South Africa

RISK & COMPLIANCE REPORT

DATE: March 2018

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Executive Summary - South Africa	
Sanctions:	None
FAFT list of AML Deficient Countries	No
Higher Risk Areas	US Dept of State Money Laundering Assessment Not on EU White list equivalent jurisdictions
Medium Risk Areas:	Compliance with FATF 40 + 9 Recommendations Corruption Index (Transparency International & W.G.I.)) World Governance Indicators (Average Score) Failed States Index (Political Issues)(Average Score)

Major Investment Areas:

Agriculture - products:

corn, wheat, sugarcane, fruits, vegetables; beef, poultry, mutton, wool, dairy products

Industries:

mining (world's largest producer of platinum, gold, chromium), automobile assembly, metalworking, machinery, textiles, iron and steel, chemicals, fertilizer, foodstuffs, commercial ship repair

Exports - commodities:

gold, diamonds, platinum, other metals and minerals, machinery and equipment

Exports - partners:

China 14.5%, US 7.9%, Japan 5.7%, Germany 5.5%, India 4.5%, UK 4.1% (2012)

Imports:

Imports - commodities:

machinery and equipment, chemicals, petroleum products, scientific instruments, foodstuffs

Imports - partners:

China 14.9%, Germany 10.1%, US 7.3%, Saudi Arabia 7.2%, India 4.6%, Japan 4.5% (2012)

Investment Restrictions: The government of South Africa is open to green field foreign investment as a means to drive economic growth, improve international competitiveness, and access foreign export markets. Merger and acquisition activity is more sensitive and requires more advance work. Virtually all business sectors are open to foreign investment. Certain sectors require government approval for foreign participation, including energy, mining, banking, insurance, and defense. Excepting those sectors, no government approval is required to invest, and there are few restrictions on the form or extent of foreign investment.

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Section 1 - Background

Dutch traders landed at the southern tip of modern day South Africa in 1652 and established a stopover point on the spice route between the Netherlands and the Far East, founding the city of Cape Town. After the British seized the Cape of Good Hope area in 1806, many of the Dutch settlers (the Boers) trekked north to found their own republics. The discovery of diamonds (1867) and gold (1886) spurred wealth and immigration and intensified the subjugation of the native inhabitants. The Boers resisted British encroachments but were defeated in the Boer War (1899-1902); however, the British and the Afrikaners, as the Boers became known, ruled together beginning in 1910 under the Union of South Africa, which became a republic in 1961 after a whites-only referendum. In 1948, the National Party was voted into power and instituted a policy of apartheid - the separate development of the races - which favored the white minority at the expense of the black majority. The African National Congress (ANC) led the opposition to apartheid and many top ANC leaders, such as Nelson MANDELA, spent decades in South Africa's prisons. Internal protests and insurgency, as well as boycotts by some Western nations and institutions, led to the regime's eventual willingness to negotiate a peaceful transition to majority rule. The first multi-racial elections in 1994 brought an end to apartheid and ushered in majority rule under an ANC-led government. South Africa since then has struggled to address apartheid-era imbalances in decent housing, education, and health care. ANC infighting, which has grown in recent years, came to a head in September 2008 when President Thabo MBEKI resigned, and Kgalema MOTLANTHE, the party's General-Secretary, succeeded him as interim president. Jacob ZUMA became president after the ANC won general elections in April 2009.

Section 2 - Anti – Money Laundering / Terrorist Financing

FATF status

South Africa is not on the FATF List of Countries that have been identified as having strategic AML deficiencies

Compliance with FATF Recommendations

The last Mutual Evaluation Report relating to the implementation of anti-money laundering and counter-terrorist financing standards was undertaken by the Financial Action Task Force (FATF) in 2009. According to that Evaluation, South Africa was deemed Compliant for 9 and Largely Compliant for 14 of the FATF 40 + 9 Recommendations. It was Partially Compliant or Non-Compliant for 2 of the 6 Core Recommendations.

Key Findings from latest Mutual Evaluation Report (2009):

South Africa has made good progress in developing its system for combating money laundering (ML) and the financing of terrorism (FT) since its last FATF mutual evaluation in 2003.

The money laundering offence is generally in line with the Vienna and Palermo Conventions, although a lack of comprehensive statistics made it difficult to assess effectiveness. Provisions criminalising the financing of terrorism are comprehensive, although they are not yet tested in practice.

The Financial Intelligence Centre (“the Centre”) is an effective financial intelligence unit.

The confiscation scheme is comprehensive and utilises effective civil forfeiture measures. Since 2003, South Africa has also adopted mechanisms to freeze terrorist-related assets.

The FIC Act imposes customer due diligence, record keeping, and suspicious transaction reporting and internal control requirements. It should be noted that, after the FIC Act came into force, South Africa implemented a program to re-identify all existing customers. The issue of beneficial ownership has not yet been addressed, however, and South Africa also needs to adopt measures dealing with politically exposed persons (PEPs) and correspondent banking.

The FIC Act covers some designated non-financial businesses and professions (DNFBPs); however, South Africa needs to broaden the legislation to cover dealers in precious metals and stones, company service providers, and more broadly cover accountants.

At the time of the on-site visit, there were not adequate powers to supervise and enforce compliance with AML/CFT provisions; however, amendments to FIC Act have been enacted, and when they enter into force this year they will significantly enhance the compliance regime.

South African authorities have established effective mechanisms to co- operate on operational matters to combat ML and FT. South Africa can also provide a wide range of mutual legal assistance, including the possibility to extradite its own nationals.

US Department of State Money Laundering assessment (INCSR)

South Africa is categorised by the US State Department as a Country/Jurisdiction of Primary Concern in respect of Money Laundering and Financial Crimes.

OVERVIEW

OVERVIEW

South Africa's position as the financial center of the continent, its sophisticated banking and financial sector with a high volume of transactions, and its large, cash-based market make it a target for transnational and domestic crime syndicates. The Financial Intelligence Centre (FIC), South Africa's FIU, works closely with other governmental organizations on AML enforcement. The Illicit Financial Flows Task Team (FTT), composed of six agencies, including a U.S. law enforcement representative, coordinates a national approach to investigate and prosecute money laundering activities. President Zuma signed an amendment to the Financial Intelligence Centre Act, 2001 (FICA) in April 2017, and in October 2017, the FIC, in collaboration with the National Treasury, the South African Reserve Bank (SARB), and the Financial Services Board, published guidance to implement the new law.

VULNERABILITIES AND EXPECTED TYPOLOGIES

Corruption, fraud, and organized crime are believed to constitute the largest sources of laundered funds. Narcotics and wildlife trafficking also contribute substantial proceeds. South Africa is the largest market for illicit drugs in sub-Saharan Africa and a transshipment point for cocaine and heroin. It is also a major source and transit country for wildlife crime. Other sources include business email compromises, theft, racketeering, currency speculation, credit card skimming, precious metals and minerals theft, human trafficking, stolen cars, and smuggling. The proliferation of informal and formal remittance schemes for foreign workers to send cash home to neighboring countries presents a challenge for authorities.

Many criminal organizations are involved in legitimate business operations, complicating efforts to detect money laundering. In addition to domestic criminal activity, observers note criminal activity by Chinese triads; Taiwanese and Vietnamese groups; Nigerian, Pakistani, Andean, and Indian drug traffickers; Bulgarian credit card skimmers; Lebanese trading syndicates; and the Russian mafia. Some foreign nationals are using South African nationals to help them send illicit funds out of the country. Investment clubs (stokvels) and funeral savings societies have been used as cover for pyramid schemes.

In 2017, reports and investigations into high-level corruption, including charges against President Zuma, continued to receive widespread coverage in the media. Issues surrounding PEPs gained attention when private banks refused to provide financial services to a PEP family. There were additional press reports that the same PEP family would be investigated by U.S. and UK law enforcement agencies.

In June 2017, the National Assembly passed the Border Management Authority Bill. The bill seeks to establish one centralized authority to handle all matters involving South Africa's ports of entry, including policing and customs. South Africa has four types of Special Economic Zones: Industrial Development Zones, free ports, FTZs, and Sector Development Zones.

KEY AML LAWS

FICA compels financial institutions and other designated businesses to monitor financial flows and report suspicious transactions. The government has implemented comprehensive KYC and STR regulations. The SARB and the Financial Services Board carry out AML supervision of banking and non-banking entities, respectively.

President Zuma signed the Financial Intelligence Centre Act Amendment (FICAA) bill into law in April 2017. It brings South Africa's policies for countering illicit finance more in line with international standards. The law, implemented in October 2017, allows institutions to use a risk- based approach toward AML deterrence and adds high-value goods dealers, auctioneers, and virtual currency exchanges to the categories of entities falling under FIC authority. The FICAA also expands the pool of PEPs whom financial institutions must track to include foreign prominent public officials and domestic influential persons. It also requires financial institutions to identify PEPs, including those in the private sector involved in high-value government procurements.

South Africa is a member of the FATF and the ESAAMLG, a FATF-style regional body.

AML DEFICIENCIES

The criminal justice system has become more effective in securing money laundering convictions, but the lack of capacity of law enforcement and other institutions to handle complex cases remains a challenge. The difficulty of obtaining information on beneficial ownership hurts financial institutions' ability to detect and report suspicious transactions.

ENFORCEMENT/IMPLEMENTATION ISSUES AND COMMENTS

The FTT, established in October 2016, is comprised of dedicated investigators and intelligence analysts who will target suspicious money flows leaving the country. It can seize illicit money tied to narcotics, wildlife poaching, and weapons trafficking. U.S. law enforcement participates with South African AML authorities. During the fiscal year that ended March 31, 2017, the FIC blocked approximately U.S. $12 million as suspected proceeds of crime. Prosecutors typically include money laundering as a secondary charge in conjunction with other offenses. Accordingly, the government does not generally keep separate statistics for money laundering- related prosecutions, convictions, or forfeitures.

Current Weaknesses in Government Legislation (2013 INCRS Comparative Tables):

According to the US State Department, South Africa conforms with regard to all government legislation required to combat money laundering

EU White list of Equivalent Jurisdictions

South Africa is not currently on the EU White list of Equivalent Jurisdictions

World Governance indicators

To view historic Governance Indicators Ctrl + Click here and then select country

Failed States Index

To view Failed States Index Ctrl + Click here

Offshore Financial Centre

South Africa is not considered to be an Offshore Financial Centre

Reports

US State Dept Narcotics Report 2017

Trafficking and use of illegal drugs appeared to increase in South Africa in 2016. South Africa is the largest market for illicit drugs within Sub-Saharan Africa and a transshipment point for cocaine and heroin, primarily to Europe.

Cocaine primarily arrives from South America via air transport to Johannesburg. South African authorities believe that only a fraction of the human couriers entering the country are apprehended. A portion is distributed for local consumption and the remainder is trafficked by land across international borders destined primarily for Europe.

Heroin, primarily of Afghan origin, typically arrives in ports in Tanzania, Kenya, and Mozambique from South West Asia and is subsequently transported by land to South Africa, often transiting Zambia and Botswana. Heroin not consumed within South Africa is then trafficked via air to Europe, along with a small percentage shipped to the United States. Methamphetamine (known locally as “tik”), methcathinone (“cat”), and methaqualone are synthesized in South Africa from precursors imported primarily from India and China. Clandestine laboratories are largely concentrated in the province of Gauteng. Cannabis is grown and used in South Africa and imported from Swaziland. A combination of heroin, marijuana, and often dangerous adulterants known as “nyaope” is commonly used in poorer communities.

In 2016, South Africa re-organized the South Africa Police Service (SAPS) structure and established a unit devoted to narcotics enforcement and investigation. The South Africa Narcotics Enforcement Bureau was incorporated within the SAPS Directorate of Priority Crime Investigation. A narcotics unit was also organized within the Tshwane Metropolitan Police Department. South Africa accepted an expansion in U.S.-sponsored law enforcement training in 2016 to help increase the investigative capacity of its relevant agencies. These changes may be partially attributed to the installation of an effective Acting Commissioner at SAPS in October 2015, and are indicative of a better understanding of the negative impact illegal drugs have on the nation as a whole.

