

**AFRICA GUIDE –
LOCAL OWNERSHIP
AND EMPOWERMENT**





BOWMANS



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Introduction

Recent forecasts suggest that Africa will be one of the world's fastest growing regions by 2030. Among the contributing factors is its youthful population which will result in one of the largest labour pools by 2050.

This presents an opportunity for investors-foreign, intra-African and local – as does the continent's significant infrastructure gap compared to global benchmarks. Closing this gap is the first step in supporting the forecasted growth.

Current data suggests that foreign direct investment in Africa is still small relative to other developing regions in Asia and Latin America. However, against the backdrop of growth forecasts, it is likely foreign direct investment will increase in the medium to long term.

These investments will need to be made with careful consideration of local ownership and empowerment requirements, which differ from country to country having been informed by differing political histories and socio-economic environments.

Many of these requirements seek to regulate sectors of strategic national importance, such as aviation, financial services, logistics, mining/ oil and gas, private security and telecommunications. Others are aimed at redressing historic economic imbalances among certain local population groups, or protecting indigenous populations and increasing their participation in economies. Some are designed to ensure diversification while providing support for agriculture and food security, or to improve transport infrastructure, or to drive industrialisation by focusing on small local business.

In a few of the countries covered in this guide, such as Namibia, South Africa and Zambia, local ownership and empowerment regulations apply to both private companies and state institutions and across all sectors of the economy.

In some jurisdictions, there are significant penalties for non-compliance or misrepresentation regarding empowerment status (otherwise known as 'fronting practices'). These jurisdictions include among others Ghana, Namibia, South Africa, Zambia and Zimbabwe. In most other jurisdictions, non-compliance may result in the withdrawal of an investment licence.

We have prepared this guide to support our clients who are considering investing in the region. It deals with frequently asked questions relating to local ownership, local management and local content requirements, empowerment of indigenous populations and foreign land ownership.

It provides a snapshot of the relevant regulations in 14 countries and has been prepared in collaboration with our alliance firms in Ethiopia and Nigeria and our relationship firms in Botswana, Namibia, Ghana, Rwanda and Zimbabwe. Contact details for these firms are included at the end of the relevant country sections.

The information is correct as at October 2020.

Please do not hesitate to contact us if you would like to discuss the content of this guide in more detail.

Ashleigh Hale
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The contents of this publication are for reference purposes only. It is not a substitute for detailed legal advice. If you require further information, please contact one of the key contacts listed at the end of this document.

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Our Firm

We help our clients overcome legal complexity and unlock opportunity in Africa.

Our track record of providing specialist legal services in the fields of corporate law, banking and finance law and dispute resolution, spans over a century.

With nine offices in seven African countries and over 400 specialist lawyers, we draw on our unique knowledge of the business and socio-political environment to advise clients on a wide range of legal issues.

Everywhere we work, we offer clients a service that uniquely blends expertise in the law, knowledge of the local market, and an understanding of their businesses. Our aim is to assist them to achieve their objectives as smoothly and efficiently as possible while minimising the legal and regulatory risks.

Our clients include corporates, multinationals and state-owned enterprises across a range of industry sectors as well as financial institutions and governments.

Our expertise is frequently recognised by independent research organisations. Most recently, at the inaugural IFLR1000 Awards for Sub-Saharan Africa (2020), we received 10 awards across four jurisdictions confirming our leadership when it comes to advising on multijurisdictional mergers and acquisitions in Africa. At the African Legal Awards (2020), we won awards in three categories and were highly commended in a further four categories including African Law Firm of the Year – Large Practice. We received awards in three out of four categories at the *DealMakers* East Africa Awards (2019): top legal adviser in the M&A Category for both deal flow and deal value and advised on the Deal of the Year. In the *DealMakers* South Africa Awards (2019), we were placed third for deal value in the M&A Category and advised on both the Deal of the Year and the BEE Deal of the Year.

Our Footprint in Africa

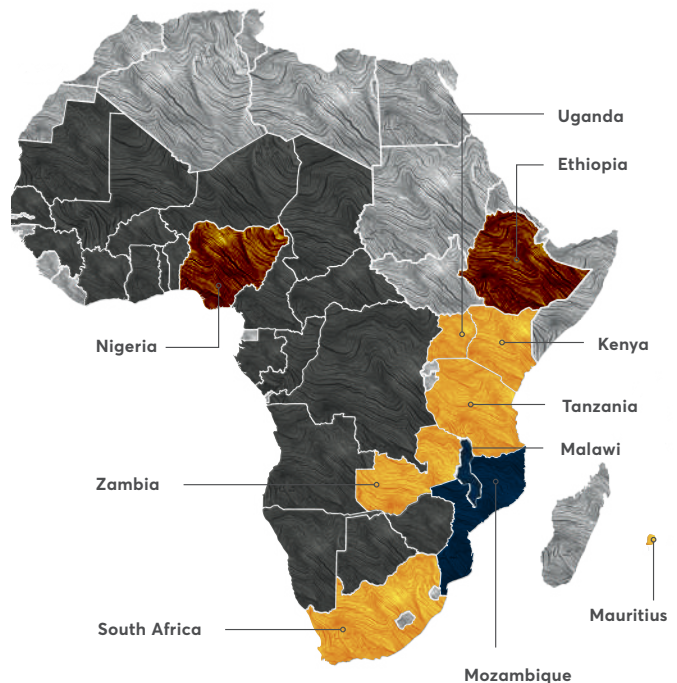
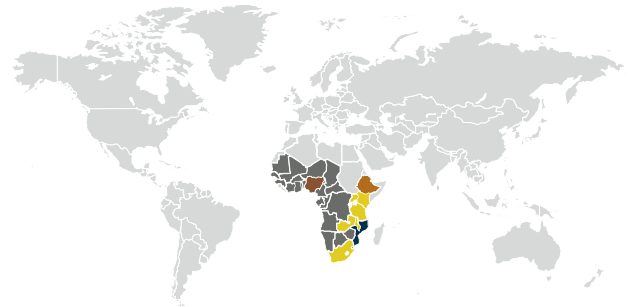
We are present in seven countries in Africa: Kenya (Nairobi), Malawi (Lilongwe), Mauritius (Moka), South Africa (Cape Town, Durban, Johannesburg), Tanzania (Dar es Salaam), Uganda (Kampala) and Zambia (Lusaka).

We work closely with our alliance firms in Ethiopia (Aman Assefa & Associates Law Office) and Nigeria (Udo Udoma & Belo-Osagie). These are two of the leading corporate and commercial law firms in their jurisdictions.

We have developed a best friend relationship with one of Mozambique's strongest law firms (Taciana Peão Lopes & Advogados Associados) and regularly work with leading law firms in other countries such as Angola, Botswana, Ghana, Ivory Coast, Namibia, Rwanda, South Sudan and Zimbabwe.

We have a comprehensive database of all the law firms we work with in the rest of Africa covering such countries as Algeria, Egypt, Morocco and French-speaking West Africa.

We are representatives of Lex Mundi, a global association with more than 160 independent law firms in all the major centres across the globe. Lex Mundi gives us the ability to connect our clients with the best law firms in each of the countries represented.



Bowmans offices



Alliance firms



Best friends



Significant transaction or advisory experience



Botswana



BOOKBINDER BUSINESS LAW

BOTSWANA

1. Local empowerment obligations

Limited relevance.

2. Local ownership targets or restrictions

The Minister of Investment, Trade and Industry has made regulations reserving certain trades and businesses for citizens of Botswana and/ or companies that are wholly owned by citizens of Botswana only. However, the Minister may exercise discretion to award a licence in a reserved business or trade to a joint venture comprising a medium-sized or large business enterprise between a citizen and a non-citizen. This is on condition that the citizen partner has at least a 51% share in the joint venture or where the citizen partner has written to the Minister confirming that he or she has accepted participation in the joint venture with less than a 51% share in the joint venture.

