



GLOBAL EXPANSION GUIDEBOOK CORPORATE

South Africa



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INTRODUCTION

Welcome to the 2024 edition of DLA Piper's *Global Expansion Guidebook – Corporate*.

GLOBAL EXPANSION GUIDEBOOK SERIES

To compete and be successful today, companies need to develop and scale their businesses globally. Each country presents its own set of unique laws, rules and regulations and business practices that companies must understand to be successful. In order to help clients meet the opportunities and challenges of expanding internationally, we have created a handy set of global guides that cover the basics companies need to know when going into and doing business in new countries. The *Global Expansion Guidebook* series reviews business-relevant corporate, employment, intellectual property and technology, executive compensation, and tax laws in key jurisdictions around the world.

CORPORATE

The *Global Expansion Guidebook – Corporate* has been created based on our research, our experience and feedback we have received from clients in both established and emerging businesses that have expanded internationally. We hope it will be a helpful resource for you.

The *Global Expansion Guidebook – Corporate* covers corporate basics in 54 key jurisdictions across the Americas, Asia Pacific, Europe and the Middle East. We touch on a wide range of corporate issues for companies expanding internationally, including establishing a corporate presence and choice of entity, liability considerations, tax presence and tax filings, capital requirements, the formation process, director, officer and shareholder requirements, registration processes, office lease processes and possible exit strategies.

With more than 600 lawyers, DLA Piper's global Corporate group is one of the largest in the world, with one of the widest geographical footprints of any global law firm and experience across the legal areas companies need as they expand internationally. With both global experience and local knowledge, we partner with our clients wherever they do business to find solutions and manage their risk in relation to their challenges and objectives.

While this guide provides high-level guidance, it is not a substitute for legal advice, and we encourage you to seek advice regarding the specific matters that concern you. If you wish to speak to any of our contributors, you may find their contact details at the end of the guide.

We hope you find this guide valuable, and we welcome your feedback.

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This is a general reference document and should not be relied upon as legal advice. The application and effect of any law or regulation upon a particular situation can vary depending upon the specific facts and circumstances, and so you should consult with a lawyer regarding the impact of any of these regimes in any particular instance.

DLA Piper and any contributing law firms accept no liability for errors or omissions appearing in this publication and, in addition, DLA Piper accepts no liability at all for the content provided by the other contributing law firms. Please note that corporate law is dynamic, and the legal regime in the countries surveyed could change.

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SOUTH AFRICA



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FORM OF ENTITY

In addition to doing business as a sole proprietor (where an individual conducts business in their personal capacity), there are different types of for-profit entities used to conduct business in South Africa:

- Private company
- Public company
- Personal liability company
- External company (these entities are branches of foreign companies and not South African incorporated entities as discussed below)
- Trust (unique legal arrangements where property is transferred to and held or administered by one or more trustees on behalf of the trust beneficiaries for their benefit or for the achievement of a specified purpose other than the trustees' own benefit)
- Partnership (regulated by a consensual contract between 2 or more persons to place their assets, labor and skill, or some or all of them, in lawful commerce or business, and to divide the profit and bear the loss in certain proportions)

This guide will focus on private and public companies as the most commonly used entities in South Africa.

ENTITY SET UP

The South African companies registrar is the Companies and Intellectual Property Commission (CIPC), whose functions include the registration and maintenance of companies. Upon making an application to register a company with the CIPC, the applicant will be required to submit the company's adopted constitutional document which may either take the form of the standard Memorandum of Incorporation (MOI) as provided by law or a customized MOI which has been tailored to include the company's powers and impose specific protocols to be complied with by the shareholders and directors in respect of their rights and obligations in and to the company, particularly, when dealing with or on behalf of the company.

We point out that a company is governed, firstly, by the South African Companies Act 71 of 2008, (Companies Act) and, secondly, by its MOI. The MOI's provisions must be consistent with the unalterable provisions of the Companies Act and can modify the application of alterable provisions of the Companies Act. Any provision of a MOI is void to the extent that it contravenes or is inconsistent with the Companies Act. Shareholders of a company may, although not mandatory, enter into a shareholders' agreement with one another relating to their rights and obligations in and to the company. Importantly, such agreement must be consistent with the Companies Act and the company's MOI and any provisions that are inconsistent with either, will be void to the extent of the inconsistency.

As it stands the CIPC does not require a specified minimum number of South African directors to be appointed when registering a company. However, any foreign shareholder of a South African company will need to have its share certificate endorsed "non-resident" as part of the South African exchange control regulations. All companies incorporated in South Africa must have a registered physical address in South Africa and it is the responsibility of each company to ensure that it keeps and maintains an accurate of its shareholders by way of a securities register.

