

South Africa Legal Provisions

Compiled by:

Swiss Business Hub Southern Africa

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General remarks

The legal system is a mixture of English common law and civilian Roman-Dutch legal principals. Many legal doctrines can be traced to civilian heritage, but court procedures owe much to common law tradition, with adversarial trial, detailed case reports (which include dissenting judges) and adherence to precedent. The rules of customary law may not, however, conflict with the South African Constitution.

The South African Constitution Act 108 of 1996 provides for the separation of legislative, executive and judicial arms of government. There are elements of Federalism within the Constitution whereby the nine provinces may pass laws on matters such as education, health and housing. However, in event of conflict, the national legislation can override provincial legislation.

The legal system is based on a very modern and much praised Constitution. The post-apartheid legal system came into being essentially in 1993; it established an independent judiciary, which included a Constitutional Court with the power to review and to abolish legislation inconsistent with the Constitution.

The Constitution includes provisions such as prohibition on all forms of discrimination and an emphasis on individual rights. These rights include “equality before the law and equal protection of the law”; freedom of expression, assembly, demonstration, petition and association; the right to “choose a place of residence anywhere in the national territory”; the right not to be deprived of citizenship without justification; full political rights; full access to the courts; and fair and lawful administrative justice mechanisms, including rights concerning detention, arrest and accusation.

Parliament consists of two houses – the National Assembly and the National Council of Provinces – which are responsible for drafting the laws of the Republic. The third arm of central government is an independent judiciary. The Constitutional Court is the highest court for interpreting constitutional matters while the Supreme Court is the highest court for non-constitutional matters.

Customs

South African customs passenger allowances entitle new or used goods of up to ZAR 3 000 in value to be brought into the country without any duty being paid. For additional goods, new or used, of up to ZAR12 000 in value, a flat rate of 20% duty will be charged. Thereafter, normal customs duties apply.

The following duty-free goods may also be brought in:

- Wine - up to 2 litres per person over the age of 18 years.
- Spirits and other alcoholic beverages - up to 1 litre in total per person.
- Cigarettes - up to 200 per person.
- Cigars - up to 20 per person.
- Cigarette or pipe tobacco - up to 250g per person.
- Perfume - up to 50ml per person.
- *Eau de toilette* (scented liquid lighter than cologne) - up to 250ml per person.

The alcohol and tobacco allowances only apply to people over 18.

All currency must be declared on entering the country. When leaving the country up to ZAR 500 in South African Reserve Bank notes is permitted to be taken out. A 20% levy is charged on amounts above ZAR500.

14% Value Added Tax (VAT) is levied on most goods and services, but foreign nationals may reclaim VAT on anything bought for over ZAR250 to take out of the country unused. This needs to be done before embarkation on the return flight, and original tax invoice for the item will have to be produced.

See www.taxrefunds.co.za for details

Import and export regulations

Traders are subject to exchange control approval, administered by the South African Reserve Bank. The Department of Trade and Industry is also empowered to regulate, prohibit or ration imports to South Africa in the national interest but most goods may be imported into South Africa without restrictions. Import permits are required only for specific categories of goods and are obtainable from the Director of Import and Export. Importers must possess an import permit prior to the date of shipment. Failure to produce a required permit could result in the imposition of penalties.

A summary of the main import regulations are:

- Certain goods imported into South Africa require an import permit, which may be obtained from the Director of Imports and Exports Control.
- The list of goods requiring import permits is specified each year in the annual Import Control Program.
- Permits are valid for imports from any country.
- Foreign Trade Zones: No Foreign Trade Zones or Free Ports are established in South Africa.
- South Africa uses the Harmonised System of Classification.
- Samples are dutiable unless they are cut samples of cloth, leather, linoleum and wallpaper in book form and not for distribution as advertising matter.
- Samples that have no commercial value because of mutilation in some way are also allowed duty-free access.
- The South African Government has viewed counter-trade as a second-best alternative to be engaged in only when normal trade cannot be conducted.
- Bonded warehouses are available at various points of entry.
- South African banks can accommodate all international transactions and are situated throughout the country.
- General rebates of duty are available for specific situations, and duties may be rebated on goods on re-export.
- The Reserve Bank plays a pivotal role in the economic and financial sectors.
- Some imports may require permission from the Department of Agriculture, Health or Environment Affairs.
- Specific excise taxes are levied on alcoholic and non-alcoholic beverages, tobacco and tobacco products, mineral waters, some petroleum products and motor vehicles. South Africa is an adherent to the Customs Valuation Agreement negotiated under GATT/WTO. The dutiable value of goods imported into South Africa is calculated on the F.O.B. price in the country of export. In conformance with its WTO commitments, South Africa has lifted import surcharges.

* ATA Carnet is accepted by the South African authorities which allows the temporary importation of commercial samples, exhibition goods and professional equipment whether accompanied or not without having to pay duty or raise custom bonds. In South Africa the sole issuing authority for the ATA Carnet is the South African Chamber of Commerce and Industry (SACCI) (www.saccci.org.za).