On 1 June 2020, a new Trade Act (Act No. 25 of 2019) came into force, repealing the Trade Act (CAP 43:02). Reserved trades and businesses under the Trade Act, 2019 include agent, auctioneer, car wash, cellphone shop, cleaning service, curio shop, dry-cleaning depot, florist, general dealer, general hire service, imported pre-owned motor dealer, internet café or copy shop, laundromat, fresh produce business, funeral parlour, hair or beauty parlour and take-away food business. In addition, certain small-scale manufacturing enterprises are reserved for Botswana citizens or companies wholly owned by Botswana citizens.

On 1 June 2020, the Industrial Development Act (Act No. 23 of 2019) came into force, repealing the Industrial Development Act (CAP43:01). The reserved enterprises include bread and confectionary manufacturers, ice making, meat processing, peanut butter manufacturing, purification and bottling of water, traditional sour milk manufacturing, and sorghum manufacturing, as well as enterprises manufacturing bricks, burglar bars, gates and windows, candles, fencing materials (excluding gum poles), floor polish, packaging, protective clothing, roof trusses, school furniture, school uniforms, screen printing and embroidery,

signage (including electronic signage), traditional crafts and traditional leather products.

3. Local management targets or restrictions

Limited relevance.

4. Other factors such as skills development, enterprise development, employee-related targets or procurement-related targets or restrictions

PROCUREMENT

The Public Procurement and Asset Disposal Act, (CAP42:08) (PPAD) gives preferential treatment, in respect of state procurement, to Botswana citizens or companies wholly owned by Botswana citizens. The Minister of Finance and Economic Development may from time to time reserve certain contracts only for Botswana citizens or Botswana-owned companies or may implement preferential procurement schemes that favour Botswana citizens and Botswana owned contractors over those of non-citizens. Contracts awarded to non-citizen and/ or foreign contractors may contain requirements for such contractors to subcontract to Botswana contractors.

The level of preference in preferential schemes is in the following order:

- joint ventures between citizen contractors;
- sole citizen contractors;
- joint ventures between citizen and non-citizen contractors; and
- association agreements between citizen sub-contractors and foreign contractors.

On 28 February 2020, regulations were issued under the PPAD reserving all works, supplies and services procurement contracts up to the sum of BWP 10 000 000 for 100% citizen-owned small, medium, and micro enterprises with annual turnovers not exceeding BWP 10 000 000. An exemption to this reservation may apply where the Public Procurement and Asset Disposal Board is satisfied that no 100% citizen-owned enterprise that is suitable and qualifies for the contract is available.

Local procurement requirements are imposed on all companies.

EMPLOYMENT

The Citizen Economic Empowerment Policy (CEE Policy), 2012, is a state-driven policy that aims to encourage businesses operating in Botswana, especially foreign-owned companies, to employ citizens rather than non-citizens of the same or similar qualifications and experience. Where a company has employed more than five non-citizen employees it must submit, to the Ministry of Employment, Labour Productivity and Skills Development, a five-year plan for the training and development of Botswana citizens for capacity to replace the non-citizen employees.

FUNDING

The Citizen Entrepreneurial Development Agency (CEDA) provides subsidised loans, structured financing, training and mentoring to businesses. The Citizen Entrepreneur Mortgage Assistance Equity Fund provides equity finance to distressed Botswana citizen businesses that face foreclosure from commercial banks. The Credit Guarantee Scheme provides guarantees to loans extended by commercial banks to citizen-owned small-, medium- and microenterprises (SMME) and pays a certain percentage in case of default.

The CEDA Guidelines mandate that CEDA services and products must be open only to citizens. A citizen entrepreneur may, however, apply for funding or assistance for joint venture programmes involving a non-citizen. The Credit Guarantee Scheme is a product offered by CEDA only to citizen-owned companies.

The Local Enterprise Authority provides development support and entrepreneurship training to citizen-owned SMMEs and to joint ventures involving a citizen or a citizen-owned company.

5. Foreign land ownership restrictions

Although foreign individuals and entities can purchase land rights in Botswana, in terms of the Land Control Act (CAP32:11), the approval of the Ministry of Agricultural Development and Food Security must be obtained to purchase agricultural land.

The Transfer Duty Act (CAP 53:01) has been amended so that the rate of transfer duty payable on property transfers is 5% for citizens (including majority- or wholly owned Botswana companies) while it has been increased to 30% for non-citizens. In addition, citizens are now exempt from paying transfer duty on the first BWP 1 000 000 of the purchase price of the property concerned.

6. Reporting obligations

Limited relevance.

7. Penalties for non-compliance

In terms of the PPAD, any person who contravenes its provisions will be guilty of an offence and subject to a fine (of not less than BWP 10 000 but not more than BWP 100 000) and, in the case of an individual, the fine or imprisonment (for a term not exceeding three years) or to both.

In terms of the Trade Act, 2019, any person who contravenes the provisions of the Act shall be liable to a fine not exceeding BWP 50 000 and, in the case of an individual, the fine or imprisonment (for a term not exceeding five years) or to both.

In terms of the Industrial Development Act, 2019, any person who contravenes the provisions of the Trade Act, 2019, shall be liable to a fine not exceeding BWP 50 000 for a first offence and, in the case of an individual committing a second offence, a fine not exceeding BWP 20 000 or imprisonment (for a term not exceeding two years) or both.

8. Proposed or contemplated changes to regulations

Limited relevance.

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Ethiopia



AMAN ASSEFA AND ASSOCIATES

ETHIOPIA

1. Local empowerment obligations

Limited relevance.

2. Local ownership targets or restrictions

Foreign investors' participation in the Ethiopian economy may be done in different forms, mainly direct investment, procurement or other schemes such as international bids.

DIRECT INVESTMENT

With regard to direct investment, the Ethiopian Investment Proclamation (Investment Proclamation) imposes a minimum capital investment requirement on foreign investors. Accordingly, a foreign investor is obliged to make an initial minimum capital injection of USD 200 000 for a sole investment and USD 150 000 for an investment to be carried out in joint venture with an Ethiopian national. However, for investments in the engineering and architectural or related technical consultancy services, in the fields of technical testing and analysis or in publishing works, the minimum threshold is lowered to USD 50 000 for joint investment and USD 100 000 for a sole foreign investment.

Foreign investors are not permitted to invest in any sector of their choosing. There are some sectors that are off limits to non-Ethiopians. A yet-to-be-published law known as the Investment Regulation (the Regulation) specifies that foreign investors may invest in any area except for: (i) areas reserved for domestic investors; (ii) areas for joint investment with Government; and (iii) areas for joint investment with domestic investors.

The following are areas reserved for domestic investors only and thus are not available for foreigners:

- financial services such as banking, insurance and micro-credit and saving services;
- translation and secretarial services;
- media services;
- construction and drilling services below Grade 1;
- attorney and legal consultancy services;
- preparation of indigenous traditional medicines;
- tour operation;
- wholesale and import trade (with the exception of wholesale of petroleum and petroleum products, electronic commerce, as well as import of liquefied petroleum gas and bitumen);
- export trade of specified raw agriculture, forestry, poultry and livestock products;
- retail trade (with the exception of electronic commerce);
- primary and middle level health services;
- hospitality businesses (excluding star-designated services);
- operating the lease of equipment;
- machineries and vehicles (except for industry-specific heavy equipment, machineries and specialised vehicles);
- private employment agency services (exclusive of services for employing seafarers and similar professionals of higher and international expertise and network);
- maintenance and repair services, including aircraft maintenance, repair and overhaul as well as aircraft ground handling and related services and excluding repairs and maintenance of heavy industry machineries and medical equipment;
- grinding mills, bakery, barbershop and beauty salon services;
- customs clearance;
- saw milling, timber manufacturing and assembling of semi-finished wood products, brick and block manufacturing, quarrying;
- non-industrial scale laundry services;
- lottery and sports betting;
- security and brokerage services;
- transmission and distribution of electrical energy through the integrated national grid system; and
- transport services including freight transport services with a capacity less than 25 tons. (However, railway, cable-car, cold-chain transport services and those other transport services subject to joint investment with domestic investors are exempt from the list of transport services reserved to domestic investors – see below).

The Regulation has identified five investment areas for investors either foreign or domestic, to engage in joint investment with Government. These areas are the manufacturing of weapons, ammunition and explosives; the import and export of electrical energy; international air transport services; bus rapid transit; and postal services excluding courier services.