Private company

A private company is a non-state owned company with an MOI prohibiting any share offering to the public and restricting transfer of its shares.

Depending on:

- the requirements of a private company's MOI
- whether it holds assets in a fiduciary capacity for unrelated persons and
- its public interest score (which is determined with reference to (i) its number of employees, (ii) the value of its third-party liability, (iii) its annual turnover and (iv) the number of holders of beneficial interests in the company securities),

A private company may be required to be audited and its audited annual financial statements filed with the CIPC. Depending on its public interest score, it may also be required to have a social and ethics committee. Proposed amendments to the Companies Act will oblige a private company with a public interest score above certain thresholds to make its annual financial statements available to the public.

A private company is a separate legal entity which is owned by shareholders with limited liability. There must be at least one shareholder. The relationship between shareholders and the company is regulated by the Companies Act as well as the company's MOI and may be further regulated by a shareholders' agreement.

A private company is required to have at least one director, in addition to the minimum number of directors required to satisfy any applicable requirement to appoint an audit and/or social and ethics committee.

A director of a private company can be held liable in the following instances:

- In terms of principles of common law relating to delicts for any loss, damage or costs sustained by the company as a consequence of any breach by a director of their fiduciary duties or duty of care, skill and diligence;

- In terms of those sections of the Companies Act which provide for director's liability; or
- In terms of any provision of the company's MOI which provides for director's liability.

Primarily, directors are required to act in the best interest of the company at all times. Accordingly, section 76 of the Companies Act makes provision for the partial codification of the South African common law duties of directors, as well as the standards of conduct required to be performed and exercised by a director. These include:

- To not use their position or any information obtained while acting in the capacity of a director to gain a personal advantage or for someone else, other than the company;
- To not gain a personal advantage, or for another person other than the company; or
- To knowingly cause harm to the company or a subsidiary of the company; and
- To communicate to the board any non-public, material information that comes to the director's attention.

When compared to a public company a private company is subject to limited accountability and transparency requirements. For example, a private company is not necessarily required to prepare audited financial statements.

A private company must every year lodge its annual return (together with its annual financial statements if required to be audited, its securities register and its register of disclosure of beneficial interests, if applicable) with the CIPC and must have a registered physical address in South Africa.

Public company

It is a requirement for a public company to be audited and its audited annual financial statements must be filed with the CIPC. It is also required to have an audit committee and a social and ethics committee. Proposed amendments to the Companies Act will oblige public companies to make their annual financial statements available to the public.

A public company's shares may be freely transferred or traded. The shares of a public company may or may not be listed on a stock exchange such as the Johannesburg Stock Exchange.

A public company must have at least 3 directors, in addition to the minimum number of directors required to satisfy any applicable requirement to appoint an audit and/or social and ethics committee.

The circumstances under which a director of a public company could be held liable are the same as that of a private company.

A public company must lodge its annual returns with the CIPC every year and must have a registered physical address in South Africa.

Personal liability company

A company is a personal liability company if it satisfies the criteria for a private company and its MOI states that it is a personal liability company. The effect of a company being a personal liability company is that its directors, including its past directors, are jointly and severally liable, together with the company, for any debts and liabilities of the company that are, or were, incurred during their respective periods of office.

Personal liability companies are primarily used by associations of professional persons, like attorneys, accountants, auditors and quantity surveyors who are required under their professional codes, laws or regulations, to practice their profession in entities that permit personal liability.

External company (branch office)

A foreign company that does not want to incorporate a subsidiary in South Africa may set up a branch office or an external company in terms of the Companies Act.

A foreign company which conducts business in South Africa must register as an external company with the CIPC within 20 business days after it first begins to conduct business, or non-profit activities in South Africa. A foreign company will be regarded as conducting business in South Africa if it is either:

- a party to one or more employment contracts in South Africa; or
- engaging in conduct or a pattern of activities in South Africa over a period of at least 6 months, that would lead a person to reasonably conclude that the company intended to continually engage in business activities in South Africa.

To effect registration with the CIPC, the company will need to submit its foreign constitution and certificate of registration.

It is not required for a company to set up a local board of directors but there must be at least one representative present in South Africa for tax purposes.

An external company must lodge its annual returns with the CIPC every year, and must also have a registered physical address in South Africa.

MINIMUM CAPITAL REQUIREMENT

There are generally no minimum share capital requirements in South Africa, however the laws of certain industries such as insurance and banking do impose minimum capital requirements. Companies can be formed with nominal share capital and funding can be provided by way of cash, assets or services subject to exchange control requirements in case of foreign investment.

LEGAL LIABILITY

Private company/public company

A private company is recognized as a separate legal entity from its shareholders. Claims which arise out of any activities conducted by the company are the liability of that company.