South Africa uses a Single Administrative Document (SAD) for all customs clearances purposes. The SAD must be accompanied by the following documents:

- Pro-forma/original invoice
- Packing declaration
- Transport documents
- Bill of Landing
- Air Waybill
- Freight Transit Order
- Insurance documents
- Customs documents
- Import permit
- Special certificates/permits
- Phytosanitary certificate for products of plant origin, including honey
- Sanitary certificate for products of animal origin
- Product testing certificate
- Fumigation certificate
- Bill of entry
- Payment documents
- Commercial invoice
- Certificate of origin
- Packing list
- Export declaration
- Export permit
- Documents in support of any request for exemption from customs duties or taxes

The International Trade Administration (ITAC) is charged with issuing import and export permits, and with conducting investigations and ensuring enforcement of the International Trade Administration Act (2003).

Currency regulations

The South African Government has taken steps to gradually reduce remaining foreign exchange controls, which apply only to South African residents. Private Citizens are now allowed a one-time investment of up to R 1 million in offshore accounts per calendar year over the age of 18 years. Since 2001, South African companies may invest up to R750 million in Africa and R500 million elsewhere.

For exchange control regulations; go to the South African Reserve Bank website.
(www.resbank.co.za)

Registration procedure for products

This will vary from product to product in that food stuffs are covered by different regulations to pharmaceutical products, but can at times cross. Medical devices, however, do not have to be registered at this time (**this state of affairs is currently under review**). Machinery, etc. will be covered by other registration procedures, thus it is difficult to generalise. Should you have an enquiry concerning a particular product, then please contact us for the specific information.

Standards, technical rules, labelling regulations

In order to promote international trade, South African regulatory practice is aligned with the requirements of international best practice (such as the guidelines of the OECD, Organization for Economic Co-operation and Development), and bilateral and international treaties such as the WTO (World Trade Organization) Agreement on Technical Barriers to Trade (TBT). The SABS is particularly concerned with the practical interpretation and implementation of the Agreement and guidelines, and is committed to supporting Government in meeting its obligations. The SABS Standards Division administers a Notification Point for technical regulations as required by the WTO TBT.

For further information on standards, go to The South African Bureau of Standards. (www.sabs.co.za)

Starting business in South Africa

The new Companies Act of 2008 came into operation on the 1st of May 2011 and replaced the Companies Act of 1973. The new Act changed many aspects of business registration and company requirements including the discontinuation of the registration of partnerships and close corporations.

The businesses entities that may be registered in South Africa are as follows:

- **Private companies Pty (Ltd)** – subject to fewer disclosure and transparency requirements under the new Act; prohibited from offering its shares to the public and the transferability of shares is restricted; more than 50 shareholders is permitted; and the board of the private company must comprise of at least one director or any other minimum number stipulated within the incorporating documentation.
- **Public companies (Ltd)** – permitted to offer shares to the public; no limit to the number of shareholders; at least one shareholder is required to form a public company and a public company must have at least three directors.
- **State-owned company (SOC)** - either a company defined as a “state-owned enterprise” in the Public Finance Management Act 1 of 1999, or is owned by a municipality as contemplated in the Municipal Systems Act 32 of 2000, and is otherwise similar to an enterprise as referred to above. The name of a state-owned company must end with the expression “SOE Ltd” and is duly incorporated and registered in terms of the Act.
- **External company** - a foreign company that is carrying on business or non-profit activities within the Republic; must be duly incorporated and registered within 20 business days after it first begins to conduct activities within the Republic as an external non-profit company (NPC) or as an external company.
- **Personal liability company (Inc)** - directors and past directors are jointly and severally liable, together with the company, for any debts and liabilities of the company that were contracted during their respective terms of office.
- **Non-profit company (NPC)** – company incorporated for public benefit or other object as specific in the Act; income and property are not distributable to its incorporators, members, directors, officers or persons related except as reasonable compensation for services rendered; and three persons and three directors may form a NPC.

Documents required for starting a business in South Africa

South Africa is ranked 73 in the world for ease of doing business second behind Mauritius (32) in Africa.

Economy	Ease of Doing Business Rank ▲	Starting a Business	Dealing with Construction Permits	Getting Electricity	Registering Property	Getting Credit	Protecting Minority Investors	Paying Taxes	Trading Across Borders	Enforcing Contracts	Resolving
Mauritius	32	37	35	41	99	42	29	13	66	27	39
South Africa	73	120	90	168	101	59	14	20	130	119	41

World Bank Group Rankings 2015: <http://www.doingbusiness.org/rankings>

The documents required for starting a business in South Africa is provided in the table on the following page.

The following institutions are important when starting a business in South Africa:

- Companies and Intellectual Property Commission (CIPC) for company registration and registration forms can be obtained from CIPC website (www.cipc.co.za).
- Office of the local receiver of revenue (SARS) for income tax, VAT, and employee withholding tax (PAYE and SITE).
- Department of Labour for Unemployment Insurance.
- Relevant metropolitan council for local revenue/salary levy.
- The Compensation Fund of South Africa, in accordance with the Compensation for Occupational Injuries and Diseases Act. Registration forms can be obtained from the Department of Labour's website (www.labour.gov.za).

