father, mother, child and this will include a biological or judicially adopted child or adoptive parents and step parents. The South African citizen or permanent resident must provide the 'prescribed' financial assurances.
- **Retired person's permits**
  A retired person may apply for permanent residence provided that he or she can prove that he or she has the right to a pension, or irrevocable retirement annuity with a minimum value of R20 000 per month, or a prescribed financial net worth of R7.5 million.
- **Spousal category**
  A foreigner must be married to or be a life partner of a South African spouse for an excess of five years before applying for permanent residence.
- **Child of a South African or permanent resident**
  A South African or permanent resident may apply for permanent residence of a child under 21 years of age. However, such a permit will lapse if the child does not submit an application to the Department within two years of his/her 21st birthday for confirmation of his/her residential status.

Contact us

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