Doing Business in South Africa

2009

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1. Introduction

UHY is an international organisation providing accountancy, business management and consultancy services through financial business centres in over 70 countries throughout the world. Business partners work together through the network to conduct trans-national operations for clients as well as offering specialist knowledge and experience within their own national borders. Global specialists in various industry and market sectors are also available for consultation.

This detailed report providing key issues and information for investors considering business operations in South Africa has been provided by the office of UHY representatives:

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Information in the following pages has been updated so that they are effective at the date shown, but inevitably they are both general and subject to change and should be used for guidance only. For specific matters, investors are strongly advised to obtain further information and take professional advice before making any decisions. This publication is current at February 2009.

We look forward to helping you do business in South Africa.

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2. Business environment

With regard both to regulatory law and to commercial practice, South Africa's economy has much in common with those of North America, Europe and Australasia. Free enterprise is the norm, although there are a number of important economic sectors (such as transport, telecommunications, electricity and water) that have been or continue to be wholly or partly Government-owned and controlled. The Government's policy is to promote the commercialisation, restructuring and privatisation of certain Government-owned enterprises.

South African entrepreneurs and business professionals are generally highly educated, skilled and competitive.

Relationship of Government and Business

The Government is committed to providing facilities and opportunities to the communities that were disadvantaged by the pre-1994 apartheid system, and to enabling those communities to share equitably in the resources of the country and its economic activity. The Government's Macroeconomic Strategy for Growth, Employment and Redistribution (GEAR) is however based on promoting the free market and financial and fiscal discipline, and aims at economic growth, job creation and the development and distribution of basic services to all South Africans.

Economic Structure

South Africa has the most sophisticated free-market economy on the African continent. The country represents only 3% of the continent's surface area, yet it accounts for approximately 40% of all industrial output, 25% of gross domestic product (GDP), over half of generated electricity and 45% of mineral production in Africa. Most of South Africa's economic activity occurs in the four main metropolitan areas (which together represent about 3% of the total land area) namely the Witwatersrand area surrounding Johannesburg in the Gauteng Province, the Durban/Pinetown area in KwaZulu-Natal, the Cape Peninsula, and the Port Elizabeth/Uitenhage area in the Eastern Cape.

Privatisation

The public sector's role in South Africa's economy has historically always been substantial in comparison with the private sector's role.

The Government is however taking steps to commercialise, restructure and increase private sector involvement in Government-controlled enterprises.

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Imports Exports and Free Trade Areas

Most of South Africa's exports to industrialised countries consist of primary and intermediate commodities. A large proportion of exports consist of unprocessed raw materials, with the mining industry contributing the greatest proportion to the country's total exports. More of South Africa's raw materials are however now processed in South Africa before being exported. South Africa is a major exporter of gold, diamonds, platinum, wool, sugar, manganese and chrome ores, asbestos, atomic energy materials and base minerals such as coal, antimony, copper and iron ore. The country is also an exporter of deciduous and citrus fruit as well as animal hides and skins. Exports of chemicals, metal products, machinery, transport equipment and manufactured goods have increased, particularly to Africa, in recent years.

Imports include mainly capital goods, certain raw materials, intermediate goods as well as sophisticated consumer goods.

Industrial and Trade Organisations

Numerous public and private development and other agencies provide advice and assistance in order to further economic development.

Black Economic Empowerment and Affirmative Action

Black Economic Empowerment ("BEE"), a programme that promotes the accelerated integration of black people into the South African economy, has been a policy of the Government since 1994. Until 2003 implementation of the policy was not particularly effective.

In 2003 the Department of Trade and Industry published a strategy document for broad based black economic empowerment, the key theme of which was that black economic empowerment had to be viewed as a broad based, integrated and coherent socio-economic process. This strategy statement was crystallised in legislation with the promulgation of the Broad Based Black Economic Empowerment Act which came into operation in April 2004. The Act provides the legislative framework for broad based black economic empowerment ("BBBEE") by defining the policy, outlining the mechanisms for the regulation and measurement of BEE, and establishing the Black Economic Empowerment Advisory Council.

Broad Based Bee

BBBEE involves the economic empowerment of all black people (which, subject to certain limitations, includes Black, Indian and Coloured South Africans) within four interrelated contexts:

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- direct empowerment – increasing the number of black people who manage, own and control enterprises and productive assets;
- human resource and skills development – achieving equitable representation in all occupational categories and at all levels of the workforce;
- indirect empowerment – promotion of preferential procurement from empowered enterprises and investment in enterprises owned or managed by black people; and
- social-economic development initiatives.

Implementation of Bee

Two primary mechanisms have been introduced to ensure that these socio-economic strategies are implemented:

- Codes of Good Practice were gazetted in February2007 by the Minister of Trade and Industry that specify empowerment targets consistent with the objectives of the Act, and the periods within which those targets must be achieved. The public sector is obliged to apply and adhere to the BEE goals and targets set out in the Codes; and
- Sector Codes that may be developed by major stakeholders in various sectors of the economy which promote transformation for that particular sector.

The Sector Codes are industry specific and will bind the signatories thereto and the government, once gazetted. Several Transformation Charters have already been concluded – Mining, Petroleum, Maritime, Agriculture, Health and Tourism, Information Communications Technology, amongst others, and numerous Charters are being negotiated amongst stakeholders on a continuing basis. In general terms, the Transformation Charters do not bind the government when such charters are converted to Sector Codes. If the Transformation Charters are not converted into Sector Codes, the Codes of Good Practice should be used to measure BBBEE. The Codes define the elements of BEE and specify the key principles relating to the measurement of BEE. A generic scorecard (applicable to Code 000 – Code700) is used to measure progress in achieving the targets set for each of the seven elements contained in that generic scorecard. In turn, each of the elements has its own individual scorecard. Points are allocated in accordance with prescribed formulae to measure the level of an entity's compliance with the BEE targets set for each element of BEE on the scorecard. The scorecard also provides for the award of bonus points if certain prescribed BEE milestones are attained or if performance is in excess of the requisite targets. The key elements and their respective weightings in the scorecard, being the maximum number

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of points that may be attained for each element (excluding bonus points, are:

- ownership (20 points) - Code 100;
- management control (10 points) - Code 200;
- employment equity (15 points) - Code 300;
- skills development (15 points) - Code 400;
- preferential procurement (20 points) - Code 500;
- enterprise development (15 points) - Code 600;
- socio-economic development initiatives (5 points) – Code 700

Code 000 is the Framework Code that sets out the main measurement principles.
Qualifying Small Enterprises (with an annual turnover of between R5 million and R35 million) have their own scorecard (Code 800) which is distinct from the generic scorecard shown above only in relation to the weightings given to each element and the measuring principles.