Shareholders and directors are not liable for any liabilities or obligations of the private company solely by reason of being an incorporator, shareholder or director, except to the extent that the Companies Act or the company's MOI provides otherwise. Claims which arise out of any activities conducted by the private company are the liabilities of that company. Generally the shareholders cannot be held accountable for such liabilities, unless otherwise provided in the MOI or otherwise agreed in, for instance, a shareholders' agreement.

There are various reporting protocols which need to be complied with by the directors that offer protection to shareholders, such as requirements which relate to access to annual financial statements, the establishment of statutory committees, and provision for oversight or approval of transactions by the Takeover Regulation Panel, a regulator established under the Companies Act to regulate fundamental transactions.

Personal liability company

As explained above, the distinguishing feature of a personal liability company compared to a private company is that its directors, including its past directors, are jointly and severally liable, together with the company, for any debts and liabilities of the company that are, or were, incurred during their respective periods of office. Shareholders cannot be held accountable.

External company

An external company is seen as the same legal entity as the foreign company, therefore any debts of an external company will be the debts of a foreign company.

Sole proprietorship

The sole proprietor in whose name the business is conducted will incur business debts or liabilities in their own name.

Trusts

Trustees are not personally liable for the debts and liabilities of a trust nor do the trust assets form part of the trustees estate. The beneficiaries of a trust do have a personal right against the trustees for compliance with their duties and acquire rights through the trust deed in respect of the trust assets.

Partnerships

Each partner is taxed on their share of the partnership profits and are held jointly and severally liable for the partnership's debts and liabilities unless otherwise agreed.

TAX PRESENCE

Private companies and public companies

A company incorporated in South Africa (SA) or which has its place of effective management in SA will be treated as a tax resident, subject to an applicable treaty.

Private and public companies must register as taxpayers with the South African Revenue Service (SARS).

From April 1, 2023, all South African resident companies are expected to pay Corporate Income Tax (CIT) on the income generated worldwide at a rate of 27 percent. An SA corporate resident is generally not subject to SA tax on the income of its foreign subsidiaries until it is repatriated, unless the Controlled Foreign Company (CFC) rules apply.

Non-resident companies are generally not subject to SA tax except on:

- Their income which is sourced in SA
- Income derived from a trade carried on through a permanent establishment in SA
- Capital gains from the disposal of:
 - SA assets attributable to a permanent establishment in SA; or
 - Immovable property or an interest in immovable property situated in SA.

Tax treaties can reduce or eliminate taxes payable by non-residents.

Tax compliance

Resident and foreign companies are generally required to submit income tax returns within 12 months from the date on which the relevant financial year ends.

All companies (including foreign companies with a South African branch) are required to make provisional tax payments in respect to their SA tax liability. Provisional tax payments are advance tax payments in respect of income tax payable for the tax year and reflect as a credit against the income tax finally assessed.

Tax rulings

Taxpayers can approach SARS for advance tax rulings. However, SARS will not give an advanced ruling on certain issues (e.g., transfer pricing, general anti-avoidance, matters of a factual nature, etc.).

Distributions

Distributions paid by a company are generally treated as a dividend to shareholders, unless the board of a corporate entity determines that the distribution results in a reduction of contributed tax capital. A return in capital in excess of a shareholder's tax base will normally be treated as a capital gain.

Generally, dividend distributions by SA resident companies are exempt from income tax. In certain instances, SA companies can rely on participation exemptions for dividends received from or capital gains realized on the shares in foreign companies.

Dividend, royalties, interest and foreign entertainment withholding taxes apply.

A 20% withholding tax applies to dividends whereas the other withholding taxes are imposed at a rate of 15%. Withholding taxes may be reduced in terms of tax treaties.

Capital Gain

Capital gains tax (CGT) applies to a resident's worldwide assets and in the case of a non-resident, to their immovable property, shares in a land rich company or assets of a permanent establishment in SA.

CGT is triggered on the disposal or deemed disposal of an asset and is calculated as being the difference between the proceeds and the base cost of the asset. Assessed capital losses are carried-forward and may be set-off against capital gains in the following year of assessment. Provision is made for exclusions and rebates, as well as rollover relief, where the gain made from a disposal is disregarded until ultimate disposal of the assets. The effective capital gains tax rate for corporates is 21.6%.

Transfer Taxes

The transfer of securities of a private or public company incorporated in SA is subject to securities transfer tax (STT) at a rate of 0.25 percent.

STT is charged on the greater of the market value of the security or the amount of consideration given. Provision is made for exclusions in the case of certain inter-company transfers, lending arrangement and transfers between non-taxable organisations.