The reorganization of SAPS and an increased focus on narcotics may help address ongoing challenges by facilitating increased networking and interagency cooperation between law enforcement agencies. South Africa cooperates with the United States on extradition matters and mutual legal assistance including requests related to narcotics.

US State Dept Trafficking in Persons Report 2016 (introduction):

South Africa is classified a Tier 2 country - A country whose governments does not fully comply with the Trafficking Victims Protection Act’s minimum standards, but are making significant efforts to bring themselves into compliance with those standards.

South Africa is a source, transit, and destination country for men, women, and children subjected to forced labor and sex trafficking. South Africans constitute the largest number of victims within the country. South African children are recruited from poor rural areas to urban centers, such as Johannesburg, Cape Town, Durban, and Bloemfontein, where girls are subjected to sex trafficking and domestic servitude and boys are forced to work in street vending, food service, begging, criminal activities, and agriculture. Many children, including those with disabilities, are exploited in forced begging. Non-consensual and illegal ukuthwala, the forced marriage of girls as young as 12 to adult men, is practiced in some remote villages in Eastern Cape province, exposing some of these girls to forced labor and sex slavery. Local criminal rings organize child sex trafficking, Russian and Bulgarian crime syndicates operate in the Cape Town sex trade, and Chinese nationals organize the sex trafficking of Asian men and women. Nigerian syndicates dominate the commercial sex trade in several provinces. To a lesser extent, syndicates recruit South African women to Europe and Asia, where some are forced into prostitution, domestic service, or drug smuggling. Law enforcement reported traffickers employ forced drug use to coerce sex trafficking victims.

Thai women remained the largest identified foreign victim group, but officials reported an increased number of Chinese victims. Women and girls from Brazil, Eastern Europe, Asia, and neighboring African countries are recruited for legitimate work in South Africa, where some are subjected to sex trafficking, domestic servitude, or forced labor in the service sector, or taken to Europe for similar purposes. NGOs in Western Cape have reported an increased number of Nigerian sex trafficking victims, many coerced through voodoo rituals, and more Nigerians in domestic servitude. NGOs reported a new trend of Central African women in forced labor in hair salons. Foreign and South African LGBTI persons are subjected to sex trafficking. Foreign male forced labor victims were discovered aboard fishing vessels in South Africa's territorial waters; NGOs estimated 10 to 15 victims of labor trafficking each month disembarked in Cape Town. Young men and boys from neighboring countries migrate to South Africa for farm work; some are subjected to forced labor and subsequently arrested and deported as illegal immigrants. Forced labor is reportedly used in fruit and vegetable farms across South Africa and vineyards in Western Cape province. Government and NGOs report an increase in Pakistanis and Bangladeshis subjected to bonded labor in businesses owned by their co-nationals. Official complicity—including among police—in trafficking crimes remained a serious concern. Some well-known brothels previously identified as locations of sex trafficking continued to operate with officials' tacit acknowledgment.

The Government of South Africa does not fully meet the minimum standards for the elimination of trafficking; however, it is making significant efforts to do so. In August 2015, the government promulgated the Prevention and Combating of Trafficking in Persons Act (PACOTIP), which criminalizes all forms of human trafficking, mandates a coordinated government program to prevent and combat trafficking, requires consolidated reporting of trafficking statistics, and outlines victim assistance measures. The government developed implementing regulations for PACOTIP, including on victim identification and referral, and began training officials on the law. The government increased law enforcement efforts—convicting 11 traffickers and initiating prosecution of five sex traffickers in 2015 in comparison to three convictions and 19 prosecutions in 2014. The Department of Social Development (DSD) continued its oversight of victim shelters, which assisted 103 victims—a significant increase compared to 41 during the previous reporting year. Officials did not implement procedures to identify trafficking victims among vulnerable groups, including illegal migrants and women in prostitution. The government did not address labor trafficking offenses systematically. A serious lack of capacity and widespread corruption among the police force hindered anti-trafficking law enforcement efforts. The government did not systematically prosecute or convict individuals involved in major international syndicates responsible for much of the sex trafficking in the country.

US State Dept Terrorism Report 2016

Overview: Following the September 2013 Westgate Mall attack in Kenya, the South African Police Service (SAPS) began engaging with U.S. law enforcement agencies to advance its preparedness for similar terrorist attacks in South Africa. U.S.-South African counterterrorism cooperation improved in several areas in 2016. U.S. law enforcement agencies engaged in productive collaboration with the Crimes Against the State (CATS) unit within the SAPS Directorate for Priority Crime Investigation (DPCI) and with the SAPS Crime Intelligence Division (SAPS CI). U.S. and South African agencies shared best practices to enhance risk management efforts and better identify challenges at their borders.

In November 2016, the South African government publicly stated that ISIS had been using South Africa as a “logistics hub and hideout” and that the government had identified the presence of foreign militant “sleeper cells” in its territory. The South African government has not publicly provided estimates of the number of South African nationals who have immigrated or returned from ISIS-controlled territories. A reputable South African-based research institute, the Institute for Security Studies, stated that South Africa serves as a “transit point for terrorists and locations for planning, training, and financing terror organizations.”

Legislation, Law Enforcement, and Border Security: In 2016, the law enforcement agencies and judicial system of South Africa used existing legislation to respond to an increased level of terrorism activity. The Protection of Constitutional Democracy Against Terrorist and Related Activities Act (POCDATARA) criminalizes acts of terrorism, financing of terrorism, and sets out specific obligations related to international cooperation. The Regulation of Foreign Military Assistance Act of 1998 applies to nationals who attempt to join ISIS or have enlisted with ISIS. The SAPS CI, CATS, DPCI, and the South Africa’s State Security Agency (SSA) are tasked with detecting, deterring, and preventing acts of terrorism within South Africa. The SAPS Special Task Force is specifically trained and proficient in counterterrorism, counterinsurgency, and hostage rescue. The National Prosecuting Authority (NPA) is committed to prosecuting cases of terrorism and international crime. The South African Revenue Service (SARS) protects South African borders from illegal importation and exportation of goods.

Securing the borders of South Africa is a particular challenge as there are numerous opportunities for international transit via land, sea, and air. South Africa has multiple law enforcement agencies policing its borders, but they are often stove-piped and inadequate communication limits their border control ability. Counterterrorism measures at the international airports include screening with advanced technology x-ray machines, but land borders do not have advanced technology and infrastructure. Trafficking networks make use of these land borders for many forms of illicit smuggling.

Citizens of neighboring countries are not required to obtain visas for brief visits. Regulation of visa, passport, and identity documents remains a challenge. The SAPS internal affairs office investigated allegations of corruption within the Department of Home Affairs concerning the sale of passports and identity documents, but the use of illegitimately obtained identity documents continued.

In July 2016, twin brothers Brandon-Lee and Tony-Lee Thulsie were arrested for planning to attack the U.S. Embassy and Jewish institutions in South Africa. They were charged with three counts of contravening the POCDATARA. Siblings Ebrahim and Fatima Patel were arrested the same day on separate charges for links to ISIS. The Thulsie case is an important test of the POCDATARA and interagency cooperation. As of December 2016, both cases were ongoing.

Countering the Financing of Terrorism: South Africa is a member of the Financial Action Task Force (FATF) and the Eastern and Southern Africa Anti-Money Laundering Group, a FATF-style regional body. South Africa's financial intelligence unit, the Financial Intelligence Centre (FIC), is a member of the Egmont Group of Financial Intelligence Units. Since FATF published its mutual evaluation report on South Africa in 2008, the country's legal and institutional framework for terrorist financing issues have improved, including improved bank supervision capacity and criminalization of money laundering and terrorist financing activities. More recently, the FIC Act Amendment Bill of 2015 proposed amendments to the act governing the FIC's responsibilities that will further address "threats to the stability of South Africa's financial system posed by money laundering and terrorist financing." Among the amendments, the bill assigns responsibility to the FIC to freeze the assets of persons on UN sanctions lists; however, the bill had not been signed by the end of 2016.

International Sanctions

UN Sanctions were in force during the period of apartheid

Bribery & Corruption

Index	Rating (100-Good / 0-Bad)
Transparency International Corruption Index	43
World Governance Indicator – Control of Corruption	60

South Africa suffers from widespread corruption, despite it performing better than regional averages across a number of key measurements. The country has simpler procedures, smoother interactions with tax officials and easier enforcement of commercial contracts than comparable regional countries. It has a robust anti-corruption framework, but laws are inadequately enforced. Public procurement is particularly prone to corruption, and bribery thrives at the central government level. The Prevention and Combating of Corruption Act (PCCA) criminalises corruption in public and private sectors, including attempted corruption, extortion, active and passive bribery, bribing a foreign public official, fraud and money laundering, and it obliges public officials to report corrupt activities. As it is a criminal offence to provide any form of "gratification" to an official if it is not lawfully due, companies are advised to refrain from giving gifts or exchanging facilitation payments. **Information provided by GAN Integrity.**

US State Department

Allegations of corruption in the public tendering process persist in South Africa at all levels of government, despite the country's excellent anti-corruption regulatory framework, as highlighted by the Prevention and Combating of Corrupt Activities Act of 2004. The office of the Public Protector, among other agencies, is tasked with conducting independent investigations into allegations of official corruption, and is widely respected for its effectiveness and impartiality. The Public Protector conducted an extended investigation into public spending on President Zuma's private residence in Nkandla, KwaZulu-Natal, which has increased the public dialogue around corruption. The governing African National Congress and opposition parties have all made fighting corruption a primary campaign platform in the run-up to the May 2014 national and provincial elections.

Corruption and Government Transparency - Report by Global Security

Political Climate

The Government of South Africa has openly committed itself to liberal economic policies with a focus on macroeconomic stability, financial discipline, and growth within foreign direct investments. Furthermore, South Africa has been relatively successful in building independent public institutions. The political climate has been and is most likely to remain stable as the African National Congress party (ANC), the ruling party since the end of the apartheid, again won the presidential elections in April 2009 in an election that was described as free and fair by the US Department of State 2012. As expected, the controversial leader of the ANC, Jacob Zuma, won the presidency by a large margin.

The country's political life has been plagued by major corruption scandals, the most famous of which is the so-called 'Arms Deal'. The scandal involved the leader of the ANC and current president, Jacob Zuma, who allegedly took kickbacks in a major public procurement scandal exposed in 1999. Zuma's former financial adviser, Schabir Schaik, was sentenced to 15 years imprisonment for his involvement in the scandal. Charges against Zuma himself have been repeatedly dropped and revived. A BBC News article from September 2011 reported that the government announced the reopening of the ‘Arms Deal’ case, and a commission of inquiry was to be set up to probe corruption allegations. However, Freedom House 2013 reports that the new investigation of the case did not go smoothly during 2012, as the head of the panel, Whillie Seriti himself was accused of bias and corruption. In addition, the report also states that corruption allegations resurfaced in 2012 as the President allegedly used state funds to build a private property near Nkandla. According to the Bertelsmann Foundation 2012, ANC dominance on the political scene has weakened institutional checks and balances, and its political power has been used to strategically influence or impede investigations into corruption scandals. The Economist in an October 2010 article reports that the Special Investigating Unit (SIU), one of South Africa's anti-corruption bodies, had identified 400,000 civil servants receiving welfare payments to which they were not entitled. A further 6,000 senior government officials had failed to declare their business interests, as required by the law, and were awaiting disciplinary hearings. According to the head of the SIU, as cited in the same article, the state's ability to convict and punish the guilty was, 'pretty limited and, in some cases, almost completely non-existent'. Furthermore, there is no law regulating private funding of political parties in South Africa, which enables the political process to be corrupted through party donations. In fact, most South African political parties have been implicated in scandals linked to party funding.