The new regulation has also enumerated some activities which may be carried out only in partnership with domestic investors. These are:

- advertisement and promotion services;
- domestic air transport services;
- freight forwarding and shipping services;
- urban passenger mass transport services with large carrying capacity;
- audiovisual services; and
- cross-country transport services with a seating capacity of more than 45 passengers.

It must be noted that the Regulation has limited the joint investment in each of the areas in this section to a maximum of 49% equity contribution by the foreign investor in the enterprise.

These restrictions do not prevent foreign companies and persons from providing specific and time-bound services to their Ethiopian clientele. Therefore, if an Ethiopian client chooses to purchase a particular service from a foreign company, it may do so even if the type of service is among those restricted to Ethiopians and thus off-limits to foreigners. In this case, the foreign service provider needs to register as a project office if the provision of the service takes more than six months. This is also aligned with the period of time to establish a permanent establishment in the Tax Code.

PROCUREMENT

With respect to procurement, the Federal Government Procurement and Property Administration Proclamation prohibits discrimination of bid candidates on the basis of nationality, race or other criteria. However, a special reservation is made for goods produced and services rendered by Ethiopian nationals. In accordance with the Procurement Proclamation,

preference and a margin in the evaluation of bids issued by public bodies is given to locally produced goods, small- and micro enterprises and to local construction and consultancy companies.

3. Local management targets or restrictions

Limited relevance.

4. Other factors such as skills development, enterprise development, employee-related targets or procurement-related targets or restrictions

EMPLOYMENT

The Investment Proclamation aims at creating employment opportunities for Ethiopians to advance knowledge, skill and technology transfer, among others. It restricts employment of foreign nationals and puts in place several requirements.

Generally, foreign nationals will be employed only if it can be ascertained that there are no Ethiopians possessing similar qualifications or experience in the relevant sector. An exception occurs where foreign nationals assigned to management positions (including chief executive officer, chief operating officer and chief finance officer) are allowed to be employed by an investor without restrictions. Again, an investor employing foreign nationals is obligated to replace such workers, within a limited period, by Ethiopians after undertaking the necessary facilitation and on-the-job training. In line with this, an investor is obligated to submit a detailed statement of the type and schedule of training together with a quarterly report on its implementation.

Additionally, all expatriate employees are required to enter the country on a work visa. Upon entry, such employees must secure work permits and residence IDs to lawfully be employed and reside in Ethiopia. Currently, work permits and residence IDs are issued for a one-year period and are renewable annually.

Whenever it is ascertained that a worker is no longer required for a position, the Ethiopian Investment Commission (EIC) has the option of cancelling or refusing to renew an expat employee's work permit.

5. Foreign land ownership restrictions

Land may not be private property under Ethiopian law; the Ethiopian Constitution prescribes that the right to own both urban and rural land is vested with the state and the people of Ethiopia. It dictates that as a common property of the nations, nationalities and peoples of Ethiopia, land shall not be subject to sale or to other means of exchange.

The right persons may have over land is a lesser right (lesser than ownership) known as ‘use right’. Therefore, businesses – whether foreign or locally owned – as well as private persons may only have use rights over land granted by the land administration authorities at the level of the regions.

Notwithstanding the restrictions on foreigners owning immovable property under the Civil Code, the Investment Proclamation recognises the right of foreign investors to own immovable property necessary for their investments. However, the Investment Proclamation has exempted land from being considered as an immovable property.

Apart from the land ownership aspect, the allocation and access to land is to be handled by regional government level bodies. Thus, foreign investors are expected to direct any land allocation requests, as well as access and use of land for their investments, to the respective regional investment body.

In addition to land, the Investment Proclamation recognises a foreign investor’s entitlement to own a dwelling house on condition that the foreign investor’s minimum investment is USD 10 000 000.

6. Reporting obligations

All investors are obligated to submit a quarterly progress report on the implementation of their investment projects to the EIC. If an investor fails to submit such report on time, the EIC has the option to suspend its investment permit.

7. Penalties for non-compliance

The EIC is mandated to revoke an investor’s investment permit if, among others, investor misuses or illegally transfers its investment incentives to a third party; fails to commence its investment project implementation; or uses the investment permit for a different objective than it was issued for.

An investor who is found to have prepared or used a false commercial registration or business licence is punishable with a fine and imprisonment from seven to 15 years.

8. Proposed or contemplated changes to regulations

Limited relevance.

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BOWMANS

Ghana



N DOWUONA & COMPANY

GHANA

1. Local empowerment obligations

Limited relevance.

2. Local ownership targets or restrictions

The GIPC Act, 2013, outlines a list of activities that are reserved for local ownership, including:

- operating taxis or a car hire service in an enterprise with a fleet of fewer than 25 vehicles;
- operating a beauty salon or a barber shop;
- printing recharge scratch cards for use by subscribers of telecommunication services;
- producing exercise books and other basic stationery;
- retailing finished pharmaceutical products; and
- all aspects of pool betting business and lotteries, except football pool.

Businesses in Ghana that are partly foreign-owned are required to register with the Ghana Investment Promotion Centre (GIPC).

There are additional requirements in certain sectors including:

- **Fintech**

Fintech companies that operate in Ghana must be partly locally owned. A company must be at least 30% Ghanaian-owned in order to operate a payment service platform or offer services as a dedicated electronic money issuer (i.e. a company that engages in electronic money business).

- **Information, communications technology and telecommunications (including broadcasting)**

All mobile network operators that provide 4G network services are required to have a specified level of local ownership as a condition for the grant of a 4G licence.

Value-added service providers (i.e. providers of services that combine applications with telecommunications services, such as email,

videotext and data processing) are also required to have local ownership as a condition for the grant of a licence.

- **Mining**

Technically speaking, there are no explicit local ownership targets or restrictions in the law for companies seeking to conduct large- to medium-scale mining operations in Ghana.

However, licensees in the industry are required by the Minerals and Mining Act, 2006, to give preference to Ghanaian-owned service agencies. This operates as an indirect restriction on foreign ownership of companies that provide services to these licensees.

Only Ghanaian citizens are permitted to engage in small-scale mining operations.

A foreigner may apply for industrial mineral rights only if the proposed investment is valued at USD 10 000 000 or more. Industrial minerals are defined by the Minerals and Mining Act, 2006 (Act No. 703) to include basalt, clay, granite, gravel, gypsum, laterite, limestone, marble, rock, sand, sandstone, slate talc, salt and other minerals that the minister responsible for mining may from time to time declare to be industrial minerals.

- **Oil and gas**

Ghanaian equity requirements exist for all entities that operate in Ghana's oil and gas industry.

An entity must have at least 5% of its equity owned by an IGC to qualify to enter a petroleum agreement or obtain a petroleum licence. IGCs enjoy first preference in the grant of petroleum agreements and licences.

Entities seeking to operate as goods and service providers in the industry are required to incorporate a joint venture with an IGC, with the IGC holding at least 10% equity in the joint venture.

- **Power (electricity supply)**

Local ownership requirements exist across various sectors in the electricity supply industry. Companies that engage in the following areas are required to comply with initial and target equity benchmarks:

- wholesale power supply;
- renewable energy projects;
- electricity distribution;
- investment in transmission infrastructure;
- electricity sales; and
- electricity brokerage.

Initial equity requirements for the different sectors in the supply chain range from 15% to 80% upon establishment, while ultimate equity targets range from 51% in 10 years to 100% in five years.

Manufacturers of electrical equipment, electrical appliances and renewable energy equipment must be at least 40% Ghanaian-owned. A foreign entity must form a partnership with an indigenous Ghanaian company (IGC) to provide goods and services to companies that operate in the industry. An IGC is a company incorporated in Ghana, that is at least 51% Ghanaian-owned and employs specified levels of Ghanaian staff.

3. Local management targets or restrictions

Limited relevance.

4. Other factors such as skills development, enterprise development, employee-related or procurement-related targets or restrictions

PROCUREMENT

Public institutions that conduct public procurement are required to consider the effect that a tender will have on the extent of local content in a manufacturer and on labour and material, goods, works or services offered by suppliers or contractors as factors in determining a successful tender.

