Investing and Conducting Business in South Africa

The Fasken Guide

FASKEN

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1. Introduction

Authored by Mike Van Vuren

Numerous international corporations and business people outside South Africa have a need for information on the various legal and fiscal factors affecting investment and business ventures in South Africa. As a young and developing country, South Africa depends heavily on foreign investment for its continued growth, and the injection of capital from abroad is essential to ensure that the proper exploitation of our country's vast natural resources will ultimately enhance the development of all people living in the sub-continent. Now, more than ever, we believe that South Africa has many attractions for the foreign investor:

- South Africa is one of the most advanced countries, both technologically and economically, in Africa, and is part of the BRICS group of countries with Brazil, Russia, India and China.
- South Africa has sophisticated financial, legal and telecommunications sectors, and a number of global business process outsourcing (BPO) operations are located in the country. It has an independent judiciary of which we are proud.
- It has world-class infrastructure, exciting innovation, research and development capabilities and an established manufacturing base. It is at the forefront of the development and rollout of new green technologies and industries, creating new and sustainable jobs in the process and reducing environmental impact.
- The steady increase in the living standards, favourable demographic profile together with the massive urbanisation of the rural population have resulted in a market segment being recognised as possessing considerable disposable income and responsible for the major share of consumer spending.
- Primary and secondary industries are both modern and competitive and the most advanced technologies are employed; South Africa compares favourably to other emerging markets in terms of the overall cost of doing business.
- South Africa 's climate is probably one of the best in the world with mainly temperate conditions all year round.
- Situated as it is at the southern end of the African continent, South Africa is a key investment location, both for the commercial opportunities within its borders and the potential it offers as a gateway to the rest of the continent - a market of some 1-billion people.

Investors wishing to invest in South Africa would firstly be required to choose a suitable business entity through which to conduct business if they do not wish to do so in their personal capacities. Such business entity may take the form of a company, a subsidiary or a branch of an overseas corporation (an external company), a partnership, or a joint venture with a South African company. In this document we set out in broad terms the local requirements affecting the establishment and operation of a business enterprise in South Africa as well as information concerning taxation, exchange control, investing in real estate and the industrial relations climate. We also include suggestions on where to stay on your business trips to South Africa and recommended leisure outings.

2. Forms of Business Enterprise in South Africa

Authored by Mike Van Vuren

Forms

Business enterprises in South Africa may be conducted by individuals, partnerships of individuals, trusts, South African companies, branches of foreign companies (known as external companies), or joint ventures with South African companies.

The Companies Act No. 71 of 2008 ("Companies Act") provides that no association of persons formed after 31 December 1939 for the purposes of carrying on any business that has for its objects the acquisition of gain by the association or its individual members is or may be a company or any other form of body corporate unless it is registered as a company under the Companies Act or any other law.

Although it is possible to have partnerships and associations doing business, they will not acquire legal personality should they meet the criteria mentioned above. This is the benefit of a company, being a legal entity separate and distinct from its shareholders and thereby protecting its shareholders from any person liability that may arise from its activities.

Company – Foreign or Local

The most common vehicle for the conduct of business operations in South Africa is a company. There are no minimum equity capital requirements for companies. The formation and regulation of companies are dealt with below.

A foreign entity which is seeking to do business in South Africa can set up an external company (branch of the foreign company) or incorporate a limited liability company ("**subsidiary**").

An external company is defined in the Companies Act, as a foreign company (a company incorporated in another jurisdiction outside South Africa) which carries on business (or non-profit activities), in South Africa. An external company must be registered with the South African companies' office (the Companies and Intellectual Property Commission - "**CIPC**") within 20 business days after it first begins to conduct activities.

Company – Foreign or Local

There are differences between the external company and the subsidiary, under our company law. The external company need not prepare and lodge financial statements under our Companies Act, although they will have to do so for tax purposes. There is no audit requirement, although the external company must continuously maintain at least one office in South Africa; and it must file an annual return within 30 business days of the anniversary of its registration with the CIPC.

There may be certain disclosure disadvantages relating to branch/external company operations. The legal liability of branches and the external company itself is not limited to the local business operations alone and hence its activities could put the assets of the foreign company at risk.
In the case of a subsidiary company, the liability of the parent company is limited to the amount of capital invested in, together with any guarantee it has given on behalf, of that subsidiary.
The subsidiary must satisfy its own debts.

3. Companies

Authored by Mike Van Vuren

Company Legislation

The Companies Act, which came in to operation on 1 May 2011, is the principal piece of legislation on company law. The Companies Act is still relatively new and there are marked differences between it and the previous Companies Act of 1973. The main changes include additional remedies to stakeholders such as employees and shareholders, appraisal remedies for minority shareholders, companies only having no par value shares and creditors receive some protection by the use of a 'solvency and liquidity test' for certain fundamental transactions (such as financial assistance, distributions, share buy backs, capitalisation shares, statutory mergers), the codification of issues such as director's duties and novel concepts such as business rescue provisions for companies in distress.

Forms Of Companies

All companies incorporated under the Companies Act are either 'profit' companies or 'non-profit' companies.

A 'non-profit' company ("**NPC**") is a company incorporated for a public benefit when its object relates to one or more cultural or social activities, or communal or group interests. There are no categories of non-profit companies. In order to distinguish NPCs from other entities, it is required that the name of every NPC be followed by the expression 'NPC'.

Profit Companies

A 'profit company' is defined as a company incorporated for the purposes of financial gain for its shareholders.

Unlike NPCs, there are four categories of profit companies, being:-

- State-owned companies ("**SOCs**") – these are generally companies owned or controlled by national, provincial or municipal bodies and are reflected in a list under stated pieces of legislation. In order to distinguish NPCs from other entities, it is required that the name of every SOC be followed by the expression 'SOC Ltd'.
- Private companies – these companies may have any number of shareholders and are defined by the limitations contained in their constitutional documents or Memorandum of Incorporation prohibiting the offering of inhibit securities (shares) to the public and restricting the transferability of securities. In order to distinguish private companies from other entities, it is required that the name of every private company be followed by the expression 'Proprietary Limited' or '(Pty) Ltd'.

- **Personal liability companies** – these are private companies whose Memorandum of Incorporation states that they are personal liability companies, being those entities often used by professional service practices, such as lawyers whereby the directors of the company are jointly and severally liable, together with the company, for any debts and liabilities of the company. In order to distinguish personal liability companies from other entities, it is required that the name of every such company be followed by the expression 'Incorporated' or 'Inc.'
- **Public companies** – is a company other than those listed above. In order to distinguish public companies from other entities, it is required that the name of every public company be followed by the expression 'Limited' or 'Ltd'.

Operation Of A South African Company

As mentioned above, the benefit of a company is that it is a legal entity separate and distinct from its shareholders, thereby protecting its shareholders from any personal liability that may arise from its activities.

Section 66 of the Companies Act states that: "*the business and affairs of the company must be managed by or under the direction of its board, which has authority to exercise all of the powers and perform any of the functions of the company, except to the extent that this Act or the companies Memorandum of Incorporation provides otherwise*".

In turn, company directors have certain responsibilities and duties and Section 76 of the Companies Act describes them as follows:

- A director of a company must not use the position of director or any information obtained while acting in the capacity of a director:
  - To gain an advantage for the director, or for another person other than the company or wholly-owned subsidiary of the company
  - To knowingly cause harm to the company or subsidiary of the company.
- A director of the company, when acting in that capacity, must exercise the powers and perform the functions of a director:
  - In good faith and for a proper purpose
  - In the best interests of the company
  - With the degree of care, skill and diligence that may reasonably be expected of a person (a) carrying out the same functions in relation to the company as those carried out by that director; and (b) having the general knowledge, skill and experience of that director

South African common law also deals with these responsibilities and duties.

Shareholders

One or more persons, or an organ of state, may incorporate a profit company. This means that private and public companies may have any number of shareholders.

An organ of state, a juristic person or three or more persons acting in common, may incorporate a non-profit company.

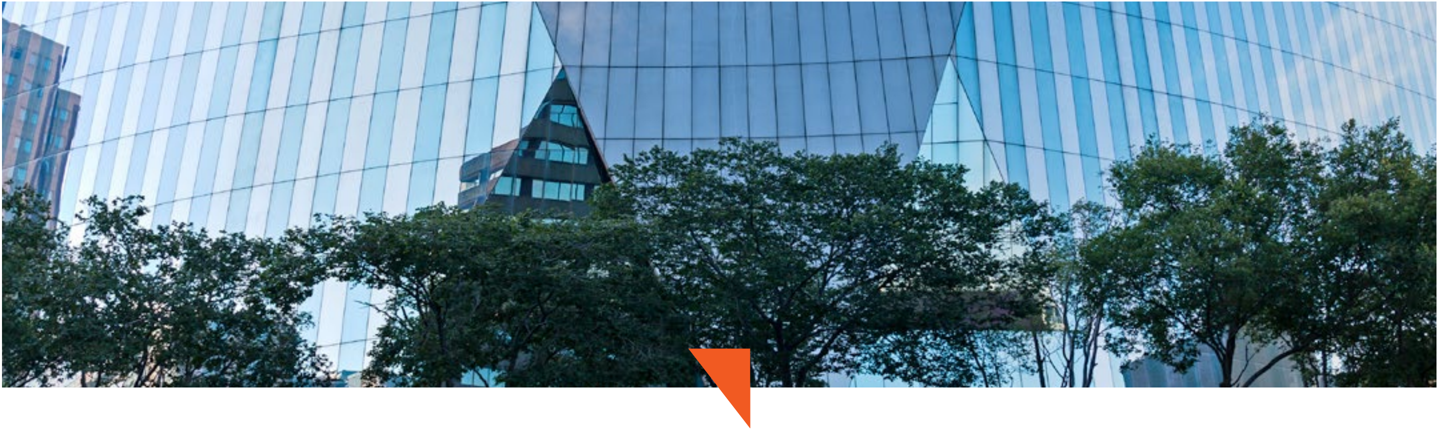
It is not necessary for any shares to be held by a South African resident, although shares held by a non-resident must be acknowledged by South African exchange control authorities or its authorised dealers.

Directors

- Public and non-profit companies must have at least 3 directors
- Private and personal liability companies must have at least 1 director

Public Officer

In terms of tax legislation, every company must appoint a South African resident to be its Public Officer who will be responsible under the Income Tax Act 58 of 1962 for all the company's tax matters.



4. Exchange Control

Authored by Conor McFadden

Introduction

The South African Exchange Control Regulations administered by the Financial Surveillance Department of the South African Reserve Bank (“**FinSurv**”), regulate the flow of capital into and out of the Common Monetary Area (“**CMA**”), which consists of South Africa, Lesotho, Namibia and Swaziland.