Registration Intellectual Property in South Africa

South Africa is signatory country to international treaties pertaining to intellectual property and thus legislation has been developed which recognises and protects intellectual property in the Republic. However, South Africa is currently in the process to legislate an amendment to IP bill, which will weaken the protection of IP's. Patents, designs and trademarks are also registered by CIPC (www.cipc.co.za).

CIPC

Postal Address: Companies

P O Box 429
Pretoria
0001

Postal Address: Intellectual Property

Private Bag x400
Pretoria
0001

Call Centre: 086 100 2472 (CIPC)
International Tel: +27 12 394 9500
Fax Number: 086 517 7224
International Fax: +27 12 394 9501

Docex: 256 Pretoria
e-mail: info@cipc.co.za

Joint venture opportunities

Formerly a partnership could be formed between at least 2 and no more than 20 persons (the new Companies Act changed this in April 2011). This number may be increased with the permission of the relevant Minister. There are no formalities required to form a partnership and a partnership will exist if the following requirements are met:

- two or more persons agree to act jointly to pursue a venture;
- they each make a contribution (whether in money or otherwise);
- the purpose of their venture is to make a profit; and
- they divide any profit (or loss) between them.

Although no formalities are required, it is usual, if not essential, that a written agreement be concluded.

A distinction is often drawn between the term “partnership” and “joint venture”. Although joint venture agreements may contain a statement that they are not to be construed as a partnership, joint ventures generally meet all the requirements of a partnership and may, where appropriate, be treated as a form of partnership. The term “joint venture” is usually used where the parties concerned intend to pursue a single venture only. For example, in the mining industry joint ventures are often formed for the purpose of prospecting for mineral deposits. If a viable deposit is found the exploitation of the minerals is thereafter carried out by a company in which the joint venture members become shareholders.

Source: <http://www.deneysreitz.co.za>

Promotion of investment

The Government of South Africa is open to investment as a means to drive growth, improve international competitiveness and obtain access to foreign markets, virtually all business sectors are open to foreign investors and no governmental approval is required. There are very few restrictions on the form or extent of foreign investment. The government department that provides assistance to foreign investors is Trade and Investment South Africa (TISA) which is a division of the department of Trade and Industry (DTI). (www.thedti.gov.za)

N.B. South Africa has cancelled a number of ‘Protection of Investment Treaties’ in 2013, the treaty with Switzerland being one of them. The government is currently in the process of drafting a new bill to take over from them.

Taxation

South Africa has concluded 844 tax treaties for the avoidance of double taxation. The double taxation with Switzerland is in force since 1967 and been revised in 2010 (<http://www.admin.ch/opc/de/classified-compilation/20053026/index.html>).

South African residents are taxed on their worldwide income. This includes the income of a foreign-controlled company. Certain types of income from outside are exempt and credit is allotted for foreign taxes paid. Non-South African residents are taxed only on South African-source income.

Individuals are deemed to be resident in South Africa for tax purposes if they normally live in the country or are in South Africa for more than 183 days a year. The tax year is 1st March to 28th (or 29th February). Tax is payable in instalments by companies, close corporations and those individuals

who are classified as provisional taxpayers (e.g. directors of companies and members of close corporations).

Individuals make two provisional payments based on estimated tax liability: the first due six months after the beginning of the assessment year and the second at the end of the assessment year.

Employees' tax is deducted at source ('pay as you earn') and paid by the employers to the tax authorities monthly.

Income Tax Rates

Income tax rates for the assessment year from end of February 2016 to end of February 2017 are as follows (www.sars.gov.za):

Taxable Income (R) Tax rate (%)	
Taxable Income (R)	Tax Rate (%)
0 – 188 000	18% of taxable income per R 1
188 001 – 293 600	33 840 + 26% of taxable income above 188 000
293 601 – 406 400	61 296 + 31% of taxable income above 293 600
406 401 – 550 100	96 264 + 36% of taxable income above 406 400
550 101 – 701 300	147 996 + 39% of taxable income above 550 100
701 301 and above	206 964 + 41% of taxable income above 701 300

Taxation of Dividends

Taxation of dividends – Dividends received by a South African company from another South African company are exempt from corporation tax, although Secondary Tax on Companies (STC), calculated on the net amount of dividends declared at a rate of 10%, is imposed on the payer of the dividends (subject to exemption). Dividends received from a foreign company are in principle subject to income tax, although various exemptions exist (e.g. where at least 20% of the shares and voting rights are held). When the foreign dividend is taxable, a credit for withholding tax suffered is generally available.

Payroll tax

Payroll tax – A 1% payroll levy ("skills development levy") is imposed on all employers, but companies with payroll costs below ZAR 500,000 are exempt.

Value Added Tax (VAT)

Value Added Tax (VAT) of 14% is levied on goods and services, excluding certain basic foodstuffs. Exports are zero-rated, provided that certain regulations are complied with.

At present, it is compulsory for companies with an annual turnover of over ZAR1m to register for VAT. A vendor making taxable supplies of more than ZAR50,000 but not more than ZAR1m per annum may apply for voluntary registration. Certain supplies are subject to a zero rate or are exempt from VAT.

Corporate Tax Rates

From the 1 April 2016 and 31 March 2017, the standard rate of corporation tax in South Africa will be 28% for resident companies and non-resident companies.