EMPLOYMENT

Partly foreign-owned companies must register with the GIPC, subject to the satisfaction of certain minimum capital requirements. An enterprise is entitled to apply for expatriate quota based on the amount of its paid-up capital.

- Enterprises with between USD 50 000 and USD 250 000 are entitled to an automatic expatriate quota of one person.
- Enterprises with between USD 250 000 and USD 500 000 are entitled to an automatic expatriate quota of two persons.
- Enterprises with between USD 500 000 and USD 700 000 are entitled to an automatic expatriate quota of three persons.
- Enterprises with more than USD 700 000 are entitled to an automatic expatriate quota of four persons.

An entity may employ foreign nationals in Ghana only upon the issue of work permits granted by the Immigration Quota Committee of the Ministry for the Interior. These work permits must specify the number and description of persons authorised to be employed. The approval to fill an immigration quota may specify the period for which the foreigner may occupy the post while a Ghanaian understudies him or her in order to replace him or her when the period expires.

SECTOR-SPECIFIC REQUIREMENTS

- **Mining**

Licensees within the mining industry must give preference to locally sourced or manufactured materials and products, as well as locally owned service agencies in the purchase, construction and installation of facilities, to the maximum extent possible and consistent with safety, efficiency and economy.

Licensees must also employ Ghanaian citizens to the maximum extent possible. Applications for mineral rights and applications for licences to export or deal in minerals or to provide mine support services must be accompanied

by details of the applicant's proposals with respect to the recruitment of expatriates and the employment and training of Ghanaians in the mining industry. A proposed immigration quota for expatriate recruits is approved only where the Minerals Commission is satisfied that no Ghanaian has the requisite qualification and experience to occupy the position for which the expatriate is to be recruited. Employment details submitted along with the application must specify timelines within which Ghanaian employees will be trained to replace expatriates. Unskilled labour and clerical positions are strictly reserved for Ghanaians.

- **Oil and gas**

Companies operating in the oil and gas industry must comply with local content obligations in the areas of employment and training, research and development and technology transfer. Minimum local content targets are also set for the procurement of goods and services in a variety of areas within the industry, including:

- front-end engineering design (FEED), detailed engineering and other engineering services;
- fabrication and construction of materials;
- well drilling services;
- transportation, supply and disposal services; and
- health, safety and environment services.

Entities operating within the industry are required to submit local content plans that guide their compliance with local content requirements at the commencement of their operations and annually thereafter.

Entities are also required to establish and implement bidding processes that give preference to IGCs. Legal and financial services may be procured only from Ghanaian-owned firms and insurable risks relating to activities conducted in the country may only be insured by Ghanaian insurance or reinsurance firms.

- **Power (electricity supply)**

The electricity supply industry has a comprehensive local content framework which includes employment and training, technology transfer, research and development and the provision of engineering, technical, maintenance and professional services.

Participants in the industry must meet local content targets for the employment of management and non-management staff. Companies are also required to train Ghanaians where employment targets cannot be met due to a lack of skill or expertise.

Industry participants are required to source specified levels of locally manufactured equipment. Companies that establish manufacturing plants for electrical equipment, appliances or renewable energy equipment may enjoy tax incentives.

Procurement procedures that incorporate local content as criteria for evaluating bids also exist. Where bids are equally adjudged, a bid with the highest level of local content prevails.

Professional services such as legal, financial and banking, engineering, technical consultancy and maintenance services must be sourced from Ghanaian firms or companies. These services may also be provided in partnership with foreign service providers if the Ghanaian partner delivers at least 51% of the value of the service. Insurance services must be procured through Ghanaian brokerage firms or reinsurance brokers. Transport, vehicle hire, vehicle maintenance, catering and janitorial services must also be sourced from Ghanaian or majority Ghanaian-owned companies unless the regulator determines that it is impractical to do so.

Companies are required to submit a local content and local participation plan to the regulator, demonstrating compliance with the local content requirements before carrying out any activities. Reports covering local content

activities must also be submitted annually. The regulator is responsible for public education of service providers, general public and other industry stakeholders on policy to enhance implementation of the local content rules in the industry.

5. Foreign land ownership restrictions

A foreign citizen cannot hold a freehold interest in Ghanaian land and may obtain a leasehold interest in land only for a term of 50 years or less at any one time.

6. Reporting obligations

Limited relevance.

7. Penalties for non-compliance

Each industry's regulations stipulate penalties for breaches of local ownership and empowerment provisions. These range from the loss or withholding of licences to fines and, in some cases, imprisonment.

The penalties may be levied against Ghanaians who assist foreign nationals in contravening the provisions for local ownership and empowerment.

A company that engages in any of the activities that are reserved for Ghanaians will be liable, on summary conviction, to pay a fine of between GHS 6 000 and GHS 12 000 and an additional fine of between GHS 300 and GHS 600 for each day that the offence continues.

GIPC may order the payment of the fees, taxes, duties and other charges in respect of which benefits were granted to the company and advise the Bank of Ghana to suspend any remittance including the transfer of capital, profits and dividends from or by the company.

The employment of foreign nationals without a permit is an offence punishable by a fine of GHS 1 000 or imprisonment for a term not exceeding two years or both.

8. Proposed or contemplated changes to regulations

Limited relevance.

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BOWMANS

Kenya



BOWMANS

KENYA

1. Local empowerment obligations

Limited relevance.

2. Local ownership targets or restrictions

Investors seeking to invest in Kenya can opt to obtain an investment certificate under the Investments Promotions Act, 2004. Whether that certificate will be issued or not depends on a number of factors, including the extent to which the investment will contribute to the:

- creation of employment for Kenyans;
- acquisition of new skills or technology for Kenyans;
- contribution to tax revenues or other government revenues;
- transfer of technology to Kenya;
- increase in foreign exchange, either through export or import substitution;
- utilisation of domestic raw materials, supplies and services;
- adoption of value addition in the processing of local, natural and agricultural resources; or
- utilisation, promotion, development and implementation of information and communication technology.

The holder of an investment certificate is entitled to the initial issuance of any additional licences required for his or her venture or operation. The licences will be mentioned on the certificate and, until the licences are actually issued by their issuing authorities and for a maximum period of 12 months after the issuance of the certificate, the licences are deemed to have been issued by virtue of the investment certificate. This is subject to the submission of appropriate applications and fees. The holder of an investment certificate is also entitled to certain entry visas for management, technical staff or shareholders for a two-year period.

While there are currently no restrictions on the proportion of foreign ownership of shares in a listed company or to be issued in a public offer, the Capital Markets (Foreign Investors) Regulations,

2002 (as amended in 2015), allows for the Cabinet Secretary for the National Treasury to prescribe a maximum foreign shareholding in respect of a privatisation of a state-owned enterprise, instances where local ownership in a strategic industry or sector is desirable, or where it is in the national interest to maintain a certain level of local ownership.

SECTOR-SPECIFIC REQUIREMENTS

• Aviation

Regulations 5 and 12 of the Civil Aviation (Licensing of Air Services) Regulations, 2018, provide that the applicant for a licence under the regulations is required to be a citizen of Kenya or, if a body corporate or a partnership, have 51% of its voting rights ultimately held by the Kenyan Government, a Kenyan citizen, or both.

The Kenyan Civil Aviation Authority (KCAA) may exempt a person from this requirement having regard to the special nature of the air service provided or proposed to be provided by such person. In addition, the KCAA may accept any person eligible under a criterion set out in any multilateral agreement or arrangement to which Kenya is a signatory.

Further, Regulation 6 of the Civil Aviation (Unmanned Aircraft Systems) Regulations, 2020, requires that an owner of an unmanned aircraft system, if not a body corporate, must be an adult Kenyan citizen or resident.

• Information, communications technology and telecommunications (including broadcasting)

The National ICT Policy issued in November 2019 by the Cabinet Secretary of Information, Communication and Technology (ICT) provides that 30% of the ownership of each prospective licensee wanting to provide ICT services must be held by Kenyans or a company that is majority owned by Kenyans. Licensees have three years to comply with this requirement but may seek a one-year extension from the Cabinet Secretary.