FinSurv has a wide discretion that is exercised in accordance with the Exchange Control Regulations (including the Orders and Rules issued under the Exchange Control Regulations) and the Exchange Control Rulings in line with the policy guidelines laid down by the Minister of Finance.

Certain banks have been appointed as ‘authorised dealers’ in terms of the Exchange Control Regulations (“**Authorised Dealers**”), and these Authorised Dealers assist FinSurv in administering the exchange control system, their authority being regulated by the Exchange Control Rulings. All applications to FinSurv must be made through an authorised dealer. It is important to determine whether Authorised Dealer or FinSurv approval is required as it may affect the closing of a transaction. Depending on the complexity of the deal an approval from an Authorised Dealer may take a week to two ; however, an approach to FinSurv may in certain circumstances, take up to four to six weeks.

Non-Residents

Authorised Dealers may allow the transfer of dividends, profits and income distributions to non-resident shareholders in proportion to their percentage shareholding and/or ownership, provided the non-resident’s share certificate is endorsed ‘non-resident’.

Non-residents who wish to invest in South Africa by means of loan capital need to obtain prior approval from an Authorised Dealer or FinSurv depending on the terms of the loan, the rates applicable to the loan, the relationship between the local borrower and foreign lender and whether there is any upfront payment of any commitment fees, raising fees and of any other administration fees payable by the borrower. Current guideline rates for inward loans are as follows:

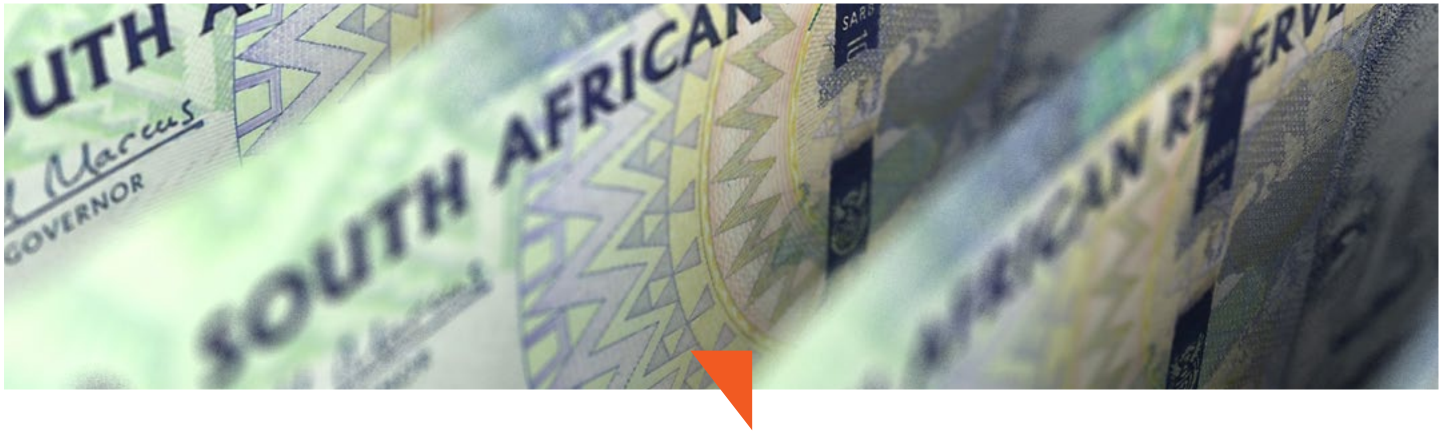
The interest rate in respect of a third-party foreign-denominated loan is the base lending rate (known as the bank rate in certain foreign jurisdictions), plus to 3 % and the base lending rate of the foreign lender in the case of shareholder loans.

The interest rate in respect of Rand-denominated loans is the prime rate plus up to 5 % on a third-party loans and prime on shareholder loans.

- **Dividends and branch profits** – Dividends and branch profits may be transferred to non-resident shareholders or owners in proportion to the percentage shareholding or ownership and provided the relative distribution will not cause the entity to be over borrowed locally.
- **Interest** – Interest income may be transferred to non-residents on local debt securities owned by them including any interest-bearing deposits which are held by a non-resident with a local financial institution in South Africa. Interest payments on loans granted to residents can be transferred to non-residents provided an Authorised Dealer is satisfied that the loan and interest rate payable has been approved by FinSurv (either on the reporting system or by way of an application to FinSurv).
- **Royalties** – Payment of royalties or similar fees for the use of know-how, patents, designs, trademarks, copyright or similar property, to non-residents in respect of local manufacturing of a product, are subject to the approval of the Department of Trade and Industry. Any other royalty (where there is no local manufacture) is subject to the prior approval of FinSurv.
- Directors' fees.

Security

A guarantee, cession of bank accounts, pledge of shares and cession of loan claims, among others, in favor of a non-resident, will in most instances require the specific approval of FinSurv.



5. Taxation In South Africa

Authored by Conor McFadden

Introduction

South Africa's tax system entails both direct and indirect taxation.

The direct taxes imposed in South Africa are:

- Income tax
- Capital gains tax ("**CGT**")
- Dividends tax
- Donations tax
- Estate duty
- Various withholding taxes

The indirect taxes imposed in South Africa are:

- Valued-added tax ("**VAT**")
- Securities transfer tax ("**STT**") (previously stamp duty/ uncertificated securities tax)
- The mining royalty
- Transfer duty
- Customs and excise duty

Income Tax

Tax Rates

Companies and close corporations are taxed at a flat rate of 28% on taxable income.

South African branches of foreign companies pay 28% on taxable income.

A 20% dividends tax is charged or withheld, subject to certain exemptions as well as reductions under applicable double tax treaties.

Individuals (natural persons) pay tax based on a sliding scale with a maximum marginal rate of 45%.

Conventional trusts are taxed at a rate of 45% on all taxable income.

Residence

South Africa applies a residence-based tax system, which means that residents are taxed on their worldwide income irrespective as to where the income is earned. However, source continues to be relevant since persons who are not resident in South Africa are subject to tax in South Africa on all income which is derived from a South African source. Relief is available for foreign taxes paid on income earned in foreign jurisdictions, but only up to the amount of the equivalent South African tax payable on such income.

A natural person may qualify as a resident in one of two ways:

- **By being 'ordinarily resident' in South Africa.** In terms of South African case law, a person is ordinarily resident in the country to which that person 'would naturally and as a matter of course return from wanderings'. It is the place that may most aptly be described as the person's real home.
- **By qualifying under the 'physical presence' test.** A person who is not ordinarily resident will be deemed to be a resident if he or she is physically present in South Africa for more than 91 days in each of the current and preceding five years and for a period or periods exceeding 915 days in aggregate during the preceding five years. This means that a person who never spends more than 182 days in South Africa in any year of assessment will never qualify under the physical presence test.

A company, trust or similar juristic entity is deemed to be a resident if it is incorporated, established, formed or has its place of effective management in South Africa. The term 'effective management' is currently interpreted as being the place where the company is managed on a regular day-to-day basis by the executive directors or senior managers of the company, irrespective of where the overriding or central management and control is exercised, or where the board of directors meets. However, the Organisation for Economic Co-operation and Development guidelines look at where the shots are called by the more senior management of the company and the South African Revenue Service ("**SARS**") appears to be moving towards this approach.

It is important to note that the place from where the entity is managed and controlled (that is the place where strategic decision-making and control takes place) need not be the same as the place from where it is effectively managed, although in practice they often coincide. However, a resident excludes any person who is deemed to be exclusively a resident of another country by virtue of a double tax treaty.

Foreign Companies

Where one or more South African residents (excluding headquarter companies) together, directly or indirectly, own or control more than 50% of the voting or participation rights in a foreign company, then it is a 'controlled foreign company' ("**CFC**") in relation to those residents. In such a case, the income of a CFC is imputed to the controlling holders in proportion to their holdings, subject to certain exclusions and tax credits where applicable.

Headquarter Companies

A headquarter company is a resident company that is substantially held by non-resident shareholders and at least 80% of the total asset value (excluding cash and cash equivalents) of that company can be attributed to either:

- Any equity interest in
- Any amount advanced or loaned to
- Any intellectual property that is licensed by that company to, any foreign company in which the resident company, whether alone or together with any other company forming part of the same group of companies as the resident company, holds at least 10% of the equity shares and voting rights

Subject to certain conditions, dividends, interest and royalties accruing to headquarter companies are not taxable. The effect thereof is that the headquarter company is a conduit through which its non-resident shareholders invest in non-resident entities and earn income in the form of dividends, interest, royalties and 'capital' gains. Dividends paid by qualifying headquarter companies are exempt from dividends tax.

Capital Gains Tax

CGT is not a separate tax from income tax but is 'normal tax' payable on the taxable portion of a capital gain. CGT is a tax levied on capital gains arising from the disposal of assets. A capital gain arises when the proceeds from the disposal of an asset exceed the base cost of that asset. South African resident companies and individuals would be subject to CGT on the disposal of their worldwide assets subject to the applicability of a double tax treaty.

In the case of a South African resident company an effective tax rate of 22.4% applies and in the case of a South African resident trust (other than a special trust) a rate of 36% applies. For individuals or a special trust the effective tax rate is up to 18%.

In addition, individuals and special trusts are entitled to an annual exclusion of Rand 40,000, being the amount of an individual's aggregate annual capital gain or loss that is disregarded for CGT purposes.

Should a taxpayer realise a net capital loss during the year of assessment, the loss cannot be used to reduce other taxable income, but is carried forward to be offset against future capital gains.

Non-residents are liable for CGT on the following assets:

- Immovable property situated in South Africa (e.g. land and buildings)
- Any right or interest in immovable property in South Africa (e.g. a long-term lease)
- An equity share in a company or ownership or the right of ownership or a vested interest in assets of a trust where 80% or more of the market value (at the time of disposal of that share or interest) is attributable to immovable property in South Africa that is held otherwise than as trading stock and, in the case of a company or other entity, the non-resident holds directly or indirectly 20% or more of the equity shares or ownership in the company
- Assets of a permanent establishment (e.g. a branch of a foreign company) situated in South Africa

Relief may, however, be available under a double tax treaty.

Capital Allowances

Expenditure is, in general, deductible if it is not of a capital nature and has been incurred in the production of income, but only to the extent that it is laid out or expended for the purposes of trade. Limited allowances for capital expenditure are granted.