Income Tax: Companies	
Type	Rate of Tax
Companies	28%
Personal service providers companies	28%
Foreign resident companies which earn income from a source in South Africa	28%
Income Tax: Small Business Corporations	
Taxable Income p. a.	Rate of Tax
ZAR 0 – ZAR 75,000	0%
ZAR 75,000 – ZAR 365,000	7%
ZAR 365,000 – ZAR 550,000	21%
ZAR 550,001 and above	28%

Secondary tax on companies (STC) is imposed at a rate of 15% on dividends declared by resident companies after being reduced by dividends receivable during a dividend cycle. South African branches of foreign resident companies are exempt from STC.

Capital Gains Taxation

Capital gains on the disposal of assets are included in taxable income. Events that trigger a disposal include a sale, donation, exchange, loss, death and emigration.

Maximum effective rate of tax:

- Individuals: 13.65%
- Companies: 18.65%
- Trusts: 26.65%

The following are specific exclusions of Capital Gains Tax:

- ZAR2m gain/loss on the disposal of a primary residence or the disposal of a primary residence; for an amount of ZAR2m or less;
- most personal use assets;
- retirement benefits;
- payments in respect of original long-term insurance policies;
- annual exclusion of ZAR30,000 capital gain or capital loss is granted to individuals and special trusts;
- exclusion on death of ZAR300,000; and
- small business exclusion for individuals of ZAR1.8m.

Transfer Duty

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

Acquisition of property by all persons	Rate of Tax
ZAR 0 – 750,000	0%
ZAR 750 001 - 1 250 000	3% on the value above 750 000
ZAR 1 250 001 - 1 750 000	15 000 + 6% of the value above 1 250 000
ZAR 1 750 001 - 2 250 000	45 000 + 8% of the amount above 1 750 000
ZAR 2 250 001 - 10 000 000	85 000 + 11% of the amount above 2 250 000
ZAR 10 000 001 and above	R937 500 +13% of the value exceeding R10 000 000

Other taxes, duties and levies:

- Customs and Excise;
- Donations tax;
- Estate tax;
- Transfer duty on real estate transactions not subject to VAT;
- Various stamp duties;
- Fuel levies;
- Motor vehicle licence;
- Municipal taxes on owners of real estate;
- Skills Development Levy (SDL);
- Airport taxes;
- Environmental levy;
- Road Accident Fund levy; and
- Electricity Levy.

For further details, please, visit the web site <http://www.sars.gov.za/>.

Professional Accountancy Bodies:

[SAICA](#), South African Institute of Chartered Accountants

[SAIPA](#), South African Institute of Professional Accountants

Entry conditions, work permits, residence permits, labour law

New immigration laws were passed on the 26 October 2015, but have not as of yet been fully implemented.

Section 11(2) – Visitors Visa with authorization to work

Commonly referred to as a business visa, holders of a section 11 (2) are now permitted to work. This applied to those who are employed by a company abroad and have a need to work in South Africa for a South African business/company for a maximum period of 90 days.

This will be a great aid for Corporates but it should be noted that no extensions are permitted. The recent new Directive 6 is also pertinent to the new changes, as the application process has also now changed as follows:

Non Visa Exempt Citizens will no longer have to apply for an authorization letter from the DHA Head Office in Pretoria and then apply in their home country for a business visa. They will now instead be allowed to go directly to the SA Embassy/High Commission/Consulate/VFS offices in either their

home country or country of residence and apply for the visa in one step. This will save time for the applicant.

Visa exempt citizens will also no longer apply for an authorization letter from SA and will now have to apply for the letter also from the SA Embassy/High Commission/Consulate/VFS offices in either their home country or country of residence.

Retired Visa

This visa is evaluated around a person's ability to financially support themselves in SA by proving a certain amount of guaranteed income or lump sum of money. Confirmation of the required financial amounts from have yet to be issued by the DHA.

Spouses and Dependent Children

One of the biggest issues, under the previous Act for various visas, was the lack of an accompanying spouse option. As an example – in the retired visa category this meant that both spouses were required to meet the financial qualifying rules. This will no longer be the case and Spouses will now be permitted to immigrate to South Africa on an accompanying basis.

Other categories of visas including the list below now also allow accompanying spouses and dependent children to accompany the main applicant into SA :- Study, Treaty, Business, Medical, Relative, Work, Retired and Exchange visas – this a great added bonus from DHA especially where the option didn't exist in the past.

Study Visas

The new rules may see significant impact on some learning institutions, as study visas will now only be granted for learning institutions that are established under the Department of Higher Education and Learning. For example – Primary, Secondary Schools, Colleges and Universities. There are also very strict guidelines for the Principal / Registrar to adhere to including:

- Providing proof of registration of the Student within 60 days of registration. If a Student fails to register, provide proof of failure to register within 7 days of the closing date of registration.
- Notifying the DHA within 30 days of de-registration of a student and within 30 days of completion of their studies.

These learning institutions now need to ensure that their systems, or those of their appointed Immigration Company, are robust enough to comply as failure to do so will have serious consequences and in worse case scenarios Students illegally in SA facing bans from the country,

Students at Colleges or Universities are still permitted to work part time for 20 hours per week.

