Chandrawat & Partners

DOING BUSINESS IN SOUTH AFRICA

A comprehensive guide on doing business in South Africa

enquiries@chandrawatpartners.com | www.chandrawatpartners.com

TABLE OF CONTENTS

Chandrawat & Partners

OVERVIEW

The most sophisticated and developed economy in Africa is that of South Africa, which is home to some elite businesses in the fields of banking, real estate, business services, manufacturing, and wholesale and retail commerce. Due to its comparative sophistication, ease of doing business, continental expertise, and capacity to serve as a basis for essential services (such as auditing) for conducting business on the rest of the continent. South Africa has one of the greatest business environments in the developing world, with a sophisticated transit infrastructure, stable macroeconomic conditions, and strong financial and legal frameworks.

The difficulties are not insurmountable, and many of them have already been resolved. The 18th-largest stock exchange in the world, South Africa is a middle-income emerging market with an abundance of natural and labour resources, well-developed financial, legal, communications, energy, and transportation sectors, and a modern infrastructure supporting a relatively efficient distribution of goods to major urban centre throughout the region.

Reasons for investment in South Africa for doing business:

- Hot emerging market: Growing middle class affluent consumer base, excellent returns on investment.
- Most diversified economy in Africa: South Africa has most industrialized economy in Africa. It is the region's principal manufacturing hub and a leading services destination.

- Largest presence of multinationals on the African continent: Global corporate reap the benefits of doing business in South Africa which is a supportive and growing ecosystem as a hub for innovation, technology and fin-tech.

- Progressive constitution and independent judiciary: the country has a mature and accessible legal system, provide certainty and respect for the rule of law.

- Abundant natural resources: South Africa is endowed with an abundance of natural resources. It is the leading producer of platinum-Group Metals (PGM's) globally. Numerous listed mining companies operated in South Africa which is also had world renowned underground mining expertise.

- Advanced financial services and banking sectors: South Africa has sophisticated banking sector with a major foot print in South Africa. It the continentals financial hub with the JSE being Africa's largest stock exchange by market capitalization.

- World class infrastructure and logistics: A massive governmental investment programme in infrastructure development has been under way for several years. South Africa has largest airports and logistics network.

ECONOMIC OVERVIEW

The most developed, diverse, and productive economy in Africa is found in South Africa. An obvious choice for American businesses looking to enter the Sub-Saharan African market is South Africa, which boasts one of the most business-friendly environments on the continent.

The nation is the top producer of platinum, vanadium, chromium, and manganese in the world and has a population of over 60 million people.

Despite covering only 3% of the continent's territory, the nation produces 40% of all industrial output, 25% of the continent's GDP, more than half of the continent's power, and 45% of its minerals.

However, since gaining its independence, South Africa has attained a high level of macroeconomic stability.

FOREIGN DIRECT INVESTMENT POLICY

South Africa's ability to draw in sustainable and ethical foreign direct investments is essential to its economic development. Foreign direct investment is defined as the acquisition of a long-term stake, typically with at least a 10% ownership interest, in a company that is located outside of the investor's country of residence with the aim of having a meaningful influence on the company's management.

Only when the right conditions are present in the host economy is it determined that FDI is beneficial to the economic well-being of the host nation. For instance, new financial capital, new plant technology, and human capital are all examples of adequate absorptive capacity. Additionally, it's crucial that domestic enterprises are not "crowded out" and are allowed to compete with foreign firms.

The growth of multinational firms has increased the complexity of supply and value chains for goods and services, spanning several nations and continents. Global value chains today have increased the relevance of FDI as a vital tool for commerce and development, fostering employment growth and the transfer of knowledge and technology. Low national savings and investment financing mostly through more erratic portfolio flows rather than longer-term FDI have been defining characteristics of South Africa's economy.

KEY SECTORS

Due to the country's vast natural resources and favorable agricultural conditions, the cornerstone of South Africa's economy has historically been made up of its primary industries. The economy has, nevertheless, been characterized throughout the last 40 years by a structural change in output. Among the key sectors that keep South Africa's are: manufacturing, wholesale and retail trade, financial services, transport, mining, agriculture and tourism.