Compliance
All organs of state and various specified public entities will be obliged to take into account the BEE status of the party concerned when implementing preferential procurement policies, selling state enterprises, entering into public private partnerships, etc. An entity that attains 100 points or more (made possible by the award of bonus points) on the balanced scorecard will be regarded as a Level One Contributor to BEE, whereas, for instance, a score below 30 points will categorise the entity as a Non-Compliant Contributor. Exempted Micro Enterprises (EME's) which are entities with annual revenue of R5 million or less are deemed to have a BEE status of a Level Four Contributor to BEE. This means that an entity procuring goods from an EME may recognise 100% of its expenditure relating to such procurement for purposes of calculating that entity's procurement points. Non compliance will not result in criminal sanction but will mean that Government support will not be forthcoming. However, a knock-on effect is created in the sense that compliance will require those seeking compliance themselves to enter into business relationships (such as supply contracts) with parties who in turn are compliant.

Multinationals
The Codes define a Multinational as an entity that does business in the Republic of South Africa and elsewhere and maintains its international headquarters outside the Republic of South Africa. The Government has issued a specific statement under Code 100 dealing with the recognition of Equity Equivalents for Multinationals. Recognising that there are

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Multinationals that look to the Government or public entities for work that are unable to sell equity to South Africans, the Minister in the Department of Trade and Industry may approve certain Equity Equivalent Programmes after the Multinational has consulted with the sectoral line ministry or other stakeholders in any other government department, provincial government or local government with respect to their Equity Equivalent Proposal. Equity Equivalent Programmes may involve programmes that support the Accelerated and Shared Growth Initiative for South Africa (*"ASGISA"*), the Joint Initiative for Priority Skills and the National Skills Development Strategy. Equity Equivalent Programmes may also involve programmes that promote enterprise creation in respect of co-operatives that meet certain requirements and any other programmes that promote socio-economic advancement or contribute to the overall socio-development of the Republic of South Africa.

Conclusion

The implementation of a BBBEE policy means that many foreign investors, who may be wary to sell equity, may now compensate for the ownership requirement by taking part in Equity Equivalent Programmes and placing extra effort in skills development, training, preferential procurement, social responsibility initiatives, promoting representivity within human resources and supporting small black businesses. In this way, a foreign investor could potentially be ranked as a good BEE contributor without selling equity to black people. It is fundamental to doing business in South Africa that potential investors and others become familiar with and meet their obligations in terms of the BBBEE laws and regulations.

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3. Foreign investment

Exchange Control

Exchange control regulations, which restrict the free flow of capital in and out of the country, exist in South Africa. These regulations, which until the recent past were rather strict, have been significantly relaxed. The expressed goal of the South African Government is the ultimate equal treatment of residents and non-residents in relation to inflows and outflows of capital and the abolition of exchange control measures.

Transfers of Capital
3.1 Non-Residents

Non-residents are no longer subject to exchange control and currently may freely transfer capital into and out of South Africa. Investments into South Africa must however be reported to the authorities and share certificates evidencing such investment must carry a"non-resident" endorsement. It should be noted that non-residents who wish to invest in South Africa by means of loan capital need to obtain prior approval from the South African Reserve Bank, particularly with reference to intended repayment dates, and interest rates. It should also be noted that the Reserve Bank will not agree to interest in excess of prime being charged by non-resident shareholders on loans to their South African subsidiaries, but loans from non-residents other than shareholders may be allowed to carry interest at prime +2%. South African subsidiaries and branches of foreign companies are considered to be South African residents and are, therefore, subject to exchange control.

3.2 Residents of South Africa

South African companies may as a general rule, but subject to possible exchange control requirements, freely remit the following to non-residents:

- Repayment of capital investments made by non-residents.
- Dividends and branch profits, provided that such transfers are made out of trading profits and are financed from available cash resources without resorting to excessive local borrowing. Certain audit certifications are required. South African corporate professionals are allowed to retain foreign dividends offshore. Foreign dividends repatriated to South Africa after 26 October 2004 may be transferred offshore again at any time for any purpose except for funding investments or loans into the Southern African Common Monetary Area for any purpose whatsoever via a loop

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structure. A loop structure comes into existence when funds which are legitimately offshore ex South Africa are reintroduced into the Common Monetary Area. The rationale is that the export of dividends on such new investments will then result in the South African resident expatriating more than is permitted.

- Interest payments, provided that the rate is reasonable in regard to the nature of the loan, current interest rates and past practices, and conforms to the requirements of the thin capitalisation rules if applicable.
- Payment of royalties or similar fees for the use of know-how, patents, designs, trademarks, copyright or similar property, subject to the prior approval of the exchange control authorities, and also in certain instances of the Department of Trade and Industry. Generally speaking, such royalties will be limited to an amount of between 2% and 6% of turnover.
- Payments for goods imported into South Africa.
- Other fees in respect of services rendered by nonresidents, subject to reasonableness.

The following may also be noted:

- Exchange control limits on new outward foreign direct investments by South African corporates are abolished. Application to the South African Reserve Bank's Exchange Control Department is still required for monitoring purposes and for approval in terms of existing foreign direct investment criteria, including demonstrated benefit to South Africa. The South African Reserve Bank reserves the right to stagger capital outflows relating to very large foreign investments so as to manage any potential impact on the foreign exchange market.
- South African companies will be allowed to raise foreign funding on the strength of their local balance sheets. But where such loans are guaranteed by South African companies in terms of approvals granted by exchange control, then, currently, no foreign lender may take steps to enforce such guarantee prior to the expiry of a period of two years after the date of the loan.
- Foreign companies, governments and institutions may list on South Africa's Bond and Securities Exchanges. This aims to promote foreign investment into South Africa and to support the positioning of South Africa as a regional financial centre better able to cater for the capital raising needs of the continent. To further support these aims, South African private individuals will now be able to invest, without restriction, in inward listed instruments on South African Exchanges. Such investments fall outside the limit of the foreign investment allowance applicable to private individuals.

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- South African companies will be allowed to retain export proceeds for a maximum of 180 days from the date of shipment or the date of rendering the relevant service.
- Local institutional investors, which include retirement funds, long-term insurers and collective investment scheme management companies, are eligible for the foreign portfolio investment allowance, subject to registration with the South African Reserve Bank. The exchange control limit on foreign portfolio investments by institutional investors may not exceed 15% of the institution's total retail assets in the case of retirement funds, long-term insurers and investment managers registered for such purposes.

3.3 Restrictions on local borrowings

The exchange control regulations provide that when75% or more of the voting stock, capital, assets or earnings of a local company are directly or indirectly vested in, or controlled by, a non-resident, a local loan may not be made or granted to the company without the prior approval of exchange control. The South African exchange control authorities allow local borrowings calculated as a percentage of the company's "total effective capital" (see below)

$$300\% + \left(\frac{\%\ \text{South African Interest}}{\%\ \text{Non-resident Interest}} \right) \times 100\%$$

The above ratio does not apply to emigrants, the acquisition of residential properties by non-residents or affected persons, and any other financial transactions, such as portfolio investments by non-residents, securities lending, hedging and repurchase agreements. In all these instances, the figure of 100% must be substituted for the figure of 300% in the above formula. "Total effective capital" includes share capital, shareholder loans from abroad, unappropriated capital or revenue profits and, in certain instances, the hard core of shareholders' trade credit. A relaxation of these provisions may be granted in exceptional circumstances. The restrictions on local borrowings apply both to a South African company and to an external company.