Business Visa

There is still some ambiguity regarding applications for a Business Visa. The publication of the amount that will be required to invested into the business (the old Act required ZAR2.5 million to be invested) has yet to be issued. There is also still no list of what is considered a desirable (and in the interests of the South African economy) or undesirable business activity. Other requirements include:

- The business visa holder must submit proof within 12 months of being granted the visa that 60% of their total staff compliment are South African Citizens or Permanent Residence holders.

- A letter of recommendation will be required from the DTI with all applications, outlining the feasibility and the interest to South Africa of the planned business.
- Undertakings required from the applicant will include registration with SARS, UIF, COIDA, CIPC and (if applicable) any relevant professional body.
- If the applicant is investing in an existing business they will also be required to submit financial statements of the business they are investing into for the previous financial year,

Business visas will be issued for a maximum of 3 years at a time.

Work Visas

Work visas see the removal of two categories, the “Quota” work permit and the “Exceptional Skills” work permit. The 2 permits have been ‘amalgamated’ and create the addition of a new work visa category – the “Critical Skills” work visa – see below for more details on this and other work visas.

No matter the work visa being applied for, there is now a little more onus on the employer as they must sign an undertaking for all repatriation costs as well as ensuring that the employee has a valid passport at all times. Proper physical records must be maintained at all times.

General Work Visa

This visa will be issued for a maximum of up to 5 years.

Applications for General Work Visas will require:

- A certificate from the Department of Labour confirming that despite a diligent search the prospective employer has been unable to find a suitable South African or Permanent Residence holder to fill the position. If enforced, a longer processing time will occur due to the added step in the already long process is to be anticipated; and
- Applications must be able to prove the applicant has the necessary skills and qualifications in line with the job offer; and
- That the benefits offered are not inferior to the average salary of a South African Citizen or Permanent Resident holding similar positions; and
- A SAQA (South African Qualifications Authority) certificate is obtained and submitted – evaluation of foreign education according to South African standards.

The employer will need to:

- provide a contract of employment that is in line with labour standards and commencement of employment is made conditional upon the work visa being granted;
- show proof of their businesses registration; and
- sign undertakings committing to inform Home Affairs if the employee does not comply with the conditions of the work visa or if the employee changes roles or type of employment within the business.

Critical Skills Visa

In order to apply for this new option you need to be on the (http://www.dha.gov.za/images/immigration_critical_skills.pdf) Critical Skills list of job titles. The Critical Skills Visa will be valid for a period of up to 5 years. Permanent residence can also be applied if you qualify for this visa – see Permanent Residence section for further information!

The application will have to be supported by a confirmation from a suitable professional body that the applicant possesses the required skills and / or qualifications along with appropriate experience.

Intra Company Transfer Visa

Under the old Act, this visa had been issued for a period of up to 2 years. This has been extended to a maximum of 4 years under the new Act. A person already in SA on an ICT visa will be allowed to extend their visa to maximize the 4-year validity option. No further applications for extension beyond this 4-year period can be made.

ICT Visa's were possible to achieve where the relationship between the foreign and South African entities existed as either, a branch, subsidiary or an affiliate relationship. There has been an apparent tightening of the definition of what constitutes an affiliate relationship – it is now defined by existence of a shareholding interest between the two companies. The branch and subsidiary relationship between entities will still allow the ICT option to take place as before.

The employer's obligations will include:

- ensuring that the employee is only employed in the specific position for which the work visa has been issued;
- notifying the DHA of any changes to the employee's status; and
- ensuring that a plan is developed for the transfer of skills to a South African or Permanent Resident.

Corporate Visa

Corporate visas can be applied for by any business that is not listed as undesirable (we similarly await the publication of this list by DHA).

Businesses will need to demonstrate:

- proof that they need to employ the requested number of foreigners;
- be able to get a certificate from the Department of Labour confirming that despite a diligent search they were unable to find suitable citizens to fill the roles;
- the proposed remuneration package shall not be inferior to the average salary of South African Citizens or Permanent Residence holders occupying similar positions;
- Proof of registrations with SARS, UIF, COIDA, CIPC;
 - an undertaking to inform DHA of any changes and to cover employee repatriation costs if this becomes necessary; and
 - that 60% of total staff are South African Citizens or Permanent Residents at any time before and after the application.

Once the Corporate Visa Employees have been recruited, employed and obtained their Corporate Worker Visa, there are also a number of obligations that the employer needs to be able to meet:

- Foreign employees passports are kept valid at all times;
- That the foreigner only conducts work in a position that the visa was issued for;
- That the foreigner departs South Africa upon completion of his contract; and
- They immediately inform the DHA if the foreigner is not compliant with the immigration and visa rules.

Individual Corporate Work Visas now require some extra documentation including SAQA (mandatory) and a certificate of registration with professional body (where applicable).

N.B – A corporate worker may no longer renew their permit or apply for a change of status whilst in South Africa!

Life Partner Visas

It is now a requirement that the relationship between a South African Citizen or Permanent Residence holder and a foreign partner must have existed for 2 years before an application for this visa may be made. Interviews with both the applicant and the South African will be conducted individually and at the same time.

