

## **STARTING A BUSINESS IN SOUTH AFRICA**

**This document serves to assist South Korean companies by outlining the requisite procedures entailed in establishing a new business entity in South Africa.**

### **STEP 1: ESTABLISH THE TYPE OF BUSINESS ENTITY YOU WISH TO SET UP**

- Personal liability company
- Company (public or private) incorporated under the Companies Act 71 of 2008)
- Partnership
- Shares in a local company
- Business trust
- Sole proprietorship
- External company (branch of a foreign company)

### **STEP 2: RESERVE A COMPANY NAME**

- Decide on a name for the enterprise (with at least two other alternatives)
- Undertake a name search on the Companies and Intellectual Property Commission (CIPC) website to ensure your preferred name has not been reserved by another enterprise
- Reserve a proposed name by completing the relevant forms available from the CIPC
- Await a registration number for the proposed enterprise

### **STEP 3: REGISTER THE COMPANY**

The most common way to register your company is through the CIPC website:  
[www.cipc.co.za](http://www.cipc.co.za)

You will need the following documents:

- A valid passport
- Police clearance certificates for all countries resided in for one year or longer

- A business plan, outlining the feasibility of the business
- Proof or an undertaking that at least five South Africans or permanent residents will be permanently employed in the business
- A written agreement with details of the partners/directors and their residential status in South Africa, if the application is an investment in an existing business
- Certification that at least R2.5 million in cash or a capital contribution of at least R2.5 million or a combination of cash and a capital contribution is available. This requirement can be waived. Kindly refer to [https://drive.google.com/file/d/1jsKNJmZAqhwvxxmw\\_OuNBkf2AnSXJ3rn/view?usp=sharing](https://drive.google.com/file/d/1jsKNJmZAqhwvxxmw_OuNBkf2AnSXJ3rn/view?usp=sharing) for exceptions in this regard.

#### **STEP 4: ENABLING TAX COMPLIANCE**

After you have registered your business and received the enterprise number, you need to register for the following from the South African Revenue Service(SARS):

**Income tax registration:** The principal source of direct tax revenue in South Africa is income tax. South Africa has a residence-based system of taxation. Non-residents are taxed on income earned from a South African source.

**Value-Added-Tax number:** Businesses with annual taxable turnover of more than R1 million must register for VAT.

**Employee withholding taxes:** Pay-As-You-Earn (PAYE), Unemployment Insurance Fund (UIF) and the Skills Development Levy (SDL)

**PAYE:** The tax required to be deducted by an employer from an employee's remuneration paid.

**UIF:** These funds are used to provide short-term relief should workers become unemployed or be unable to work for various reasons.

**SDL:** This levy is used by the government to fund education and training as stated in the Skills Development Act, 1998. The levy is payable monthly by employers to SARS.

## **ADDITIONAL INFORMATION**

### **1. LABOUR POLICIES**

The South African employment relationship between an employer and an employee is fundamentally governed by the employment contract. The employment contract is, however, always subject to sectoral determinations, bargaining council agreements and employment legislation that provide minimum standards, rights and entitlements to the employment relationship. Minimum terms and conditions of employment are regulated by the Basic Conditions of Employment Act 75 of 1997.

Foreign employees working in South Africa are protected by South African employment laws as detailed below:

***Employment Equity Act:*** The aim of this Act is to promote equal opportunity and fair treatment in employment through the elimination of unfair discrimination. Affirmative action measures must be implemented to redress disadvantages in employment experienced by designated groups, in order to ensure their equitable representation in all occupational categories of employment.

***Occupational Health and Safety Act:*** The Occupational Health and Safety Act requires an employer to bring about and maintain, as far as reasonably practicable, a work environment that is safe and without risk to the health and safety of its workers.

***Skills Development Act:*** This Act provides a framework to devise and implement national, sectoral and workplace strategies to develop and improve the skills of the South African workforce.

***Employee rights: Dismissals and dispute resolution:*** The Labour Relations Act regulates and deals with dismissals or termination of employment. This recognises

three grounds on which a termination might be legitimate: conduct of the employee, the capacity of the employee, and the operational requirements of the employer's business. There are strict procedures for dismissing an employee as well as dispute mechanism to resolve conflicts.

**Trade unions:** Trade unions remain an important force in South Africa, active in most industries, and representing a significant percentage of the workforce. Collective bargaining is regulated by the Labour Relations Act. Most collective bargaining occurs at employer level, but some industries are regulated by industry-level bargaining councils where bargaining between employer and employee organisations will take place. A list of registered trade unions can be accessed at:

<https://www.labourguide.co.za/trade-unions-in-south-africa>

## 2. VISA POLICIES

South Africa's immigration system is regulated by the Immigration Act, 2002 (Act No. 13 of 2002). This Act facilitates foreign investment and the employment of needed foreign labour as well as enabling the entry of exceptionally skilled or qualified people.

Foreign nationals from some countries are exempt from obtaining visas before coming to South Africa. Nationals that are not exempt from obtaining visas are required to obtain a visa before they depart for South Africa. The Immigration Act provides for two main categories under which a person may stay in South Africa, being visas for temporary visits and permits for permanent residency. The South African Embassy in Seoul, South Korea is responsible for the issuance of visas and applications should be submitted in person to the Embassy.

Details of the latest regulations around immigration are available on the Department of Home Affairs' website ([www.dha.gov.za](http://www.dha.gov.za)). The following are some of the categories for temporary residence visas:

**Business visa:** To establish a business or to invest in an existing business venture.

**General work visa:** Issued when the South African employer can show that it has been unable to find a South African citizen (or permanent resident) with the same skills (or better) than those of the foreign national.

**Critical skills work visa:** This category is exclusive to employees that possess skill sets unavailable in South Africa. It is the responsibility of the applying company to prove such when applying for this category of visa.

**Intra-company transfer work visa:** This visa allows for employees to be temporarily transferred/deployed to a branch, subsidiary or an affiliate of that company in South Africa.

**Corporate visa:** The corporate visa allows for bulk employment. Companies need to provide proof that at least 60% of the total staff complement are citizens or permanent residents. The departments of trade and industry and labour will make recommendations for a corporate visa application.

**Business visa:** Issued for businesses that will enhance the national interests. The feasibility of the prospective business venture, and the benefit it would have for the South African economy, must be assessed before a business visa may be issued.

## 2. USEFUL LINKS

- Department of Trade, Industry and Competition → [www.thedti.gov.za](http://www.thedti.gov.za)
- CIPC → [www.cipc.co.za](http://www.cipc.co.za)
- SARS → [www.sars.gov.za](http://www.sars.gov.za)
- One Stop Shop → [www.investSA.gov.za](http://www.investSA.gov.za)
- South African Embassy in Seoul (for visa).→ <http://www.southafrica-embassy.or.kr/eng/visa/visas.php>
- Department of Home Affairs → [www.dha.gov.za](http://www.dha.gov.za)