Despite the overall success of South Africa in transforming itself into a democratic state with regionally unmatched economic performance, many social problems remain unsolved. Corruption is certainly a serious problem for South Africans, and according to the SIU’s estimate, each year between EUR 2.5 and 3 billion from the government procurement budget is either stolen, or deemed untraceable due to annual negligence, as reported in an October 2011 article by The Irish Times. However, figures from the Afrobarometer 2012 show that the public expected the government to address other issues first, such as immense unemployment and crime and security issues, despite that the vast majority of surveyed citizens viewed the previous government's efforts against corruption in the public administration as highly ineffective. According to Transparency International's Global Corruption Barometer 2013, the surveyed South African households perceive the Zuma government's fight against corruption as fruitless, with only 3% viewing it as 'effective' and 36% as 'ineffective'. In the same survey, 53% of the respondents believed that corruption had increased a lot over the past three years.

Business and Corruption

Over the past decade, the Government of South Africa has sought to liberalise trade and enhance its international competitiveness. While the media frequently reports on corruption scandals involving high-ranking civil servants, petty corruption is not perceived as being particularly pervasive compared to other African countries. According to the World Economic Forum Global Competitiveness Report 2013-2014, companies rank corruption as the fourth most problematic factor for doing business in the country. The largest constraints for business operations are an inadequately educated workforce and restrictive labour regulations, followed by inefficient government bureaucracy. Yet, tendencies in the labour market indicate that this might be linked indirectly to corruption. There have been reports of personnel officers from the private sector who accept bribes in exchange for awarding jobs, especially with respect to unskilled or semi-skilled jobs.

According to Transparency International's Bribe Payer's Survey 2012, 34% of companies have lost a contract because competitors resorted to bribery compared to 66% of the surveyed executives who responded negatively when asked the same question. On the other hand, only 30% of companies believe that national anti-bribery laws in South Africa are effective in combating corruption, as reported by the same survey. South Africa ranks 15th out of 28 economies in Transparency International's Bribe Payers Index 2011, in relation to the perceived likelihood of companies from South Africa paying bribes abroad.

Public procurements are seriously hampered by corruption and negligence, as demonstrated by an estimated figure given by the head of the Special Investigating Unit (SIU). According to him, as stated in a 2011 article by The Irish Times, around 20% (between EUR 2.5 and 3 billion) of all government procurements are lost annually due to theft or negligence. In addition, public procurement is often cited as an area of business activity in which foreign companies are very likely to encounter corruption and other unethical practices. In order to root out corruption in public sector procurement, President Zuma announced in the parliament in February 2010 that his government plans to establish a tender compliance unit and introduce supply chain fraud audits, in addition to improving spending data and establishing a ministerial committee on corruption, as reported in a 2010 article by Supply Management. Nevertheless, these measures were still not implemented by the time of the review. This announcement was made days after five public officials were arrested on account of procurement fraud. In order to best reduce the risk of extortion and demands for bribes in the procurement process, foreign investors considering bidding on public tenders are advised to use a specialised due diligence tool on public procurement. All in all, due to the likelihood of encountering corruption, companies are generally advised to consult with experienced attorneys to develop, implement and strengthen integrity systems, and to carry out extensive due diligence before committing funds or when already doing business in South Africa.

Regulatory Environment

In the World Economic Forum Global Competitiveness Report 2013-2014, surveyed companies rank inefficient government bureaucracy as one of the largest obstacles for doing business in South Africa. As the Bertelsmann Foundation 2012 reports, the dominance of the ANC has led to, among other things, increasing corruption and the politicisation of the public service. The report advocates that both can be mitigated only by changing the controversial cadre deployment policy, which promotes an environment conducive to patronage and nepotism. Nevertheless, the tax system is efficient, as reported by a December 2011 issue published by Accountancy SA. According to the US Department of State 2013, in 2011 South Africa employed a new Companies Act that simplified company registration processes and reduced costs for business start-ups. Data from the World Bank & IFC Doing Business 2013 reveals that bureaucracy is not as unwieldy in South Africa as in other countries in the region. The data indicates that it only takes an average of 5 procedures and 19 days to start a company in the country at a cost of 0.3% of GNI per capita, compared to a regional average of 8 procedures and 34 days at a cost of 67.3% of GNI per capita. Amendments to the Companies Act 2011 have eased company start-ups considerably by reducing costs of starting a new company as well as simplifying registration procedures. Compared to the Sub-Saharan regional average, companies in South Africa encounter less complicated and less costly import/export procedures, less complicated procedures related to starting and closing a company and securing property rights, and smoother interaction with tax officials.

The South African Services website provides comprehensive information about the services offered by the South African government, including information on regulations, licences and permits. The Department of Trade and Industry (DTI) provides information and assistance to foreign investors. Its one-stop shop for investment offers information on sectors, industries and the regulatory environment; provides links to joint venture partners; and assists with work permits. Investors will find several useful publications on its website, including the Investors Handbook 2011/2012. The DTI also offers investment incentives in several sectors among which the most prominent are the incentives offered to the Business Process Outsourcing and Off-Shoring (BPO&O). Investors should note that the national government enacted a Broad-Based Black Economic Empowerment Act in 2003, which is the legal framework behind a Broad-Based Black Economic Empowerment (BBBEE) strategy aiming at increasing the participation of black citizens in the South African economy. Companies are not required to meet BBBEE criteria, but are at a disadvantage for government tenders if they do not. All companies must have their BBBEE compliance audited every year by an accredited verification agency under the DTI. The BBBEE requirements are specified in the Codes of Good Practice. However, the BBBEE strategy has also been criticised for providing too much preferential treatment to wealthy black elites in relation to getting government contracts, which has led to an increase in procurement corruption. Nevertheless, according to the US Department of State 2013, the government proposed to review the law governing the BBBEE project and introduce measures to combat businesses that manipulate and misuse their levels of black empowerment to win contracts.

South African courts have been struggling with considerable backlogs for many years, which have delayed cases involving private companies. A positive response to this problem has been the establishment of Specialised Commercial Crime Courts that have proven to be successful in dealing with white-collar crime. Business Against Crime South Africa has added financial backing to ensure the success of these courts. Dispute settlement and enforcement of commercial contracts is now relatively easy and not as costly as in other countries in the region, which is also reflected in the fact that companies operating in South Africa have greater confidence in the judicial system. The US Department of State 2013 reports that South Africa applies its commercial and bankruptcy laws with consistency and has a court system for enforcing property and contractual rights which is objective and independent. According to Global Integrity 2010, small companies have the possibility to uphold their rights in court thanks to the Contingency Fee Act 1997, where the fees are not rendered unless the client is successful in his/her claim. South Africa is not a member of the World's Bank International Center for the Settlement of Investment disputes, yet it is a member of the New York Convention of 1958 and it recognises the International Chamber of Commerce, which supervises the resolution of transnational disputes. Access the Lexadin World Law Guide for a collection of legislation in South Africa.

Section 3 - Economy

South Africa is a middle-income emerging market with an abundant supply of natural resources; well-developed financial, legal, communications, energy, and transport sectors; and a stock exchange that is Africa's largest and among the top 20 in the world.

Economic growth has decelerated in recent years, slowing to just 1.5% in 2014. Unemployment, poverty, and inequality - among the highest in the world - remain a challenge. Official unemployment is roughly 25% of the workforce, and runs significantly higher among black youth. Even though the country's modern infrastructure supports a relatively efficient distribution of goods to major urban centres throughout the region, unstable electricity supplies retard growth. Eskom, the state-run power company, is building three new power stations and is installing new power demand management programs to improve power grid reliability. Load shedding and resulting rolling blackouts gripped many parts of South Africa in late 2014 and early 2015 because of electricity supply constraints due to technical problems at some generation units, unavoidable planned maintenance, and an accident at a power station in Mpumalanga province. The rolling blackouts were the worst the country faced since 2008. Construction delays at two additional plants, however, mean South Africa will continue to operate on a razor thin margin; economists judge that growth cannot exceed 3% until electrical supply problems are resolved.

South Africa's economic policy has focused on controlling inflation; however, the country faces structural constraints that also limit economic growth, such as skills shortages, declining global competitiveness, and frequent work stoppages due to strike action. The current government faces growing pressure from urban constituencies to improve the delivery of basic services to low-income areas and to increase job growth.

Agriculture - products:

corn, wheat, sugarcane, fruits, vegetables; beef, poultry, mutton, wool, dairy products

Industries:

mining (world's largest producer of platinum, gold, chromium), automobile assembly, metalworking, machinery, textiles, iron and steel, chemicals, fertilizer, foodstuffs, commercial ship repair

Exports - commodities:

gold, diamonds, platinum, other metals and minerals, machinery and equipment

Exports - partners:

China 11.3%, US 7.3%, Germany 6%, Namibia 5.2%, Botswana 5.2%, Japan 4.7%, UK 4.3%, India 4.2% (2015)

Imports - commodities:

machinery and equipment, chemicals, petroleum products, scientific instruments, foodstuffs

Imports - partners:

China 17.6%, Germany 11.2%, US 6.7%, Nigeria 5%, India 4.7%, Saudi Arabia 4.1% (2015)

Banking

South Africa's well-developed banking system consists of three key elements:

- the South African Reserve
- Bank (the country's central bank),
- private sector banks (commercial banks, merchant banks, and general banks), and
- mutual banks.

South African banks hold the first six places among the top 100 banks on the continent of Africa.

Four large banks dominate the South African banking landscape. Standard Bank of South Africa, Nedcor, ABSA (Amalgamated Bank of South Africa, now owned by Barclays PLC), and FirstRand Bank collectively account for around 85 percent of banking services throughout South Africa. In total, there are approximately 70 foreign banks operating in South Africa, either via representative offices, branches, subsidiaries or joint ventures with local companies. International banks in the country have focused on offshore lending where they have a competitive advantage as a result of their low overheads and their ability to raise funds at comparatively favorable rates), as well as treasury activities for corporate and clients and government.

All banks offer a comprehensive range of products and services through extensive branch and electronic banking infrastructures, serve a wide customer base, and have the characteristics of universal banks.

Based on population numbers, South Africa does not appear to be “over-banked,” as one branch exists for approximately every 9,500 persons. However, a large portion of the population does not have access to normal banking services and uses only a few products. Many Black South Africans tend to save outside the formal banking sectors, and choose to save in cooperative savings institutions called “stokvels.” Excluding the non-banked segment of the population, it is estimated that there is one branch for every 3,200 persons. E-commerce financial services (i.e., banking and share dealing online) are doing well in the local market, and it is projected that this segment will continue to rise.

Although the services sector has, in the past, focused on the mid- to high-income population, government pressure, through the Financial Services Charter, as well as demand from the lower-income population, has pushed the banks to join the smaller micro-lenders. As a result, the banks are incorporating the lower end of the market into their strategies, as well as developing BEE strategies into their business development plans.

Despite the global turmoil in the banking sector, the South African banking system remained relatively stable and the South African Reserve Bank reported that banks were adequately capitalized. South African banks are currently well capitalized, particularly compared to their international counterparts. This is due, in part, to the Government’s prudent measures and retention of exchange control. Overall, local banks are viewed to be relatively stable and are unlikely to default any time soon. If any South African bank was to default, it is likely that the government would intervene to help protect depositors.

Stock Exchange

South Africa boasts a sophisticated financial sector with well-developed financial institutions and a stock exchange in Johannesburg, the Johannesburg Stock Exchange (JSE) that ranks among the top exchanges in the world. Recently, South Africa has seen rapid increases in both inbound and outbound Foreign Direct Investment (FDI).

Section 4 - Investment Climate

Executive Summary

With the most advanced, broad-based economy on the continent, South Africa offers investors a diverse and mature economy with a vibrant financial and service sector, as well as preferential access to export markets in the United States, the European Union and the southern Africa. Standards are generally similar to those in most developed economies, U.S. investors find local courts generally fair and consistent, and infrastructure is well-developed. South Africa's democracy is well-established with transparent and contested elections, and an appreciation for the rule of law.

Despite this generally welcoming environment, there are serious and growing concerns among investors about the general direction of policy making and structural reform issues. Labor strikes have increased in recent years, even while union membership is declining. Two strikes in 2014 in mining and metalworking were noteworthy for their duration and intensity, and in 2015 there were significant strikes by municipal workers, miners and in transport. Given the labor situation, slow economic growth and policy uncertainty, one or more of the international credit ratings agencies are likely to downgrade South Africa's credit rating in 2016.