Employment Taxes

Employers are required to deduct employees tax (PAYE) on all remuneration paid to employees, including directors, unless a tax deduction directive is issued by SARS. Fringe benefits are included in remuneration.

Employers may also be required to deduct and pay unemployment fund contributions and skills development levies.

Value Added Tax

South Africa imposes Value-Added Tax (VAT) at the standard rate of 15 percent on the supply of goods or services on a destination basis, i.e. VAT is borne by the final consumer of goods or services. The primary mechanism to ensure that only local consumption is taxed in South Africa is through the zero rating (0 percent) of certain goods and services exported and the levying of VAT on the importation of goods and certain services.

It is mandatory for any business to register for VAT with SARS if its taxable supplies in any twelve month period exceeds R1 million or when it has a contractual obligation in writing to make supplies of R1 million in a 12 month period. A business may also choose to voluntarily register for VAT if the value of taxable supplies made or to be made is less than R1 million, but has exceeded R50 000 in the past 12 months.

Subject to certain exclusions in the recently revised regulations on electronic services for VAT purposes issued by the South African National Treasury, the provision of electronic services (as defined in the South African Value-Added Tax Act 89 of 1991) by foreign entities to South African customers (including businesses) is generally subject to VAT in South Africa and at least two of the following circumstances are present:

- The customer is a South African resident;
- The payment of the services originates from a South African bank account; or
- The customer has a business, residential or postal address in South Africa.

External companies

If an external company retains its effective management offshore, it will be considered a non-resident and therefore will only be charged CIT on South African sourced income.

Dividends' tax is not imposed on any profits remitted offshore. The same VAT requirements for private and public companies apply to an external company.

INCORPORATION PROCESS

A South African company can be set up in 2 ways:

- incorporating a new company; or
- purchasing and customizing a shelf company (ie a company previously incorporated and held for sale without any trading or other activities).

The time frame to amend the details (including directors and shareholders) relating to a shelf company is comparable to the time taken to incorporate a new entity. It is fairly quick to incorporate a new entity when the directors are South African residents or citizens. It has become more complicated in recent times to add foreign directors or incorporate a new company with foreign directors. Foreign directors must undergo a foreign assurance process which entails the submission of a notarized copy of the directors' passports and the directors providing one-time pins submitted to their emails and cellular devices.

Private companies and public companies

Private and public companies are incorporated by completing and signing a MOI and filing it, together with certain prescribed company registration (CoR) forms and a nominal registration fee with CIPC. This process can take up to 25 working days after the documents have been filed with the CIPC. As discussed above the company can opt to have a standard form MOI or choose to adopt its own version. A MOI may be amended at a later point in time, therefore should the company wish to adopt the standard form MOI for purposes of registering the company they may do so and later effect amendments to or replace the MOI.

The time period to complete customisation and updating of the company's records with the CIPC may take approximately 3 to 4 weeks. However, the shares in the company can be acquired by the new shareholder/s, and the new directors appointed, immediately upon completion and signing of certain documents (without requiring any filing with the CIPC to be effective).

External company

Registration of an external company must be done manually with the CIPC, and a certified copy of the company's founding documents as well as a certificate of incorporation must be submitted along with other relevant supporting documents.

BUSINESS RECOGNITION

Private company

Well regarded and most widely used.

Personal liability company

Use is generally limited to associations of professional persons, like attorneys or auditors, who are required under their professional codes, laws or regulations, to practice their profession in entities that permit personal liability.

Public company

Well regarded and widely used.

External company

Well regarded and widely used.

SHAREHOLDER MEETING REQUIREMENTS

Private company (requirements apply uniformly to personal liability companies)

A private company is not required to hold an annual general meeting (AGM), although it may choose to do so in terms of the MOI.

- A private company must hold a shareholders meeting whenever the Companies Act or the company's MOI requires it to do so (for example, to appoint or remove directors or to approve a fundamental transaction).
- A private company must call a shareholders meeting when 1 or more shareholders deliver written and signed demands to the company, which must:
 - Describe the specific purpose for which the meeting is proposed and
 - In aggregate, demands for substantially same purpose are made and signed by the holders, as of the earliest time specified in any of those demands, of at least 10 percent (or a lower percentage specified in the company's MOI) of the voting rights entitled to be exercised in relation to the matter proposed, to be considered at the meeting

Public company

A public company must call a shareholders meeting whenever the Companies Act or the company's MOI requires it to do so and if it receives demands from shareholders as described above.

A public company must convene an AGM initially no more than 18 months after its date of incorporation and thereafter once in every calendar year, but not more than 15 months after the date of previous AGM.