Manufacturing: South Africa has constructed a diversified manufacturing sector that has proven to be resilient and competitive in the global market.
The manufacturing industry acts as a catalyst for the expansion of other industries, such as services, and the achievement of particular goals, like the creation of jobs and economic empowerment. Manufacturing is dominated by industries such as agro-processing, automotive, chemicals, information and communication technology, electronics, metals, textiles, clothing and footwear.

Wholesale and retail trade: In South Africa, a variety of retail trade enterprises are represented in a monthly industry survey. retailers of specialty food, drink, tobacco, pharmaceutical and medical items, cosmetics and toiletries, general dealers, textiles, apparel, footwear, leather goods, home furnishings, appliances and equipment, hardware, paint and glass, as well as various other retailers of a range of various goods are included in this category.

Financial services: An independent organization called the Financial Services Board was created by statute to regulate South Africa's non-banking financial services sector. The board's goal is to advance reliable and effective financial services and institutions, as well as safeguards for investors. As a result, laws are governing the financial industry, particularly those pertaining to risk management, have undergone extensive revision to bring them into compliance with generally accepted standards and best practices. Together with other service sectors, the banking, real estate, and business sectors have established themselves as a pillar of the nation's economic expansion over time.

Mining: The nation is well known for having an abundance of mineral resources, which make up a sizeable amount of the world's production and reserves. South African mining companies also control a large portion of the worldwide mining market. South Africa is one of the top producers of base metals, coal, and the world's largest producer of gold and platinum. Only Botswana, Canada, and Russia produce more diamonds annually than the country's fourth-largest diamond industry.

Agriculture: Over the past forty years, the share of GDP devoted to agriculture has declined. The economy has advanced gradually. Agriculture made for 9.1% of the economy in 1960. Intense crop production and mixed farming in winter rainfall and high summer rainfall areas, raising cattle in the bushveld, and sheep farming in desert locations are all examples of agricultural activity. Only 22% of South Africa's land is high-potential arable, despite the fact that 13% of it is suitable for crop production. South Africa is a net exporter of food in addition to being self-sufficient in almost all major agricultural crops. The economy and prosperity of southern Africa still rely heavily on agriculture.

Tourism: One of the biggest sectors worldwide and recognized as a modern-day engine of growth is tourism. Being less volatile than the commodities sector is one of the benefits of tourism as an export earner. South Africa has designated tourism as a growth industry because it is well adapted to enhancing the value of the nation's numerous natural, cultural, and other resources. South Africa's GDP and employment are directly and indirectly accounted for by tourism.

ADVANTAGES OF DOING BUSINESS

Following are the advantages of doing business:

- Separate legal entity: The South African Company will have a separate legal identity from that of the foreign company. This is beneficial from a liability perspective.
- Newly incorporated entity: This allows company information, such as the name of the company, the identity of the directors and the shareholding to be recorded from inception.
- The Republic of South Africa's flexible tax system is its key selling point: Under certain circumstances, South African businesses may be excluded from paying taxes.
- It should be highlighted that capital gains are not subject to taxation (unless the company's assets are purchased explicitly for a profit-making sale). Tax-free dividend income comes from both foreign and South African corporations.
- The ease of doing business in South Africa is considerably higher than in other powerhouse countries such as India, china, Brazil, or even Russia, which will entice foreign investors looking to invest in South Africa.
- The legal requirements are all very direct forward for anyone looking to do business in this country, and there is no complex procedure to start a company.
- Dealing with issues like building permits and credit approvals is simple, and investors are also given investment protection.
- The quality of a nation's infrastructure will always be of interest to foreign investors or foreign businesses.
- The nation should be proud of its impressive infrastructure, which includes an advanced transport network, a smart banking industry, and an easily accessible energy industry

TYPES OF BUSINESS

Sole proprietorship: A sole proprietorship is when the company's founder is the only one who owns and manages it. Because the business and the owner are one and the same, this is the most straightforward type of business entity. The company or a business may have a trading name, and decisions pertaining to it.
A sole proprietorship does not need to be registered because it is not a separate legal entity under South African law. Such a business does not exist independently of its proprietor, who is referred to as the owner. As a result, there is no established legal structure that can be used to register or establish a sole proprietorship.