3.4 Money laundering

'Know Your Client's Procedures

Although not part of the exchange control system as such, money laundering activities are now controlled by the Financial Intelligence Centre Act of 2001 (as amended by the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004), the Prevention of Organised Crime Act of 1998, and the regulations published under these Acts. This legislation, in keeping with worldwide trends, aims at curbing the use of the proceeds of crime and money laundering. Rigorous compliance obligations are imposed on "accountable institutions" in terms of this legislation Accountable institutions are obliged to accountable institution includes attorneys such as follow 'know your client' procedures, namely to: identify and verify new and existing clients; keep records of identities of clients and all transactions entered into with clients; report certain transactions to the authorities; train employees; and appoint a compliance officer. Please bear in mind, therefore, that in asking you, our clients, for the required information we are doing no more than carrying out our legal duties.

3.5 Stock Exchange

The JSE Securities Exchange South Africa (JSE) is the only stock exchange operating in South Africa. In addition to the main board listing, there is a division of the JSE, is a parallel market for small to medium sized high growth companies which opened for trading in October 2003. It is the first alternative exchange in Africa.

The century old open outcry trading system utilised in the JSE was successfully converted to fully automatic electronic trading on the Johannesburg Equities Trading System (JETS) in June 1996. The JETS is an order-driven automated trading system which was acquired from the Chicago Stock Exchange.

In addition, a new electronic settlement system, the Share Transactions Totally Electronic System (STRATE) was implemented in 1999/2000. This system involves the dematerialisation of share certificates and the cancellation of share certificates deposited with the Central Securities Depository (CSD) of the JSE. Shareholdings are recorded by way of book entries in the accounts of participants accepted by the CSD. The introduction of STRATE necessitated substantial amendments to a range of South African legislation, including the Companies Act, the Safe Deposit of Securities Act and the JSE Listing Requirements and Rules.

3.6 Regulatory Bodies

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There are regulations governing the conduct of business in various sectors of the economy such as finance, banks, other financial institutions, medicine, and manufacturing and mining (in which safety and other working conditions are subject to inspection by Government bodies).

The Financial Services Board (FSB) is a statutory body charged with supervising the activities of financial institutions, including financial services and banking services. The FSB acts in an advisory capacity to the Minister of Finance and its powers include the suspension and withdrawal of authorisations to provide financial services.

The Independent Communications Authority of South Africa (ICASA) regulates television and radio broadcasting, telecommunications and the assignment of radio frequencies. The Government-controlled Telkom Limited had exclusivity on the provision of basic telecommunication services but this terminated in 2002. Its licence for those services and for other services that it provides as well as the licences granted to other service providers will be regulated by ICASA. ICASA is currently in the process of granting a licence to a second network operator which will compete against Telkom.

The Securities Regulation Panel (SRP) is a statutory body established to investigate insider trading and regulate acquisitions and takeovers where there is a change of control in public companies and private companies where the shareholders' interests exceed a prescribed limit. At present, "control" is defined as the holding of at least 35% of the voting shares of the offered company, irrespective of whether or not actual control in fact results from such shareholding. Transactions extending shareholdings already over 35% but under 50% are in certain circumstances also subject to the SRP. The SRP has published a Code and Regulations, which have the force of law. Copies of all relevant documents and announcements concerning transactions affected by the Code are required to be lodged with the executive director of the SRP for approval prior to issue. The SRP's powers include the power to compel the making of like offers to minorities or to reverse transactions which have been implemented. In appropriate circumstances, the SRP will grant exemption from compliance with any or all of the provisions of the Code and Regulations.

Provincial gambling boards regulate gambling and related activities in accordance with national and provincial legislation and regulations.

The Lotteries Act provides for a licence to conduct the National Lottery. The National Lotteries Board regulates the National Lottery and other lawful lotteries.

3.7 Import and Export Restrictions

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The Minister of Trade and Industry is empowered by statute to regulate, prohibit or ration imports to or exports from South Africa in the national interest. Such powers are exercised within the ambit of WTO rules and consist of import tariffs and direct controls. Many of the direct controls have been phased out. However, if applicable, import permits may be obtained from the Directorate of Import and Export Control in Pretoria. Export controls are imposed to prevent local shortages of goods, but, in view of the country's policy of export promotion, these controls are kept to a minimum.

Customs tariffs are set forth in accordance with the Brussels system of nomenclature.

There is free and virtually unimpeded exchange of goods between the member states of the SACU - Botswana, Lesotho, Namibia, South Africa and Swaziland. These countries apply the tariffs and regulations in force in South Africa.

3.8 Investment Incentives

The Department of Trade and Industry provides a large number of incentives, loans and rebates, including investment support, small business development, empowerment finance and export assistance. Legislation was passed in 2000 providing for the establishment of Industrial Development Zones. These zones are purpose-built industrial estates that are linked to an international port or airport which contains a controlled Customs Secured Area (CSA). Each zone offers - direct links to an international port or airport; a dedicated customs support services to expedite excise inspection and clearing; duty-free importation of production-related raw materials and inputs; a zero rate of VAT on supplies procured from South African sources; import status for finished goods which are sold into South Africa.

3.9 Government incentive schemes

There are Industrial Development Zones at East London and Coega (near Port Elizabeth) in the Eastern Cape and at Johannesburg International Airport and Richards Bay in KwaZulu-Natal. The Department of Trade and Industry now operates several Export Marketing and Investment Assistance Schemes available to qualifying exporters who are registered with the Department.

The Primary Export Market Research Scheme provides exporters with some reimbursement of costs incurred in developing new export markets. Assistance provided may include airfares, a subsistence allowance, and

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assistance with the transport of samples, with the production of marketing materials and with product registration.

The Outward Selling Trade Mission Scheme assists exporters to make contact with foreign buyers by providing assistance with flights, a subsistence allowance and the transport of samples. For a trade mission to qualify for assistance it must be organised by a qualifying organisation. The Inward Buying Trade Mission Scheme provides assistance to organisers of inward buying trade missions so that prospective buyers can make contact with South African exporters. For a trade mission to qualify for assistance it must be organised by a qualifying organization.

The Exhibition Assistance Scheme assists individual exporters to introduce their products to foreign markets by participating in exhibitions. The Foreign Direct Investment Research Scheme partially compensates exporters for costs incurred in researching new foreign direct investment into South Africa through visits to potential investors in foreign countries. Other schemes provide assistance for exporters to participate in certain trade fairs and exhibitions abroad, to take part in outward investment recruitment missions or inward investment missions. The Department also provides assistance to specific industry sectors to develop new export markets, broaden the export base, and increase the participation of black economic empowerment companies and small business in the export process.