Violent crime and corruption remain widespread. Security and corruption are common factors that investors have to address. Basic infrastructure gaps and poor government service delivery in low-income areas have increased the incidence of protests and crime in recent years. Access to electricity has become a significant concern with the advent at the end of 2014 of "load shedding" (planned, limited brownouts of sectors of a city), shaving 1% off estimates for economic growth. In the latter half of 2015, load shedding eased, due to reduced demand in mining and manufacturing. Unemployment is high, averaging 25 percent by standard definitions, but high-skilled labor is in short supply and immigration laws make importing labor a challenge that has frustrated many current investors.

The biggest concern for investors has become the direction of economic policy. The South African government has since 2012 increasingly proposed laws, policies and reforms aimed at improving the lives of historically disadvantaged, generally black South Africans, arguing that the transition from apartheid over the last 21 years has not produced the expected economic transformation in terms of employment and ownership of companies. There is also a sense that the ANC and the South African Government feel they cannot rely on the private sector to complete this transformation in a timely manner, and thus the state needs to take a more direct hand in driving development, particularly by promoting greater industrialization. The need to improve economic outcomes for the unemployed and historically disadvantaged is broadly recognized within the business community, and companies have invested significant time and money in developing their staff and in development opportunities in their communities. Recent initiatives have included tightening labor laws to achieve proportional racial representation in workplaces, performance requirements for government procurement such as ownership transfer and localization, and weakening commercial property rights. While some initiatives have gained the force of law, such as the updated 2013 Broad-based Black Economic Empowerment (B-BBEE) amendments, other initiatives remain the subject of debate, creating uncertainty about the future regulatory and investment climate. Sectors of specific concern have included the extractive industries, security services and agriculture.

Macroeconomic management was generally strong until the global economic crisis in 2008, with reduced levels of public debt, generally low inflation, and a positive rate of economic growth. Inflation remained within the central bank's target range of 3-6 percent from 2010 - 2014, though it has pushed the upper limit since late 2012 and exceeded 6 percent in 2015. Growth has stalled, at 1.3 percent in 2015 and a forecast for 0.7 percent in 2016, and government revenue has been negatively affected to result in a projected deficit of 3.9 percent of GDP through March 2016. Sovereign debt remains barely investment worthy, with a sustained negative outlook. In October 2014, Moody's downgraded South Africa's credit rating to Baa2 from Baa1, and maintained a negative outlook. The rating agency still cited the government's weakening institutional strength, lackluster economic growth despite low interest rates, infrastructure shortfalls, high labor costs despite high unemployment, and increased concern about political stability as the major factors for maintaining a negative outlook for South Africa. In 2014 Fitch downgraded South Africa's sovereign debt to BBB with a negative outlook; Standard and Poor's downgraded South Africa to BBB- at the same time.

Despite policy uncertainty, South Africa is a destination conducive to U.S. investment, and should remain so as the dynamic business community is highly market-oriented and the driver of economic growth. South Africa offers ample opportunities, and continues to attract investors seeking a location from which to access to the rest of the continent.

Table 1

Measure	Year	Index or Rank	Website Address
TI Corruption Perceptions index	2015	61 of 168	transparency.org/cpi2014/results
World Bank's Doing Business Report "Ease of Doing Business"	2015	73 of 189	doingbusiness.org/rankings
Global Innovation Index	2015	60 of 143	globalinnovationindex.org/content/page/data-analysis
U.S. FDI in South Africa ($M USD, stock positions)	2014	$6,181	Bea.gov/international/factsheet/factsheet.cfm
World Bank GNI per capita	2014	$6800	data.worldbank.org/indicator/NY.GNP.PCAP.CD

1. Openness To, and Restrictions Upon, Foreign Investment

Attitude toward Foreign Direct Investment

The government of South Africa is generally open to foreign investment as a means to drive economic growth, improve international competitiveness, and access foreign markets. Merger and acquisition activity is more sensitive and requires advance work to answer potential stakeholder concerns. Virtually all business sectors are open to foreign investment. Certain sectors require government approval for foreign participation, including energy, mining, banking, insurance, and defense. Excepting those sectors, no government approval is required to invest, and there are few restrictions on the form or extent of foreign investment. The Department of Trade and Industry's (DTI) Trade and Investment South Africa (TISA) division provides assistance to foreign investors. The DTI concentrates on sectors in which research indicates the foreign country has a comparative advantage. TISA offers information on sectors and industries, consultation on the regulatory environment, facilitation for investment missions, links to joint venture partners, information on incentive packages, assistance with work permits, and logistical support for relocation. DTI publishes the "Investor's Handbook" on its website: www.dti.gov.za

While the South African government supports investment in principle, investors and market commentators are concerned that its commitment to assist foreign investors is insufficient in practice. Some of their concerns include a belief that the national-level government lacks a sense of urgency when it comes to supporting investment deals. Several investors reported trouble accessing senior decision makers. Additionally, South Africa scrutinizes merger- and acquisition-related foreign direct investment for its impact on jobs, local industry, and retaining South African ownership of key sectors. Private sector representatives and other interested parties were concerned about politicization of South Africa’s posture towards this type of investment. Despite South Africa’s general openness to investment, actions by some South African Government ministries and statements by politicians provide troubling examples of a lack of awareness of the potential impact domestic policies can have on investments. At times, there also seems to be a lack of conviction in some political circles about the importance of FDI to South Africa’s growth and prosperity. There is also a general inability among South African Government ministries to consult adequately with stakeholders before implementing laws and regulations, which has on occasion produced unintended but serious consequences that hamper investors. Examples include the newly adopted Protection of Investment Bill, the recently passed Expropriation Bill, the Private Security Industry Regulation Act (PSIRA) and the Minerals and Petroleum Resources Development Act (MPRDA).

South Africa’s Broad-Based Black Economic Empowerment (B-BBEE) program also has a significant effect on foreign investment. B-BBEE is an affirmative action program assisting historically disadvantaged South Africans to participate in the economy. B-BBEE requirements are specified in the Codes of Good Practice, which were published in the Government Gazette in 2007 and first implemented in 2011. The codes were updated in 2013 with those changes entering into force in April 2015. The 2013 updates retain a Black Economic Empowerment (BEE) “Scorecard” to rate a firm’s commitment to economic transformation using five different dimensions—ownership, management control, skills development, enterprise and supplier development, and socio-economic development. Each dimension is weighted, with ownership receiving the most empowerment points (25) and socio-economic development the least (5).

Equity equivalence deals provide multinational corporations options for scoring on the B-BBEE ownership dimension without the transfer of equity stakes, which could run against a company’s bylaws. Such a deal would likely involve creation of a black-owned South African joint venture valued at least 25 percent of the multinational’s South African operations. However, the process for approving an equity equivalent mechanism by the DTI is complicated and requires a significant effort on the part of the multinational. The updated codes identify ownership, management and enterprise development/preferential procurements as key elements. Should a firm fail to score high enough in any of these areas, a one level penalty is applied to the final scorecard.

In addition to B-BBEE transformation framework, sectors such as financial services, mining, and petroleum have their own "transformation charters" intended to accelerate empowerment within the sector. In 2011, the integrated transport, forest products, construction, tourism, and chartered accountancy sector charters gained force of law in South Africa. In 2012, the Information and Communication Technology (ICT) Charter and Property Sector and Financial Services charters gained force of law. Other sectors, including Agri-business and Marketing, have transformation charters that are more "aspirational" in nature. While public tenders consider B-BBEE along with price, quality and delivery to weigh bids, individual public tenders increasingly involve additional performance requirements separate from B-BBEE such as job creation, localization, and knowledge transfer. These reduce the weight of price in the final calculation of a bid's competitiveness.

Other Investment Policy Reviews

Neither the OECD nor the UNCTAD has conducted an investment policy review of South Africa in the last three years.

Laws/Regulations on Foreign Direct Investment

After the end of apartheid in 1994, the government liberalized trade and enhanced international competitiveness by lowering tariffs, abolishing most import controls, undertaking some privatization and reforming the regulatory environment. Since the 2008 financial crisis, the government has adopted a more protectionist trade policy to incubate developing industries. South African banks are well-capitalized and have little exposure to sub-prime debt or other sources of financial contagion.

Industrial Promotion

The Department of Trade and Industry has incentive programs in automotive, clothing and textile, critical infrastructure, industrial innovation, agricultural development, and the film and television sectors. Information is available on their website at: http://www.thedti.gov.za/industrial_development/industrial_development.jsp

Limits on Foreign Control and Right to Private Ownership and Establishment

Currently there are no limitations on foreign ownership, although the Private Security Industry Regulation Act (PSIRA) which has passed Parliament and is awaiting presidential signature to become law, has a clause requiring 51% ownership and control by South Africans. President

Zuma also announced in his State of the Nation Address (February 11, 2016) that he will soon launch a land reform bill that restricts foreign ownership, and will convert foreign-owned land to long term leases.

Privatization Program

N/A

Screening of FDI

Mergers and acquisitions in South Africa are subject to screening and approval under the Competition Act of 1998. This act allows South Africa's Competition Commission to review investment for public interest considerations such as its effect on specific industrial sectors, employment within South Africa, the ability of small businesses to become competitive, and the ability of national industries to compete internationally. These broad powers present a risk. Political interference has, at times, imposed requirements that discriminated against foreign investors. The Competition Tribunal reviews decisions made by the Competition Commission. Inward investment is subject the Companies Act of 2011, which sets out requirements for corporate governance, among other considerations. South Africa's Industrial Policy Action Plan (IPAP) aims to strengthen industrial development. Key stated objectives include revising government procurement policy to support targeted sectors (capital and transport equipment; automotive; chemical, plastic fabrication and pharmaceuticals; and forestry, paper and furniture); using trade and competition policy to improve South Africa's competitiveness; and facilitating industrial financing for small- and medium-sized firms.

Competition Law

The Competition Commission is empowered to investigate, control and evaluate restrictive business practices, abuse of dominant positions and mergers in order to achieve equity and efficiency. Their public website is www.compcom.co.za

Business Registration

Companies must register with the Companies and Intellectual Property Commission (CIPC), which is a division of the Department of Trade and Industry (DTI). The website www.cipc.co.za contains how-to guides, document templates, and detailed FAQs. CIPC has a simplified registration process which can be completed online for domestic companies who use a standardized Memorandum of Incorporation (MOI). They also have walk-in self-service centers in the four major metropolitan areas (Pretoria, Johannesburg, Cape Town and Durban). Certified copies of identity documents and MOI are required, but certification is easily obtainable at any post office or police station. Foreign firms can register as "external companies" with CIPC. Company name reservation costs less than $5, and company registration between $10 and $40. The DTI asserts that the process takes less than 25 working days.

Companies must also register with the South African Revenue Service (SARS) – www.sars.gov.za – to get an income tax reference number for turnover tax (small companies), corporate tax and as well as employer contributions for PAYE (income tax) and skills development levy (applicable to most companies). The smallest informal companies may not be required to register with CIPC, but must register with the tax authorities. Companies also need to register with the Department of Labour (DoL) – www.labour.gov.za – to contribute to the unemployment insurance fund (UIF) and a compensation fund for occupational injuries. The DoL registration takes the longest (up to 30 days), but can be done concurrently with other registrations.

Trade and Investment South Africa, a wing of the Department of Trade and Industry, serves as the "investor relations" arm of the South African government. They promote investment opportunities (particularly those related to DTI's industrial policy framework), assist with site location, provide regulatory overview and, together with Brand South Africa and occasionally National Treasury, promote South Africa as an investment destination. Also, all nine of South Africa's provinces have Provincial Investment Agencies. The provincial agencies differ tremendously in activities and budgets, with those in the major cities offering far more services and incentives. In theory, they provide services to any interested investor, although presumably the larger and more strategic investors get more attention.

The government of South Africa has recently announced an Inter-Ministerial Committee on Investment intended to streamline the investment procedures with a "One-Stop Shop" concept led by the Department of Trade and Industry.

South Africa established a specific Department of Small Business Development in 2014 to promote small business growth. The Small Enterprise Development Agency (www.seda.gov.za) specifically helps small businesses find opportunities. The services include special incentives for specific industries (automobiles, film) and funds which businesses may use for financing.