Telecommunication licensees are required to pay licence fees in full before the Communications Authority may issue them with the licence applied for. However, where the prospective licensee is at least 51% owned by Kenyan citizens, it may pay the licence fee in instalments over a period not exceeding 10 years. The default position resumes should the licensee cease to maintain the 51% Kenyan owned majority during the instalment period.

The Kenya Information and Communications (Broadcasting) Regulations, 2009, allows the Communications Authority to prescribe the minimum amount of time for the broadcast of local content or a quota for local content for foreign broadcasters broadcasting in Kenya.

In assessing adherence to any local content requirements by licensees, one criterion that can be applied to qualify content as local is that the company producing the content is at least 20% owned by Kenyan citizens.

Further, providers of subscription management services, defined under the Kenya Information and Communications (Broadcasting) Regulations as a service which involves the provision of support services to a subscription broadcasting service, should have a minimum of 20% local equity participation.

- **Engineering**

Engineering consulting firms operating in Kenya must be registered or incorporated in Kenya and have a minimum of 51% of their shareholding held by Kenyan citizens. They must also be registered with the Engineers Board of Kenya under the Engineers Act, 2011.

- **Insurance**

The Insurance Act (CAP 487) provides that not less than one-third of the paid-up share capital of an insurance company must be owned by citizens of the states forming the East African Community, a partnership whose partners are all citizens of those states, or that is wholly owned by the Kenyan Government.

The Insurance Act further provides that at least 60% of the ownership of an insurance broker must be held by Kenyan citizens or by a company or partnership that is wholly owned by Kenyan citizens. It also requires that a minimum of one-third of the board of directors or managing board of an insurer must be Kenyan citizens.

- **Mining**

The Mining (Local Equity Participation) Regulations, 2012, issued under the previous Mining Act makes the granting of every mining licence conditional on local equity participation amounting to at least 35% in respect of the mineral right.

Further, the new Mining Act, 2016, provides for the Cabinet Secretary to prescribe limits on capital expenditure. A holder of a mining licence whose planned capital expenditure exceeds the prescribed amount is required to list at least 20% of its equity on a local stock exchange within three years after commencement of production. However, the holder of a mining licence may apply in writing to the Cabinet Secretary to execute an equitable alternative mechanism that will allow the company to meet this requirement.

Mineral rights relating to small-scale operations can be held only by Kenyan citizens or by bodies corporate with at least 60% shareholding by Kenyan citizens.

- **Pension funds/ schemes**

In terms of the Retirement Benefits Act, 1997, at least 60% of the paid-up share capital of a scheme administrator must be held by Kenyan citizens, unless the administrator is a bank or an insurance company.

- **Private security**

Corporate private security providers operating in Kenya must be licensed by the Private Security Regulatory Authority established by the Private Security Regulation

Act, 2016. A condition of licensing is that the prospective licensee must have a minimum 25% local shareholding.

- **Shipping**

The Merchant Shipping (Maritime Service Providers) Regulations, 2011, issued under the Merchant Shipping Act, 2009, stipulate that the granting of every maritime service provider licence is conditional on the licensee being a Kenyan citizen or, in the case of a company, the company being incorporated under the local Companies Act with not less than 51% of its share capital held by Kenyan citizens.

3. Local management targets or restrictions

Generally speaking, there is no minimum requirement for participation of Kenyan citizens in management positions. However, there is one notable exception in section 27 of the Insurance Act, which requires that at least one-third of members of the board of directors or management board of an insurance company must be Kenyan citizens.

4. Other factors such as skills development, enterprise development, employee-related or procurement-related targets or restrictions

Under the Mining (Use of Local Goods and Services) Regulations, 2017, holders of mining licences are required to give priority to goods and materials produced in Kenya and services provided by Kenyans or by entities incorporated and operating in Kenya or controlled by Kenyans subject to quality, quantity and price considerations *vis-à-vis* goods and services from foreign suppliers. To this end, the licensees are required to submit procurement plans indicating how goods and services will be sourced from local producers to the Cabinet Secretary as part of the licence application process.

Moreover, the Mining (Employment and Training) Regulations, 2017, requires that prospective licensees provide, as part of the mining licence application process, plans outlining proposals for the employment and training of Kenyans. The plans should include, among other things: specification

of the skills needed, the number of Kenyans the applicant plans to employ, recruitment of any expatriates required and their eventual replacement by Kenyans, particulars of the employment of marginalised groups and persons from communities inhabiting the area of the mining operations, and the proposed expenditure to be incurred under the plan.

5. Foreign land ownership restrictions

The Constitution of Kenya, 2010, introduced a prohibition on ownership of freehold land by foreigners by providing that non-Kenyan citizens are not permitted to own an interest in land longer than a leasehold term of 99 years.

A private limited liability company incorporated in Kenya cannot, in terms of the Land Control Act, 2012, own agricultural land unless all of its shareholders are Kenyan citizens.

6. Reporting obligations

The regulators in the various sectors may conduct inspections that, among other things, seek to establish the extent of compliance with the local ownership rules.

7. Penalties for non-compliance

The regulators in the various sectors may refuse to grant a licence or suspend or withdraw a licence issued under the applicable legislation in the event of non-compliance with the local ownership rules.

Penalties for a general failure to comply with the relevant legislation may also be levied.

8. Proposed or contemplated changes to regulations

Limited relevance.

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BOWMANS

Malawi



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MALAWI

1. Local empowerment obligations

The Public Procurement and Disposal of Public Assets Act (No. 27 of 2017) requires every ministry, department or agency (MDA) of Government, in all competitive bidding or public procurement, to give a 60% preference to indigenous black Malawians and 40% to non-indigenous Malawians and other nationals.

The Business Licensing Act (No. 25 of 2012) requires every non-Malawian investor to show actual or potential foreign investment of at least USD 250 000 into Malawi before being issued with a business licence.

The Business Licensing Regulations (G.N. 45/2014) issued under the Business Licensing Act restricts the carrying on of retail business by non-Malawians to only the six urban areas (central business districts) of Blantyre, Kasungu, Lilongwe, Luchenza (Thyolo), Mzuzu and Zomba. Conduct of retail business by non-Malawians in the rural areas of Blantyre, Kasungu, Lilongwe, Thyolo, Mzuzu and Zomba as well as in the other 22 districts of Malawi is prohibited.

2. Local ownership targets or restrictions

SECTOR-SPECIFIC REQUIREMENTS

- **Information, communications technology and telecommunications (including broadcasting)**

The Communications Act (No. 34 of 2016) requires every electronic communications licensee, be it for network services or application services, to maintain a local shareholding of at least 20% at all times. Further, the Communications Act limits foreign ownership in any business providing content services, to 20%.

- **Mining**

The Mines and Minerals Act (No. 8 of 2019) restricts the issuance of certain types of prospecting and mining licences to Malawians,

either natural persons or entities owned wholly by Malawians. The following licences are issued only to Malawians: non-exclusive prospecting licence; and small-scale mining licence and artisanal mining permit.

3. Local management targets or restrictions

The Companies Act (No. 15 of 2013) requires every private company limited by shares to have at least one director and every public company limited by shares to have at least three directors. Only public companies are required to have company secretaries. Both private and public companies are required to have at least one director resident in Malawi. The resident director does not have to be Malawian. There is no minimum requirement for Malawian directors or management representatives.

Inasmuch as private companies are required to employ one director and employ discretion to employ a company secretary or not, there are certain sectoral laws applying in regulated sectors, such as financial services laws, which require private companies to appoint and maintain a company secretary and more than one director.

4. Other factors such as skills development, enterprise development, employee-related or procurement-related targets or restrictions

All companies in Malawi, foreign or locally owned are entitled to employ expatriates. However, in terms of the Immigration Act, employment permits to expatriates are granted or renewed on condition that there is a local person or employee understudying the expatriate.

5. Foreign land ownership restrictions

In terms of the Land Act (No. 16 of 2016), a non-Malawian entity can hold land in Malawi if issued a licence by the minister responsible for land acting in consultation with the President of Malawi. Other than this provision applicable to non-Malawian entities, all natural and legal persons, including foreign incorporated companies, in Malawi can hold land, provided written consent is given by the minister responsible for land prior to the transfer of land.