3.10 Export credit incentives
The Industrial Development Corporation makes financing available at reduced rates for selected expansion schemes that are expected to result in increased foreign exchange earnings. Financing of credit for exporters of capital goods is also available through the IDC or private sector merchant banks at reduced rates.

3.11 Customs and excise duty refunds, drawbacks and rebates - provision is made in the Customs and Excise Act for general refunds as well as a large number of specific drawbacks and rebates of customs and excise duties to exporters. These concessions are available to manufacturers as well as to merchants who import goods for re-export.

3.12 Export credit insurance - the Credit Guarantee Insurance Corporation of Africa Limited provides substantial export credit insurance and export project insurance against political and/or commercial risks. The guarantees are reinsured by the Department of Trade and Industry. To qualify, the

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export transaction must include substantial South African content of goods and/or services.

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4. Setting up a Business

There are a number of forms in which persons may elect to carry on business or to invest in South Africa. The most important are:

- individually as a sole proprietor;
- jointly with others in partnership;
- through a close corporation where only natural persons may be involved;
- through a private or public company;
- by the registration of a juristic person incorporated outside South Africa as an "external company" in South Africa. Investments and enterprises can also be carried on through a business trust. This involves the passing of ownership in assets to trustees who then hold those assets, as a separate estate distinct from their own personal estates, for the benefit of the beneficiaries. Trusts are often used to attain a form of limited liability without the formalities of incorporating a close corporation or company. They are also used for the purposes of protecting assets by separating the assets from those of the beneficiaries. Trusts can play an important role in estate planning for individuals.

4.1 South African Investments

Except for the comprehensive provisions of the Black Economic Empowerment legislation in South Africa, and related industry charters which govern and regulate black participation in the ownership and management of businesses in this country, an individual or any one or more individual members or shareholders of a close corporation or a company need not be citizens of or resident in South Africa. Save for such empowerment provisions, there is also no requirement that any of the directors of companies should be citizens of or resident in South Africa. The non-resident status of individuals, shareholders or directors does, however, have a number of consequences. For example:

- certain investments held by non-residents are required to be endorsed as "non-resident" in terms of the exchange control regulations
- there are limits on the local borrowing powers of non-residents which in the case of juristic persons apply where ownership or control of 75% or more of the equity or votes is in the hands of non-residents
- the so-called "thin capitalisation rules" may be applied to limit the amount of interest charged in respect of financial assistance, such as a loan, granted by non-residents to connected or related companies (as defined) in South Africa, specifically where a debt:

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equity ratio of 3:1 is not observed
- the anti-transfer pricing provisions contained in the Income Tax Act may be applied in relation to goods or services acquired or supplied under an international agreement (which is defined), concluded between connected persons
- the nationality of non-South African directors must be disclosed on all documents where directors' names are required to be listed, for example on letterheads.

In addition, other requirements must be met. For example:
- traders are required to register as vendors in terms of the Value-Added Tax (VAT) Act, 1991 where their income exceeds a specified amount. Where a trader is not a South African resident, a person resident in South Africa must be nominated as the representative of that person for VAT purposes;
- close corporations, companies and external companies must: - appoint an accounting officer or auditor resident in South Africa; - appoint a representative resident in South Africa to receive service of documents and to act as the Public Officer for liaison purposes with the South African Revenue Service; and- have a registered address in South Africa.

4.2 Business Entities

4.2.1 Individual / Sole Proprietor

There are no additional formalities required where a person commences business as a sole proprietor. The business is not a separate legal person and all transactions are regarded as having been concluded by the person concerned. Accordingly, the sole proprietor does not enjoy limited liability.

4.2.2 Partnerships and Joint Ventures

In general, a partnership may be formed between at least 2 and no more than 20 persons. This number may be increased with the permission of the relevant Minister. There are no formalities required to form a partnership and a partnership will exist if the following requirements are met: two or more persons agree to act jointly to pursue a venture; they each make a contribution (whether in money or otherwise); the purpose of their venture is to make a profit; and they divide that profit (or loss) between them. Although no formalities are required, it is usual, if not essential, that a written agreement be concluded. A distinction is often drawn between the term "partnership" and the term "joint venture". Although joint venture agreements may contain a statement that they are not to be construed as a partnership, joint ventures generally meet all the requirements of a partnership and may, where appropriate, be treated as a form of partnership. The term "joint venture" is usually used where the parties

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concerned intend to pursue a single venture only, for example, in the mining industry joint ventures are often formed for the purpose of prospecting for mineral deposits. If a viable deposit is found the exploitation of the minerals is thereafter carried out by a company in which the joint venture members become shareholders. Although there are certain special forms of partnership, partnerships do not generally offer limited liability and during the existence of the partnership the partners are normally jointly and severally liable for the debts and losses of the partnership. If a partnership is sequestrated, the individual estates of the partners are automatically and simultaneously sequestrated. However, should a partner give an undertaking to discharge the partnership debts and provide security for such discharge, the partner's private estate will not be sequestrated. Joint and several liability means that any one of the partners may be compelled to pay the whole of the debt. If a partner has paid more than its share of the debts, it has a right of recourse against the other partner(s) for the excess.

4.2.3 Close Corporations

This form of business entity was introduced in 1984. It is intended to serve smaller businesses, extending limited liability and other advantages of corporate identity without requiring compliance with all the formalities of the Companies Act, 1973. A close corporation exists as a separate legal entity from its members and has an unlimited lifespan.
Membership is restricted to ten members. Legislation recognises the personal nature of the relationship between members of a close corporation. Thus the courts have extensive powers to regulate the relationship of the members should there be a dispute, including where appropriate, the power to order one member to sell its interest in the close corporation on terms fixed by the court. The limited liability of members may be lost if certain of the provisions of the Close Corporations Act, 1984 are contravened. Members in a close corporation commonly regulate their relationship by way of an association agreement. The association agreement may vary some, but not all, of the provisions of the Close Corporations Act, 1984. A close corporation does not have any directors and there is, therefore, no practical separation between ownership and management. It is possible to convert a close corporation into a company and vice versa.

4.2.4 Companies

All companies are regulated in terms of the Companies Act, 1973 as amended. The Act is modelled very closely on English law, although there are several important differences. A fairly comprehensive revision of South African company law is currently being considered so as to bring it more into line with international practices, but the changes are unlikely to be

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implemented for another year or so. As in the case of close corporations, a company exists as a separate legal entity from its shareholders/members and has an unlimited lifespan. But, unlike close corporations, both natural and juristic persons may become members. Furthermore, since companies must have directors, there is a separation between ownership and management.

Share Capital

Generally speaking, all companies have a share capital consisting of shares either having a par value or no par value. Different classes of share may be created. Each different class of share must have rights that differ from the other classes in one or more respects, which may include voting rights. All issued share capital must be fully paid-up. A company may buy back its own shares within certain limits, but normally it is not permitted to give financial assistance directly or indirectly for the purchase of its shares. There are no minimum share capital requirements in South Africa. Companies may thus be formed with a nominal share capital. However, on incorporation, the directors of the company must lodge a statement that the capital of the company is adequate for its purposes or must state how the company proposes to procure sufficient funds to carry out its business. Stamp duty is payable on transfers of shares but not on the issue of shares.