Two years after being issued the Life Partner Visa, a visit to DHA is required in order to prove that the relationship still exists and maintain the validity of the permit granted.

There is some confusion with the interpretation of this part of the new Act whereby it appears that a Life Partner can also apply for Permanent Residence at the same time as applying for Temporary Residence if they meet the 2 year criteria. However when referring back to the original immigration Act of 2002 and the lack of change in the 2011 Amendment Act we are of the belief that permanent residence can only be applied for after 5 years.

Please be very careful if applying for Permanent Residence before you have proof of 5 years. Applications may be taken in by the Department of Home Affairs and then being rejected 1-2 years later based on current processing times within South Africa.

Spousal Permits

Temporary Residency – This has not changed and can be applied for if a foreign national is married to a SA Citizen or a SA Permanent Resident holder as before.

Permanent Residency – 5 years of marriage is still required in order to apply for this option. Please note there has been confusion surrounding the amount of years that you need to be married here but this stays as 5 years and not 2 as some information states online and in the press.

Who can apply for Permanent Residence?

The below is a quick overview of various options that allow an individual to apply for Permanent Residence.

- Spouses of South African Citizens or Permanent Residents in SA who have been together for 5 years;
- Holder of work visa for 5 years (strictly section 19 Work Visas and excluding that of a Corporate Worker visa);
- Children of South African Citizens or Permanent Residents;
- Parents of South African Citizens or Permanent Residents;
- Applicants who received a permanent offer of employment under the condition that the applicant will remain employed in the field for a period of 5 years and submits an original advert, confirmation from DOL and falls within yearly limits (the list is not published yet);
- Critical Skills applicant who can show proof of post-qualification experience of 5 years, testimonials from previous employers, a CV and a letter of motivation;
- Business Visa applicants (own business); and
- Retired applicants depending on financial eligibility rules (financial values also yet to be published).
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Other Major Points to Note

Travelling Rules

If someone has a pending application and the previous visa/permit has lapsed while in process of waiting, the employee if wanting to travel out of SA will be asked to sign a form confirming they are undesirable and will be added to the v-list and not permitted back to SA for a prescribed number of years.

Your employees must remain in SA for the outcome of their application or travel within the validity of an existing permit. Travel with a pending application and an expired visa is no longer an option.

Undesirable Persons – “foreigners who over stay the validity of their visa”

Harsher treatment will be handed out to those who overstay their visa and can result in them being declared undesirable for as many as 5 years. The message here is very clear – all foreigners will need to have a valid visa in their passport or face not being allowed back in to South Africa for a time period ranging from 1 to 5 years.

Applying for a visa

Note that you may not enter South Africa on a visitor's visa and apply for a change of status (for example a work visa). All first time applications for temporary residence must be applied for in the foreigners' home country or country of residence.

Exception is made for the Accompanying Spouse or Accompanying Minor's who are on long term visitor visas while accompanying a Business Visa or Work Visa holder. In the event they want to change to taking up their own employment or to start school, application in South Africa for a change of status may be allowed.

Renewals

If you wish to renew or apply for a change of conditions to your visa, it must be submitted to Home Affairs (soon to be VFS) not later than 60 days in advance of your existing visa expiring.

<http://homecomingrevolution.com/south-africa/2014/05/28/south-africas-new-immigration-act-summary-may-2014/>

Procedures for collecting payment

The following are the most common forms of payment for orders placed by South African companies on suppliers in Switzerland:

1. Letter of Credit (L/C), either confirmed by a Swiss bank or not. An L/C could include payment terms of say 90 – 180 days.
2. Open account, usually including payment terms. This term of payment applies to a supplier and customer who have extensive dealings and/or have built up a relationship of trust.
3. Payment before shipment of goods. This usually applies when a product has to be manufactured to a customer's requirements or where the amount of the order is very low.
4. Payment by the Swiss representative or by the buying agent of the buyer.

Land/property acquisition

There are very few restrictions at present on the purchase of property by non-residents, but there are procedures and requirements which must be complied with in certain circumstances. For example, entities registered outside of South Africa who intend to purchase property in South Africa must be registered here and must appoint a South African resident public officer for a local company whose shares are owned by a non-resident. In the event that a non-resident plans to purchase property in South Africa with the intention of residing here for longer periods, he or she will have to apply for permanent residency in accordance with the given requirements and procedures of South African law.

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

Property in South Africa is usually purchased through a registered broker or real estate agent, who would be registered as such with Estate Agency Affairs Board (EAAB).

The different forms of ownership available are:

Non-residents can own property partially or wholly, in their own names or through ownership of an interest in one or other forms of legal entity. Freehold is the most common form of property ownership, while other forms of ownership include leasehold, sectional title and share block.

Property can be owned individually (i.e.: ownership by individual title), jointly in undivided shares, or by an entity such as a company, close corporation or trust or a similar entity registered outside South Africa. The choice is dependent on decisions in relation to tax transfer duty issues, or relating to the protection of assets.

