

Rödl & Partner

HELPING HAND

Legal framework conditions for
business in Southern Africa



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1. The legal system of Africa

The legal system within the African continent reflects its past. Prior to the colonisation of the individual African countries, the traditional law in the form of the African common law and Islamist law had been in effect. Owing to the colonisation, the modern law of colonial powers was introduced in Africa. With the colonisation having drawn to a close, a legal pluralism emerged in Africa due to the fact that the colonial law has not been abandoned, but instead remained in force along with the traditional law.

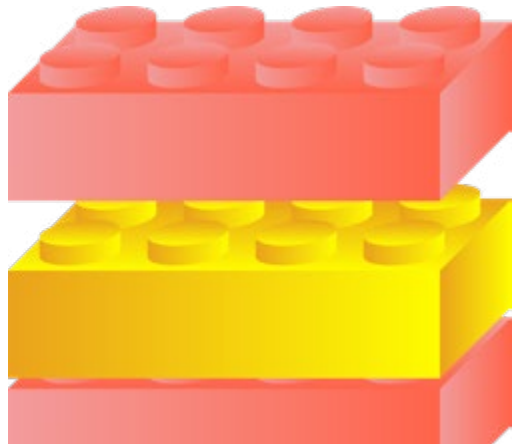
Due to the various colonial powers, the legal system of the African countries is either shaped by the British “Common Law” or the Roman-Dutch law. The success of Great Britain as a colonial power in Southern Africa has led to a dominance of the “Common Law” in this region.

The most recent past has demonstrated an increasing pursuit of legal standardization. This is encouraged primarily by the formation of associations for common economic areas, political unions and customs unions (African Union, ECOWAS, COMESA, East African Union, SADC, SACU etc.).

2. Building of a business

Fundamentally, there are three types of commercial presence:

- Foundation of an independent subsidiary;
- Opening of a dependent office branch; or
- Business activities with the support of a commercial agent, importer or a concessionaire.



3. Legal framework conditions in Southern Africa

In the following paragraph, the legal framework conditions regarding the business affiliation of foreign companies in Southern Africa with an emphasis on South Africa, Angola, Mozambique, Zambia and Namibia will be further examined.

3.1. LEGAL FRAMEWORK CONDITIONS FOR FOREIGN INVESTMENTS

There are no general review or approval requirements for foreign investments with an exception of specific sectors, such as energy. The “Trade and Investment South Africa” (TISA), a section of “Departments of Trade and Industry” (DTI) offers support concerning foreign investments. In Angola, each and every foreign investment is subject to the approval of the “Private Investment and Export Promotion Agency” (AIPEX). In Mozambique, foreign investments must be registered at the “Agency for Investment and Export Promotion” (AIPEX) in order to obtain an investment certificate. In Zambia, the receipt of an “Investment Licence” by the “Zambia Development Agency” (ZDA) is not mandatory. However, it is necessary for certain investment promotions. In Namibia, the “Namibia Investment Centre” (NIC) supports foreign investors. This includes but is not limited to promotions of investments.

None of these countries require a minimum amount for foreign investments. Nevertheless, occasionally there are minimum amounts that are required to qualify for specific advantages and incentives. For example, the minimum amount is MZN 2,500,00 (approximately EUR 35,000) in Mozambique and USD 500,000 in Zambia. There are no minimum amounts in South Africa and Namibia in order to qualify for specific advantages and incentives.

3.2. COMPANY FORMATION

The most important corporate form in Southern Africa is the private limited company. Due to the liability of the shareholders being limited to the amount of the authorised capital assumed but not yet incorporated, this corporate form is similar to the German GmbH. In South Africa, it is the “Private Company” ((Pty) Ltd), in Angola it is the “Sociedades por Quotas de Responsabilidade Limitada” (SQ), in Mozambique it is the “Sociedades por Quotas de Responsabilidade Limitada (LDA), in Zambia it is the “Private Company limited by Shares” and in Namibia it is the “Private Company” ((Pty) Ltd).