Incorporation

A company is incorporated by lodging its Memorandum and Articles of Association and various supporting documents and company forms with the Registrar of Companies. A company may trade only when the Registrar has issued it with a certificate to commence business. Once all the documents have been lodged there is only a minimal delay in the company being incorporated and a certificate to commence business being issued. A company's main business must accord with that which is described as its main business in its Memorandum of Association. Companies may either be private companies (designated by the words "(Pty) Ltd" or "(Proprietary) Limited" after the name) or public companies (designated by the word "Ltd" or "Limited" after the name), or may be incorporated as companies limited by guarantee which are associations not for gain, the business of which is carried on for altruistic or philanthropic or special purposes.

Private Companies

A private company may be established by one or more persons provided that it does not have more than 50 shareholders. Although a private company is obliged to prepare audited financial statements on an annual

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basis, these financial statements do not have to be lodged with the Registrar of Companies and do not therefore become public documents. The right to transfer the shares of a private company must be restricted by its Memorandum and Articles of Association. Shareholders commonly regulate their relationship by way of a shareholders' agreement. Save where any provision is contrary to the Companies Act, the shareholders may agree that as between themselves certain of the provisions of the Memorandum or Articles will not be binding on them. Usually they will agree to procure changes to the Memorandum and Articles to give effect to their agreement.

Public Companies

A public company requires a minimum of 7 shareholders. Public companies are required to lodge audited financial statements with the Registrar of Companies each year to make such statements available for inspection by members of the public at the registered office of the company. Only a public company may, but is not obliged to, and offer its shares or debentures to the public and only a public company may be listed in terms of the Stock Exchanges Control Act. In order to obtain a listing the company must comply with the listings requirements of the Johannesburg Stock Exchange (JSE Limited). A public offer will require a detailed prospectus which must contain all the information required by the Companies Act, except where minimum subscriptions exceed a prescribed amount, or the offer is a private placement. An electronic clearing and settlement system for equity securities listed on the Johannesburg Stock Exchange, namely Share Transactions Totally Electronic (STRATE) has been introduced. This involves the dematerialisation of scrip – i.e. the substitution of a paper share certificate with an electronic record of ownership.

External Companies

South African law recognises the corporate identity of juristic persons incorporated outside the Republic of South Africa. However, where any company or other association of persons incorporated outside the Republic of South Africa establishes a "place of business" in the Republic of South Africa, it is obliged to register as an external company. "Place of business" is defined as any place where the company transacts or holds itself out as transacting business. An external company must register within 21 days of establishing its place of business. Registration involves the lodging of a notarially certified copy of the Memorandum and Articles of Association of the company. If that document is not in one of the official languages of the Republic of South Africa it must be accompanied by a sworn translation into one of the official languages. In addition, the external company must: give notice of its registered and postal office in South

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Africa and its financial year-end; appoint an auditor who practises in South Africa; give full details of all directors; and nominate a person resident in South Africa to accept service of documents on behalf of the company.

An external company must file a copy of its annual financial statements with the Registrar of Companies in respect of its South African branch, as well as a certified copy of the foreign financial statements of the company. Exemptions may be granted under certain circumstances. The external company will be subject to tax on its South African branch profits at a higher rate than South African companies but will be exempt from the Secondary Tax on Companies. The result is that the effective tax rate should be lower for the branch than would be the case for a local company.

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5. Labour

The legislative environment governing the relationship between employer and employee has undergone a process of major reform over the past number of years. The Government has attempted to obtain consensus with its social partners, Business and Labour, on the process of aligning South African employment legislation with International Labour Organisation recommendations and conventions. This process took place under the auspices of a statutory tripartite forum, the National Economic Development and Labour Council and has resulted in a number of key statutes being enacted. The impact of these statutes is briefly explained below.

Labour Relations Act

The purpose of the Labour Relations Act, 1995 (LRA) is to advance economic development, social justice, labour peace and the democratisation of the workplace The LRA provides a framework within which employees, trade unions, employers and employer organisations can bargain collectively on wages, terms and conditions of employment and other matters of mutual interest. The LRA is specifically designed to promote orderly collective bargaining at industry level, particularly by means of bargaining councils that have the power to conclude and enforce collective agreements. The LRA also promotes employee participation in decision making in the workplace through consultation and joint decision-making. The LRA provides simple procedures for the resolution of most labour disputes, including unfair dismissal and unfair labour practice disputes. These can be resolved through statutory conciliation and arbitration by the Commission for Conciliation, Mediation and Arbitration (CCMA), or through independent alternative dispute resolution services accredited for this purpose. The Labour Court and the Labour Appeal Court are tasked with the adjudication and determination of labour disputes of a more serious nature. The Labour Court has the status of an ordinary High Court and appeals against Labour Court judgments are dealt with by the Labour Appeal Court, but the Supreme Court of Appeal has jurisdiction to hear appeals from the Labour Appeal Court. The LRA also contains provisions aimed at the protection of employees in the event of the transfer of a business or the reduction of staff on the grounds of the operational requirements of the employer

Basic Conditions of Employment

The Basic Conditions of Employment Act, 1997 (BCEA) prescribes minimum standards of employment. Although the BCEA allows for a certain measure of variation of some of its provisions, important minimum

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standards may not be varied by agreement. The BCEA regulates working time in respect of certain categories of employees such as managers and employees who earn less than an amount determined by Government Gazette, by inter alia providing for the maximum ordinary hours of work per week at 45 hours and determining payment for overtime work. The minimum extent of annual leave, family responsibility leave and maternity leave provisions in respect of all the employees are regulated by the BCEA. The BCEA also places comprehensive administrative requirements on employers. The BCEA creates a permanent commission with broad powers to set minimum standards tailored primarily for those industries where collective bargaining does not take place. The BCEA gives the Department of Labour's inspectorate extensive powers of investigation and action with regard to breaches of minimum employment standards. The CCMA plays a major role in the determination of disputes and offences in respect of alleged breaches of employment standards.

Employment Equity Act
The Employment Equity Act, 1998 (EEA) was promulgated to achieve equality in the workplace by promoting equal opportunity and fair treatment in employment through the elimination of unfair discrimination. The further purpose of the Act is to implement affirmative action measures to redress the historical disadvantages in employment experienced by designated groups (defined as "black people, women and people with disabilities"), in order to ensure their equitable representation in all occupational categories and levels in the workforce. Extensive fines are imposed upon employers who do not comply with the transformation provisions of the EEA.