The name must be registered with the Companies and Intellectual Property Commission ("CPIC") if a lone owner wants to conduct business under a name other than his or her given name. Depending on CIPC backlogs, the registration process normally takes two to four weeks. There is no specific legal framework for single owners.

State owned companies: A state-owned company is a company listed as a public entity in Schedule 2 or 3 of the Public Finance Management Act, No 1 of 1999 or is a company owned by a municipality. The state is the sole or major shareholder. A state-owned company's name must end with the suffix 'SOC Ltd'

Partnership: A partnership is an organization made up of two or more people and established through a written agreement that each member must abide by. Accept to contribute in some way to the relationship. The goal of the firm, which is run for the partners' mutual advantage, is to make money.
Partners are co-owners of the partnership property, which is owned jointly in undivided shares, unless the partnership agreement specifies otherwise. A South African citizen is not required to be a partner. This contribution need not be monetary as long as it has value that can be measured or is useful.

Joint ventures: a "joint venture" is not a separate legal body, and there is no special legal framework that governs joint ventures. Various legal frameworks, such as partnerships, business trusts, or incorporated corporations, can be used to create joint ventures. Joint ventures do not have their own registration or incorporation processes.

A joint venture will need to follow particular registration or incorporation procedures depending on the type of legal structure it adopts.

Limited liability partnership companies: This type of partnership is a limited liability company that can have two or more owners and benefits from pass-through taxation. While members of a Limited Liability Partnership companies are responsible for their own actions, they are not held personally responsible for the actions of their fellow partners or for the debts and losses incurred by the company.

Personal liability companies: A corporation is considered to be public if it issues securities through an Initial Public Offering ("IPO") and conducts stock trading on at least one stock exchange. The market value of the entire firm is determined by the daily trading of the stock of the public company.

A public firm offers advantages like: Since you can sell your shares to the general public, you have additional capital at your disposal. When a company is listed on a stock exchange, fund managers and traders are aware of it.

Non-Profit Companies ("NPC"): A NPC is a company that is incorporated for a public benefit or other social or cultural objectives. The income and property of a non-profit company are not distributable to its incorporators, members, directors, officers or persons related to any of them, except as reasonable compensation for services rendered or as reimbursement for expenses incurred in carrying out the company's activities.

The name of a non-profit company must end with 'NPC' and its objectives must relate to social activities, public benefits, cultural activities or group interests. A non-profit company must have at least three directors.

Foreign and external companies: Corporations with foreign ownership that are formed outside of South Africa yet conduct business there are known as external corporations. Foreign-owned businesses must register with the CIPC as external firms in order to be able to issue securities to the South African market.

COMPANY REGISTRATION

- By creating a memorandum of incorporation ("MOI") and a notice of incorporation and submitting them to the Companies and Intellectual Property Commission ("CIPC"), a business may be established and incorporated "from scratch." The CIPC is the organization or organization that, among other things, acts as a registrant and regulator of businesses in South Africa.

- The MOI is the document that governs how the firm, its shareholders, and its directors interact with one another. For this aim, one can employ relatively "standard form" MOIs or create a tailored MOI to address the specific requirements of the shareholders. The proposed name for the firm must be reserved at the CIPC prior to the MOI being submitted. Once the CIPC issues a certificate of incorporation, the company is both registered and incorporated.

- Another strategy is to leverage "shelf" businesses. In essence, shelf companies can be "transferred" into the name and control of a client who needs a firm quickly. Shelf companies are previously created and registered private organizations with no assets or liabilities. The advantage of shelf companies is that since the company has already been founded, the shareholding and directorship of the firm just need to be changed, eliminating the need to wait for the CIPC to register a newly established company. Stock standard MOIs register shelf firms.