Transfer Pricing And Thin Capitalisation Rules

Transfer pricing applies where connected persons enter into a transaction, the terms of which are different from what they would have been had the persons been independent and dealing at arm's length. Where such a transaction results in a tax benefit to any party thereto, that person's tax liability must be calculated as if the transaction was entered into on an arm's length basis between independent persons.

South Africa's thin capitalisation rules have been incorporated into the transfer pricing rules to the effect that where the transaction involves the granting of financial assistance, any tax benefit will be negated by the requirement that a person's tax liability must be calculated with reference to the arm's length principle. Excessive interest deductions on foreign debt not found to comply with the arm's length principle will thus be denied. The amount of the disallowed interest deduction will be subject to a secondary adjustment in the form of a deemed dividend or donation.

Previously, the South African Revenue Service recognised a 'safe-harbour' debt to equity ratio of 3:1. However, since 1 April 2012, the South African Revenue Services no longer recognises a 'safe-harbour' rule. A draft interpretation note on the issue has been released but is yet to be finalised.

Withholding Taxes

Royalties paid to non-residents attract a withholding tax of 15%.

A withholding tax of 15% is also levied on the income of visiting entertainers and sportspersons.

A withholding tax of between 7.5% to 15% is deductible from the proceeds of the sale of immovable property by a non-resident unless it relates to the activities of the South African permanent establishment of the recipient.

A withholding tax of 20% is levied on dividends paid by resident companies.

A 15% withholding tax on interest paid to non-residents applies from 1 March 2015. Interest attributed to a permanent establishment outside South Africa will be exempt from the withholding tax. Most importantly, inter-company cross-border debt will be subject to the withholding.

The above withholdings are subject to any reduction or elimination under a double tax treaty.

Double Taxation Agreements

South Africa has concluded bilateral agreements for the avoidance of double taxation with more than 70 countries and is continually increasing this number. Most of the agreements are comprehensive, while there are several limited sea and air transport bilateral agreements in force.

Value Added Tax (“Vat”)

VAT must be charged and paid over by all suppliers of goods and services (other than very limited exempt goods and services).

The current standard rate is 15%.

All suppliers of goods and services having an annual turnover currently exceeding Rand 1 million are obliged to register as VAT vendors and to charge output tax. Other vendors (but excluding micro businesses) may elect to register as VAT vendors provided their annual turnover exceeds Rand 50,000.

Services rendered by a vendor to a non-resident generally qualify for zero-rating (i.e. the levying of VAT at 0%) provided that the non-resident is not in South Africa at the time the services are rendered.

Venture Capital Companies

Certain investors may, subject to certain limitations, deduct the cost of shares issued by a venture capital company (“**VCC**”). A VCC does not carry on any trade; it invests in the equity of small and medium-sized companies.

Estate Duty

Estate duty is payable in respect of the estate of every natural person who dies and who was ordinarily resident in South Africa at the date of their death. Generally, assets that belonged to a person at the date of death will fall within their estate regardless of whether the assets are situated in South Africa.

The estate of a deceased person is subject to 20% Estate Duty on the first Rand 30 million of the dutiable amount of an estate and 25% on the amount exceeding that figure, after taking into account a deduction of Rand 3.5 million against the net value of the estate.

Donations Tax

A donation is a gratuitous disposal of property including a gratuitous waiver or renunciation of a right. For donations tax purposes it is also deemed to be the difference between the actual consideration and an adequate consideration for a disposal.

A tax of 20% is imposed on donations made by residents, subject in the case of natural persons to an annual exemption of Rand 100,000. Persons other than natural persons may make casual donations of not more than Rand 10,000 per annum without incurring the tax. Public companies are exempt from donations tax, as are donations in the public interest to recognised public benefit organisations, institutions for the advancement of science or art, political parties and spheres of government. Donations between members of the same group of companies are exempt.

Non-residents are not liable for donations tax.

The person making the donation (donor) is liable for the tax but if the donor fails to pay the tax within the set period the donor and donee are jointly and severally liable for the tax .

Public Benefit Organisations ("Pbos")

Organisations carrying out one or more 'public benefit' activities may apply for exemption from normal tax. Taxpayers who make donations to exempted PBOs within certain categories may deduct the value of such donations from their income, subject to limitations.

Transfer Duty

Transfer duty at between 0% and 13% is payable by purchasers of immovable property.

Oil And Gas

Oil exploration companies enjoy special provisions consisting in the main of four incentives:

- Operating expenses, including pre-exploration and pre-production costs, are fully deductible
- The rate of dividends tax payable from these companies is 0%
- Capital expenditure is fully deductible plus an additional 100% for exploration assets and 50% for production assets
- The tax regime in operation at the time a lease is entered into will continue to apply, unless subsequent changes to the legislation make it more favourable for the taxpayer to choose the amended provisions

Securities Transfer Tax (“Stt”)

STT is payable at 0.25% of the consideration, closing price or market value (whichever is greater) on the transfer, cancellation or redemption of any listed or unlisted share in a company, or member’s interest in a close corporation.

Mining Royalties

A person engaged in extracting a mineral resource in South Africa must pay a once off royalty in respect of the transfer of that mineral. The royalty is based on a formula and the amount payable depends on whether the mineral is transferred in a refined or unrefined state. The latter being capped at 7% and the former at 5%.

The Davis Tax Committee

In February 2013, the South African Minister of Finance, when tabling the 2013/14 Budget, announced that the South African government will initiate a tax review to assess its tax policy framework and its role in supporting the objectives of inclusive growth, employment, development and fiscal sustainability. The committee set up to conduct the review is known as The Davis Tax committee (“**DTC**”). The DTC will make recommendations to the Minister of Finance and any tax proposals arising from these recommendations will be announced as part of the usual budget and legislative processes.

6. Investment in Real Estate in South Africa

Authored by Johan Coetzee

We set out below a general overview of the various aspects of real estate ownership in South Africa.

Right To Property

Section 25(1) of the Constitution of the Republic of South Africa, 1996 (the deprivation provision) protects property rights in so far as it states that "*no one may be deprived of property except in terms of a law of general application and no law may permit an arbitrary deprivation of property*".

Although the constitutional clause does not constitute a positive guarantee to the right to property, it does grant negative protection (a negative guarantee) to property rights in that these rights may only be regulated within the framework of a law of general application and as such interference may not be arbitrary.

In terms of Section 25(2) (the expropriation provision), property may be expropriated in terms of a law of general application provided that compensation has been paid and the expropriation is for a public purpose or in the public interest. The amount of compensation to be paid is determined with reference to the factors listed in Section 25(3).

Land Tenure And Rights In Land

Although South Africa still recognises a historic system of 99-year leasehold, the primary real right in land is that of ownership, akin to the English concept of 'freehold' title, and most land in South Africa is held by outright ownership.

While the common law ownership of land includes the ownership of all fixed improvements erected on the land, South African law also recognises separate ownership of buildings or parts of a building (sectional title units). Such ownership is regulated by the Sectional Titles Act 95 of 1986.

Statutory rights in land are also provided for in the Share Blocks Control Act 59 of 1980 ("**Share Blocks Control Act**"). This form of tenure entitles the holder of shares in a share block company to the use and enjoyment of land owned or leased by the share block company. This form of tenure is not registered in a deeds registry and the rights attaching thereto are protected by the Share Blocks Control Act.

In South African law, lessees are protected for a period up to ten years by virtue of the '*huur gaat voor koop*' rule. In essence this rule grants real protection to lessees for ten years in instances where the lessor has sold the property to a third party. The new owner must abide by the provisions of the lease even though he was not a signatory to the original lease agreement. Should the lessee wish to have similar protection after the expiry of ten years, such lease will have to be registered in the deeds office, failing which the lessee will only be protected from eviction if the purchaser of the property was aware of the lessee at the time when he purchased the property.

Rights to minerals in South Africa are regulated by the Mineral and Petroleum Resources Development Act 28 of 2002 ("**MPRDA**"). The MPRDA makes provision for equitable access to and development of the nation's mineral and petroleum resources, and recognises the internationally accepted right of the State to exercise sovereignty over all the mineral and petroleum resources within South Africa. Provision is made in the MPRDA for guaranteeing security of tenure in respect of prospecting and mining operations. The registration of mineral and petroleum titles and other related rights and deeds is effected at the Mineral and Petroleum Titles Registration Office, in accordance with the provisions of the Mining Titles Registration Act 16 of 1967.

Rights in land are further subject to regulation relating to environmental issues and concerns. Applicable legislation such as the National Environmental Management Act 107 of 1998 ("**NEMA**") is aimed, among other things, at preventing pollution and ecological degradation, promoting conservation and securing ecologically sustainable development and use of natural resources while promoting justifiable economic and social development. Certain activities require authorisation before they may be conducted. For example, an environmental impact assessment and environmental authorisation may be required under the NEMA's Environmental Impact Assessment Regulations, where a landowner intends to develop his or her property. Please refer to the Environmental law chapter below for further details.

Regulation Of Real Estate Transactions

The transfer of ownership in land is effected by registration in a Deeds Registry in accordance with the provisions of the Deeds Registries Act 47 of 1937. South Africa boasts a sophisticated and efficient system of land registration.

The system is one of registration of title as opposed to a system of registration of deeds, as is found in many Western countries. Although the system of registration may be described as a negative system, that is one in which the state does not guarantee title, disputes as to the validity of title are few and far between. The South African system of registration effectively provides the registered owner of land with security of title.

This security of title is the result of the respective responsibilities carried by professional land surveyors (under authority of a Surveyor-General), the Deeds Registries established throughout South Africa and an independent attorneys' profession. In the latter case, the preparation and execution of deeds requires the services of an attorney in professional practice, who has passed a specialist examination in the law and practice of conveyancing, and has been admitted to practice as a conveyancer by the High Court of South Africa.

The information registered the Deeds Registries is freely accessible to the public. The holder or owner of the rights is clearly identified by his unique Identity Number. Similarly, the land to which his rights relate is identified by a cadastral diagram and all use rights or restrictions on use relating to the land together with any rights registered in favour of third parties are reflected on the Title Deed (Document of Ownership).

The majority of the records in the Deeds Registries are now computerised and are retained on micro film to increase efficiency and save space. Most attorneys in South Africa have direct on-line access to the records in the Deeds Registries.

In terms of South African Law, no agreement for the acquisition of ownership of land or real rights in land (rights which are enforceable not against a single person, but the whole world) is of any force or effect unless it is recorded in writing and is signed by all the parties to the agreement or their duly authorised representatives. This does not include leases which can either be oral or in writing. Leases of land for periods in excess of 10 years are not binding on third parties who are unaware of their existence, unless the lease is also registered in the Deeds Registry (which necessitates that it be reduced to writing).