South Africa formally defines MSMEs by size of turnover, and the thresholds vary by industry and change every year since they are indexed to inflation. However, many government officials use informal cutoffs by number of employees to classify enterprises as micro (less than 5 employees), very small (6-20 employees), small (21-50 employees) and medium (between 510 and 200 employees).

Some useful references:

http://www.southafrica.info/business/investing/open.htm#.VuFoFvlEm70
General Government Promotion (Why do business in South Africa?)

http://www.seda.org.za/Publications/Publications/The%20Small,%20Medium%20and%20Micro%20Enterprise%20Sector%20of%20South%20Africa%20Commissioned%20by%20Seda.pdf
overview of MSME's (micro, small, and medium enterprises), 2015 by BER

2. Conversion and Transfer Policies

Foreign Exchange

The South African Reserve Bank's (SARB) Exchange Control Department administers foreign exchange policy. An authorized foreign exchange dealer, normally one of the large commercial banks, must handle international commercial transactions and report every purchase of foreign exchange, irrespective of the amount. Generally, there are only limited delays in the conversion and transfer of funds. Due to South Africa's relatively closed exchange system, no private player, however large, can hedge large quantities of Rand for more than five years.

While non-residents may freely transfer capital in and out of South Africa, transactions must be reported to authorities. Non-residents may purchase local securities without restriction. To facilitate repatriation of capital and profits, foreign investors should ensure an authorized dealer endorses their share certificates as "non-resident." Foreign investors should also be sure to maintain an accurate record of investment.

Remittance Policies

Subsidiaries and branches of foreign companies in South Africa are considered South African entities and are treated legally as South African companies. As such, they are subject to exchange control by the SARB. South African companies may, as a general rule, freely remit the following to non-residents: repayment of capital investments; dividends and branch profits (provided such transfers are made out of trading profits and are financed without resorting to excessive local borrowing); interest payments (provided the rate is reasonable);

and payment of royalties or similar fees for the use of know-how, patents, designs, trademarks or similar property (subject to prior approval of SARB authorities).

While South African companies may invest in other countries, SARB approval/notification is required for investments over R500 million ($43.5 million). South African individuals may freely invest in foreign firms listed on South African stock exchanges. Individual South African taxpayers in good standing may make investments up to a total of R4 million ($340,000) in other countries. As of 2010, South African banks are permitted to commit up to 25 percent of their capital in direct and indirect foreign liabilities. In addition, mutual and other investment funds can invest up to 25 percent of their retail assets in other countries. Pension plans and insurance funds may invest 15 percent of their retail assets in other countries.

Before accepting or repaying a foreign loan, South African residents must obtain SARB approval. The SARB must also approve the payment of royalties and license fees to non-residents when no local manufacturing is involved. When local manufacturing is involved, the DTI must approve the payment of royalties related to patents on manufacturing processes and products. Upon proof of invoice, South African companies may pay fees for foreign management and other services provided such fees are not calculated as a percentage of sales, profits, purchases, or income.

3. Expropriation and Compensation

The Expropriation Act of 1975 (Act) and the Expropriation Act Amendment of 1992 entitles the government to expropriate private property for reasons of public necessity or utility. The decision is an administrative one. Compensation should be the fair market value of the property as agreed between the buyer and seller, or determined by the court, as per section 25 of the Constitution. In several restitution cases, in which the government initiated proceedings to expropriate white-owned farms after courts ruled the land had been seized from blacks during apartheid, the owners rejected the court-approved purchase prices. In most of these cases, the government and owners reached agreement on compensation prior to any final expropriation actions. The government has twice exercised its expropriation power, taking possession of farms in Northern Cape and Limpopo Provinces in 2007 after negotiations with owners collapsed. The government paid the owners the fair market value for the land in both cases. There is no record, dating back to 1924, of an expropriation or nationalization of a U.S. investment in South Africa. A new draft expropriation law, intended to replace the Expropriation Act of 1975, is currently under consideration in Parliament. Some commentators have raised concerns about aspects of the new legislation, including new clauses that would allow the government to expropriate property without first obtaining a court order.

Racially discriminatory property laws during apartheid resulted in highly distorted patterns of land ownership in South Africa. In 2011, South Africa tabled a “Green Paper” on land reform to address these distortions. The Green Paper’s “three pillars” include a land management commission, a land valuation-general and a land rights management board with local management committees. These would keep track of land sales, ensure proper record keeping, and "facilitate productive land usage and an equitable land distribution." Certain provisions in the Green Paper have generated controversy such as proposed "severe limitations" on private land ownership, particularly foreign ownership, the powers granted to a proposed “valuer-general” to assist the Department of Rural Development and Land Reform in assessing the fair value of land, the proposed Commission’s powers to invalidate title deeds and confiscate land, and the state’s right to intervene regarding the use of land.

President Zuma suggested that private land ownership will be limited to 12,000 hectares (roughly 30,000 acres) and that no foreigners would be allowed to own land in his State of the Nation address in February 2015. While details about these proposed policies remain hazy and are not yet law, it is an indication of the direction of government policy, and has already caused some investors to cancel potential deals. The Finance Minister announced the creation of the Office of a Valuer-General will be funded in the FY 2015-16 fiscal year.

In March 2014, the Parliament passed the Restitution of Land Rights Amendment Bill, which reopens the window for persons or communities disposed of their land after 1913, due to past discriminatory laws and policies to lodge claims for their properties. President Zuma signed the bill on July 1, 2014. As expected, the bill inspired some significant new claims for restoration of property seized during colonization or under the Apartheid government.

The Mineral and Petroleum Resources Development Act 28 of 2002 ("MPRDA"), enacted in 2004, gave the state ownership of all of South Africa's mineral and petroleum resources. It replaced private ownership with a system of licenses controlled by the South African government. Under the MPRDA, investors who held pre-existing rights were granted the opportunity to apply for licenses provided they met certain criteria, including the achievement of certain BEE objectives. Amendments to the MPRDA passed by Parliament in 2014 but not signed into law by President Zuma grant the state de facto expropriation rights for projects in the minerals and petroleum sectors; they also grant broad discretionary powers to the person of the Minister to restrict exports and prices for commodities the Minister deems strategic. While seemingly written for the mining sector, the bill's inclusion of petroleum could complicate, if not obviate, new investment in oil and gas because of the carried interest provisions. The South African government has been strongly urged to separate out petroleum from the bill. In February 2015 the bill was returned to committee because of constitutional concerns over process and policy.

In February 2014, the South Africa Parliament passed amendments to the 2001 Private Security Industry Regulatory Act aimed at controlling national security risks associated with foreign investors. President Zuma had not signed the bill into law as of March 2015. This bill would require at least 51 percent domestic ownership of foreign-owned private security companies, possibly including not only private security services providers, but also security equipment manufacturers and service providers like locksmiths and keymakers. The forced ownership transfer requirements likely would be found in violation of South Africa's commitments under the General Agreement on Trade in Services (GATS). There is concern that passage of the bill with the local ownership requirement would lead other industries to ask for similar provisions.

In December 2015, President Zuma signed the Promotion of Investment Act into law, to put the rights of foreign and domestic investors on an equal footing. The Act provides the government the option to expropriate property at a price lower than market value based on a formulation in the Constitution termed "just and equitable compensation." This considers market value with discounts based on the current use of the property, the history of the acquisition, current use of the property, and the extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property. The Act also allows the government to expropriate under a broad range of policy goals, including economic transformation and correcting historical grievances.

4. Dispute Settlement

Legal System, Specialized Courts, Judicial Independence, Judgments of Foreign Courts

South Africa has a mixed legal system of Roman-Dutch civil law, English common law, and customary law.

Bankruptcy

South Africa has a strong bankruptcy law, which grants many rights to debtors, including rejection of overly burdensome contracts, avoiding preferential transactions and the ability to obtain credit during insolvency proceedings. South Africa has a World Bank rank of 73 in the 2016 Doing Business report.

Investment Disputes

A major U.S. company sued the South African Government in 2014 over a disputed award on a government tender. The dispute is on-going in South African courts.

International Arbitration

Arbitration in South Africa follows the Arbitration Act of 1965, which does not distinguish between domestic and international arbitration and is not based on UNCITRAL model law.

ICSID Convention and New York Convention

South Africa is a member of the New York Convention of 1958 on the recognition and enforcement of foreign arbitration awards, but is not a member of the World Bank's International Center for the Settlement of Investment Disputes. South Africa recognizes the International Chamber of Commerce, which supervises the resolution of transnational commercial disputes. South Africa applies its commercial and bankruptcy laws with consistency, and has an independent, objective court system for enforcing property and contractual rights. South Africa’s new Companies Act also provides a mechanism for Alternative Dispute Resolution. South African courts retain discretion to hear a dispute over a contract entered into under U.S. law and under U.S. jurisdiction. The South African court will interpret the contract with the law of the country or jurisdiction provided for in the contract, however.

Duration of Dispute Resolution – Local Courts

Dispute resolution can be a time-intensive process in South Africa. If the matter is urgent, and the presiding judge agrees, an interim decision can be taken within days while the subsequent appeal process can take months or years. If the matter is a dispute of law and is not urgent, it may proceed by application or motion to be solved within months. Where there is a dispute of fact, the matter is referred to trial, which can take several years. The Alternative Dispute Resolution involves negotiation, mediation or arbitration, and may resolve the matter within a couple of months. Alternative Dispute Resolution is increasingly popular in South Africa for many reasons, including the confidentiality which can be imposed on the evidence, case documents and the judgment.

5. Performance Requirements and Investment Incentives

WTO/TRIMS

South Africa is a member of the WTO. It is increasing its local content requirements for investors, largely under the Broad-Based Black Economic Empowerment (B-BBEE) program, which is not mandatory, but will influence the ease of doing business in South Africa and the ability to bid on public tenders.

Investment Incentives

- Business Process Services (BPS) replaced in 2010 the Business Process Outsourcing & Off-Shoring (BPO&O) investment incentive. BPS is aimed at attracting investment and creating employment in South Africa through off-shoring activities.
- The 12i Tax Incentive supports investments of more thanR1.6 million (US$139,000). Projects must be within the priority sectors identified in the Industrial Policy Action Plan (IPAP). Projects should: upgrade an industry within South Africa; provide general business linkages within South Africa; acquire goods and services from small, medium and micro-sized enterprises (SMMEs); create direct employment within South Africa; provide skills development in South Africa.
- The Manufacturing Investment Program offers an investment grant of up to 30 percent of qualifying investment costs in machinery, equipment, commercial vehicles, land and buildings required for: establishing a new production facility; expanding an existing production facility; or upgrading production capability in an existing clothing and textile production facility.
- The Sector Specific Assistance Scheme (SSAS) is a reimbursable cost-sharing grant whereby financial support is provided to Export Councils, Industry Associations, and Joint Action Groups. Foreign companies can access SSAS funding through participation in one of these entities.
- The Film and Television Production Rebate Scheme.
- The Automotive Investment Scheme was announced in 2010 as part of the Automotive Production and Development Program (APDP). It provides qualifying firms a taxable cash grant of 20 percent of the value of qualifying investment in productive assets.
- The Capital Projects Feasibility Program (CPFP) is a cost-sharing grant that contributes to feasibility studies for projects to increase local exports and stimulate the market for South African capital goods and services. A foreign entity will only be considered if it partners with a South African registered entity, and if the application is submitted by the South African entity.
- The Critical Infrastructure Program (CIP) is a cost sharing grant for projects designed to improve critical infrastructure in South Africa. The grant covers qualifying development costs up to 30 percent towards the total development costs of qualifying infrastructure. Private firms with a minimum B-BBEE level of four can qualify.
- Incubation Support Program (ISP) supports business incubators for enterprises with the potential to revitalize communities.

- The Manufacturing Competitiveness Enhancement Program (MCEP) encourages manufacturers to upgrade production facilities to sustain employment and maximize value-addition.

- The Support Program for Industrial Innovation (SPII) promotes technology development in South Africa's industry through the development of innovative products and/or processes. SPII focuses on the development phase, which begins at the conclusion of basic research and ends at the point when a pre-production prototype has been produced.