Land can no longer be issued as freehold to anyone in Malawi. Land can be issued only under a lease, including to non-Malawians. Land cannot be transferred by way of a gift inter vivos as between two living persons who are not citizens of Malawi.

Unless an application with full explanation is made for a longer lease, the Land Act limits a term of land issued to non-Malawians to a lease of up to 50 years. The Land Act also requires all land sold to non-Malawians citizens to be advertised to Malawians first by publication in a local daily newspaper not less than 21 days before the sale of the land to a non-Malawian.

6. Reporting obligations

Limited relevance.

7. Penalties for non-compliance

There are various offences which can be committed when acting in contravention of most of the provisions of the above laws. For instance, it is a criminal offence punishable by a fine and/or imprisonment to operate a business in Malawi without a business licence issued under the Business Licensing Act.

8. Proposed or contemplated changes to regulations

Limited relevance.

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BOWMANS

Mauritius



BOWMANS

MAURITIUS

1. Local empowerment obligations

Limited relevance.

2. Local ownership targets or restrictions

Generally, there are no restrictions on ownership of companies in Mauritius. An exception is in respect of foreign ownership in (i) companies holding radio broadcasting or television broadcasting licences and (ii) sugar companies listed on the stock exchange. Only 20% of the shares in companies holding radio broadcasting or television broadcasting licences can be held by foreigners, and not more than 15% of the voting capital of a sugar company can be held by a foreign investor without written consent from the Financial Services Commission.

3. Local management targets or restrictions

Limited relevance.

4. Other factors such as skills development, enterprise development, employee-related or procurement-related targets or restrictions

Limited relevance.

5. Foreign land ownership restrictions

Investments made by foreign investors in immovable property (whether freehold or leasehold), or in a company holding freehold or leasehold immovable property in Mauritius, require approval from the Prime Minister's Office under the Non-Citizens (Property Restriction) Act, 1975.

However, the Prime Minister's approval is not required in the following instances:

- holding immovable property for commercial purposes under a lease agreement not exceeding 20 years.
- purchase of residential units under the Invest Hotel Scheme, Property Development Scheme and Smart City Scheme.

- acquisition of immovable property for business purposes with the approval of the Economic Development Board.
- purchasing of apartments in condominium developments of at least two levels above ground (G+2) with the prior approval of the Economic Development Board, provided the purchase price is not less than MUR 6 million (approximately USD 150 000) or its equivalent in any other hard convertible foreign currency.

It is notable that the Government has a policy of encouraging foreign ownership of residential land under the Property Development Scheme, which also gives a right to reside in Mauritius.

6. Reporting obligations

Limited relevance.

7. Penalties for non-compliance

The acquisition of immovable property by a foreigner in breach of the Non-Citizens (Property Restriction) is void and of no effect. The property is taken into the possession of the Curator of Vacant Estates who has the obligation to sell it. The proceeds of sale, after deduction of all charges, is paid to the non-citizen.

8. Proposed or contemplated changes to regulations

Limited relevance.

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BOWMANS

Namibia



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NAMIBIA

1. Local empowerment obligations

Limited relevance.

2. Local ownership targets or restrictions

The Foreign Investment Act, 1990, currently applies in Namibia. It provides that, subject to compliance with any formalities or requirements prescribed by any law in relation to the relevant business activity, a foreign national (which includes a company incorporated under the laws of any country other than Namibia) may invest and engage in any business activity that any Namibian citizen may undertake in Namibia.

Foreign nationals engaged in business activities or intending to commence activities in Namibia are not required to have local equity participation, subject to certain exceptions, nor transfer their businesses or any part thereof to the Government or to any Namibian.

There is, however, a provision in the case of a foreigner applying for a licence or authorisation of an agreement for rights over natural resources where the Government is entitled to acquire an interest in any enterprise to be formed for the exploitation of such rights.

SECTOR-SPECIFIC REQUIREMENTS

- **Information, communications technology and telecommunications (including broadcasting)**

In terms of the Communications Act, 2009, the Communications Regulatory Authority of Namibia will not issue a licence to any person that is not a Namibian citizen or a Namibian company. Further, no more than 49% of the share capital of any such company may be owned by persons who are not Namibian citizens or Namibian companies that are not controlled by Namibian citizens.

- **Microlending**

In terms of the Microlending Act, 2018, a person may not be registered as a microlender or hold a certificate of registration as a microlender if such person is not a Namibian citizen, or is not lawfully admitted to Namibia for permanent residence, and, being a corporate entity, is not registered in Namibia and the majority of the member's interest or shareholding is not owned by a Namibian citizen or a person lawfully admitted to Namibia for permanent residence.

- **Mining**

In February 2016, the Minister of Mines and Energy issued new standard licence conditions applicable to exclusive prospecting licences and mining licences in terms of which a minimum of 5% of the share capital of the relevant mining company must be held by Namibian citizens or companies wholly owned by Namibian citizens.

Mining claims are granted to Namibian citizens or to companies owned only by Namibian citizens. However, a mining claim holder may choose to contract a foreigner, or a company owned by foreigners to prospect and mine.

The Diamond Act, 1999, provides that the Minister of Mines and Energy may not grant a licence unless the applicant is a Namibian citizen or is permanently resident in Namibia.

In terms of the Petroleum Products and Energy Act, 1990, downstream petroleum licences will not be issued to an applicant if such an applicant is not a Namibian citizen, or is not lawfully resident in Namibia, or loses Namibian citizenship or the right to be lawfully resident in Namibia. If the applicant is a body corporate, such a licence will also not be issued to it if it is not registered in Namibia or if its registration in Namibia has been cancelled.

In terms of the Minerals (Prospecting and Mining) Act, 1992, there must be a minimum of 20% representation of previously disadvantaged nationals (PDN) in the management structure of a mining company.

A new mining empowerment law has been proposed by the Minister of Mines and Energy in terms of which mining firms will be compelled to have a minimum 20% ownership stake reserved for PDNs.

3. Local management targets or restrictions

Limited relevance.

4. Other factors such as skills development, enterprise development, employee-related or procurement-related targets or restrictions

NEW EQUITABLE ECONOMIC EMPOWERMENT FRAMEWORK BILL

In terms of section 23(1) of the New Equitable Economic Empowerment Framework Bill, 2016 (NEEEF Bill), which has not yet come into effect, any private sector enterprise is required to, within a prescribed period, sell at least 25% ownership, or a percentage as determined by the Minister of Industrialisation, Trade and SME Development, to PDNs.

However, at the Namibia Economic Growth Summit in August 2019, President Hage Geingob explained that the tabling of the NEEEF Bill was not a means to take ownership away from advantaged Namibians and the 25% ownership pillar would likely be done away with because it would not translate into broad-based empowerment.

The NEEEF Bill also makes provision for other empowerment pillars such as management control and employment equity; human resource and skills development; entrepreneurship development and marketing; corporate social responsibilities; and value addition, technology and innovation.

The NEEEF Bill contains certain local management targets. The current management target is set at 50%. The Bill also contains mandatory human

resources and skills development requirements in terms of which businesses will be required to spend an amount of 0.5% of their gross wages on training costs. Training costs are calculated as the total training cost minus the Vocational Education and Training (VET) levy contribution.

ELECTRICITY ACT

In terms of the Electricity Act, 2007, the Minister of Mines and Energy may grant licences subject to terms and conditions recommended by the Electricity Control Board. Generation licences often include, as a condition, that a stipulated percentage of the shareholding of the relevant project company (which varies between 23% and 30%) should be held by PDNs and there must be a minimum of 20% representation of PDNs in the management structure of the project company.

COMPETITION ACT

The Competition Act, 2003, empowers the Namibian Competition Commission (Commission) to impose certain conditions when considering a merger regulated by it. The Commission has imposed local empowerment conditions in the past such as in the Walmart/ Massmart merger (2011) where, as a condition of the approval of the merger, Walmart was obliged to include local ownership participation, as well as that of PDNs.

MARINE RESOURCES ACT

In terms of the Marine Resources Act, 2000, an application for a right of exploitation or a quota, whether the applicant is a Namibian citizen or an entity held by Namibian citizens, may be considered. If the applicant is not a Namibian citizen or an entity held by Namibian citizens, the applicant must show the advancement of persons in Namibia who have been socially or educationally disadvantaged by discriminatory laws or practices prior to Namibian independence.