Land Reform

Land is an important and sensitive issue to all South Africans. It is a finite resource that binds all together in a common destiny. As a corner stone for reconstruction and development, a land policy for the country needs to deal effectively with:

- The injustices of racially-based land dispossession of the past
- The need for a more equitable distribution of land ownership
- The need for land reform to reduce poverty and contribute to economic growth
- Security of tenure for all; and
- A system of land management that will support sustainable land use patterns and the rapid release of land for development.

The South African land policy has set out a number of key policy objectives. These are: *the accessible means of recording land and registering rights in the property; establish the broad norms and guidelines for land use planning; effectively manage public land; and develop a responsive client friendly land administration service.*

The central thrust of land policy is the land reform programme. This has three aspects: **redistribution; land restitution; and land tenure reform.**

- Redistribution aims to provide the disadvantaged and the poor with access to land for residential and productive purposes. Its scope includes the urban and rural poor, labour tenants, farm workers and new entrants to agriculture.

- Land restitution covers cases of forced removals that took place after 1913. This is being dealt with by a *Land Claims Court and Commission* established under the *Restitution of Land Rights Act 22 of 1994*.
- Land tenure reform is being addressed through a review of present land policy; administration and legislation to improve the tenure security of all South Africans and to accommodate diverse forms of land tenure, including types of communal tenure.

The government has adopted a two-pronged approach. On the one-hand, it is striving to create an enabling policy environment and on the other, it is providing direct financial and other support services.

The government's vision of a land policy and reform programme is one that contributes to reconciliation, stability, growth and development in an equitable and sustainable way. It presumes an active land market supported by an effective and accessible institutional framework. In an urban context, the vision is one where the poor have secure access to well-located land for the provision of shelter. The poverty focus of the land reform programme is aimed at achieving a better quality of life for the most disadvantaged.

The collective aim of land reform is to ensure the transfer of 30% of all agricultural land over a period of 15 years.

For more information go to the following website: <http://www.ruraldevelopment.gov.za/DLA-Internet/content/pages/Home.jsp>

B-BBEE Revised Codes of Good Practice

The B-BBEE process has been identified as crucial to the future viability of SA's economy. There is no legal requirement that multinationals or foreign-owned companies doing business in South Africa must transfer equity or assets to Black Economic Empowerment (BEE) groups.

However, it often becomes a commercial imperative for firms to do so. A Company, for example that relies on government business is obliged to comply with BEE requirements because state-owned entities and governmental departments are legally obliged to be B-BBEE compliant.

New codes have been gazetted as a result of what the DTI calls a 'tick-box mentality that evolved when following the old system introduced in 2007 and to get away from the 'fronting' issue that has certainly arisen in attempting to avoid compliance. Additionally many companies have been slow or have not tried to introduce B-BBEE.

Many aspects of the new codes are admirable in what they are trying to achieve, especially the drive to remove 'fronting' by insisting that there must be active participation in the company for the scores to count towards their B-BEE score card. However, there are still issues that will lead to difficulties in compliance, particularly in the case of Multinationals present in South Africa.

The thresholds for Exempted Micro Enterprises (EME) and Qualifying Small Enterprises have been adjusted. The turnover for EME's has risen from ZAR 5 million to **ZAR10 million** and from ZAR 5 million – ZAR35 million to **ZAR 10 million – ZAR50 million** for QSE's.

- Ownership
- Skills development
- Enterprise and supplier development

Ownership

Failure to achieve minimum targets will mean an automatic drop by two levels. i.e. Should a company has no black ownership, but reaches level 4 (that is the 100%) it will automatically drop to level 6 which would mean that they would no longer be considered for government tenders. This is clearly problematic if it is also forced upon multinational firms whose owners are based abroad and therefore unlikely to want South African owners.

An enterprise must achieve 40% of the net value targets in order to comply with the priority requirements. In ownership the black members must have voting rights half of them must be women. The same applies to economic interest in the company.

Management control

Indicators for management and employment equity have been combined into one element. The board should consist of 50% black members, half of whom have to be black women. The same applies to top management whole 60% and 30% respectively apply to senior management. Disabled employees should now be 2% of total and only count if they are black.

Skills development

The emphasis here has been moved in that the number of people trained becomes the priority rather than the money spent in training.

One area of concern is associated with work-based training abroad in that only internationally recognized training skills will be counted and these would have to be assessed by the South African Qualifications Authority (SAQA). This could clearly become a problem for foreign companies in sector/work specific training.

Another issue is that 100% of those trained have to be absorbed into the industry. This could be very difficult in some specialized industries. One example would be a watchmaker's apprenticeship. And when this is combined with a slump in a specific sector could lead to the score being discounted through no fault of the firm involved.

Enterprise and Supplier development

Preferential procurement and supplier development have been combined in this revised code and is a priority element with a 40% threshold. There is also increased targets for companies that are over 50% black owned and over 30% black women owned to 40% and 12% respectively.

Only annual contributions will be recognized. This could end up discouraging companies from investing large sums into supplier development, even though with start-up companies there is a high initial capital investment requirement.

Socio-Economic Development

Emphasis now lies on supporting black sustainable, income generating projects. Corporate responsibility projects no longer count towards the B-BBEE score card. This will undoubtedly lead to significant problems in loss of income for many NGO's.