How To Secure Land Rights

If you wish to secure ownership of land or some other right to use land such as a lease, or rights to prospect for or mine mineral resources, you are advised, in the first instance, to consult an attorney in South Africa.

After he has been briefed on your needs and requirements, he will be able to advise you of the relevant legal aspects and put you in touch with estate agents, developers or others who could assist you in identifying suitable land.

The attorney could then assist you in negotiating an acceptable agreement for the acquisition or leasing of the land and for the development of the land in accordance with your requirements.

Taxes, Duties And Fees

Transactions relating to the acquisition and disposal of land are subject to payment of taxes and duties. Fees are payable to a Deeds Registry in respect of each transaction registered. Professional fees are also payable to a conveyancer.

Before a purchaser can obtain transfer of land, he is required to pay transfer duty or VAT which is calculated on the purchase price of the property.

If the seller is registered as a vendor for the purposes of the Value Added Tax Act 89 of 1991, then VAT, rather than transfer duty is payable, on the purchase price of a property. At present, this is 14% of the purchase price.

The below transfer duty rates apply to properties acquired on or after 1 March 2017, and apply to all persons (including companies, close corporations and trusts):

Value Of Property (Rand) Rate

Rand 0 to Rand 900,000	0%
Rand 900,001 to Rand 1,250,000	3% of the value exceeding Rand 1,250,000
Rand 1,250,001 to Rand 1,750,000	Rand 10,500 + 6% of the value exceeding Rand 1,250,000
Rand 1,750,001 to Rand 2,250,000	Rand 40,500 + 8% of the value exceeding Rand 1,750,000
Rand 2,250,001 to Rand 10,000,000	Rand 80,500 + 11% of the value exceeding Rand 2,250,000
Rand 10,000,000 and above	Rand 933,000 + 13% of the value exceeding Rand 10,000,000

Rates are levied on land by the local authorities or municipalities to enable them to provide the various municipal services, such as sewerage, refuse removal, and electrical and water reticulation to townships. Such rates are calculated on the basis of the market value of the property concerned.

7. Broad-Based Black Economic Empowerment

Authored by Paul Fouche

Introduction

The Broad-Based Black Economic Empowerment Act 53 of 2003, as amended, ("**B-BBEE Act**") is the framework legislation which regulates B-BBEE and sets out the objectives to be achieved.

The B-BBEE Act prohibits any fronting practices, which are defined in the B-BBEE Act as including any transaction, arrangement or other act or conduct that directly or indirectly undermines or frustrates the achievement of the objectives of the B-BBEE Act.

Fronting practices include conduct or initiatives, such as, the conclusion of a legal relationship with a black person for the purpose of that enterprise achieving a certain level of B-BBBEE compliance without granting that person the economic benefits that would reasonably be expected to be associated with the status or position held by such a person. Engaging in fronting practices constitutes an offence and will result in either a fine or imprisonment, or both. If the convicted person is a company it will result in a fine not exceeding 10% of its annual turnover.

Generic Codes Of Good Practice

The Revised Codes of Good Practice on B-BBEE ("**Revised Codes**"), published by the Minister of Trade and Industry in terms of the B-BBEE Act, came into effect on 1 May 2015. The Revised Codes introduced a generic scorecard as the basis upon which B-BBEE compliance is measured. The Revised Codes contains five elements against which B-BBEE compliance is measured and assessed:

- Ownership
- Management Control
- Skills Development
- Enterprise and Supplier Development
- Socio-economic Development

The B-BBEE Status of an entity is taken into account when the State or other public entities award contracts in the private sector and is further taken into account in relation to the granting of statutory permits, licenses, concessions, the formation of public private partnerships and the sale of state owned assets.

The relevance of B-BBEE compliance is not limited to conducting business with the State or public entities. The corresponding Recognition Level attached to the B-BBEE Status is an important factor that drives B-BBEE compliance because an entity which supplies goods and services to another entity (customer) affects the total B-BBEE score of the customer to which it is a supplier.

Ownership, skills development, and enterprise and supplier development, are classified as priority elements. Failure to meet a subminimum threshold target set for each of these priority elements will result in the B-BBEE status level of an entity being verified being discounted by one level.

In addition to having a favorable B-BBEE Status, entities must also qualify as an Empowering Supplier to contribute to the B-BBEE status of its customers. An Empowering Supplier is a B-BBEE compliant entity, which is a good "citizen" that complies with all regulatory requirements of the country and meets certain B-BBEE criteria relating to procured from local producers or suppliers, job creation for Black people, transformation of raw material/beneficiation and skills transfer to small Black businesses.

B-BBEE In The Mining Industry

B-BBEE in the mining industry by contrast is regulated by the "Amendment of the Broad-Based Socio-Economic Empowerment Charter for the South African Mining and Minerals Industry" ("**Mining Charter**"), promulgated in 2010 in terms of the MPRDA.

The Mining Charter is implemented by the Department of Mineral Resources ("**DMR**") and sets out the various targets that companies conducting mining activities need to comply with in order to demonstrate that they are meeting the transformation goals applicable to the mining industry.

Although not directly applicable to companies that supply to the mining industry, the Mining Charter imposes strict obligations on mining companies in respect of the suppliers from whom they procure capital goods, consumer goods and services from.

Compliance with the Mining Charter is a condition upon which mining rights are issued to and retained by mining companies.

At present the DMR and the Chamber of Mines are in dispute about a new 2017 Mining Charter ("**Mining Charter III**") that the Minister of Mineral Resources published in 2017. The operation of Mining Charter III has been suspended pending finalisation of consultation by the Minister with relevant stake holders. The final version of Mining Charter III is expected to be published towards the end of 2018.

8. Competition Law

Authored by Neil MacKenzie

In line with international trends, the South African competition authorities are currently promoting a strong culture of compliance with the relevant laws. The Competition Act 89 of 1998 (“**Competition Act**”) grants the regulator, the Competition Commission (the “**Commission**”), wide investigative and enforcement powers.

The Competition Act applies to all economic activity within or having an effect within South Africa. An anticompetitive effect is not necessary to trigger application of the Competition Act. Any effect, whether benign, negative or positive is sufficient.

South Africa’s competition laws in relation to both merger control and prohibited practice policing are introduced below.

Merger Control

The Competition Act requires every merger that meets particular financial thresholds to be notified to the competition authorities.

A merger occurs when one or more firms directly or indirectly acquire or establish control over the whole or a part of the business of another firm. This includes acquisition of the assets or shares of another firm, and so-called “de facto” control, which can be achieved in any manner that confers the ability to materially influence the commercial policy and strategy of the target firm.

Authorisation must be obtained before implementation of a proposed transaction.

Thresholds

Notifiable mergers are classified as small, intermediate or large according to particular turnover thresholds.

A merger is **small** if (according to the firms’ most recent audited financial statements):

- The combined turnover, combined assets or combination of turnover and assets of the acquiring firm and the target firm are less than Rand 600 million
- The turnover or asset value of the target firm is less than Rand 100 million

A merger is **intermediate** if (according to the firms' most recent audited financial statements):

- The combined turnover, combined assets or combination of turnover and assets of the acquiring firm and the target firm exceed Rand 600 million, but are less than Rand 6.6 billion
- The turnover or asset value of the target firm exceeds Rand 100 million, but is less than Rand 190 million

A merger is **large** if (according to the firms' most recent audited financial statements):

- The combined turnover, combined assets or combination of turnover and assets of the acquiring firm and the target firm exceed Rand 6,6 billion
- The turnover or asset value of the target firm exceeds Rand 190 million

In applying these thresholds, the relevant turnover is that generated during the most recent completed financial year in, into or from South Africa according to the firm's most recent, audited annual financial statements.

The relevant asset value is calculated based on those assets in South Africa reflected in its most recent audited annual financial statements.

For purposes of calculating turnover and asset value of the acquiring firm, the relevant turnover or asset value is that of the entire acquiring group, and not just the acquiring entity. In other words, 'acquiring firm' should for practical purposes be read to mean 'acquiring group'.

The greater of the firms' turnover or asset values is used to determine whether the thresholds are met.

Procedure And Timing

Small mergers generally do not require competition approval. However, if a small merger has an adverse effect on competition or raises significant public interest concerns, the parties may wish to notify the Commission or the Commission may require notification. If one of the merging parties is under investigation by the Commission or is being prosecuted before the Competition Tribunal, the Commission's *Small Merger Guidelines* recommend that the Commission must be informed of the merger.

Intermediate mergers require prior notification to and approval of the Commission. The Commission has a review period of 60 business days after a complete filing (in simple cases, the review period generally lasts about 20 to 40 business days. This is subject to the Commission's workload). Intermediate mergers giving rise to competition or public interest issues are likely to take the full 60 business day period to review.

Large mergers require prior notification to the Commission, which investigates and makes a recommendation to the Competition Tribunal. Following a hearing, the Tribunal decides the case. The Commission is allowed 40 business days to make its recommendation to the Tribunal. This may be extended by a further 15 business days at a time, on application to the Tribunal or by agreement with the merging parties. There is no limit to the number of extensions that can be sought, which means the review period can vary substantially, depending on the complexity of the case. Mergers that do not give rise to competition or public interest issues may be approved within 2 or 3 weeks after recommendation to Tribunal. Contentious or opposed mergers may take several months for approval.

Filing fees payable to the Competition Commission for an intermediate merger are Rand 165,000. The fee for a large merger is Rand 550,000.

Failure to notify before implementing a notifiable transaction may result in a fine up to 10% of the total turnover of the parties to the transaction. The Commission has issued Guidelines on how it would calculate the applicable fine.

National Security Filing

In addition to the competition authorities merger review process, the Amendment Act has introduced a parallel notification and investigation process to be administered by a committee, established by the President. This committee will determine whether the merger has an “adverse effect” on national security interests. This process will only apply to merge filing within designated areas or sectors prescribed by the President.

Prohibited Practices

The Competition Act prohibits a number of unilateral and collaborative practices. This includes both “conventional” prohibited practices which are in line with similar laws in Europe and the USA, and a number of novel prohibitions aimed at protecting and assisting small and medium sized businesses and firms owned or controlled by historically disadvantaged persons.

Per Se Prohibitions

The following conduct is automatically unlawful and carries a penalty of up to 10% of annual turnover for a first offence:

- Price fixing, market allocation or collusive tendering by competing firms.Resale price maintenance by firms in a vertical relationship

“Rule Of Reason” Or “Effects-Based” Prohibitions

Arrangements between parties in a vertical or horizontal relationship are prohibited if the anticompetitive effect of the conduct outweighs any associated efficiency, technological or pro-competitive gain.