Health and Safety
The Compensation for Occupational Injuries and Diseases Act, 1993 provides for compensation for injury, disease or death arising in the work environment Compensation is paid out of public funds and no action lies against the employer which contributes to those funds. The Mine Health and Safety Act, 1996 and Occupational Health and Safety Act, 1993 place duties on employers to ensure a safe working environment as far as is reasonably practicable. Failure to comply with the provisions of these Acts is a criminal offence.

Human Resources Development
A need has been identified to develop the skills of South Africa's workforce, in order to enable the country to attract investment and to compete globally. The Skills Development Act, 1998 and Skills Development Levies Act, 1999 have been promulgated to achieve this purpose. Employers are required to pay an amount equal to a certain

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percentage of the value of their payrolls to the government. These funds are then applied by either the government or industry-based educational and training authorities to train workers. This is consistent with the goal of improving the productivity of the workforce for the sake of competitiveness. Businesses that undertake approved training can apply for refund of portion of the levy paid.

Conclusion

South Africa has a sophisticated legislative network that regulates employment matters. This has to be taken into account when doing business with South Africa. In the medium to long term, it is expected that the legislative framework will go a long way towards establishing a competent, stable and productive workforce.

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6. Taxation

Residents are taxed on the residence basis, while non-residents are taxed on the source basis. The effect on non-residents is that any income accruing from a South African source is taxable in the Republic. Residents are taxed on their worldwide income, with relief in respect of foreign taxes paid on income from foreign sources, 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 the Republic. 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 his 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. A company, trust or similar entity is deemed to be a resident if it is incorporated, established, formed or has its place of effective management in South Africa. The residence status of a person under any double tax treaty will, however, take precedence over this definition. Where one or more residents together hold 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. 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. Related to this provision, foreign dividends are exempt from tax in South Africa where they are received by resident shareholders holding in excess of 20% of the equity share capital and voting rights of the company declaring the dividend. Dividends received by residents holding less than 20% of such capital will be taxable in South Africa subject to a tax credit for foreign withholding taxes payable by the recipient shareholder. Resident shareholders holding from 10% to 20% of the participation rights or votes in the foreign company may elect on an annual basis that their attributable share of that company's net income be treated as taxable income in South Africa (as if they held more than 50% of such rights or votes). In this event they will get the benefit of a tax credit for the foreign taxes paid by such company with respect to their pro rata share of that income. Trusts are not covered by the CFC rules, but provisions exist to achieve substantially the same

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effect where trusts are used for offshore activities and capital or income is vested in a beneficiary resident in South Africa, or in a non-resident beneficiary in consequence of any donation, settlement or other disposition made by a resident of South Africa.

Capital Gains Tax

Since 1 October 2001 a capital gains tax (CGT) has applied in South Africa. Subject to a number of exemptions, limitations and rollover provisions, the tax is imposed by including, in taxable income on disposal, gains over the value of the asset on 1 October 2001 or the actual cost in respect of assets acquired after that date:

- in the case of natural persons, 25% of any gain on disposal. The effective rate of tax for such persons is thus 10% at the maximum marginal rate of 40%; and
- for other taxable entities, 50% of any gain on disposal.

The effective rate of tax for companies is thus 14% and 20% for trusts. Capital losses may only be set off against capital gains, so that if in any year the losses exceed the gains, the difference is carried forward until there are gains against which to set them off. The gain or loss in each case is the difference between the base cost and the proceeds. Base cost is the value at 1 October 2001 where the asset was held at that date, determined by a formal valuation or on a time-apportionment basis, or by deeming 20% of the proceeds to be the base cost, or the cost of acquisition where it was acquired after that date. Where the status of a person or an asset changes (see the list of deemed disposals below), the base cost after the change is the market value on the date of the change. In all cases, other expenses of a capital nature incurred after acquisition are added to the base cost. Proceeds are the amounts accrued on disposal. Provisions are in place to prevent the manipulation of the proceeds of disposals between connected persons. Such disposals are deemed to have taken place at market value Disposal for CGT purposes means more than mere sale. Disposals include:

- in broad terms, any act or occurrence that affects the value of the patrimony of a person;
- death;
- becoming or ceasing to be a resident;
- converting a capital asset into trading stock and vice versa;
- converting a capital asset into a personal-use asset (which is exempt from CGT) and vice versa;
- capitalisation of loans, waivers of claims on loan account, and variations of the rights attaching to shares in certain circumstances.

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The first R1.5 million of the gain on the disposal of the primary residence of a natural person is exempt, as is the first R15 000 of gains each year. In the year of death, the first R120 000 is exempt. There are special provisions relating to gains in foreign currencies. In essence they have the effect of taking into account foreign exchange gains and losses for individuals, but not for companies. The latter are subject to normal tax on the results of their foreign exchange gains and losses.

The CGT legislation is very complex and a document such as this cannot do justice to it. A more detailed description is available from members of our tax division.

Tax Rates

Companies and close corporations are taxed at a flat rate of 28% on income. There is also currently a Secondary Tax of 10% on declared dividends resulting in an effective rate of 34.54% in respect of distributed profits. External companies are taxed on branch profits at a flat rate of 33% on income. The Secondary Tax on Companies does not apply to external companies Small business corporations (defined below) are taxed at 0% on the first R46 000 of taxable income, 10% up to R300 000 and 28% thereafter. Individuals pay tax based on a sliding scale with a maximum marginal rate currently of 40%. Trusts are taxed at a rate of 40% on all taxable income.

Capital Allowances

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

- Wear and tear – An annual write-off of part of the cost or value of a capital asset. The amount of the allowance is at the discretion of the South African Revenue Service (SARS) and the period of the write off depends on the type of asset. The wear and tear allowance is not granted on structures of a permanent nature (such as buildings) or any assets which are written off in terms of the special depreciation allowance provisions of the Income Tax Act referred to below.
- Industrial buildings – An annual allowance expressed as a percentage of the cost of buildings or improvements (excluding the land) is granted in respect of buildings used wholly or mainly for commercial purposes or in a process of manufacture or a similar process. The percentage of the allowance varies according to the date of commencement of the erection of, or improvements to, the buildings. The rate applicable to erection/improvements commenced between 1 July 1996 and 30 September 1999, and

buildings brought into use before 31 March 2000, is 10% per annum. The current rate for buildings brought into use after that date is 5% per annum.