- The Clothing and Textile Competitiveness Improvement Program (CTCIP) supports capacity among manufacturers and the apparel value chain in South Africa on issues of cost, quality, flexibility, reliability, adaptability and the capability to innovate.

- Special Economic Zones were approved in 2014 and are in the process of being created. These zones will provide tax and tariff incentives for manufacturing in specified locations

Research and Development

Foreign companies are eligible for public financed research programs. Most government tenders are subject to a relatively high score on the B-BBEE scorecard.

Performance Requirements

South Africa uses government procurement policies to promote domestic economic development and fight unemployment. South Africa's Preferential Procurement Policy Framework Act of 2000 (the Framework Act) and associated implementing regulations created a legal framework and formula for evaluating tenders for government contracts. Certain provisions of the Act provide a pathway for government departments to issue tenders that favor local content providers. Moreover, in a bid to boost industrialization and to create jobs, the government signed with labor leaders in 2011 the "Local Procurement Accord," which commits the government to increasing the proportion of goods and services procured from South African suppliers to an "aspirational target" of 75 percent.

Data Storage

There are currently no requirements on local data storage for intellectual property rights. However, there is a new draft IP rights policy under consideration, which has not yet been released for public content. There have been proposals to require financial sector entities not to transfer data outside South Africa.

6. Protection of Property Rights

Real Property

The South African legal system protects and facilitates the acquisition and disposition of all property rights (e.g., land, buildings, and mortgages). Deeds must be registered at the Deeds Office. Banks usually register mortgages as security when providing finance for the purchase of property.

Intellectual Property Rights

South Africa has a strong legal structure and enforcement of intellectual property rights through civil and criminal procedures. Criminal procedures are generally lengthy, so the customary route is through civil enforcement. There are concerns about illegal commercial photocopying, software piracy, and internet policy.

Owners of patents and trademarks may license them locally, but when a patent license entails the payment of royalties to a non-resident licensor, DTI must approve the royalty agreement. Patents are granted for twenty years - usually with no option to renew. Trademarks are valid for an initial period of ten years, renewable for ten-year periods. The holder of a patent or trademark must pay an annual fee to preserve ownership rights. All agreements relating to payment for the right to use know-how, patents, trademarks, copyrights, or other similar property are subject to approval by exchange control authorities in the SARB. A royalty of up to four percent is the standard approval for consumer goods, and up to six percent for intermediate and finished capital goods.

Literary, musical, and artistic works, as well as cinematographic films and sound recordings are eligible for copyright under the Copyright Act of 1978. New designs may be registered under the Designs Act of 1967, which grants copyrights for five years. The Counterfeit Goods Act of 1997 provides additional protection to owners of trademarks, copyrights, and certain marks under the Merchandise Marks Act of 1941. The Intellectual Property Laws Amendment Act of 1997 amended the Merchandise Marks Act of 1941, the Performers' Protection Act of 1967, the Patents Act of 1978, the Copyright Act of 1978, the Trademarks Act of 1993, and the Designs Act of 1993 to bring South African intellectual property legislation fully into line with the WTO's Trade-Related Aspects of Intellectual Property Rights Agreement (TRIPS). Amendments to the Patents Act of 1978 also brought South Africa into line with TRIPS, to which South Africa became a party in 1999, and implemented the Patent Cooperation Treaty. The private sector and law enforcement cooperate extensively to stop the flow of counterfeit goods into the marketplace, and the private sector believes that significant progress has been made since 2001. Statistics on seizures are not available.

In August 2012, the Copyright Review Commission (CRC) released a report recommending amending laws to hold Internet Service Providers (ISPs) and Wireless Application Service Providers (WASPs) accountable for copyright violations occurring through the internet and improve royalty collection. In December 2013, President Zuma signed into law a bill amending four pieces of intellectual property legislation to protect indigenous intellectual property. IP experts and rights holders have been concerned the legislation could undermine the ability of existing IP rights holders to protect their rights in court. In 2013, the government released a draft National Intellectual Property Policy that would inform the government's approach to intellectual property and existing laws. The policy recommended South Africa make greater use of TRIPS flexibilities in order to lower the cost of medicines, and ensure the protection of rights reflected in national industrial and public objectives. In February 2015, the government rescinded the draft 2013 policy, and reissued a new draft policy that has not yet been published.

Resources for Rights Holders

Economic Officer covering IP issues: Edward Winant
Trade and Investment Officer
+27(0)12 431-4343
WinantEH@State.gov

For additional information about South Africa's treaty obligations and points of contact at local IP offices, please see WIPO's country profiles at http://www.wipo.int/directory/en/. List of attorney for various South African districts can be found on the U.S. Mission Citizen Services page: http://southafrica.usembassy.gov/information_for_travelers.html.

7. Transparency of the Regulatory System

South African laws and registrations are generally published in draft form for stakeholder comment, and legal, regulatory, and accounting systems are generally transparent and consistent with international norms.

South Africa implemented a new Companies Act in 2011, intended to encourage entrepreneurship and employment opportunities by simplifying company registration procedures and reducing the costs for forming new companies. It is also intended to promote innovation and investment in South African markets and companies by providing for a predictable and effective regulatory environment. In the first action against a U.S. company under the new act, South Africa's Competition Appeals Court dismissed in March 2012 an appeal by the South African Government to overturn the Competition Tribunal's approval of a U.S. company's purchase of a majority stake in a South African retailer. The court, however, ordered the South African firm to re-employ 503 workers fired before the merger and commissioned a study to recommend the best means by which South African small and medium sized suppliers could participate in the U.S. company's global value chain.

South Africa's Consumer Protection Act (2008) went into effect in 2011. The legislation reinforces various consumer rights, including right of product choice, right to fair contract terms, and right of product quality. Impact of the legislation will vary by industry, and businesses will need to adjust their operations accordingly. The legislation for the Consumer Protection Act can be found at: www.dti.gov.za/ccrdlawreview/DraftConsumerProtectionBill.htm The implementing regulations can be found at: www.dti.gov.za/ccrd/cpa_regulations.htm.

8. Efficient Capital Markets and Portfolio Investment

South Africa recognizes the importance of foreign capital in financing persistent current account and budget deficits and openly courts foreign portfolio investment. Authorities regularly meet with investors and encourage open discussion between investors and a wide range of private and public-sector stakeholders. After weak growth prospects and an increasing likelihood of downgrades by credit rating agencies shook investor confidence in late 2015, the government has enhanced efforts to attract and retain foreign investors. In February and March 2016, the Finance Minister was joined by senior officials from the South African Reserve Bank and representatives from private business and labor unions on the biannual "investor road shows" in London, Boston and New York to actively promote South Africa as an investment destination.

South Africa's financial market is regarded as one of the most sophisticated among emerging markets. A sound legal and regulatory framework governs financial institutions and transactions. The World Economic Forum's 2015/2016 Global Competitiveness Report ranked South Africa 12th out of 140 countries in Financial Sector Development, and second behind Finland in the sub-index covering Regulation of Securities Exchanges.

The fully independent South African Reserve Bank regulates a wide range of commercial, retail and investment banking services according to international best practices, such as Basel III, and participates in international fora such as the Financial Stability Board and G-20 Finance Ministers and Central Bank Governors. The Johannesburg Stock Exchange (JSE) serves as the front-line regulator for listed firms, but is supervised in these regulatory duties by the Financial Services Board (FSB). The FSB also oversees other non-banking financial services, including other collective investment schemes, retirement funds and a diversified insurance industry. The South African government has committed to tabling a Twin Peaks regulatory architecture to provide a clear demarcation of supervisory responsibilities and consumer accountability and to consolidate banking and non-banking regulation in 2016.

South Africa has access to deep pools of capital from local and foreign investors which provide sufficient scope for entry and exit of large positions. Financial sector assets amount to almost three times GDP and the JSE is the largest on the continent with capitalization of approximately $1 trillion and approximately 400 companies listed on the main and alternative board. Non-bank financial institutions (NBFI) hold about two thirds of financial assets. The liquidity and depth provided by NBFIs make these markets attractive to foreign investors, who hold more than a third of equities and government bonds, including sizeable positions in local-currency bonds. A well-developed derivative market and a currency which is widely traded as a proxy for emerging market risk, allows investors considerable scope to hedge positions with interest rate and foreign exchange derivatives.

The South African Reserve Bank's (SARB) exchange control policies permit authorized currency dealers, normally one of the large commercial banks, to buy and borrow foreign currency freely on behalf of domestic and foreign clients. The size of transactions is not limited, but dealers must report all transactions to SARB, regardless of size. Non-residents may purchase securities without restriction and freely transfer capital in and out of South Africa. Local individuals and institutional investors are limited to holding 25% of their capital outside of South Africa. Given the recent depreciation of the exchange rate, this requirement has entailed portfolio rebalancing and repatriation to meet the prescribed prudential limits.

Banks, NBFIs and other financial intermediaries are skilled at assessing risk and allocating credit based on market conditions. Foreign investors may borrow freely on the local market. A large range of debt, equity and other credit instruments are available to foreign investors, and a host of well-known foreign and domestic service providers offer accounting, legal and consulting advice.

Money and Banking System, Hostile Takeovers

South African banks are well capitalized and comply with international banking standards. There are 17 registered banks in South Africa, of which 14 are branches of foreign banks. Four banks - Standard, ABSA, First Rand (FNB), and Nedbank - dominate the sector, accounting for over 80 percent of the country's banking assets, which total over US$366 billion. However, Capitec Bank is a notable newcomer in the retail banking space. The South African Reserve Bank (SARB) regulates the sector according to the Bank Act of 1990. There are three alternatives for foreign banks to establish local operations, all of which require SARB approval: separate company, branch, or representative office. The criteria for the registration of a foreign bank are the same as for domestic banks. Foreign banks must include additional information, such as holding company approval, a letter of "comfort and understanding" from the holding company, and a letter of no objection from the foreign bank's home regulatory authority. More information on the banking industry may be obtained from the South African Banking Association at the following website: www.banking.org.za/.

The Financial Services Board (FSB) governs South Africa's non-bank financial services industry (see website: www.fsb.co.za/). The FSB regulates insurance companies, pension funds, unit trusts (i.e., mutual funds), participation bond schemes, portfolio management, and the financial markets. The JSE Securities Exchange SA (JSE) is the seventeenth largest exchange in the world measured by market capitalization. Market capitalization stood at R11.036 billion (US$1 billion) in February 2014, with over 380 firms listed. The Bond Exchange of South Africa (BESA) is licensed under the Financial Markets Control Act. Membership includes banks, insurers, investors, stockbrokers, and independent intermediaries. The exchange consists principally of bonds issued by government, state-owned enterprises, and private corporations. The JSE acquired BESA in 2009. More information on financial markets may be obtained from the JSE (website: www.jse.co.za). Non-residents are allowed to finance 100 percent of their investment through local borrowing (previously, they were required to invest R1 for every R3 borrowed locally). A finance ratio of 1:1 also applies to emigrants, the acquisition of residential properties by non-residents, and financial transactions such as portfolio investments, securities lending and hedging by non-residents.

9. Competition from State-Owned Enterprises

State-owned enterprises (SOE) play a significant role in the South African economy. In key sectors such as electricity, transport (air, rail and freight), and telecommunications, SOEs play a lead role, often defined by law, although limited competition is allowed in some sectors (i.e., telecommunications and air). The government’s interest in these sectors often competes with and discourages foreign investment. The Department of Public Enterprises (DPE) minister has publicly stated that South Africa’s SOEs should advance economic transformation, industrialization and import substitution. DPE has oversight responsibility in full or in part for eight of the approximately 240 SOEs that exist at the national, provincial and local levels: Alexcor (diamonds); Broadband Infraco (fiber optic cable); Denel (military equipment); Eskom (electricity generation); South African Express; South African Forestry Company (SAFCOL) (forestry) and Transnet (transportation). South African Airways (SAA) was transferred in 2014 to control by the National Treasury. These eight SOEs employ approximately 118,000 people. South Africa’s overall fixed investment was 19 percent of GDP. The SOEs share of the investment was 21 percent while private enterprise contributed 63 percent (government spending made up the remainder of 16%). The IMF estimates that the debt of the SOEs would add 13.5% to the overall national debt.