In line with competition laws globally, South African competition law also prohibits abuse of dominance.

Dominance is defined by reference to a combination of market share thresholds as well as a firm’s “market power”. Of most relevance is that a firm with a market share of 45% or more is deemed dominant.

Certain exclusionary abuse of dominance listed in Section 8(i)(d) of the Competition Act are analysed based on their effect on competition, but carry a fine of up to 10% of turnover for a first contravention. These include:

- Requiring or inducing a supplier or customer to not deal with a competitor

- Refusing to supply scarce goods to a competitor
- Selling goods or services on condition that the buyer purchases separate unrelated goods or services
- Predatory pricing
- Buying-up scarce intermediate goods or resources required by a competitor
- Margin squeeze

Any other "exclusionary act" by a dominant firm may be abusive and unlawful if it has an anti-competitive effect which is not outweighed by pro-competitive gains.

The Competition Act also prohibits anti-competitive price discrimination, excessive pricing and refusal by a dominant firm to give access to an essential facility when it is economically feasible to do so. Price discrimination may also be unlawful if it impedes small or medium businesses, or of firms owned or controlled by historically disadvantaged persons from effective participation in the market.

In addition, it is illegal to abuse a positon of buyer power in certain industries, by requiring or imposing unfair prices or trading conditions from suppliers that are small or medium businesses of firms owned or controlled by historically disadvantaged persons.

Criminal Liability For Cartel Conduct

Since 1 May 2016, individual criminal liability applies to directors and managers who cause a firm to engage in cartel activity or 'knowingly acquiesce' in such activity. The maximum sentence for an individual is 10 years imprisonment and / or a fine of up to Rand 500,000.

Market Inquiries

The Commission has the power to launch a market inquiry into an industry or sector to examine whether there are features or a combination of features in the sector which prevent, distort or restrict competition. The outcome of such inquiries may be investigations into prohibited conduct, orders containing measures to rectify any issues identified that distort competition, or a recommendation to the Competition Tribunal for an order of divestiture.

9. Industrial Relations

Legal Framework

South African labour law is mainly regulated by the Labour Relations Act (“**LRA**”), the Basic Conditions of Employment Act (“**BCEA**”) and the Employment Equity Act (“**EEA**”). Other important acts are the Occupational Health and Safety Act, the Compensation for Occupational Injuries and Diseases Act, the Skills Development Act and the Unemployment Insurance Act.

The LRA applies to all employees, with the exception of employees of the National Defense Force, the National Intelligence Agency and the South African Secret Services. Amongst other things, the LRA:

- Provides that every employee has the right to freedom of association, which includes the right to join a trade union and take part in its activities (the LRA regulates the registration of trade unions and employers’ organisations, which, in turn, bestows upon trade unions a number of benefits, including organisational rights)
- Provides for both closed shop and agency shop agreements
- Regulates:
  - Collective bargaining, including registration of Bargaining Councils and statutory councils
  - The requirements for protected industrial action, for both strikes and lock-outs
  - A system of dispute resolution. The Commission for Conciliation, Mediation and Arbitration (“CCMA”), the national Labour Court and Labour Appeal Court (“LAC”) were created by the LRA. The function of the CCMA is to seek to resolve disputes actively by way of a conciliation process, and thereafter by arbitration, with a minimum of legal formalities. The Labour Court has the status of the High Court, and has jurisdiction over all matters arising from the LRA, except where arbitration by the CCMA is specifically provided for. The LAC has been established to hear appeals against final judgments and orders of the Labour Court. The LRA also recognises private dispute resolution procedures
- Codifies many of the principles developed by the previous Industrial Court and the LAC in respect of unfair dismissal. The LRA recognises three grounds for a fair dismissal, namely, the employee’s conduct, capacity, or the employer’s operational requirements. Even when one of these grounds exist, the employer is not precluded from proving the substantive and procedural fairness of such a dismissal. The LRA also provides for automatically unfair dismissals

The Basic Conditions of Employment Act ("**BCEA**") regulates the minimum conditions of employment for all employees in South Africa, both in the private and public sector, with the exception of members of the National Defense Force, the National Intelligence Agency and the South African Secret Service. It also applies to unpaid workers working for charitable organisations.

In its preamble, the Employment Equity Act ("**EEA**") recognises that the apartheid regime caused disparities in employment, occupation and income within the labour market and that these disparities have created such pronounced disadvantages for certain categories of people that they cannot be redressed simply by repealing discriminatory laws. The EEA prescribes the implementation of compulsory affirmative action programmes by employers that employ more than 50 employees or if the employer's annual turnover exceeds prescribed turnover thresholds. The EEA extends protection to all employees against unfair discrimination in the workplace.

The Occupational Health and Safety Act places a duty on employers to maintain a safe work place and to minimise the exposure of employees and the public to workplace hazards.

The Compensation for Occupational Injuries and Diseases Act provides 'no fault' compensation for employees who are:

- Injured in accidents that arise in the course of their employment
- Who contract occupational diseases

Employees are entitled to compensation regardless of whether their injury or illness arose as a result of fault on the employer's part or the fault of any third party. Employees are, however, prevented from instituting delictual claims against their employers for damages suffered as a result of such an accident or a disease. Employees are entitled to additional compensation if they can establish that their injury or disease was caused by the negligence of the employer.

The Unemployment Insurance Act ("**UIA**") establishes an Unemployment Insurance Fund ("UIF")to which both employers and employees contribute. The following benefits are paid from the Fund:

- Unemployment benefits
- Illness benefits
- Maternity benefits
- Adoption benefits
- Benefits to the dependents of deceased workers

All employees are covered by the UIA, with the exception of the following categories of employees:

- Employees employed for less than 24 hours per month, and their employers
- Employees under a contract in terms of Section 18(2) of the Skills Development Act 1998 and their employers
- Employees in the national and provincial spheres of government who are officers of employees as defined in the Public Service Act 103 of 1994 and their employers
- Persons who entered South Africa for the purpose of carrying out a contract of service, apprenticeship or training within South Africa if, upon the termination of the contract the employer is required by law, or by the contract of service, apprenticeship or training, as the case may be, to repatriate that person, or if that person is so required to leave South Africa, and their employers

Selection For Recruitment

Employers may not act in a discriminatory manner when recruiting employees, except to the extent that the EEA allows employers to prefer an affirmative action candidate who is suitably qualified for the position, in order to achieve equitable access to positions for all races and genders within the workplace.

Affirmative action is defined by Section 15(1) of the EEA, as measures designed to ensure that suitably qualified people from designated groups have equal employment opportunities and are equitably represented in all occupational categories and levels in the workforce of a designated employer. Employees from designated groups are defined as black people, women and people with disabilities. Black people is a generic term used in the EEA which means Africans, Coloureds and Indians.

Discrimination (other than in terms of affirmative action measures) is prohibited by the EEA if the reason for the disparate treatment is based on the applicant's race, gender, pregnancy, marital status, family responsibility, ethnic or social origin, sexual orientation, age, disability, religion, HIV status, conscience, belief, political opinion, culture, language, or any other arbitrary ground.

When short listing or selecting candidates, employers should ensure that any decision is based on consistent selection criteria, which are not discriminatory and are relevant to the inherent job requirements.

Employment Contract

The BCEA prescribes the minimum statutory terms and conditions of employment such as annual leave, sick leave, maternity leave and family responsibility leave and notice of termination.

There is no general statutory requirement that a written contract must be entered into or signed, provided the employer has complied with the requirement to furnish the employee with the written particulars of employment.

Agreements between employers and employees, collective agreements between employers and trade unions, collective agreements concluded at Bargaining Council level, sectoral determinations and Ministerial variations may amend certain levels of basic conditions of employment (except several core rights) prescribed by the BCEA, and such collective instruments take precedence over provisions in contracts of employment between the employer and the employee. In addition a national minimum wage is being considered by Government.

Unless excluded by agreement, some common law obligations, implied and tacit terms may also apply to the employment agreement.

Persons rendering services as independent contractors, rather than employees, are excluded from all employment related benefits and protections, including for instance the right not to be unfairly dismissed, as it is found in the LRA and minimum conditions of employment found in the BCEA. Whether a person is an employee or an independent contractor depends on the specific circumstances, and will be determined based on the actual manner in which the person renders the services, rather than the terms of the contract (insofar as the two differ).

Immigration And Citizenship

All foreign employees in South Africa must hold an appropriate work visa if they do not have permanent residence. Detailed conditions governing the admission and residence of foreign nationals into South African territory are regulated by a system of entry visas and administered by the Department of Home Affairs, in accordance with the provisions of the Immigration Act 13 of 2002. South Africa generally recognises three different categories of work visas (intra-company, critical skills and general).

A local sponsor for a work visa is generally required and under some categories of work visa it may be necessary to show that no local person is capable of filing the vacant position, it is further generally necessary to show that no local person is capable of filling the applicant's position.

A person is not permitted to work in South Africa with a work visa pending, so employers should ensure that the application is submitted well in advance of the employee's commencement date.

A-Typical Forms Of Employment

In recognition of the business need to have some flexibility in obtaining required services that meets the business' particular needs, various ways may be employed to allow for non-standard employees, (where the standard method will be full-time, permanent employment). Commonly used non-standard employment types include:

- Fixed term contracts of employment
- Independent contracting arrangements
- Placements through temporary employment services ("TES")
- Part-time employment

Courts will give effect to the reality of the relationship, rather than the contractual terms, where the two differ.

Legislative amendments have partially or completely limited some or all of the aforestated employment options for employees earning below a statutory income threshold (currently Rand 205,433.30 per annum). For instance, employers must be able to justify the use of fixed term employees, where such employees are utilised for more than three months failing which employment may become permanent.

In the case of temporary employment services, after three months the client is deemed to be the employer of the TES employees except if a limited number of exceptions apply. In both cases (TES employees and fixed term employees) they become entitled to the same benefits and remuneration as that of the other permanent employees, after three months.

Benefits And Entitlements

General - In addition to independent contractors, certain employees are also excluded from the protections afforded by the BCEA. Employees working for less than 24 hours per month will not be entitled to any of the protections of the BCEA, while others are only excluded from particular classes of protection.

For instance, employees earning above the statutory threshold amount are not (unless in terms of a more beneficial contract of employment) entitled to be paid for overtime worked. It is open to the parties to provide employees with benefits greater than the minimum, in terms of an individual or collective agreement. In limited circumstances, collective agreements may also result in reduced benefits and entitlements, insofar as the BCEA allows for such reductions.