- New rail locomotives and wagons – An allowance of 20% per annum on cost is granted.
- New quay walls and other port facilities – An allowance of 5% per annum is granted.
- Environmental capital expenses – will qualify for allowances not yet announced.
- Hotels – An allowance of 5% per annum of the cost of that portion of the buildings or improvements used for the purposes of the taxpayer's trade as a hotelkeeper is granted if the erection or improvement was commenced on or after 4 June 1988 (if the erection or improvement commenced before 4 June 1988 the allowance is 2% per annum). Improvements to an existing hotel building which do not extend the exterior framework of the building and which were commenced after 17 March 1993 are subject to an allowance of 20% per annum. An annual allowance of 20% is also granted on new or used hotel equipment.
- Aircraft – An allowance is granted of 20% per annum of the cost of aircraft acquired on or after 1 April 1995 for the purpose of any trade.
- Ships – An allowance is granted of 20% per annum of the cost of ships acquired on or after 1 April 1995 for the purpose of any trade.
- Intellectual property – In respect of such property acquired before 29 October 1999, the cost may, at the discretion of the SARS, be written off over the lesser of the estimated life of the property or 25 years. In respect of expenditure incurred after that date but before any year of assessment commencing on or after1 January 2004: expenditure on patents, trademarks (other than acquisition), copyrights and similar property may be written off over 20 years; expenditure on designs and similar property may be written off over 10 years; expenditure on the acquisition of trademarks may not be written off at all. In respect of years of assessment commencing on or after 1 January 2004, the cost of acquiring any of the categories listed above may be written off as indicated. The cost of research and development conducted in South Africa that results or may result in an identifiable intangible asset may be written off as follows: buildings, machinery, plant and other capital assets: 40% in the year of first use and 20% per annum thereafter; other expenditure: in the year in which it is incurred.
- Leasehold improvements – The cost of leasehold improvements effected by the lessee may be written off over the period of the lease, provided the lesser is taxable on the value of the

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improvements, and provided the improvements are carried out in terms of an obligation under the lease.

- Certain commercial and residential buildings– If buildings in certain designated municipal areas, usually CBDs in need of revival, are refurbished, the cost may be written off at 20% per annum. If new buildings are constructed in such areas, the cost may be written off at 20% in the year of first use and 5% per annum thereafter.
- Plant and machinery – There is a special depreciation allowance expressed as a percentage of the cost of plant and machinery in the year it is brought into use for the first time by the taxpayer for the purpose of trade (other than mining or farming) and in succeeding years, and used directly in a process of manufacture or similar process. The allowance is presently 40% in the year in which it is first brought into use and 20% per annum for the next three years.
- Small business corporations– The cost of the plant and machinery brought into use by a small business corporation (SBC) and used in process of manufacture may be written off in full in the year of first use. An SBC is a company or close corporation all of whose members are natural persons with no other investments in companies (other than in listed shares or collective investment schemes). The gross income of the SBC may not exceed R14 million, not more than 20% of which may consist of investment income.
- Strategic industrial projects – Where a company carries on a strategic industrial project (SIP), it may write off 100% of the cost of industrial assets, up to a limit of R600 million, in the year of first use where the SIP has "preferred status", and 50%, up to a limit of R300 million, where the SIP has "non-preferred status". The value of the investment in assets must exceed R50 million over not more than four years. Ministerial approval is required, and applications are dealt with on a case by case basis. In the year of disposal or scrapping of any asset used for the purposes of trade, an adjustment recoupment of allowances on disposal is limited to the initial cost of the asset. It should be noted that foreign losses incurred by a resident may not be set off against is allowed to the extent that the tax value exceeds the proceeds. Any the domestic profits of the taxpayer. There are provisions to prevent the abuse of allowances by means of disposals between "connected persons" (this is a broadly defined expression in the Income Tax Act).

Transfer Pricing and Thin Capitalisation Rules

- Transfer pricing – The anti-transfer pricing provisions contained in the Income Tax Act may be applied where goods or services are supplied or acquired in terms of an international agreement

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concluded between connected persons (essentially group companies). If the price of the goods or services is other than it would be between persons transacting with each other at arm's length, SARS may adjust the consideration in the determination of the taxable income of either the acquirer or the supplier.

- Thin Capitalisation – The thin capitalisation rules may be applied by SARS where financial assistance, such as a loan, advance or debt, or the provision of any security, is granted by a non-resident investor to a resident investee who is either a connected person, or a corporate entity in which the investor has a direct or indirect interest entitling it to participate in not less than 25% of the dividends, profits, capital or votes. The thin capitalisation rules, when applied, disallow the deductibility of interest paid by the South African resident to the foreign lender, to the extent that such interest is considered to be excessive by the SARS. In broad terms, the rules will not be applied if- the debt: equity ratio falls within a safe haven ratio of 3:1. In other words, where the financial assistance granted by the non-resident investor does not exceed three times the fixed capital (being essentially share- capital, share premium and accumulated profits) of the resident investee; and- the interest rate does not exceed the weighted average of prime plus 2% for South African Rand denominated loans, or the relevant weighted average interbank rate plus 2% for loans denominated in other currencies. These rules do not apply to financial assistance granted by a "parent" company to its branch operating as an external company in South Africa.

Withholding Taxes

A withholding tax of 12% is deductible from gross royalties payable to non-residents. A withholding tax of 15% is also levied on the income of visiting entertainers and sportspersons. A new withholding tax of between 5% and 10% on the proceeds of the sale of immovable property by a non-resident will soon be applicable. South Africa has entered into a number of double taxation treaties with foreign countries (see 4.6 below). These agreements often vary the provisions concerning the withholding tax on royalties and may be an important consideration relative to the offshore shareholding and funding structure of a South African company.

Passive Investment Income

- Dividends – Local dividends received by a taxpayer are currently exempt from tax. Foreign dividends received by residents are taxable in South Africa unless the recipient (or the recipient's group

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of companies) holds in excess of 20% of the total equity share capital of the company declaring the dividend, or the foreign profits giving rise to the dividend have already been taxed in South Africa, or the dividend is declared by a company enjoying a dual listing both in South Africa and its country of domicile, and in excess of 10% of the share capital of that company is held by residents of South Africa.

- Interest – Interest payable to non-residents is exempt from normal tax in South Africa provided that:
  - interest payable to persons (other than companies) ordinarily resident outside South Africa will only be exempt if payable to a natural person who is physically absent from South Africa for at least 183 days during the tax year;
  - interest payable to a company managed and controlled outside South Africa will only be exempt if the interest is not effectively connected with the business carried on by such company in South Africa.

  In the case of all passive investment income, relief is available in respect of foreign taxes paid on the income.

Secondary Tax on Companies (STC)

Secondary Tax on Companies (STC) applies to companies and close corporations, but not to the local branches of foreign companies. The net amount of a dividend declared by a company and a close corporation) is subject to STC at a rate of 10%. The net amount is the amount by which dividends declared during a dividend cycle, and on which STC was paid, exceed dividends accrued to the company during the relevant cycle. The dividend cycle commences on the day after the declaration of the previous dividend and ends on the date on which the next dividend accrues to the shareholders. Dividends passing through a group structure will be exempt from STC when declared by a wholly owned subsidiary, but will suffer STC when subsequently declared out by the parent company. STC is payable by the company declaring the dividend, and not by the recipient. Companies that earn profits both from within and outside South Africa are liable to STC on the pro rata portion of dividends declared which relates to profits earned from a source within South Africa. Dividends received are not taken into account in the determination of the ratio. STC is being fazed out altogether. From 2008, STC will be abolished and replaced with a dividend tax, payable by the recipient of the dividend rather than the declaring company. Currently some countries grant tax relief in respect of the STC imposed in South Africa. Special provisions apply to gold mining companies and long-term insurers.