In addition, the Minister of Fisheries and Marine Resources may, in his or her discretion, impose conditions on fishing licences or quotas.

PUBLIC PRIVATE PARTNERSHIP ACT

In terms of the Public Private Partnership Act, 2017, all public private partnership projects must be procured through a competitive bidding process comprising a pre-qualification and final selection stage. The final selection stage involves a request for qualification and a request for proposal. The evaluation criteria under the request for proposal must include preference for the protection and advancement of previously disadvantaged persons, small and medium enterprises, nationally owned organisations or other such persons or organisations in compliance with the applicable legislation.

INSURANCE

In terms of the Namibia Special Risks Insurance Association Act, 2017, a person is not eligible for appointment as a director if he or she is not a Namibian citizen or the holder of a permanent residence permit in Namibia.

Further, both the Short-Term Insurance Act, 1998, and the Long-Term Insurance Act, 1998, require that half of the board of directors of an insurance or reinsurance company must be Namibian citizens resident in Namibia. This is also the case for the managing director, although permission may be sought for this position to be held by a resident non-Namibian citizen.

AFFIRMATIVE ACTION (EMPLOYMENT) ACT

The Affirmative Action (Employment) Act, 1998, provides for the establishment of the framework of an obligatory Employment Equity Programme (EEP) by employers, to be administered by an independent government agency, the Employment Equity Commission.

An EEP is a set of measures designed to ensure persons in designated groups enjoy equal employment opportunities and are equitably represented in the various positions of employment. In the private sector, employers who employ 25 or more employees will be required to develop and implement EEPs. It is proposed that EEPs will benefit previously disadvantaged groups, including people of colour, women and handicapped persons.

PUBLIC PROCUREMENT ACT

The Public Procurement Act, 2015, includes preferential procurement provisions that seek to benefit local products, PDNs, women and youths, small and medium enterprises and Namibian enterprises in general.

In terms of the Public Procurement Act, a public entity may limit participation in open advertised bidding proceedings to the citizens of Namibia or entities incorporated in Namibia with no less than 51% equity owned by Namibian citizens of which no less than 30% is owned by previously disadvantaged persons.

A public entity means any office, ministry or agency of the Namibian Government, and includes a local authority, a regional council, and a public enterprise as referred to in the Public Enterprise Governance Act, 2006.

NAMIBIAN INVESTMENT PROMOTION ACT

In terms of the Namibian Investment Promotion Act, 2016 (NIPA), which has not yet come into force, investment in the natural resources sector, or in any other sector which is above a certain threshold (which is still to be determined), requires the prior approval of the relevant line Minister. Any change of control of such investment, or transfer of any licences, also requires prior approval.

This Act has been passed by Parliament but is yet to be brought into force. NIPA will come into force on a date set by the Minister responsible for investment, in the Namibian *Government Gazette*.

5. Foreign land ownership restrictions

A foreign person who obtains a legal right to remain in Namibia is generally accorded the same treatment as Namibian citizens in respect of land ownership. However, the Agricultural Land Reform Act, 1995, prohibits foreign nationals from entering into any agreement regarding the right to occupy or possess agricultural land without the written permission and consent of the Minister of Lands.

The Regional Councils Amendment Bill, 2015, empowers the minister (responsible for regional government affairs) to determine methods of sale or letting of real property applied by regional councils in order to prohibit the acquisition of this property by foreign nationals in 'settlement areas' and, therefore, obliging the owners of such property to deal exclusively with Namibian citizens. (The settlement areas are designated by regional councils and are areas outside of existing local authorities).

In terms of the Local Authorities Amendment Bill, 2015, certain areas must be designated by a local authority as reserved for the acquisition of property by Namibian citizens. In terms of this Bill, foreign nationals will require written consent from the Minister (responsible for local government affairs) to lease such property and this lease cannot exceed 30 years (but must be for a period greater than one year).

The Land Bill, 2016, proposes barring foreigners from owning agricultural, commercial and communal lands.

6. Reporting obligations

Limited relevance.

7. Penalties for non-compliance

The NEEEF Bill (which is not yet in effect) contains penalty provisions for non-compliance with its provisions including:

- a fine or imprisonment for a period not exceeding 12 months; and
- a fine or imprisonment for a period not exceeding 10 years or both.

Broadly, a person commits an offence if he or she knowingly misrepresents or provides false information in respect of the compliance of a private sector enterprise, or to gain a benefit associated with a compliance status, or where he or she engages in fronting practices (indicating that PDNs are receiving benefits which are not actually flowing to them).

If such person is convicted of any of the above offences, that person will be liable to a fine (determined by the courts) or to imprisonment for a period not exceeding 10 years or to both a fine and such imprisonment or, if the convicted person is not a natural person, to a fine not exceeding 10% of its annual turnover.

8. Proposed or contemplated changes to regulations

Limited relevance.

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Nigeria



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NIGERIA

1. Local empowerment obligations

Limited relevance.

2. Local ownership targets or restrictions

In terms of the Nigerian Investment Promotion Commission Act (CAP N117 of the Laws of the Federation of Nigeria (LFN), 2004) (NIPC Act), foreign ownership of 100% is permitted in all industries. However, certain sector-specific regulations and laws either limit or prohibit foreign ownership.

SECTOR-SPECIFIC REQUIREMENTS

Various sectors of the Nigerian economy require local participation including, among others, the shipping and oil and gas sectors. In certain sectors, foreign participation is not possible, such as in the advertising sector.

- **Advertising**

The Advertising Practitioners Council of Nigeria (established under the Advertising Practitioners (registration, etc.) (Act No. 55 of 1988, CAP A7, LFN, 2004) introduced the Proclamation on Registration and Licensing Regime in the Advertising Industry, 2013 (Proclamation), which is a set of licensing guidelines and requirements that govern advertising practices in Nigeria.

The Proclamation stipulates that only a national agency (being a locally incorporated company with at least 74.9% Nigerian shareholding) may advertise to the Nigerian market. A foreign agency (whether or not locally incorporated) cannot practise advertising that is targeted at the Nigerian market.

- **Architecture**

The Architect (registration, etc.) Act (CAP A19, LFN, 2004) provides for the registration of non-Nigerian citizens only if the applicant's

country of nationality grants reciprocal registration facilities to Nigerian citizens and if the applicant has been resident in Nigeria for at least five years preceding the date of his or her application for registration.

- **Aviation**

The Civil Aviation Act, 2006, provides that in order for an aircraft to be used by any person in Nigeria for any flying undertakings, an aviation licence, permit or other authorisation of the Nigerian Civil Aviation Authority (NCAA) must be obtained. In order to qualify for the grant of an aviation licence or other related aviation permits, the NCAA must be satisfied that the applicant is a Nigerian citizen or, in the case of a corporate body, that the applicant is a company registered in Nigeria with a majority of its shares held by Nigerian citizens.

- **Engineering**

In terms of the Engineering (registration, etc.) Amendment Act, 2018, any company engaging in a service that is considered as the practice of engineering must be registered with the Council for the Regulation of Engineering (COREN). A company applying for registration with the COREN must show that it has Nigerian directors who are registered with the COREN. These registered directors must hold at least 55% of the shares in the company.

- **Information, communications technology and telecommunications (including broadcasting)**

The National Broadcasting Commission Act (CAP N11, LFN, 2004) requires that a company applying for a Nigerian Broadcasting Commission (NBC) licence must demonstrate it is not representing any foreign interests and that it is substantially owned and operated by Nigerians.

Furthermore, the Nigerian Broadcasting Code, 2019 (Code) provides that the NBC in the regulation of broadcasting shall ensure broadcasting services are at least 70% owned and operated by Nigerians.

In terms of the National Office for Technology Acquisition and Promotion Act (CAP N62, LFN, 2004) (NOTAP), every agreement or contract in which a foreigner or foreign entity is to provide foreign technology, management, consultancy or assistance to a Nigerian company, is required to be registered (with the issue of a registration certificate) by the Nigerian company with the NOTAP. This registration must take place no later than 60 days from the date of execution or conclusion of the contract.