HOW TO SET UP AN ENTITY?

The corporate community in South Africa has a long history of conservatism, a clear sense of hierarchy, and a concentration of power at the top. Large international corporations that invested in the nation after 1994 have contributed to the slow-moving change. The corporate community is often risk adverse, which is consistent with this conservative approach, as seen by the significance of contracts.
Verbal agreements are rarely used since these are so comprehensive. Personal relationships are the one aspect that matter in all civilizations. Doing business in South Africa will be simpler if there is a strong personal connection between the two parties.

Step by step guide for setting up a business in South Africa:

Step 1: Choosing a business structure

Step 2: Registering the business with the companies and Intellectual Property Commission (CPIC): Every business in South Africa will need to be registered with CIPC. The company must be registered with the South African Registrar of Companies within 21 days of the company being started.

Step 3: Registering for statutory requirements

Step 4: Understanding tax and legal requirements

Step 5: Protecting your business with Insurance.

TAXATION

Personal income tax: Residents of South Africa are subject to local taxes on income earned elsewhere in the world, whereas non-residents are only subject to local taxes on income earned within the country.

According to data from 2023, 23.9 million of its 59 million residents were registered to pay personal income tax, and personal and corporate taxes account for the majority of the state's revenue. However, indirect taxes like the value-added tax do make up close to a third of the government's revenue.

Income tax: Earnings received from employment income, self-employed trade, rental income, investment income, and pension income are subject to income tax. Self-employed people pay income tax at the same levels as employees in South Africa. These are South Africa's income tax bands for the 2023 tax year (1 March 2023 to 29 February 2024).

Corporation tax: Corporate tax in South Africa is charged at a flat rate of 28% for all companies (which will decrease to 27% for tax years ending on or after 31 March 2023). Small business corporations are taxed at lower progressive rates, starting at 7% on taxable income above R95,750, 21% for income between R365,000 and R550,000, and 28% for income exceeding R550,000.

Value Added Tax ("VAT"): VAT in South Africa is levied on the consumption of goods and services. The VAT rate in South Africa is currently 15% on most goods and services and on imported goods, though there are some exceptions, for example some financial services.

ACCOUNTING STANDARDS

South Africa has become the first country in the world to adopt the International Accounting Standards Board's proposed International Financial Reporting Standards for Small and Medium-sized Entities in its exposure draft form as a transitional standard for limited interest companies without public accountability.

It includes new standards such as IFRS 15 (Revenue), IFRS 9 (Financial Instruments), and IFRS 16 (Leases), replacing the old IAS 18, IAS 32, and IAS 17, respectively.

SMEs that have a public interest score under 100 points (under the Companies Act) and whose financial statements are internally compiled can use their own accounting policies if they are not required to comply with any other financial reporting standards.

EMPLOYMENT AND LABOUR LAWS

Labor Relations Act 1995 (“LRA")

The main law governing workers’ rights in South Africa is the LRA of 1995. The LRA provides key protections for employees and regulates for the resolution of disputes between employers and employees, thus covering areas such as:

Unfair dismissal: Employee contracts cannot be cancelled merely by giving notice, and everyone has a right against being fired arbitrarily. Generally speaking, three factors are accepted as justifications for termination, namely: Employee misconduct Incapacity (poor work performance or incapacity to perform due to illness or injury) The employer's operational requirements

Unfair labour practices: The LRA protects workers from different types of unfair labour practices, including unfair behaviour on the part of the employer regarding promotion, suspension, or benefit supply.

Dispute resolution: Employees have reasonably simple access to the Commission for Conciliation, Mediation and Arbitration (“CCMA”), a body with broad authority to compel reinstatement or compensation, through the statutory dispute resolution system.

Collective bargaining: The negotiating council system, which divides industries into distinct areas of specialization, such as construction, motor manufacture, and engineering, is used in South Africa to regulate working conditions.