Annual leave - Employees are entitled to a minimum number of paid annual leave days. The minimum period of paid annual leave is 21 consecutive days on full remuneration for each annual leave cycle, or by agreement it can be accrued based on one day's annual leave accrued for every 17 days.

Statutory holidays - There are currently 12 statutory holidays recognised in South Africa and all employees are entitled to paid leave on statutory holidays. Special overtime rates apply, to the extent that an employee is nonetheless required to work on public holidays.

Sick leave - The BCEA states that employees are entitled to paid sick leave equal to the number of days the employee would normally work in a period of six weeks, in every sick leave cycle. A sick leave cycle is 36 months and begins on commencement of employment and on completion of every prior sick leave cycle. However, during the first six months of employment an employee is only entitled to one day paid sick leave for every 26 days worked.

Rest periods - While employees may, in the normal course, be required to work up to 45 hours per week as part of their normal working week, the BCEA imposes certain minimum rest periods. For instance, employees are entitled to a minimum of 36 consecutive hours weekly and 12 consecutive hours daily rest periods.

Maternity leave - Employees are entitled, subject to conditions, to a period of four months' unpaid maternity leave. Some payment during maternity leave may be claimed in terms of the UIA and the Unemployment Insurance Contributions Act 4 of 2002, which create an UIF, largely funded by mandatory contributions from the employer and employee. However, this may be less than the employee's normal remuneration and is further reduced in the event that the employer pays partial remuneration during maternity leave.

Family responsibility leave - Employees are entitled, subject to conditions, to three days' paid leave for a defined list of family responsibilities per year. This leave cannot be accrued.

Retirement Benefits

Employers are not required to enroll their employees in a mandatory retirement fund. Where such a retirement fund is offered as a benefit of employment, both the employer and the employee are normally required by the rules of the fund to contribute to the fund at a specified rate of the employees relevant income. Retirement funds are regulated by statute. There is no obligatory national retirement fund scheme although one is contemplated by Government.

Compensation For Unemployment And Injuries

Employees in South Africa are covered in respect of injuries arising out of and in the course of employment. Employers on a monthly basis must make contributions to the statutory fund created to cover claims arising from employment related illness or injury. The benefit to the employer (that complies with the relevant health and safety and payment obligations), is that it is indemnified against claims made by employees relating to illness developed or injuries sustained at work.

Employees are, subject to conditions, entitled to unemployment compensation for a prescribed term and according to a fixed formula. Employers and employees are also obliged to contribute to another statutory fund created to provide these benefits (the UIF).

Taxation

All employees who earn income from a South African or foreign employer are liable to pay income tax. Employers are further obliged to deduct tax from an employee's salary and, in addition, have reporting duties to SARS. Employers are further obliged to make contributions to statutory training programmes, although a percentage of such contributions may be recovered, should the employer conduct, or send employees to attend, approved training programmes.

Data Privacy

Although the Protection of Personal Information Act 4 of 2013 ("**POPIA**") has been promulgated only certain sections have come into operation. Under the POPIA, employers in South Africa will have to comply with its data protection principles when collecting and using employees' personal data. Broadly, the POPIA requires that personal data should only be used for the purposes for which it was collected, or for purposes that are directly related to those purposes. The POPIA imposes obligations in relation to informing individuals of the purposes for collecting the personal data and the use that would be made of that personal data. In addition, the POPIA restricts the use and storage of personal data and requires that personal data should be collected by means that are lawful and fair. Employers are also required to ensure that the personal data is accurate and held securely.

Individuals have a right to access and correct their personal data which is held by the employer.

Termination

Where a termination of an employment contract amounts to a dismissal, the LRA requires that such dismissal must be fair. To be fair, a dismissal must be for a fair reason and according to a fair procedure.

Not all terminations of employment equate to dismissals. A termination of an employment contract that will not constitute a dismissal, is for instance when the contract was for a limited duration, and terminated by effluxion of time.

The LRA recognises three fair reasons for a dismissal: misconduct, lack of capacity (based either on ill health, or lack of the ability to perform the functions of the position to which the employee was appointed) or the employer's operational requirements.

A dismissal may be automatically unfair if the reason for the dismissal is: the employee participated in, or supported a strike; the employee refused to accept a demand in respect of any matter of mutual interest; related to pregnancy; unfair discrimination by the employer; any reason related to a transfer of a business or service as a going concern; because the employee has made a protected disclosure; or because the employee took action against the employer by exercising any right in terms of the LRA.

The employee's remedy for an unfair dismissal is reinstatement (which may have retrospective effect) and/or under specified circumstances payment of compensation limited to a maximum of 12 months' remuneration.

In the case of an automatically unfair dismissal, the remedy is reinstatement and/or where payment of compensation is appropriate, payment of compensation limited to 24 months' remuneration.

Alleged unfair dismissals for misconduct or incapacity are adjudicated by the CCMA or a Bargaining Council with jurisdiction. Such disputes are resolved by way of a conciliation meeting followed by arbitration if the matter cannot be settled. With a few exceptions, dismissals for operational requirements and automatically unfair dismissals are adjudicated by the Labour Court.

Challenges to arbitration awards of the CCMA are limited to reviews on restricted grounds, while an appeal lies from the Labour Court to the LAC, subject to leave to appeal being granted. The LAC is the final court of appeal in all labour matters, other than constitutional matters or matters that raise an arguable point of law of general public importance, where the Constitutional in all matters other than constitutional matters.

Notice Requirements

In South Africa, both employers and employees are permitted to terminate the employment relationship by providing notice, or for the employer, making a payment in lieu of notice. The required length of notice for employment contracts is set out in the BCEA but may be extended by the contract of employment. For indefinite period contracts the notice period is whatever the contract provides, but not less than one week if the employee has been employed for six months or less, two weeks if the employee has been employed for more than six months but less than one year, and one month if the employee been employed for a year or more. Employers may however only terminate the employment relationship if one of the aforementioned fair reasons exist, and pursuant to having followed the correct process.

An employer is entitled to summarily dismiss an employee (i.e. without a notice period) after having followed a fair process in certain limited circumstances of gross misconduct. Employers should note that the threshold to justify a summary dismissal in South Africa is high.

Procedural Requirements

The LRA requires that an employer must follow a fair process prior to dismissing an employee for one of the authorised fair reasons for dismissal (i.e. misconduct, incapacity or operational requirements). The procedure to be followed differs depending on the reason for the dismissal. The procedure to be followed in the event of operational requirement dismissals is the most regulated, given that this type of dismissal normally affects more than one employee, and therefore has the greatest societal impact.

Termination Payments

An employee may be entitled to the following payments on termination: accrued but unpaid remuneration for work performed; a payment in lieu of notice (if the employer elects that the employee should not work the notice period); and accrued but unpaid leave pay.

In addition, employees who are dismissed by reason of redundancy or for operational requirements are entitled to a severance payment if they have been employed for 12 consecutive months or more. The minimum severance payment is calculated in terms of a prescribed formula (one week's remuneration per completed year of service).

Dispute Resolution

The Labour Court and the Civil Courts share jurisdiction to enforce contractual employment rights.

Disputes relating to statutory employment rights, such as unfair dismissals, automatically unfair dismissals, unfair labour practices, and unfair discrimination disputes, must however be referred to specialist Labour Courts or tribunals clothed with the requisite jurisdiction by the relevant statute creating that right. Such disputes may be referred to either arbitration under the auspices of the CCMA or a Bargaining Council, or adjudication by the Labour Court. Almost all labour disputes are first referred to the CCMA or a Bargaining Council with jurisdiction, for an attempt at conciliating the dispute.

Some types of labour disputes are capable of justifying a protected strike or lockout. Disputes which the LRA reserves for determination by the CCMA, a Bargaining Council, or the Labour Court, may not form the subject matter of industrial action. If industrial action should be embarked on, the Labour Court will then be able to interdict the continuation of the industrial action, and further adverse consequences may follow for the perpetrators, such as disciplinary action taken against employees embarking upon an unprotected strike.

The typical type of dispute that is left for resolution by negotiation and eventual power play in the form of industrial action, is that relating to increases in remuneration and other increases in terms and conditional of employment.

Retirement

There is no statutory retirement age. Employers are entitled to agree on a retirement age with employees, or impose a normal retirement age in the form of an internal policy, which must be fairly arrived at, and consistently applied.

The retirement age usually coincides with the age specified in the rules of an applicable retirement fund. Termination of the employment agreement on attaining the retirement age does not constitute a dismissal.

10. Environmental Law

Introduction

Environmental Law is gaining increasing importance in the world of development. This is attributable to the rapid development and increased stringent application of the environmental laws by the Department of Environmental Affairs (“**DEA**”), the increased monitoring of corporations’ environmental compliance by environmental NGOs and the adoption of the Equator Principles by financial services providers.

All environmental laws are regulated by the National Environmental Management Act 107 of 1998 (“**NEMA**”) which gives effect to the constitutional environmental right contained in Section 24 of the South African Constitution. The NEMA is founded on a number of international environmental law principles. These principles include *inter alia*:

- Development must be socially, environmentally and economically sustainable
- That negative impacts on the environment and on people’s environmental rights be anticipated and prevented, and where they cannot be altogether prevented, are minimised and remedied
- Responsibility for the environmental, health and safety consequences of a policy, programme, project, process, service or activity exists throughout its life cycle
- The costs of remedying pollution, environmental degradation and consequent adverse health effects and of preventing, controlling or minimising further pollution, environmental damage or adverse health effects must be paid for by those responsible for harming the environment

These principles guide the manner in which all environmental legislation must be interpreted and applied. There are numerous statutes governing the environment which are set out below, all of which must be understood within the context of these principles.

Environmental Management Legislative Framework

South African environmental law is regulated by a suite of legislation which operates at a national, provincial and municipal level and which is aimed at environmental management. Included in the suite of NEMA associated legislation set out below in detail is the National Environmental Management: Protected Areas Act 57 of 2003 and the National Environmental Management: Integrated Coastal Management Act 24 of 2008. There is also ancillary legislation not specifically directed at environmental management, but which includes provisions aimed at environmental management.

The NEMA Environmental Impact Assessment ("**EIA**") Regulations were amended in April 2017 and there is an Amendment Bill before parliament (the NEMLA 4) which is intended to provides clarity on the suite of environmental legislation in order to strengthen integrated environmental management, the One Environmental System, the efficacy of some of the compliance monitoring and enforcement mechanisms, improve biodiversity and conservation measures, air quality management and waste management.

Environmental Management

Environmental Authorisations

To ensure that the principles contained in NEMA are sustainably enforced, Section 24 of the NEMA requires that any person that intends to undertake an activity identified by the Minister (the "**Listed Activities**") will be required to undertake either a Basic Assessment or a Scoping Assessment and an EIA. Listed Activities that may not commence without environmental authorisation have been published in terms of NEMA. Such authorisations may only be issued following an investigation and reporting process that identifies potential environmental impacts associated with the listed activity.