The state-owned electricity monopoly Eskom generates approximately 95 percent of the electricity used in South Africa. Coal-fired power stations generate approximately 93 percent of Eskom’s electricity. Eskom’s core business activities are generation, transmission, trading and distribution. South Africa’s electricity system operates under strain because of low availability factors for base load generation capacity due to maintenance problems. The electricity grid’s capacity reserve margins frequently fall under two percent, well below international norms. Since November 2013, Eskom has periodically declared “electricity emergencies,” and asked major industrial users reduce consumption by ten percent for specified periods (usually one to two days). Additionally, Eskom has implemented load shedding (rolling blackouts) to ease demand on the system on a periodic basis since November 2014. To meet rising electricity demand, Eskom is building new power stations (including two of the world’s largest coal-fired power stations, but both are years overdue and over budget) and power lines. Eskom and independent industry analysts anticipate South Africa's electricity grid will remain constrained for at least the next several years. The South African government has implemented a renewable energy independent power producer procurement program (REIPPP) that in the past 3 years has added 1500Mw of a planned 3900Mw of renewable energy production to the grid. Standard and Poor's rates Eskom as BBB- with a Fair business risk and highly leveraged financial risk.

Transnet National Port Authority (TNPA), the monopoly responsible for South Africa's ports, charges the highest shipping fees in the world. In March 2014, Transnet announced an average overall tariff increase of 8.5 percent at its ports to finance a $240 million modernization effort. High tariffs on containers subsidize bulk shipments of coal and iron ore, thereby favoring the export of raw materials over finished ones. According to the South African Ports Regulator, raw materials exporters paid as much as one quarter less than exporters of finished products. TNPA is a division of Transnet, a state-owned company that manages the country's port, rail and pipeline networks. Transnet is in its third year of the Market Driven Strategy (MDS), a R300 billion ($26 billion) investment program to modernize its port and rail infrastructure. Transnet's March 2014 selection of four OEMs to manufacture 1064 locomotives is part of the MDS. This CAPEX is being 2/3 funded by operating profits with the remainder from the international capital markets. Standard and Poor's rates Transnet as BBB- with a Strong business risk and significant financial risk. Of the major South African SOEs, Transnet is the most competently managed.

Direct aviation links between the United States and Africa are limited, but have expanded over the past few years. The growth of low-cost carriers in South Africa has reduced domestic airfares, but private carriers are likely to struggle against national carriers without further air liberalization in the region and in Africa. In South Africa, the state-owned carrier, South African Airways (SAA), relies on the government for financial assistance to stay afloat. SAA dominates the southern Africa regional market, but faces competition from regional airlines such as Emirates. SAA has had losses exceeding US$1.8 Billion over the past 11 years. In January 2015, they received a government-backed loan guarantee of $565 million, bringing their total loan guarantee to $1.25 billion. Their last CEO was suspended under dubious reasoning in November 2014 and the interim CEO is also the CEO of Mango Airlines. As part of its 90-day turn-around strategy, SAA has cut unprofitable routes (i.e., the Johannesburg to Beijing route which lost over US$100 million since its opening in 2012), renegotiated leases on its A340s, and is seriously considering redundancies to trim its bloated payroll. In addition, the airline is seeking a strategic partnership with an international partner such as Etihad. The much-needed tender for wide-body long haul aircraft has been put on hold until the airline is on more solid financial footing.

While government efforts to liberalize the telecommunications sector and encourage competition have improved, regulatory uncertainty and fragmented competition have hampered growth. Key challenges include: strengthening the capacity of the sector regulator, the Independent Communications Authority of South Africa (ICASA), and implementing a spectrum auction. Most analysts believe that South Africa will fail to meet the June 17, 2015 International telecommunications Union (ITU) deadline for switching off analog TV signals as part of the digital migration. Many of the issues stem from the confusion and infighting caused by the split of the Department of Communications into two departments shortly after the May 2014 national election. The two departments—the Department of Communication (DOC) and the Department of Telecommunication and Postal Services (DTPS)—have been at odds over roles and responsibilities. ICASA falls under the DOC while

DTPS is responsible for writing the policies on telecommunications that ICASA is supposed to regulate.

The constant battling between the two departments has delayed much-needed rapid deployment guidelines for broadband and spectrum allocation that is supposed to be a by-product of the constantly delayed analog to digital migration. In February 2015, the DTPS announced that Telkom (a 51% state-owned telecommunications company) will take the lead in a national broadband rollout with the goal of introducing broadband to the rural and historically underserved areas. Analysts are skeptical of Telkom's ability to effectively roll out broadband on such a scale.

10. Responsible Business Conduct

OECD Guidelines for Multinational Enterprises

Responsible Business Conduct (RBC), is well-developed in South Africa, and is driven in part by the recognition that the private sector has an important role to play. The socio-economic development element of B-BBEE has formalized and increased RBC in South Africa, as firms have largely aligned their RBC activities to the element's performance requirements. The 2013 amendment's compliance target is one percent of net profit after tax, and at least 75 percent of the RBC activity must benefit historically disadvantaged South Africans referred to the B-BBEE act as black people, which includes South Africans of black, colored, Chinese and Indian descent. Most RBC is directed towards non-profit organizations involved in education, social and community development, and health.

11. Political Violence

Government officials and observers considered 11 killings during calendar year 2015 to be politically motivated. Many more individuals survived assassination attempts. According to press reports and party officials, since 2011 at least 49 ANC members, at least 27 members combined from the Inkatha Freedom Party (IFP) and National Freedom Party, and one member of the Agang SA, party were killed in politically linked violence.

12. Corruption

Allegations of corruption in the public tendering process persist in South Africa at all levels of government, despite the country's excellent anti-corruption regulatory framework, as highlighted by the Prevention and Combating of Corrupt Activities Act of 2004. The office of the Public Protector, among other agencies, is tasked with conducting independent investigations into allegations of official corruption, and is widely respected for its effectiveness and impartiality. The Public Protector conducted an extended investigation into public spending on President Zuma's private residence in Nkandla, KwaZulu-Natal, which has increased the public dialogue around corruption.

UN Anticorruption Convention, OECD Convention on Combatting Bribery

South Africa signed the Anticorruption Convention on 9 Dec 2003 and ratified it on 22 Nov 2004. They have also signed the OECD Convention on Combatting Bribery, in 2007, with implementing legislation dating from 2004.

Resources to Report Corruption

To report corruption to the government:
Advocate Thuli Madonsela
Public Protector
Office of the Public Protector, South Africa
175 Lunnon Street, Hillcrest Office Park, Pretoria 0083
Anti-Corruption Hotline: +27 80 011 2040 or +27 12 366 7000
http://www.pprotect.org or customerservice@pprotect.org

Or for a non-government agency:
David Lewis
Executive Director
Corruption Watch
87 De Korte Street, Braamfontein/Johannesburg 2001
+27 80 002 3456 or +27 11 242 3900
http://www.corruptionwatch.org.za/content/make-your-complaint
info@corruptionwatch.org.za

13. Bilateral Investment Agreements

Bilateral Taxation Treaties

South Africa had bilateral investment treaties (BITs) with 41 countries. After a two-year review of BITs, the DTI determined in 2012 that “first generation” BITs, an estimated 30 agreements mostly with EU states, exposed South Africa unnecessarily to international arbitration or created domestic policy conflicts, and should be terminated. South Africa may adopt a new BIT model for the future that exempts investor-state dispute and expropriation provisions, and facilitates the government’s economic transformation goals including Broad-based Black Economic Empowerment (B-BBEE). South Africa has allowed the BITs of Netherlands, Spain, Luxembourg and Belgium and Germany to expire. Article 52 of the 1999 EU-South Africa Trade, Development, and Cooperation Agreement covers investment promotion and protection. The BITs were replaced with the Protection of Investment Act, signed December 2015.

The United States and South Africa signed a Trade and Investment Framework Agreement (TIFA) in 1999. TIFA discussions were renewed in 2011, and the agreement was updated in 2012, and discussions were held again in April 2015. The United States and the South African Customs Union negotiated in 2008 a Trade, Investment and Development Cooperation Agreement (TIDCA) which also covers South Africa. TIDCA talks were planned for April 2015, but canceled. The U.S.-South Africa bilateral tax treaty eliminating double taxation entered into force in 1998. The U.S. and South Africa signed a new bilateral tax treaty in June 2014 to implement the U.S. Foreign Asset Tax Compliance Act which went into force in October.

14. Foreign Trade Zones/Free Ports/Trade Facilitation

South Africa designated its first Industrial Development Zone (IDZ) in 2001. IDZs offer duty-free import of production-related materials and zero VAT on materials sourced from South Africa, along with the right to sell in South Africa upon payment of normal import duties on finished goods. Expedited services and other logistical arrangements may be provided for small to medium-sized enterprises, or for new foreign direct investment. Co-funding for infrastructure development is available from DTI. There are no exemptions from other laws or regulations, such as environmental and labor laws. The Manufacturing Development Board licenses IDZ enterprises in collaboration with the South African Revenue Service (SARS), which handles IDZ customs matters. IDZ operators may be public, private, or a combination of both. IDZs are currently located at Coega near Port Elizabeth, in East London and Richards Bay. In February 2014, the Department of Trade and Industry introduced a new Special Economic Zones (SEZs) bill focused on industrial development. The bill was subsequently passed, and the SEZs are in the process of being created. The SEZs are intended to encompass the IDZs but also provide scope for economic activity beyond export-driven industry to include innovation centers and regional development. The broader SEZ incentives strategy allows for 15% Corporate Tax as opposed to the current 28%, Building Tax Allowance, Employment Tax Incentive, Customs Controlled Area (VAT exemption and duty free), and Accelerated 12i Tax Allowance.

15. Foreign Direct Investment and Foreign Portfolio Investment Statistics

Table 2: Key Macroeconomic Data, U.S. FDI in Host Country/Economy

	Host Country Statistical source*		USG or international statistical source		USG or International Source of Data: BEA; IMF; Eurostat; UNCTAD, Other
Economic Data	Year	Amount	Year	Amount	
South Africa's Gross Domestic Product (GDP) ($M USD)	2014	$350 billion	2014	$350 billion	www.worldbank.org/en/country/southafrica
Foreign Direct Investment	Host Country Statistical source*		USG or international statistical source		USG or international Source of data: BEA; IMF; Eurostat; UNCTAD, Other
U.S. FDI in South Africa ($M USD, stock positions)	2014	$7,936	2014	$6,181	http://bea.gov/international/direct_investment_ multinational_companies_comprehensive_data.htm
Host country's FDI in the United States ($M USD, stock positions)	2014	$1,003	2014	$765	http://bea.gov/international/direct_investment_ multinational_companies_comprehensive_data.htm
Total inbound stock of FDI	2014	2.5%	2014	2.0%	N/A

as % host GDP					

*https://www.resbank.co.za/Lists/News%20and%20Publications/Attachments/7195/09Statistical%20tables%20%E2%80%93%20International%20economic%20relations.pdf

Table 3: Sources and Destination of FDI

Direct Investment from/in Counterpart Economy Data					
From Top Five Sources/To Top Five Destinations *(US Dollars, Millions)*					
Inward Direct Investment			Outward Direct Investment		
Total Inward	138,905	100%	Total Outward	146,023	100%
U.K.	63,089	45%	China	46,203	32%
Netherlands	23,102	17%	Luxembourg	14,989	10%
U.S.	9,530	7%	U.K.	12,934	9%
Germany	6,473	5%	Mauritius	11,564	8%
China	5,211	4%	U.S.	7,538	5%
"0" reflects amounts rounded to +/- USD 500,000.					