The AGM agenda must at a minimum provide for the following business of the company to be transacted:

- The presentation of the directors' and audit committee reports (and when proposed amendments to the Companies Act come into force, also the social and ethics committee report and remuneration report)
- The presentation of the audited financial statements for the immediately preceding financial year;
- The election of directors, as required by law and the MOI;
- The appointment of the auditors and the audit committee; and
- Any matters raised by shareholders, regardless of whether advance notice of the topic has been given.

External company

- Regulated by the foreign company's place of incorporation.

BOARD OF DIRECTOR MEETING REQUIREMENTS

Private and public companies (including personal liability companies)

A director authorized by the board of a company can call a meeting of the board at any time.

A board meeting must be called if required to do so by at least 25 percent of directors when the board has 12 members or more. In any other case, 2 directors would suffice.

A company's MOI can specify a higher or lower percentage or number as a requirement for calling a board meeting.

A company must keep minutes of the board meetings and include any declaration given by notice or made by a director and every resolution adopted by the board.

External company

If there are no directors who are locally appointed, then an external company is not required to have directors' meetings.

ANNUAL COMPANY TAX RETURNS

Corporate income tax

South African tax resident companies are taxed on their worldwide income, whilst non-resident companies are taxed on income derived from a source in South Africa. In either instance, the applicable corporate tax rate is 27 percent.

Under the South African Income Tax Act 58 of 1962 every taxable business is required to register with SARS as a taxpayer.

Every registered taxpayer is required to submit an income tax return in a prescribed form 12 months after the end of its financial year. Returns can be submitted electronically via e-filing or manually at a [SARS branch](#) where the taxpayer is registered.

Tax on assessment

Payment of tax upon an assessment notice issued by SARS must be done within the period specified in such notice.

BUSINESS REGISTRATION FILING REQUIREMENTS

Private company

Private companies need to be registered with the CIPC.

This application is done online and must be accompanied by:

- A certified identity document or passport (if the person is not a South African) of the applicant.
- Certified copies of the identity documents or passports (if the person not a South African) of the directors and incorporators (foreign directors must undergo a foreign assurance process which entails the submission of notarized copies of their passport, email address and cell phone numbers, the process usually takes less than 24 hours and must be complete before incorporation.)
- The name confirmation certificate (COR9.4) if the applicant has reserved a name which is not mandatory.
- MOI: Standard or customized (CIPC's CoR 15.1A and CoR 15.1B forms provide standard MOIs. Customized MOI's cannot be done online, and would have to be done manually). It is advisable to retain the services of a legal professional to assist with drafting a customized MOI.
- CoR 14.1 (Notice of Incorporation);
- CoR 14.1 Annexure A (Initial Directors of the Company);
- a power of attorney (if applicable).

The applicant may in the MOI impose restrictions on the management and ownership of the company in respect of any of the alterable provisions of the Companies Act as well as by imposing on the company more onerous requirements in respect of unalterable provisions of the Companies Act.

For trust or company/juristic person as an incorporator, the resolution and certified copy of an identity document or passport copy (only if the representative is not South African) of the duly authorized representative must be attached.

Public company

Public companies must be registered with the CIPC, following the same process outlined above.

Registration must be accompanied by the following additional form which is available on the CIPC website:

- CoR 14.1 Annexure D (Notice of Company Appointments - it is mandatory to appoint an auditor, audit committee members and a company secretary).

External company

The following documents must be filed with the CIPC (together with a minimal registration fee) to register as an external company:

- A notarial certified copy of the company's constitutional documents, and if the documents are not in English they must be translated.
- A CoR 20.1 form - the registration form advising CIPC that the foreign company wishes to carry on business within South Africa.
- Annexure A to CoR 20.1 form - a list of the Directors of External Company.
- A CoR 21.2 form - registration of the South African representative (a person authorised to accept services on behalf of the company).
- A CoR 44 form - appointment of an auditor for the branch.
- A certified copy of the identity document or passport (only if not a South African citizen) of the person who is applying for the establishment of the branch (most commonly a director of the foreign company).

All documents that are to be filed with the CIPC must be clear and legible. With CIPC making provision for documents to be filed electronically the original documents are not required with the exception of certain documents which the CIPC may require a certified copy thereof. The process takes approximately 10 to 15 working days to complete. However, delays at the CIPC are a possibility. An external company must lodge its annual returns with the CIPC every year. As the board of directors of the foreign company will constitute the board for the branch, the branch does not need to appoint a local board. However, a public officer must be appointed for South African tax purposes.

BUSINESS EXPANSION

Entities are able to pursue their own business expansion strategies.

EXIT STRATEGY

Private and public companies (including personal liability companies)

Private and public companies can be deregistered by the CIPC either by way of its own application, or through the request from a 3rd party when a company has:

- a. ceased to carry on business; and
- b. has no assets or, because of the inadequacy of its assets, there is no reasonable probability of the company being liquidated.