Value Added Tax (VAT)

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Value Added Tax (VAT) must be charged and paid over by all suppliers of goods and services (other than very limited exempt goods and services). The current rate is 14%. All suppliers of goods and services having an annual turnover currently exceeding R300 000 are obliged to register as VAT vendors and to charge output VAT. Other vendors may elect to register as VAT vendors provided their annual turnover exceeds R20 000. If they do not register, they are prohibited from:

- charging VAT on goods or services they supply; and
- claiming an input tax (rebate of VAT paid) on goods and services which they acquire.

Double Taxation Agreements

South Africa has concluded bilateral agreements for the avoidance of double taxation with approximately 60 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.

Estate Duty

An estate duty of 20% is imposed on the net value of deceased estates, after an abatement of R3.5 million. This applies to the worldwide assets of residents, subject to certain exemptions, and to the South African assets of non-residents.

Donations Tax

A tax of 20% is imposed on donations made by residents, subject in the case of natural persons to an annual exemption of R100 000. Persons other than natural persons may make casual donations of not more than R10 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 organizations, institutions for the advancement of science or art, political parties and spheres of government.

Public Benefit Organisations

Organisations carrying out one or more "public benefit" activities may apply for exemption from normal tax. There are eleven categories of such activities:

- -welfare and humanitarian;
- health care;
- land and housing;
- education and development;
- religion, belief or philosophy;
- cultural;
- conservation, environment and animal welfare;

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- research and consumer rights;
- sport;
- the provision of funds, assets or other resources to a PBO or institution, board or body conducting one or more public benefit activities; or
- the provision of support services to one or more of the entities referred to in 4.9.10, or a bid to host or the hosting of an international event approved by the Minister. Taxpayers who make donations to exempted PBOs may deduct the value of such donations from their income, subject to certain limitations.

Assessed Losses and Secondary Trades

Whereas assessed losses from one trade may generally be set off against income from other trades conducted by the same taxpayer, certain limitations apply to natural persons whose taxable income exceeds the level at which the maximum marginal rate is payable. Losses from any denominated secondary trade carried on by such a person may in certain circumstances be ring-fenced and only set off against subsequent profits from the same trade.

Transfer Duty

Transfer duty at between 0% and 8% is payable by purchasers of immovable property who are natural persons. The duty in respect of purchases by other legal persons is 8%. Transfer is likely to be refused if the tax affairs of the seller are not up to date.

Soccer World Cup

In preparation of the 2010 Soccer World Cup to be held in South Africa, a number of "tax free bubbles" will be created in and around the football venues. Activities within these bubbles will be exempt from income tax and VAT. Supplies to the bubbles will be zero rated, with the result that suppliers who are registered vendors will enjoy a considerable VAT benefit.

The benefits will apply to consumable and semi-durable goods but not to fixed assets or durable goods. FIFA and its associated members will in addition be exempt from import duties where the goods concerned will be re-exported after the event. Other entities that will benefit include: commercial affiliates of FIFA; licensees; broadcasters; merchandising partners; FIFA designated service providers; concession operators; hospitality service providers; and the FIFA flagship store operator.

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7. Accounting & reporting

South African law requires companies to keep proper accounting records in one of SA's official languages for each financial period. There is no specific legal requirement for sole proprietors to keep accounting records. However, tax legislation requires the retention of records used in the completion of tax returns. Partnerships must keep records of all receipts and payments and all sales and purchases of goods.

Tax legislation requires that accounting records be kept for at least 15 years.

Preparation of accounts
The directors of a company must prepare a balance sheet, income statement and cash flow statement for each financial year. The annual report must include a directors' report. If a company has one or more subsidiaries, it must also prepare group annual financial statements. The Companies Act prescribes the form and content of the balance sheet, income statement and additional information to be provided by way of notes, such as details of directors' remuneration. Accounts must be prepared in one of SA's official languages.

There is an overriding requirement for the accounts to fairly present the state of affairs and business of the company.

Reporting and accounting requirements
Reporting and accounting requirements are contained in the following references:

- The Companies Act and regulations made under it;
- Accounting standards – South African Statements of Generally Accepted Accounting Practice (SA GAAP);
- International Financial Reporting Standards (IFRS); and
- The Listing Rules issued by JSE Limited (listed companies only).

GAAP
SA GAAP is not defined by law but is considered to encompass all the official material above as well as the accounting practices that are regarded as appropriate by the accounting profession. The Companies Act requires directors to produce accounts that fairly present the state of affairs and business of the company. SA GAAP must normally be adopted in order to give a true and fair view.

IFRS

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For accounting periods beginning on or after 1 January 2005, companies must adopt IFRS in their annual financial statements.

Abbreviated accounts

The Companies Act does not provide for the preparation of abbreviated accounts.

Audit requirements

All companies must have their accounts audited. The auditor must examine the accounts and accounting records of the company and prepare a report for the company's members. The report, included in the published report and accounts, must contain an opinion on whether or not the company's annual accounts have been properly prepared in accordance with the Companies Act and whether or not they fairly present the state of affairs and business of the company. The auditor will consider whether or not the information given in the directors' report is consistent with the annual financial statements and accompanying notes. If, in the auditor's opinion, the accounts or directors' report do not comply with the Companies Act, the auditor will qualify this in the report.

Who can act as auditor?

The eligibility for acting as auditor is set out in the Companies Act. Eligibility is also governed by ethical considerations. An auditor must be independent of the company. Therefore a person cannot be appointed as an auditor if he/she is:

- A director, officer or employee of the company, its holding company, subsidiary or fellow subsidiary of such a company;
- A director, officer or employee of any company performing secretarial work for the company, its holding company, subsidiary or fellow subsidiary of such a company;
- A partner or employer or employee of a director or an officer of the company, its holding company, subsidiary or fellow subsidiary of such a company;
- A person who, personally, or whose partner or employee habitually or regularly performs the duties of secretary or bookkeeper of the company, its holding company, subsidiary or fellow subsidiary of such a company;
- A person who at any time during the financial year was a director or officer of the company, its holding company, subsidiary or fellow subsidiary of such a company; and
- A person not qualified to act as such under the Public Accountants' and Auditors' Act.

Other services that an auditor may provide

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An auditor may provide secretarial and bookkeeping services to a private company, no shares of which are held by a public company, subject to the approval of all the shareholders in writing and the disclosure of this in the auditor's report.

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8. UHY firms in South Africa

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Website:	www.rahellman.co.za

9. UHY offices worldwide

For contact details of UHY offices worldwide, or for details on how to contact the UHY executive office, please visit www.uhy.com

Appendix: Useful web links

Department of Trade and Industry:	www.dti.gov.za
Industrial Development Corporation:	www.idc.co.za
South African Revenue Services:	www.sars.gov.za
The South African Reserve Bank:	www.reservebank.co.za

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