Table 4: Sources of Portfolio Investment

Portfolio Investment Assets								
Top Five Partners (Millions, US Dollars)								
Total			Equity Securities			Total Debt Securities		
All Countries	154,865	100%	All Countries	145,802	100%	All Countries	9,062	100%
U.K.	62,920	41%	U.K.	61,291	42%	U.S.	4,066	45%
U.S.	25,638	17%	Luxembourg	21,951	15%	U.K.	1,629	18%
Luxembourg	22,740	15%	U.S.	21,571	15%	Luxembourg	789	9%
Ireland	15,727	10%	Ireland	15,661	11%	India	672	7%
Bermuda	9,851	6%	Bermuda	9,803	7%	Nigeria	311	3%

Section 5 - Government

Chiefs of State and Cabinet Members:

For the current list of Chief of State and Cabinet Members, please access the following - Central Intelligence Agency online directory of Chiefs of State and Cabinet Members of Foreign Governments

Legal system:

Mixed legal system of Roman-Dutch civil law, English common law, and customary law

International organization participation:

ACP, AfDB, AU, BIS, BRICS, C, CD, FAO, FATF, G-20, G-24, G-77, IAEA, IBRD, ICAO, ICC (national committees), ICRM, IDA, IFAD, IFC, IFRCS, IHO, ILO, IMF, IMO, IMSO, Interpol, IOC, IOM, IPU, ISO, ITSO, ITU, ITUC (NGOs), MIGA, MONUSCO, NAM, NSG, OECD (Enhanced Engagement, OPCW, Paris Club (associate), PCA, SACU, SADC, UN, UNAMID, UNCTAD, UNESCO, UNHCR, UNIDO, UNITAR, UNSC (temporary), UNWTO, UPU, WCO, WFTU (NGOs), WHO, WIPO, WMO, WTO, ZC

Exchange control

Subject to certain limited exclusions, South African residents are subject to exchange controls. Exchange controls have been relaxed somewhat in recent years. Non-residents are excluded from the ambit of exchange controls.

Treaty and non-treaty withholding tax rates

South Africa has exchange of information relationships with 116 jurisdictions through 78 DTCs, 16 TIEAs and 1 multilateral mechanism, Convention on Mutual Administrative Assistance in Tax Matters.

Jurisdiction	Type of EOI Arrangement	Date Signed	Date entered into Force	Meets standard	Contains paras 4 and 5
Algeria	DTC	28 Apr 1998	12 Jun 2000	Unreviewed	No
Argentina	TIEA	2 Aug 2013	not yet in force	Unreviewed	Yes
Australia	DTC	1 Jul 1999	21 Dec 1999	Yes	Yes
Austria	DTC	4 Mar 1996	6 Feb 1997	Yes	Yes
Bahamas, The	TIEA	14 Sep 2011	25 May 2012	Yes	Yes
Barbados	TIEA	17 Sep 2013	not yet in force	Unreviewed	Yes
Belarus	DTC	18 Sep 2002	29 May 2003	Unreviewed	No
Belgium	DTC	1 Feb 1995	10 Oct 1998	Yes	No
Bermuda	TIEA	6 Sep 2011	8 Feb 2012	Yes	Yes
Botswana	DTC	7 Aug 2003	20 Apr 2004	No	No
Brazil	DTC	8 Nov 2003	24 Jul 2006	Yes	No
Bulgaria	DTC	29 Apr 2004	27 Oct 2004	Unreviewed	No
Canada	DTC	27 Nov 1995	30 Apr 1997	Yes	No
Cayman Islands	TIEA	10 May 2011	23 Feb 2012	Yes	Yes
Chile	DTC	11 Jul 2012	not yet in force	Yes	No
China	DTC	25 Apr 2000	7 Jan 2001	Yes	No
Chinese Taipei	DTC	14 Feb 1994	12 Sep 1996	Unreviewed	No
Congo, Democratic Republic of the	DTC	29 Apr 2005	18 Jul 2012	Unreviewed	No
Cook Islands	TIEA	25 Oct 2013	not yet in force	Unreviewed	Yes
Costa Rica	TIEA	27 Oct 2012	not yet in force	Yes	Yes
Croatia	DTC	18 Nov 1996	7 Nov 1997	Unreviewed	No
Cyprus	DTC	26 Nov 1997	8 Dec 1998	Yes	No
Czech Republic	DTC	11 Nov 1996	3 Dec 1997	Yes	No
Denmark	DTC	21 Jun 1995	3 Dec 1997	Yes	No
Dominica	TIEA	7 Feb 2012	not yet in force	No	Yes

Jurisdiction	Type of EOI Arrangement	Date Signed	Date entered into Force	Meets standard	Contains paras 4 and 5
Egypt	DTC	26 Aug 1997	15 Dec 1998	Unreviewed	No
Ethiopia	DTC	17 Mar 2004	4 Jan 2006	Unreviewed	No
Finland	DTC	26 May 1995	12 Dec 1995	Yes	No
France	DTC	8 Nov 1993	1 Nov 1995	Yes	No
Gabon	DTC	22 Mar 1995	not yet in force	Unreviewed	No
Germany	DTC	9 Sep 2008	not yet in force	Yes	No
Germany	DTC	25 Jan 1973	28 Feb 1975	No	No
Ghana	DTC	2 Nov 2004	23 May 2007	Yes	No
Gibraltar	TIEA	2 Feb 2012	21 Jul 2013	Yes	Yes
Greece	DTC	19 Nov 1998	19 Feb 2003	Yes	No
Grenada	DTC	6 Aug 1960	5 Oct 1960	No	No
Guernsey	TIEA	21 Feb 2011	26 Feb 2012	Yes	Yes
Hungary	DTC	1 Mar 1994	1 Jan 1997	Yes	No
India	DTC	4 Dec 1996	28 Nov 1997	No	No
Indonesia	DTC	15 Jul 1997	23 Nov 1998	Yes	No
Iran	DTC	3 Nov 1997	23 Nov 1998	Unreviewed	No
Ireland	DTC	7 Oct 1997	5 Dec 1997	Yes	Yes
Israel	DTC	2 Oct 1978	27 May 1980	Yes	No
Italy	DTC	16 Nov 1995	2 Mar 1999	Yes	No
Japan	DTC	7 Mar 1997	5 Nov 1997	Yes	No
Jersey	TIEA	12 Jul 2011	29 Feb 2012	Yes	Yes
Kenya	DTC	26 Nov 2010	not yet in force	Yes	Yes
Korea, Republic of	DTC	7 Jul 1995	7 Jan 1996	Yes	No
Kuwait	DTC	17 Feb 2004	25 Apr 2007	Unreviewed	No
Lesotho	DTC	24 Jul 1996	9 Jan 1997	Unreviewed	No
Liberia	TIEA	7 Feb 2012	not yet in force	Yes	Yes
Liechtenstein	TIEA	6 Dec 2013	not yet in force	Unreviewed	Yes
Luxembourg	DTC	23 Nov 1998	8 Sep 2000	No	No
Malawi	DTC	3 May 1971	2 Sep 1971	Unreviewed	Yes
Malaysia	DTC	26 Jul 2005	6 Jul 2006	Yes	Yes
Malta	DTC	16 May 1997	12 Nov 1997	Yes	No
Mauritius	DTC	5 Jul 1996	20 Jun 1997	Yes	No
Mexico	DTC	19 Feb 2009	22 Jul 2010	Yes	Yes
Monaco	TIEA	23 Sep 2013	not yet in force	Unreviewed	Yes
Mozambique	DTC	18 Sep 2007	19 Feb 2009	Unreviewed	No
Namibia	DTC	18 May 1998	11 Apr 1999	Unreviewed	No
Netherlands	DTC	10 Oct 2005	28 Dec 2008	Yes	Yes
New Zealand	DTC	18 Feb 2002	23 Jul 2004	Yes	No
Nigeria	DTC	29 Apr 2000	5 Jul 2008	Yes	No
Norway	DTC	2 Dec 1996	12 Sep 1996	Yes	No
Oman	DTC	9 Oct 2002	29 Dec 2003	Unreviewed	No
Pakistan	DTC	26 Sep 1998	9 Mar 1999	Unreviewed	No

Jurisdiction	Type of EOI Arrangement	Date Signed	Date entered into Force	Meets standard	Contains paras 4 and 5
Poland	DTC	10 Nov 1993	1 Jan 1996	Yes	No
Portugal	DTC	13 Nov 2006	22 Oct 2008	Yes	No
Romania	DTC	12 Nov 1993	21 Oct 1995	Unreviewed	No
Russian Federation	DTC	27 Nov 1995	1 Jan 2001	No	No
Rwanda	DTC	5 Dec 2002	3 Aug 2010	Unreviewed	No
Samoa	TIEA	26 Jul 2012	not yet in force	Unreviewed	Yes
San Marino	TIEA	10 Mar 2011	28 Jan 2012	Yes	Yes
Saudi Arabia	DTC	13 Mar 2007	1 May 2008	Yes	No
Seychelles	DTC	26 Aug 1998	7 Mar 2002	Yes	Yes
Sierra Leone	DTC	21 Nov 1968	29 Jun 1969	Unreviewed	No
Singapore	DTC	23 Dec 1996	5 Dec 1997	No	No
Slovakia	DTC	28 May 1998	30 Jun 1999	Yes	No
Spain	DTC	23 Jun 2006	28 Dec 2007	Yes	No
Sudan	DTC	7 Nov 2007	not yet in force	Unreviewed	No
Swaziland	DTC	23 Jan 2004	8 Feb 2005	Unreviewed	No
Sweden	DTC	24 May 1995	25 Dec 1995	Yes	No
Switzerland	DTC	8 May 2007	27 Jan 2009	No	No
Tanzania	DTC	22 Sep 2005	15 Jun 2007	Unreviewed	No
Thailand	DTC	12 Feb 1996	15 Jun 2007	Unreviewed	No
Tunisia	DTC	2 Feb 1999	10 Dec 1999	Unreviewed	No
Turkey	DTC	3 Mar 2005	6 Dec 2006	Yes	No
Uganda	DTC	27 May 1997	9 Apr 2001	Unreviewed	No
Ukraine	DTC	28 Aug 2003	29 Dec 2004	Unreviewed	No
United Kingdom	DTC	4 Jul 2002	17 Dec 2002	Yes	Yes
United States	DTC	17 Feb 1997	28 Dec 1997	Yes	No
Zambia	DTC	22 May 1956	31 Aug 1956	Unreviewed	No
Zimbabwe	DTC	10 Jun 1965	3 Sep 1965	Unreviewed	No

Methodology and Sources

Section 1 - General Background Report and Map

(Source: CIA World Factbook)

Section 2 - Anti – Money Laundering / Terrorist Financing

	Lower Risk	**Medium Risk**	**Higher Risk**
FATF List of Countries identified with strategic AML deficiencies	Not Listed	AML Deficient but Committed	High Risk
Compliance with FATF 40 + 9 recommendations	>69% Compliant or Fully Compliant	35 – 69% Compliant or Fully Compliant	<35% Compliant or Fully Compliant
US Dept of State Money Laundering assessment (INCSR)	Monitored	Concern	Primary Concern
INCSR - Weakness in Government Legislation	<2	2-4	5-20
US Sec of State supporter of / Safe Haven for International Terrorism	No	Safe Haven for Terrorism	State Supporter of Terrorism
EU White list equivalent jurisdictions	Yes		No
International Sanctions UN Sanctions / US Sanctions / EU Sanctions	None	Arab League / Other	UN , EU or US
Corruption Index (Transparency International) Control of corruption (WGI) Global Advice Network	>69%	35 – 69%	<35%
World government Indicators (Average)	>69%	35 – 69%	<35%
Failed States Index (Average)	>69%	35 – 69%	<35%
Offshore Finance Centre	No		Yes

Section 3 - Economy

General Information on the current economic climate in the country and information on imports, exports, main industries and trading partners.

(Source: CIA World Factbook)

Section 4 - Foreign Investment

Information on the openness of foreign investment into the country and the foreign investment markets.

(Source: US State Department)

Section 5 - Government

Names of Government Ministers and general information on political matters.

(Source: CIA World Factbook / https://www.cia.gov/library/publications/world-leaders-1/index.html)

Section 6 - Tax

Information on Tax Information Exchange Agreements entered into, Double Tax Agreements and Exchange Controls.

(Sources: OECD Global Forum on Transparency and Exchange of Information for Tax Purposes PKF International)

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