At least 50 percent of the directors of a company requesting its own deregistration must sign the request letter.

If the company's annual returns are outstanding for more than 2 successive years or if the CIPC believes that the company has been inactive for 7 years deregistration it would, upon request of a 3rd party or a company which did not meet the 50 percent directors support threshold deregister the company.

The company would also have to provide a tax certificate to prove that it does not have any outstanding tax liabilities.

External company

An external company is not considered to be a company under the Companies Act and therefore cannot apply to CIPC for deregistration. To deregister an external company an application may be made to the Companies Tribunal. Upon receipt of an application, a member of the Tribunal is empowered to make an “administrative order that is appropriate and reasonable in the circumstances.”

ANNUAL CORPORATE MAINTENANCE REQUIREMENTS

All companies are required to maintain their company records. A company must at all times have a copy of its MOI and any amendments or alterations to it, as well as any rules that apply to the company in terms of its MOI.

A company is also required to keep registers of its securities holders, directors, its company secretary and auditors.

Public companies and certain private companies are required to keep registers of disclosures of beneficial interests in their securities. Other companies must file records with the CIPC regarding individuals who are "beneficial owners" of such companies.

All companies are required to keep accurate and complete accounting records, which must be kept and be accessible at the company's registered office.

All companies are required to lodge their annual returns with CIPC every year.

Public companies and private companies required to be audited must file audited annual financial statements every year.

External companies must continuously maintain at least 1 office in South Africa which must be registered as its address (or principal office if it has more than 1 office) and file an annual return with CIPC every year.

DIRECTOR / OFFICER REQUIREMENTS

Private company and personal liability company

It is required that a private company have at least 1 director in addition to the minimum number of directors required to satisfy any applicable requirement to appoint an audit and/or social and ethics committee.

Public company

It is required that a public company have at least 3 in addition to the minimum number of directors required to satisfy any applicable requirement to appoint an audit and/or social and ethics committee.

External company

Regulated by the foreign company's place of incorporation.

LOCAL CORPORATE SECRETARY REQUIREMENT

Private company and personal liability company

Not applicable for this jurisdiction unless required by the company's MOI.

Public company

Public companies are required to appoint a company secretary who must be a permanent resident of South Africa and must remain a resident while serving as company secretary.

External company

Regulated by the foreign company's place of incorporation.

LOCAL LEGAL OR ADMIN REPRESENTATIVE REQUIREMENT

For tax purposes, every company carrying on business or having an office in South Africa must at all times be represented by an individual residing in South Africa. This individual is called the public officer of the company. The public officer must be approved by the South African Revenue Service and must be a person who is a senior official of the company or if no senior official resides in South Africa, may be another suitable person residing in South Africa. The public officer must be appointed within 1 month after the company begins to carry on business or acquires an office in South Africa. A local director can be appointed as both director and public officer.

LOCAL OFFICE LEASE REQUIREMENT

Not applicable for this jurisdiction.

OTHER PHYSICAL PRESENCE REQUIREMENTS

Every company must continuously maintain a registered office in South Africa.

SUFFICIENCY OF VIRTUAL OFFICE

Sufficient for all companies provided that they maintain a registered physical address in South Africa.

PROVISION OF LOCAL REGISTERED ADDRESS BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER

These services are provided by some law firms and there are other service providers who offer company secretarial services.

PROVISION OF LOCAL DIRECTOR OR CORPORATE SECRETARY BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER

These services are provided by some law firms and there are other party service providers who offer company secretarial services.

NATIONALITY OR RESIDENCY REQUIREMENTS FOR SHAREHOLDERS, DIRECTORS AND OFFICERS

There are no nationality or residency requirements; however, the fact that the directors or shareholders of the company are not residents of South Africa must be declared.

RESTRICTIONS REGARDING APPOINTMENT OF NOMINEE SHAREHOLDERS OR DIRECTORS

A company's MOI may restrict the ability of a person to hold shares, and to be the registered shareholder thereof, on behalf of another.

Unless a company's MOI provides otherwise, alternate directors can be elected or appointed to act in other directors' place.

SUMMARY OF DIRECTOR'S, OFFICER'S AND SHAREHOLDER'S AUTHORITY AND LIMITATIONS THEREOF

The Companies Act gives the board of directors the authority to exercise all of the powers and to perform any of the companies of the company, except to the extent the Companies Act or the company's MOI provides otherwise.

Directors owe fiduciary duties, as well as a duty of care and skill, to the companies on whose boards they serve (as opposed to the shareholders who elected them). This is governed by the Companies Act as well as the common law.

A board of directors of a private or public company will only require shareholder approval for proposed actions in limited circumstances set out in the Companies Act or a company's MOI.