The Basic Assessment is a superficial assessment into the environmental impacts resulting from undertaking the proposed listed activity while a Scoping Assessment and an EIA is required in respect of those activities which are expected to have a more significant impact on the environment.

The Basic Assessment or Scoping Assessment and EIA are undertaken by an independent Environmental Assessment Practitioner who must compile a report setting out the environmental impacts of the listed activities. This report is submitted to the relevant authority for consideration. Upon considering the report the relevant authority is authorised to approve the listed activities with or without conditions or refuse the project. If the listed activity is approved, the relevant authority will issue an environmental authorisation to the party that intends to undertake the listed activities.

If only Basic Assessment activities are triggered, then the applicant need only follow the Basic Assessment procedure which is an abbreviated process and an environmental authorisation may be granted much faster than in a Scoping Assessment and EIA. The DEA, however, has recently commenced with a programme which endeavours to ensure that environmental authorisations are processed in not more than 300 days from application.

Another point to consider is which party will be the applicant for the environmental authorisation and in whose name any such environmental authorisation will be granted. The DEA looks to the holder of the environmental authorisation as the party which they will hold responsible in the event of any non-compliance with the authorisation. The holder is responsible for any contractors and / or subcontractors that it appoints to implement any activities in terms of the environmental authorisation.

It is important to note that appeals against environmental authorisations suspend such authorisation and no authorised activities may commence or be conducted until the appeal has been extinguished.

Duty of Care

In addition to the obligation to obtain an environmental authorisation, there is a general duty of care on "every person" to prevent pollution and / or environmental degradation. Section 28 of the NEMA states that every person must take "reasonable measures" to prevent pollution / environmental degradation from occurring, continuing or recurring or, where such pollution / environmental degradation cannot be prevented or stopped, to take measures to minimise and rectify such pollution or environmental degradation.

This obligation to take measures applies to "every person" including (but not limited to) the owner of the property, any person that has a right to use the property or exercises control over the property.

What is "reasonable" will depend on the facts of each case but shall include measures to:

a) "Investigate, assess and evaluate the impact on the environment
b) Inform and educate employees about the environmental risks of their work and the manner in which their tasks must be performed in order to avoid causing significant pollution or degradation of the environment
c) Cease, modify or control any act or activity or process causing the pollution or degradation
d) Contain or prevent the movement of pollutants or the causing of degradation
e) Eliminate any source of the pollution or degradation
f) Remedy the effects of the pollution or degradation"

If a party fails to take reasonable measures, the relevant authority can issue that person with a directive compelling that person to take action. Alternatively the authority can perform those actions itself and reclaim the reasonable cost from the party that failed to undertake the reasonable measures or any person that benefitted from those activities being.

Non-compliance with the conditions of an environmental authorisation or an environmental management programme could result in a directive being issued against the holder, with such directive either suspending or withdrawing that environmental authorisation.

Offences and Penalties

It is an offence to commence a listed activity without first obtaining an environmental authorisation. A person convicted of such an offence is liable for a fine not exceeding Rand 10 million or to imprisonment for a period not exceeding 10 years or to both such fine and imprisonment.

Criminal Proceedings

If a person is convicted of certain offences contained in other pieces of environmental legislation (Schedule 3), and such conduct results in loss or damage to an organ of state or another person (including the costs associate with the rehabilitation of the environment) the court may inquire summarily and without pleading into the amount of the loss or damage caused. Upon proof of such amount the court may give judgment in favour of the organ of state / person against the convicted person. The judgment would be enforceable in the same manner as a civil judgment.

Similarly, the court may inquire into any monetary benefits that the convicted person enjoyed as a result of committing the offence and impose a fine / award damages or require that the convicted person undertake remedial measures.

It is not possible to contract out of criminal liability and the holder of any licence is likely to be held responsible for any non-compliance with the terms of that licence and NEMA.

We have seen a number of instances where directors of companies have been held criminally liable for the environmental degradation caused by the activities of the company's operations.

Waste Management

Waste management in South Africa is governed by the National Environmental Management: Waste Act 59 of 2008 ("**NEMWA**"), which seeks to avoid and minimise the generation of waste and provides that where possible waste should be reduced, reused, recycled or recovered. However, if this is not possible waste should be treated and safely disposed of (as a last resort) so as to prevent pollution or environmental degradation.

For purposes of the NEMWA, "waste" includes:

- Any substance, material or object that is unwanted, rejected, abandoned, discarded or disposed of, or that is defined by the Minister of Environmental Affairs as a waste, or that is intended or required to be discarded or disposed of, by the holder of that substance, material or object

However, any waste or portion of waste ceases to be a waste:

- Once an application for its re-use, recycling or recovery has been approved or, after such approval, once it is, or has been re-used, recycled or recovered
- Where approval is not required, once a waste is, or has been re-used, recycled or recovered
- Where the Minister has, in term of Section 74 of the NEMWA, exempted any waste or a portion of waste generated by a particular process from the definition of waste
- Where the Minister has, in the prescribed manner, excluded any waste stream or portion of a waste stream from the definition of waste

Duty of Care

There is a general duty imposed on a holder of waste (being any person who imports, generates, stores, accumulates, transports, processes, treats, or exports waste or disposes of waste) to take all reasonable measures, where waste must be disposed of, to *inter alia* ensure that the waste is treated and disposed of in an environmentally sound manner; and prevent any employee or any person under his or her supervision from contravening the NEMWA. These reasonable measures include measures to investigate, assess the impact on the waste in question on health or the environment and to cease, modify or control any act causing pollution or environmental degradation, further to remedy the effects of the pollution or environmental degradation.

According to the "cradle to grave" principle which is the responsibility of a generator of waste for that waste from its creation to its proper disposal, and the duty set out in Section 16 of the NEMWA, it will be the responsibility of the holder of waste (or its contractor), as the generator of the waste to ensure that the waste is packaged, transported, treated and disposed of in terms of the legal requirements, and that there is an auditable record of the steps involved in storing, collecting and transporting the waste. Where waste is being disposed, it must be done in an environmentally sound manner.

Permits and Licencing

Certain waste management activities may trigger the requirement for a waste management licence, including:

- The storage and transfer of waste
- The recycling and recovery of waste
- The treatment of waste
- The storage, treatment and processing of animal waste
- The expansion or decommissioning of facilities and associated structures and infrastructure
- The disposal of waste on land

The NEMWA categorises these waste management activities in respect of which a waste management licence is required into Category A (General Waste) waste management activities in respect of which a basic assessment must be conducted and Category B (Hazardous Waste) waste management activities, in respect of which a Scoping Assessment and EIA must be conducted.

Offences and Penalties

Section 67 of the NEMWA lists a number of offences, including unauthorised disposal of waste and contravention or failure to comply with a condition or requirement of a waste management licence. Such offence will lead to liability of a fine not exceeding Rand 10 million or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment, in addition to any other penalty or award that may be imposed or made in terms of the NEMA.

Additionally, the failure to adhere to the requirements for the storage and collection of waste as well as failure to comply with any norm or standard established in terms of the NEMWA will lead to a fine not exceeding Rand 5 million or to imprisonment for a period not exceeding five years, or to both a fine and such imprisonment, in addition to any other penalty or award that may be imposed or made in terms of the NEMA.

Air Quality Management

Air quality management in South Africa is governed by the National Environmental Management: Air Quality Act 39 of 2004 (t "**NEMAQA**"). The objective of the NEMAQA is to "*protect the environment by providing measures for the enhancing of air quality, the prevention of air pollution and ecological degradation*". In addition the NEMAQA provides for the creation of air quality frameworks and plans.

Permits and Licencing

Section 21 of the NEMAQA provides that if any person intends to undertake an activity identified by the Minster or MEC which results "*in atmospheric emissions and which the Minister or MEC reasonably believes have or may have a significant detrimental effect on the environment, including health, social conditions, economic conditions, ecological conditions or cultural heritage*" must obtain an atmospheric emission licence prior to undertaking the activity.

Offences and Penalties

Failure to comply with the NEMAQA is an offence punishable by a fine of up to Rand 5 million or imprisonment for a period of 5 years for a first offence and a fine up to Rand 10 million or imprisonment for 10 years for a subsequent offence.

Water Resource Management

Water resource management in South Africa is governed by the National Water Act 36 of 1998 ("**NWA**"). Water may only be used in accordance with the provisions of the NWA.

Duty of Care

Section 19 of the NWA sets out the duty of care of persons in control of land and who conduct activities which cause or caused or are likely to cause pollution to a water resource and who are obliged to take reasonable measures to prevent such pollution.

Any person who intends to undertake a water use (as contemplated in the NWA) must ensure that the water use is conducted in accordance with a water use licence.

Permits and Licencing

In terms of Section 21 of the NWA, any person that intends on:

- Taking water from a water resource
- Storing water
- Impeding or diverting the flow of water in a watercourse
- Engaging in a stream reduction activity contemplated in Section 36 of the NWA
- Engaging in a controlled activity identified in terms of Section 37(1) or declared in terms of Section 38(1) such as fracking

- Discharging waste or water containing waste into a water resource through a pipe, canal, sewer, sea outfall or other conduit
- Disposing of waste in a manner which may detrimentally impact on a water resource
- Disposing in any manner of water which contains waste from, or which has been heated in, any industrial or power generation process
- Altering the bed, banks, course or characteristics of a watercourse
- Removing, discharging or disposing of water found underground if it is necessary for the efficient continuation of an activity or for the safety of people
- Using water for recreational purposes

will be required to obtain a water use licence unless exempt from requiring a licence in terms of the NWA.

The Department of Water and Sanitation has recently published regulations in respect of applications for water use licences which are now prescribed to take 200 days to be granted from date of application.

It is important to note that appeals against water use licences suspend such licences and no water use activities may be conducted until such appeal has been extinguished.

Offences and Penalties

It is an offence to undertake water use without a water use licence in terms of the NWA. Any person convicted of an offence is liable "*on the first conviction, to a fine or imprisonment for a period not exceeding five years, or to both a fine and such imprisonment and, in the case of a second or subsequent conviction, to a fine or imprisonment for a period not exceeding ten years or to both a fine and such imprisonment.*" In addition, the failure to take reasonable measures results in pollution of a water resource may also trigger liability in terms of the Schedule 3 offences of NEMA.