Strikes and lockouts: Employees have the right to strike and cannot be fired for doing so, subject to complying with certain preceding criteria in particular, a mandatory conciliation meeting.

The LRA applies to all employees except for members of the:

- National defence force.
- National intelligence agency.
- South African secret service.

Basic Conditions of Employment Act 1997 (“BCEA”)

A "floor" of rights, or fundamental minimum standards of employment, is established by the BCEA of 1997 (BCEA), below which an employer may not enter into a contract. It guarantees, among other things:

- Workday duration is set.
- Employees receive sufficient breaks throughout the workday.
- Employees receive a set amount of paid yearly and sick time.
- Certain groups of workers receive additional compensation for labour done after hours and on Sundays.
- Employees may also be granted other fundamental rights.

The BCEA specifies how pay rates and working hours are to be computed as well as what documents an employer must keep. Unless a bargaining council agreement applies to the industry or region in which the employer conducts business and specifies minimum terms and conditions for the employees in that industry or region that are less favourable to the employees than those set out in the BCEA, an employer and an employee cannot agree to terms that are less favourable than those laid out in the BCEA.

Employment Equity Act 1988 (“EEA”)

Another important law pertaining to employment is the EEA of 1998. By promoting equal opportunity and fair treatment in the workplace, eliminating unfair discrimination, and putting affirmative action policies into place to address the disadvantages experienced by members of the targeted groups, it aims to achieve equality in the workplace.

These are the considered designated categories under the EEA:

- Women from South Africa
- People of Black colour
- Individuals with disabilities

Every designated employer must put affirmative action policies in place with regard to people from the designated categories in order to achieve employment equity. Employers classified as designated employers under the EEA are those who meet certain standards for yearly turnover or employee count.

HOW WE CAN HELP?

Chandrawat and Partners is a professional services firm that specializes in helping companies do business worldwide.

We offer a range of services, including company registration, tax advisory, and legal support. Our team of experts has extensive experience working with foreign companies and can provide tailored solutions to meet the business needs.

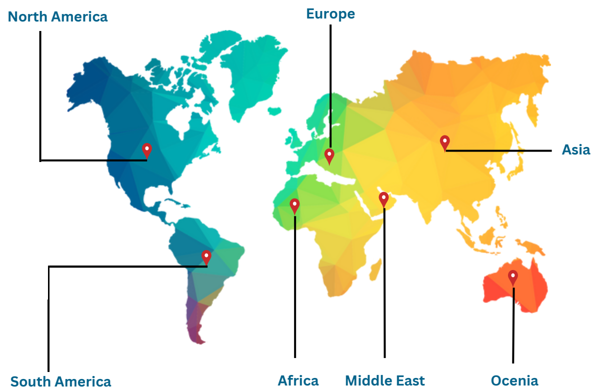
Our team can provide legal advice on the regulatory framework for automotive sectors, and automotive companies to drive efficiencies, unlock new value, improve the customer experience, and generate new business models.

Our team ensure that the business complies with all applicable laws and regulations, including consumer protection, labor, product safety, and environmental laws.

Our team can assist with obtaining the necessary licenses and registrations to operate legally in the jurisdiction. Furthermore, product liability insurance can also help businesses with licensing and registration requirements.

Chandrawat & Partners

SERVING CLIENTS WORLDWIDE



The information contained herein is of a general nature. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. The information is not offered as an advice on any matter, and no one should act or fail to act based on such information without appropriate legal advice after a thorough examination of the particular situation. The information does not make us responsible or liable for any errors and/or omissions, whether it is now or in the future. We do not assume any responsibility and/or liability for any consequences.

Key Contact

Surendra Singh Chandrawat

Managing Partner

surendra@chandrawatpartners.com

Connect Surendra on

LinkedIn WhatsApp WeChat

Chandrawat & Partners is a leading and rapidly growing full-service firm providing high quality professional and corporate services to foreign and local clients, representing companies and individuals in a wide range of sectors through separate entities established in various countries worldwide.

Follow us on: LinkedIn twitter facebook Instagram