PUBLIC DISCLOSURE OF IDENTITY OF DIRECTORS, OFFICERS AND SHAREHOLDERS

The identity of directors and officers of a public or private company are publicly available on the CIPC website provided that the company has updated CIPC with any changes.

Members of the public are entitled to inspect the securities registers (containing information about the shareholders of companies) as well as the directors' registers of all companies.

Proposed amendments to the Companies Act will oblige companies to make their annual financial statements (if they are required to be audited) and their registers of disclosures of beneficial interests in securities (in the case of public and certain private companies) available to the public as well.

MINIMUM AND MAXIMUM NUMBER OF DIRECTORS AND SHAREHOLDERS

Private company and personal liability company

Directors: Minimum of one, in addition to the minimum number of directors required to satisfy any applicable requirement to appoint an audit and/or social and ethics committee; no maximum.

Shareholders: Minimum of one; no maximum.

Public company

Directors: Minimum of 3, in addition to the minimum number of directors required to satisfy any applicable requirement to appoint an audit and/or social and ethics committee; no maximum.

Shareholders: Minimum of one; no maximum.

External company

Regulated by the foreign company's place of incorporation.

MINIMUM NUMBER OF SHAREHOLDERS REQUIRED

Not applicable for this jurisdiction.

REMOVAL OF DIRECTORS OR OFFICERS

Private and public companies (including personal liability companies)

A director may be removed by an ordinary resolution adopted at a shareholders meeting after giving the relevant director notice of such meeting and affording the director an opportunity to make representation.

External Company

Regulated by the foreign company's place of incorporation.

REQUIRED AND OPTIONAL OFFICERS

Public company

A public company is required to appoint an external auditor, as well as a company secretary.

A public officer must be appointed for tax purposes.

Private company

A private company is required to appoint an external auditor if it is required in terms of the Companies Act or Regulations, or in terms of its MOI, to have its annual financial statements audited. It may appoint a company secretary but is not required to do so.

A public officer must be appointed for tax purposes.

BOARD MEETING REQUIREMENTS

Private and public companies (including personal liability companies)

A director who is authorized by the board of the company may call a meeting of the board at any time and must call such a meeting if required to do so by at least 25 percent of the directors if there are more than 12 directors or, if required, to do so by 2 directors in any other case.

A majority of directors must be present at the meeting before a vote may be called.

A company must keep minutes of all board meetings.

External company

Regulated by the foreign company's place of incorporation.

QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS

To commence a shareholders' meeting, there must be a sufficient number of shareholders present to exercise at least 25 percent of the voting rights entitled to be exercised in respect to at least 1 matter to be decided at the meeting.

A matter to be decided at the shareholders' meeting cannot be considered unless a sufficient number of shareholders are present at the meeting. At least 25 percent of all voting rights that are entitled to exercise on a matter that is called on the agenda must be present.

A company's MOI may specify a lower or higher quorum requirement for a shareholders' meeting. Subject to a different threshold having been set in the company's MOI, a shareholders' meeting of a company with more than two shareholders cannot commence until at least 3 shareholders are present.

For an ordinary resolution to be approved by shareholders, it must be supported by more than 50 percent of the voting rights exercised. For a special resolution to be approved by shareholders, it must be supported by at least 75 percent of the voting rights exercised. These thresholds can be amended in a company's MOI.

If the attendance requirement for the meeting is not met within 1 hour after the meeting is scheduled to begin, the meeting must be postponed for one week. At the postponed meeting, the shareholders present at the meeting in person or by proxy are deemed to be a quorum (unless the MOI provides otherwise).

The quorum requirement for a Board meeting is the majority of directors, unless the company's MOI states otherwise.

MUST A BANK ACCOUNT BE OPENED PRIOR TO INCORPORATION, AND MUST THE BANK ACCOUNT BE LOCAL?

No requirement to open a bank account when registering a company in South Africa.

AUDITING OF LOCAL FINANCIALS. IF SO, MUST THE AUDITOR BE LOCATED IN LOCAL JURISDICTION, AND MUST THE COMPANY'S BOOKS BE KEPT LOCALLY?

Private company

A private company is only required to appoint an auditor if it is required to have its annual financial statements audited due to (i) the company's public interest score or (ii) a requirement of the company's MOI.

An auditor must be registered with the Independent Regulatory Board for Auditors established in terms of the South African Auditing Profession Act, 2005.

A company's accounting records must be kept at, or be accessible from, the registered office of the company.

Public company

A public company is obliged to appoint an auditor.

An auditor must be registered with the Independent Regulatory Board for Auditors established in terms of the South African Auditing Profession Act, 2005.

A company's accounting records must be kept at, or be accessible from, the registered office of the company.