Here again only annual contributions are counted and again leading to problems in initial capital investment sums.

Contact the Embassy of Switzerland in Pretoria for further information or consult the homepage of the Department of Trade and Industry at www.thedti.gov.za.

Preferential Procurement Policy Framework Act

The Preferential Procurement Policy Framework Act, which aims to boost local entrepreneurs while creating more jobs in the private sector, came into effect on Wednesday 7th December 2011. The act compels state institutions, from municipalities to government departments to buy locally up to a certain level.

The designated sectors for now are the manufacturers of buses, power pylons, rolling stock (minimum level 65%), TV set-top boxes, clothing, canned vegetables, footwear and leather products. Further designations will follow this year. There are different local levels depending on the technical nature of the product.

Read more: <http://www.southafrica.info/business/economy/development/procurement-091211.htm#ixzz1iOduEnkB>

The Consumer Protection Act / The National Credit Act

The Consumer Protection Act came fully effective on the 31st March 2011. The Act aims to provide a legal framework for consumer protection and attempts to codify SA's common law with specific regard to the rights of consumer and the obligations of those providing services and products to them. Established ways of conducting every day commercial transactions have been altered and in a number of respects the proposed changes have removed the current protections afforded to suppliers when dealing with unscrupulous consumers.

The Bill's objectives are to:

- Promote a fair, accessible , and sustainable marketplace for consumers, responsible consumer behaviour, and a consistent framework relating to consumer transactions and agreements;
- Prohibit unfair marketing and business practices; and
- Provide for improved standards of customer information, harmonisation of consumer laws, and the establishment of the National Consumer Commission.

The main topics of the Bill are:

- Consumers will be guaranteed equal access to markets.
- Consumers' privacy will be protected.
- Consumers will have a right to choose.
- Fair disclosure of information to customers
- Fair and responsible marketing.
- Consumers will be entitled to honest and fair dealing.
- Terms and conditions need to be fair, just and reasonable.
- Consumers should expect fair value, good quality and safe products.
- Suppliers need to be accountable to customers.
- Consumers have a right to be heard and receive compensation if they are unfairly treated.

One of the important parts of the Bill for importers and producers is “section 61” which calls for a major change in product liability laws. It states:

“... the producer or importer, distributor or retailer of any goods is liable for any harm as described in subsection (6), caused wholly or partly as a consequence of—

- a. supplying unsafe goods;*
- b. a product failure, defect or hazard in any goods; or*
- c. inadequate instructions or warnings provided to the consumer pertaining to any hazard arising from or associated with the use of any goods, irrespective whether the harm resulted from negligence on the part of the producer, importer, distributor or retailer, as the case may be.”*

In other words, producers, importers, distributors or retailers would be liable for consequential damages suffered by consumers as a result of products sold by the retailers, regardless of their negligence. The clause does not require proof of negligence on the part of the consumer, as a common law currently does. In fact, a consumer needs only to prove the product caused the loss, including illness, injury death or economic.

Similarly to consumer law in most first world countries, the Bill is designed to protect the consumer and ensure a socially responsible attitude is adopted by companies.

Therefore a company will be:

- liable for all harm, including economic, through product failure or inadequate instructions or warnings;
- prohibited from unfair contracts or business practices;
- required to provide consumers with goods and services that are reasonably suitable for purchase and free from defect, and
- liable unless it successfully argues one of the statutory defences above.

As a result, companies may need to carry additional insurance limits in order to mitigate their exposure to this increased liability.

Suppliers are also obligated to accept the return of waste goods that may not be accepted in the common waste collection system.

There is, however, still confusion concerning how the act applies to various industries and as to how it will be implemented.

A breakdown and explanation of the act can be found at:

https://www.pwc.com/za/en/assets/pdf/cpa_article.pdf

www.consumerprotectionactmadeeasy.co.za (*The Consumer Protection Act made easy* extracts the essence of Act and rearranges the sections into a more user friendly order, making it easier to navigate through the Act, with the bulk of the provisions coming into effect on 25 October 2010.)

The National Credit Act

The National Credit Act (NCA), came into effect on 1 June 2007. It aims to amongst other things, protect the consumer from being granted credit recklessly, and the creation of a fair and non-discriminatory credit market.

Two new regulatory institutions have been established to administer the NCA: The National Credit Regulator (NCR) is the administrative regulator dealing with issues such as research and policy development, registration of industry participants and investigation of serious complaints. The NCR will take responsibility for the enforcement of the NCA. The National Consumer Tribunal (NCT) will conduct hearings into complaints relating to the NCA.

Sources of information and links

Additional information and a more detailed look into the above can be obtained from the following websites:

- www.statssa.gov.za
- www.thedti.gov.za
- www.resbank.co.za
- www.lowtax.net
- www.offshore.hsbc.com
- www.doingbusiness.org
- www.home-affairs.pwv.gov.za
- https://www.pwc.com/za/en/assets/pdf/cpa_article.pdf
- http://www.deloitte.com/assets/Dcom-SouthAfrica/Local%20Assets/Documents/qtg_2013.pdf
- <http://homecomingrevolution.com/south-africa/2014/05/28/south-africas-new-immigration-act-summary-may-2014/>

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