

**A FOREIGN
INVESTORS
GUIDE
TO STARTING A
BUSINESS IN
SOUTH AFRICA**

1. Is it difficult to start a business in South Africa?

Starting a business in any country has its challenges; there will always be numerous requirements that have to be met before one can capitalize on a good business opportunity.

South Africa is no exception but the potential for success makes the hassle well worth the while.

2. What aspects should be considered when starting a business?

The aspects which need to be considered are the following:

- The requirements of the various types of companies
- Registering a company and appointing a representative
- Opening a bank account
- Requirements of SARS
- Exchange control Requirements

3. What are the various types of legal entities in South Africa?

The legal entities which may be formed are as follows:

- Close Corporation
- Private Companies
- Sole Proprietors/Partnerships
- Joint ventures
- Local branch of a foreign Company

Close Corporation

A close corporation consists of members who must be natural persons . In a close corporation, the members have the rights and obligations of both shareholders and directors, and consequently, ownership and management of the corporation are not separated. Close corporations may have up to 10 members. In general, few formal requirements are imposed on close corporations.. A close corporation is not subject to the stringent capital maintenance rules applicable to share capital in companies. The interest of a member of a close corporation is represented by a percentage, which is established on registration of the founding statement, and which may be changed by the registration of an amended founding statement. Members of a close corporation enjoy limited liability. The legal requirements for a close corporation are governed by the Close Corporations Act. A statutory audit is not required; however, the close corporation must have an accounting officer who must verify that the annual financial statements are in agreement with the accounting records.

Private companies

They exist as separate legal entities from their shareholders and/or members. Once formed, a company has an unlimited lifespan. Both public and private companies must be incorporated and registered with the Registrar of Companies. Companies incorporated in South Africa must have a registered office and maintain statutory and accounting records in South Africa. Approval of the name of the company must be obtained from the Registrar of Companies before incorporation. Private companies may not offer their shares for sale to the public. The right of transfer of their shares is restricted and the number of members is limited to 50. Private companies are not required to file their annual financial statements with the Registrar of Companies; thus, they are not available to the general public. They must include the word "Proprietary" or (Pty) at the end of the registered name immediately before the word "Limited" or "Ltd". An audit by a registered accountant and auditor is obligatory.

The Companies Amendment Act, 1999

Partnerships/ Sole Proprietors

Partnerships and sole traders are subject to few statutory requirements, but the partners and the traders generally do not have the protection of limited liability. However, in a partnership in which not all the names of the partners are disclosed, the undisclosed partners may limit their liability to third parties to the amount of their contribution to the partnership. Any unincorporated company, association or partnership may not consist of more than 20 persons, except in the case of certain professional partnerships, where there is no limitation on the number of partners. Registration is not required and there are no statutory reporting requirements, except that for tax purposes financial statements must be produced in sufficient detail to enable tax assessments to be made by the South African Revenue Service

Joint ventures

A joint venture is a contractual relationship between two or more enterprises engaged in a trade or business that does not qualify as a partnership.

Local branch of a foreign company

With the exception of banking and insurance companies, any foreign company may establish a place of business and carry on its activities in South Africa without forming a separate locally incorporated company. The establishment of a branch requires registration with the Registrar as an "external company" under Section 32 of the Companies Act within twenty-one (21) days after the establishment of a place of business in the Republic.

4. What requirements should be met when registering a company?

As each type of entity has its own separate legal requirements, the requirements which must be adhered to will depend on the type of entity formed and the particular Act governing such entity.

5. Can a company be registered in the name of the foreign investor or should a representative be appointed?

As per the immigration Act, in order for a foreign investor to start a business in South Africa in his personal capacity, the foreign investor must apply for a business permit. In order to qualify for a business permit, the following requirements must be met:

- A business plan must be presented
- The foreigner must invest the prescribed financial or capital contribution in the business
- The Contribution referred to above must form part of the company's book value
- A Chartered accountant must certify the compliance of the foreign investor with the provisions of Immigration Act.
- The foreign investor must undertake to comply with any relevant registration requirement set out by any law of the South African Revenue Services.

Alternatively, the foreign investor can appoint a Representative, one who is a resident in the republic. Please note that it is necessary to make this decision prior to registering the company.

6. Once a company is registered, what other requirements will have to be met?

Once the registration procedure has been done successfully, the company will still need to do the following:

- Open a bank account
- Register for all applicable taxes with the South African revenue services
- Familiarize themselves with the labour law in South Africa
- Familiarize themselves with the environmental law in South Africa
- Familiarize themselves with the regulatory law applicable to the particular industry in which the business operates.

Opening a bank account:

There are many different banks in South Africa and the decision on which bank to use will depend on the foreign investor's needs and personal preferences. For a list of banks operating in South Africa, Please visit www.finforum.co.za. Should you wish to gain an independent comprehensive comparison of the banks operating in South Africa, please visit www.thinkmoney.co.za.