External company

No requirement.

REQUIREMENT REGARDING PAR VALUE OF STOCK

Private and public companies

Companies incorporated on or after May 1, 2011 are only allowed to have no-par value shares (subject to exceptions only if required in terms of other legislation).

Pre-existing companies may have par value shares or no-par value shares, but they are not allowed to increase their number of authorized par value shares. If an increase in the number of authorized shares of a class with par value is required, conversion of such shares to no-par value must first be implemented.

External companies

Regulated by the foreign company's place of incorporation.

INCREASING OF CAPITALIZATION IF NEEDED

Private and public companies

A company's authorized share capital is determined by its MOI. If additional shares are required to be issued in excess of the authorized shares, the MOI will have to be amended in order to sufficiently increase the authorized shares.

External companies

Regulated by the foreign company's place of incorporation.

SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (IE DIVIDENDS OR REDEMPTION)

Private and Public companies

South African resident companies, and to a limited extent non-residents, are required to comply with South Africa's Exchange Control regulations, imposed by the South African Reserve Bank (SARB). These regulations also apply to the transfer of profits to non-residents.

Where a private/public company is required to be audited (in terms of the South African Companies legislation), funds can be repatriated freely from South Africa on presentation of copies of the relevant documentation to the company's Authorized Dealer (being the commercial bankers) – for example, an auditor's certificate confirming distribution is made from earned profits.

Where a private/public company is not required to be audited, profits may be remitted on presentation of *inter alia* copies of the Annual Financial Statements as prepared by the accounting officer.

A resolution of the board may also be required and should state that profits have been declared remitted from earned profits as a dividend distribution or redemption.

Before funds can be repatriated, a company must liaise with its commercial bank to ensure all formal requirements for remittance are met.

If the company's balance sheet reflects a "loan" owed to the holding company, then the relevant Exchange Control principles are applied.

External Company

A branch is also defined as South African "resident" for Exchange Control purposes and is therefore required to comply with South Africa's Exchange Control regulations imposed by the South African Reserve Bank (SARB).

Where a branch is required to be audited (in terms of the South African Companies legislation), profits may be remitted freely from South Africa on presentation of copies of the relevant documentation to the branch's Authorized Dealer (being the commercial bankers) – for example, an auditor's certificate confirming distribution is made from earned profits.

Where a branch is not required to be audited, profits may be remitted on presentation of *inter alia* copies of the Annual Financial Statements as prepared by the accounting officer.

A resolution of the board may also be required and should state that profits have been declared remitted from earned profits.

Before profits are remitted, a branch must liaise with its commercial bank to ensure all formal requirements for remittance are met.

If the company's balance sheet reflects a "loan" owed to the holding company, then the relevant Exchange Control principles are applied.

RESTRICTIONS ON TRANSFERABILITY OF SHARES

Private company

A private company's MOI must place limitations on the transferability of shares.

Private company shares may not be offered to the public.

Public company

Public company shares are freely transferrable and may be offered to the public (subject to the requirements of the Companies Act).

External company

Regulated by the foreign company's place of incorporation.

OBTAINING A NAME AND NAMING REQUIREMENTS

All companies in South Africa, if they wish to reserve a name, may do so by submitting proposed names to the CIPC. The name may not be the same as that of another company, be considered propaganda for war, incite violence nor advocate hatred.

SUMMARY OF "KNOW YOUR CLIENT" REQUIREMENTS

A bank's KYC requirements are guided by the Financial Intelligence Centre Act 38 of 2001 and other applicable anti-money laundering and counter-terrorism legislation. These requirements differ amongst the banks as the information required by the bank is subject to the bank's internal policy. At minimum, the bank will request the proof of identity of a company's directors, confirmation of its incorporation details, proof of its registered address, details of its trading name, proof of its operating address (if different from the registered address), the contact details of the company as well as the company's tax and value-added-tax registration numbers (if applicable). In all cases, originals or certified copies of the original documents must be submitted.

APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT

Private and public companies

A company's MOI may be amended in compliance with a court order or if a special resolution to amend the MOI has been proposed by the board or shareholders. This will also depend on what is prescribed by the company's MOI regarding amendments.

External company

Regulated by the foreign company's place of incorporation.

LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION

Most licenses are industry specific rather than company structure specific.

A company conducting certain business activities in South Africa (for example, construction, electronic communications, energy, financial services, mining, real estate and activities impacting environment) may require licenses or other forms of authorization.

Industry specific laws and regulations apply to companies operating within certain industries (eg, the Banks Act and Financial Advisory and Intermediary Services Act).

PROCESS OF PURCHASING AND UTILIZING A SHELF COMPANY

Shelf companies are available for purchase in South Africa.

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