Biodiversity Management

The National Environmental Management: Biodiversity Act 10 of 2004 ("**NEMBA**") provides a framework for the conservation of biodiversity and the protection of species and ecosystems that warrant protection. The NEMBA requires that a permit must be obtained if any person intends:

- Undertaking a threatening activity or listed activity within a protected ecosystem
- Carrying out a restricted activity involving a specimen of a listed threatened or protected species without a permit
- Carrying out a restricted activity in relation to a specimen of an alien species or listed invasive species without a permit

A restricted activity includes, amongst other things, activities such as hunting, catching, capturing or killing any living specimen of a listed threatened or protected species; gathering, collecting or plucking any specimen of a listed threatened or protected species.

A person authorised by permit to carry out a restricted activity involving a specimen of an alien or invasive species must comply with the conditions of the permits and take all required steps to prevent harm to biodiversity. The relevant authority may direct any person to take necessary steps to prevent harm to biodiversity. If the relevant person fails to take such action, the relevant authority can take the necessary steps and recover the costs from the responsible person. This is required prior to undertaking the restricted activity.

The NEMBA is usually applied in tandem with provincial biodiversity legislation and the National Forest Act 84 of 1998.

Permits and Licences

A person may not carry out a restricted activity involving a specimen of an alien species, a listed threatened or protected species or a listed invasive species without a permit issued in terms of Chapter 7 of the NEMBA.

<u>Duty of Care</u>

A person authorised by a permit, must comply with the conditions under which the permit has been issued and take all required steps to prevent or minimise harm to biodiversity.

Offences and Penalties

It is an offence to undertake an activity contemplated above without a permit or to breach the conditions of a permit or go beyond the authority granted in terms of the permit.

It should be noted that a person convicted of an offence in terms of the NEMBA is liable to a fine not exceeding Rand 10 million, or imprisonment for a period not exceeding ten years, or to both such a fine and such imprisonment. In addition, if a person is convicted of an offence involving a specimen of a listed or threatened or protected species, a fine may be determined (as set out) or equal to three times the commercial value of the specimen, whichever is the greater.

Associated Legislation Directed At Environmental Management

Heritage Resource Management

The National Heritage Resources Act 25 of 1999 (“**NHRA**”) aims to promote good management of the national estate, and to enable and encourage communities to nurture and conserve their legacy so that it may be bequeathed to future generations.

The NHRA defines a heritage resource as “*any place or object of cultural significance*”. Heritage resources include, amongst other things, buildings older than 60 years, graves and burial grounds and archaeological and palaeontological sites.

Section 38 of the NHRA states that any person that intends to undertake a development, for example, the construction of a road, wall, powerline, pipeline, canal or other similar form of linear development or barrier is required to notify the relevant authority, which authority may require that a heritage impact assessment be conducted and a report submitted for approval. Where the heritage impact assessment forms part of an EIA process, a Section 38 approval is not required, provided that the consenting authority ensures that the evaluation fulfils the requirements of the relevant heritage resources authority in terms of the NHRA, and any comments and recommendations of the relevant heritage resources authority with regard to such development have been taken into account prior to the granting of the consent.

Mineral And Petroleum Resources Development Act 28 Of 2002 (“Mprda”)

Due to the high environmental impacts of prospecting, mining and production activities, the MPRDA affirms the State’s obligation to protect the environment for the benefit of present and future generations, to ensure ecologically sustainable development of mineral and petroleum resources and to promote economic and social development.

Whereas prior to its amendment, the MPRDA made provision for the management of environmental impacts associated with mining, these provisions relating to mining activities have now been included in the NEMA. As such, the MPRDA must be read in conjunction with the NEMA and its associated principles, provisions and regulations which now cater directly to mining and associated activities. Mining related environmental management plans, programmes and financial provisioning for rehabilitation of mining operations are now found in the NEMA. In this regard, please refer to the segment on the “One Environmental System” below.

One Environmental System

The “One Environmental System” became effective on 8 December 2014, which saw the streamlining of the licensing processes for mining, environmental authorisations and water use licences and is aimed at bringing certainty to many sectors, particularly mining.

This system has come about due to difficulties experienced with the previous situation where authorisations were required from various government departments, including the Department of Environmental Affairs and the DMR, and which resulted in long delays in the issuing of the required authorisations and therefore resulted in delays to projects.

The system represents Government’s commitment to improve the ease of doing business and further enhance South Africa’s global competitiveness as a mining investment jurisdiction.

Under the One Environmental System, environmental authorisations and waste management licences required for mining and related activities will be issued by the Minister of Mineral Resources in terms of the NEMA and NEMWA. The Minister of Environmental Affairs will be the appeal authority for these authorisations.

The Ministers of Environmental Affairs, Mineral Resources as well as Water and Sanitation have agreed to harmonise the issuing of permits, licences and authorisations within a 300 day period.

Developments In Environmental Law In South Africa

Climate Change Bill: Purpose and Objectives

Purpose

The purpose of the Climate Change Bill (“**the Bill**”) is to build the Republic’s effective climate change response and long term transition to a climate resilient, equitable and internationally competitive lower carbon economy and society.

The Bill purports to be an effective, progressive and incremental response to domestic and international calls to urgently mitigate the effects of anthropogenic climate change. Domestically, the Constitution of the Republic of South Africa, 1996, entitles everyone to the right to dignity, life and an environment that is not harmful to their health and well-being. It further provides the right to have the environment protected for the benefit of present and future generations while allowing justifiable environmentally sustainable economic and social development. The Bill serves the purpose of giving effect to this Constitutional mandate.

In the wake of global anthropogenic climate change posing a threat to human societies and the planetary environment, the Bill provides a legislative framework to give effect to the Republic’s international commitment to implement an effective, nationally determined climate change response that represents the Republic’s fair contribution to the global climate change response.

Objects

The objects of the Bill are to:

a) Provide for the coordinated and integrated response to climate change by all spheres of government.

b) Provide for the effective management of inevitable climate change impacts through enhancing adaptive capacity, strengthening resilience and reducing vulnerability to climate change.

c) Make a fair contribution to the global effort to stabilise greenhouse gas concentrations in the atmosphere at a level that avoids dangerous anthropogenic interference with the climate system in a manner that enables economic, employment, social, and environmental development to proceed in a sustainable manner.

11. Business Travel In Johannesburg, South Africa

Hotels

Hotel accommodation compares favourably with anything in the rest of the world and is inexpensive by world standards. Due to the fact that many businesses and corporate head offices have been decentralised from the Central Business District of Johannesburg, we believe it is preferable and more convenient to stay in one of the many modern hotels in the suburbs just north of Johannesburg including Sandton and Rosebank. Furthermore, numerous excellent shopping centres and restaurants are situated on the outskirts of Johannesburg. Some of the many comfortable hotels are:

Michelangelo
Maud Street, Sandton
Tel 27(11) 245-4000

Sandton Sun and Towers Intercontinental
Maud Street, Sandton
Tel 27(11) 780-5000

Hilton Sandton Hotel
138 Rivonia Road, Sandion
Tel 27(11) 322-1888

Radisson BLU
3rd Peregrine Building Valley Crescent, Sandton
Tel 27(11) 883-6430

Holiday Inn (Sandton)
123 Rivonia Road, Sandton
Tel 27(11) 282-0000

Garden Court (Sandton City)
Maude Street, Sandton
Tel 27(11) 269-7000

Protea Hotel by Marriott Johannesburg
Balalaika
Sandton
Tel 27(11) 322-5000

Southern Sun Katherine Street
115 Katherine Street
Sandown
Johannesburg
Te; 27(11) 884 8544

Transport

Transport facilities by road and air are efficient and more than adequate for the needs of the business traveller.

There is a new metropolitan underground rail service in Johannesburg which runs from the OR Tambo International airport into Sandton. It is called the Gautrain and was introduced just prior to the FIFA 2010 World Cup. Information on the service is available on www.gautrain.co.za. It is world class, efficient, safe and secure.

Johannesburg has a red tour bus service which provides guided tours through Johannesburg and its suburbs. This is a marvellous way to enjoy our good weather and see the sights of Johannesburg on a 'hop on, hop off' basis. This company also operates City and Soweto tours. Their telephone number is 086 173 3287 and they can be found in Oxford Road, Rosebank, Johannesburg.

Uber operates a service in Johannesburg by using their app.

We also mention **Corporate Cabs** 0800 800 800 which runs a professional taxi service around Johannesburg and to and from the airport.

The bus service is not up to European standards. As Johannesburg is spread over a wide area it is therefore best to use taxis or, preferably, if you have a business contact in Johannesburg to arrange to provide transport to your various meetings in the Greater Johannesburg Area.

Safety And Awareness

South African cities are no different from any other major cities where the precautionary measures listed below are also applicable.

- Avoid walking in the streets alone after shopping hours or over week-ends
- Only use taxis which are booked through a reputable taxi company
- Try not to attract attention by carrying cameras and wearing expensive jewellery
- Lock all your valuables in the hotel safety deposit box
- Keep your car doors locked and your windows up at all times
- It is not advisable to resist if confronted
- For shopping and entertainment expenses we recommend that you use credit cards rather than carrying large amounts of cash on your person
- By exercising reasonable care we are sure you will enjoy a relaxed and pleasant stay in South Africa

Out And About

We suggest the following excursions to places of interest:

Diamond cutting tours at the Erickson Diamond Centre;

- Tel 27(11) 970-1355 / 69

Gold mine tours

- Travel down a fully operational mine on a guided tour
- Tel 27(11) 498-7100

Gold Reef City Tours

- This is a replica of Johannesburg as a mining camp at the turn of the century.
- Tel 27(11) 248 6875

The Johannesburg Stock Exchange

- Experience the only Stock Exchange in South Africa and visit the trading floor
- Tel 27(11) 520-7000

Bush Safaris

There are numerous tour operators who can arrange short trips of a few days' duration either to the Kruger Park or to various private game reserves on the edge of the Kruger National Park approximately 3½ hours by road or 1 hour by air from Johannesburg.

Kruger Park in Mpumalanga

Bookings at the various rest camps in the Kruger National Park in Mpumalanga (The Province East of Johannesburg) can be arranged through International Tel 27(11) 704-3502.

If you have no more than one or two days to spend, then the best place to see the widest variety of wild game in a natural bush habitat is in the Pilanesberg Game Reserve, approximately two hours by car to the West of Johannesburg at International Tel 27(11) 465-5423. There are several comfortable lodges on the edge of the reserve and Sun City (a complex of 4 hotels, including the renowned Palace of the Lost City) are situated with two golf courses, extensive sporting facilities and a casino in the crater of an extinct volcano in beautiful bushveld country approximately two hours by car west of Johannesburg.

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