Generally, all banks require the following:

- The completion of an application form
- The furnishing of proof of your business address
- A certified copy of all the foreign investors, registered as the directors of the company, passports and if a representative has been appointed, a copy of the representatives identity document
- If the company has more than one director, all the directors must sign a resolution to open a bank account.

Once the account has been opened, the company can effect transactions on the account, subject to FICA requirements.

Registration for applicable taxes in South Africa

Taxes which businesses must register for in South Africa:

- Value added tax
- Income tax and provisional tax
- Employees tax
- Skills Development levy
- Unemployment insurance fund

All registration forms can be obtained from www.sars.gov.za.

- Value added tax;

Vat is an indirect tax levied at 14% on the supply of all goods and services in the Republic of South Africa.

Who may register for vat:

Compulsory registration – business whose taxable supplies \geq R 300,000.00

Voluntary registration – A business who makes taxable supplies \geq R 20,000.00

Registration process:

1. Applications for VAT registration must be done in person so that SARS can verify identity and other application details
2. Applicants must present their identity document and the original copy of a utility bill, e.g. a municipal bill and a recent bank statement when applying for VAT registration. These steps are in line with security measures introduced by a variety of financial institutions, including FICA requirements, and are intended to prevent incorrect or fraudulent payments.

3. SARS officials will conduct site inspections of businesses, where necessary, to verify trade activities before the activation of VAT accounts.

- Income tax and provisional tax:

Income tax is a tax on income and profit levied on all persons, both natural and juristic. All Businesses are required to register for income tax in South Africa. According to the income tax act, all companies must register as provisional tax payers. Provisional taxpayers are required to make two compulsory provisional tax payments during the year and a third voluntary payment referred to as the topping up payment.

Registration Procedure:

1. Obtain an application form (IT77C), complete and submit it for both income tax and provisional tax.

- Employees Tax:

Employee's tax is a withholding tax which is deducted from an employee's remuneration on a regular (usually monthly) basis. The deductions are made by the employer and are determined by using tables issued by the Receiver of Revenue. Every employer who pays remuneration, which is subject to employees' tax, has to register with the Receiver of Revenue as an employer for employees' tax purposes.

How to register:

1. Obtain an application form (EMP 101) from the SARS website, complete it and submit it to the South African Revenue Services.

- Skills Development levy:

The Skills Development Levy is a compulsory levy for the purpose of funding education and training as envisaged in the Skills Development Act. It must be paid by all employers paying remuneration to their staff.

How to register:

Where an employer is liable to pay the levy he/she must register per EMP 101 (Application for Registration) as an employer with the Receiver of Revenue in which area the business is situated, and indicate thereon, the jurisdiction of the SETA within which the employer must be classified.

- Unemployment insurance fund:

It is a fund which has been established for the insurance of unemployment. All employees who work for more than 24 hours per month must contribute to the Fund. It is illegal for employers not to make the deduction from an employee's earnings.

- How to register:

Registration for UIF takes place simultaneously with the application to register for employees' tax, on an EMP 101.

The registrations above are a guideline and consideration must be given to the particular industry in which the business operates as well as the transactions the business enter into as this will determine any additional registration or compliance which must be adhered to by the business. These will include registration as an importer/exporter, secondary tax on companies, transfer duty, capital gains tax etc.

Once all the necessary registrations have been affected, the business can legally operate as a normal business entity and enter into transactions as any normal entity would do.

7. Can foreign investors repatriate funds to their country of origin or any foreign country if they so wish?

Foreign investors may remit funds overseas in the form of transfers or dividends subject to exchange control. An application to the reserve bank must be made to transfer funds through an authorized dealer. Most banks act as agents on behalf of any individual applying to transfer funds and are thus authorized dealers.

As per the exchange control manual, a resident is entitled to a single discretionary allowance of up to a maximum of R 500,000.00 per calendar year.

The discretionary allowance is in addition to the R 2,000,000.00 foreign capital allowance per individual per year.

Funds can also be repatriated in the form of dividends and payments to directors:

Remittance of dividends, profits and income from the RSA

- Requirements for quoted companies

For a non-resident shareholder (a foreign company, entity or person that has never been resident in the RSA):

- Dividends/profits/income distributions are remittable in proportion to the percentage shareholding/ownership.
- Dividends/profits/income distributions by affected persons who have local financial assistance at their disposal may be remitted, provided the relative distribution will not cause the entity to be placed in an overborrowed position in terms of the formula requirements

- Requirements for non-quoted companies and other business entities

For a non-resident shareholder (a foreign company, entity or person that has never been resident in the RSA)

- Dividends/profits/income distributions are remittable in proportion to the percentage shareholding/ownership.
- Dividends/profits/income distributions by affected persons who have local financial assistance at their disposal may be remitted, provided the relative distribution will not cause the entity to be placed in an overborrowed position in terms of the formula requirements.

Directors' fees to non-residents

Authorised Dealers may authorise the transfer to non-resident directors' provided:

- The application is accompanied by a copy of the Resolution of the board of the remitting company confirming the amount to be paid to the beneficiary; and
- it can be shown that the beneficiary is permanently domiciled outside the CMA.