In South Africa, Angola, Mozambique and Namibia there is no minimum authorized capital for the incorporation. In Zambia, a minimum authorized capital in the amount of ZMA 15,000 (approximately EUR 1,000) is a requirement for the formation of a “Private Company limited by Shares”.

In South Africa and Namibia, it is possible for a one-man-company to be formed while in Angola, Mozambique and Zambia the formation of a “Private Limited Company” requires at least two shareholders.

There is no general limitation regarding the amount of foreign shareholders in any of the countries. Exceptions exist solely for few sectors, such as agriculture in Namibia and the building sector in Mozambique. There is another particularity with respect to the management in Zambia: at least half of the managing directors must have their permanent place of residence domestically.

3.3. DEPENDENT BRANCH OFFICE

A dependent branch office may be founded in lieu of an independent company in all countries. Such a branch office does not constitute an independent legal person and thus requires a local legal representative.

3.4. COMMERCIAL AGENCY LAW

The South African, Namibian and Zambian distribution law is based on the English “Common Law” and is subject to an extensive freedom of contract. It is not mandatory for the commercial agent to have his permanent place of residence or work in South Africa, Namibia or Zambia. Furthermore, the commercial agent is not obliged to be a merchant or trader. In addition, an exclusivity of the commercial agency relationship or the requirement of form regarding commercial agency agreements is not necessary under the terms of the “Common Law”.

Regarding Angola and Mozambique, the commercial agency law is regulated legally. The regulations of Angola are found in Act no. 18/2003 dated 12 August, according to which the commercial agent is obligated to mediate business transactions independently and continuously for account of another party against payment. The commercial agency agreement must be in written form. The commercial agent can be assigned a particular region or a specific clientele. He is entitled to a commission. Unless stipulated otherwise

in the commercial agency agreement, exclusivity persists for both the commercial agent and the represented party. In Mozambique, the commercial agency agreement is regulated in the “Código Comercial de Moçambique. The commercial agency agreement must be in written form. Exclusivity clauses with respect to the commercial agent or the represented party can be agreed upon by contract. A subagency is valid unless excluded in the contract. The commercial agent is entitled to a remuneration and commission.

3.5. FRAMEWORK CONDITIONS ACCORDING TO TAX LAW

A flat rate withholding tax on technical and consultancy services carried out by foreign companies is imposed in Mozambique (20%), Zambia (20%) and Namibia (10%).

The VAT in South Africa amounts to 15%, in Mozambique it amounts to 17%, 16% in Zambia and 15% in Namibia. In July 2019, a VAT of 14% is introduced in Angola.

The corporate income tax in South Africa amount to 28%, in Mozambique it amounts to 32%, 30% in Angola, 35% in Zambia and 32% in Namibia.

3.6. EXCHANGE CONTROL

South Africa, Angola, Mozambique and Namibia decree an exchange control. As a consequence, the entire money inflow and cash drain of the respective country is monitored by an exchange control authority.

In March 2014, Zambia revoked the exchange control, introduced in

2012, with immediate effect, aiming counteract the heavy decline of their own currency.

3.7. BROAD-BASED BLACK ECONOMIC EMPOWERMENT

Further impacts for foreign investors are contained in the South African “Broad-Based Black Economic Empowerment” (B-BBEE) program, which aims to improve the participation in the economy of historically disadvantaged South Africans. Companies receive a “B-BBEE Scorecard”, which determines the B-BBEE status of the respective company according to a predefined score system. The B-BBEE status is particularly crucial for participation in public invitations to tender.

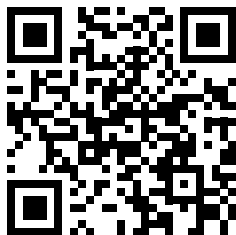
The introduction of a similar program in Namibia has been discussed for a while, however, it has not been implemented yet.



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