- **Oil and gas**

The Nigerian Oil and Gas Industry Content Development Act, 2010 (Local Content Act), prescribes various levels of compliance in relation to different activities that may be conducted in operations and transactions in the industry. In the oil and gas sector, indigenous companies (i.e. companies with 51% or more Nigerian shareholding) are given preference under the Local Content Act in relation to the award of contracts in the industry.

- **Pharmaceutical**

The provisions of the Pharmacist Council of Nigeria Act, 2004, provide for the registration of non-Nigerian citizens only if the applicant's country of nationality grants reciprocal registration facilities to Nigerian citizens and if the applicant has been resident in Nigeria for at least 12 months immediately preceding the date of his or her application for registration.

- **Private security**

In terms of the Private Guard Companies Act (CAP P30, LFN, 2004), a foreign investor cannot acquire an interest in a Nigerian private security guard company.

- **Shipping**

The Coastal and Inland (Cabotage) Shipping Act, 2004 (Cabotage Act), restricts the use of foreign-owned and/ or manned vessels for coastal trade in Nigeria and promotes

the development of indigenous or Nigerian ownership of vessels.

3. Local management targets or restrictions

SECTOR-SPECIFIC REQUIREMENTS

- **Architecture**

The Qualifications for Registration of Architects and Architectural Firms Regulation states that the directors of architectural firms must be fully registered architects with Nigerian citizenship.

- **Information, communications technology and telecommunications (including broadcasting)**

The Nigerian Broadcasting Code, 2019, provides that the NBC, in the regulation of broadcasting, shall ensure broadcasting services are at least 70% owned and operated by Nigerians.

- **Private security**

Private security companies must be completely owned and managed by Nigerian citizens.

- **Shipping**

All vessels used for cabotage or coastal transportation of goods and services must be managed by Nigerian citizens.

4. Other factors such as skills development, enterprise development, employee-related or procurement-related targets or restrictions

SECTOR-SPECIFIC REQUIREMENTS

- **Advertising**

The Nigerian Code of Advertising Practice, Sales Promotion and Other Rights/ Restrictions on Practice (fifth Edition) (Advertising Code) stipulates that advertising positions in advertising and media agencies may be occupied by non-Nigerians only where there are no qualified Nigerians available

for such positions. The Code further states that non-Nigerians shall be employed only in situations where such employment promotes the development of local manpower.

In addition, the Advertising Code requires that the majority of the content of advertisements, such as equipment, footage and production input, shall as much as possible be Nigerian. The Advertising Code also stipulates that Nigerian advertising practitioners, artists of equal or similar qualification and/ or experience be given first consideration in any advertising project, contract and/ or deal.

- **Engineering**

The Regulation on the Construction Industry (COREN Regulation) made by the COREN stipulates that the design of major engineering contracts' facilities shall be carried out in Nigeria. It also requires that the award of contracts for engineering works and services up to NGN 2.5 billion be exclusively reserved for indigenous engineering firms, and that where, in the opinion of the owner of the contract, the expertise required is beyond the engineering capability of Nigerian firms, a foreign firm be required to partner with a Nigerian firm acceptable to the owner in the execution of the project. Furthermore, all major engineering contracts are required to have a training component for the training of engineering personnel.

- **Oil and gas**

In terms of the Local Content Act, indigenous service companies are given exclusive consideration in bids for contracts and services that are to be executed on land or in swamp operating areas of the Nigerian oil and gas industry.

- **Shipping**

The Cabotage Act established a fund known as the Cabotage Vessel Financing Fund to promote the development of indigenous ship acquisition capacity by providing financial

assistance to Nigerian operators in the domestic coastal shipping industry. The beneficiaries of the fund are Nigerian citizens and shipping companies wholly owned by Nigerians.

5. Foreign land ownership restrictions

Foreign ownership of land is prohibited in Nigeria following the Supreme Court of Nigeria's decision in the case of *Ogunola & Ors v. Eiyekole & Ors*. (1990) in which section 1 of the Land Use Act (CAP 5 LFN, 2004), was considered.

6. Reporting obligations

Under the Local Content Act, each oil and gas operator must, within 60 days of the beginning of each year, submit to the Nigerian Content Development and Monitoring Board (NCDMB) its annual Nigerian Content Performance Report covering all its projects and activities for the year under review by the NCDMB. This report must include employment and procurement achievements.

7. Penalties for non-compliance

A foreign company that fails to comply with the requirement to incorporate a Nigerian entity and obtain the required foreign investment approvals, will be guilty of an offence and liable, on conviction, to a fine of not less than NGN 2 500. Every officer or agent who knowingly allowed such offence to occur will also be liable, on conviction, to a fine of not less than NGN 250 and a further fine of NGN 25 for every day that the default continues.

SECTOR-SPECIFIC REQUIREMENTS

- **Advertising**

APCON is empowered to impose any of the following sanctions for non-compliance: reprimand, warning, light or heavy fine, reduction of the scope of licence (or scope of practice for individuals and sole practitioners), temporary suspension of registration or licence, removal from the register of practice, revocation of licence and a recommencement or reactivation fine in the cases of suspension or revocation of licence, and removal from the register of practice.

- **Aviation**

The NCAA is empowered to revoke, suspend or vary a licence, permit, certificate or authorisation if it is no longer satisfied that the holder of such licence, permit, certificate or other authorisation is a Nigerian citizen, or in the case of a corporate body, that the applicant is a company registered in Nigeria with a majority of its shares held by Nigerian citizens.

- **Information, communications technology and telecommunications (including broadcasting)**

The National Information Technology Development Agency Act, 2007, provides that any body corporate or person, that fails to comply with the guidelines and standards formulated by NITDA commits an offence and is liable on conviction to a fine of NGN 200 000 or imprisonment for a term of one year, or to both such fine and imprisonment, for a first offence; and for a second and subsequent offence, to a fine of NGN 500 000 or imprisonment for a term of three years, or to both such fine and imprisonment.

The initial penalty for non-compliance with the local content requirements stipulated under Class B in the Nigeria Broadcasting Code is a warning to remedy the breach within a timeframe. Failure to comply with the warning attracts a reduction of the daily broadcast hours, which may result in the suspension of the broadcast licence for a period of 30 days if the breach persists. Recommencement of full broadcast hours or full broadcast attracts a fee, which varies depending on the severity of the breach.

- **Engineering**

Any project owner who contravenes the COREN Regulation is guilty of an offence and is liable to be prosecuted. The engineer or engineering personnel, if found culpable, will be tried separately, by the Registered Engineers Disciplinary Tribunal.

- **Oil and gas**

An oil and gas operator, contractor or sub-contractor who carries out any project contrary to the provisions of the Local Content Act, commits an offence and is liable upon conviction to a fine of 5% of the project sum for each project in which the offence is committed, or cancellation of the project by the NCDMB.

- **Private security**

Where a person commits an offence under the Private Guard Companies Act, he or she is liable on conviction in the case of an individual to a fine of NGN 400 or imprisonment for 12 months or to both fine and imprisonment. In the case of a body corporate or incorporate, every officer is liable on conviction to a fine of not less than NGN 5 000.

The Private Guard Companies Regulations 2018 (2018 Regulations) made pursuant to the Private Guard Companies Act, however, provides stiffer penalties for the contravention of the provisions of the 2018 Regulations. The 2018 Regulations provide that any guard or company that contravenes the provisions of the 2018 Regulations is liable to a fine of NGN 500 000 in the case of a company, or NGN 100 000 in the case of a person or guard. Furthermore, the licensing authority may seal an office or revoke the licence of a company for contravening the provisions of the 2018 Regulations.

- **Shipping**

Any vessel that does not comply with the requirements contained in the Coastal and Inland (Cabotage) Shipping Act, 2004, is liable, on conviction, to a fine of not less than NGN 10 000 000 and/ or forfeiture of the vessel involved in the offence or such higher sum as a court may deem fit.

8. Proposed or contemplated changes to regulations

Limited relevance.

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Rwanda



TRUSTLAW CHAMBERS

RWANDA

1. Local empowerment obligations

Limited relevance.

2. Local ownership targets or restrictions

There are generally no restrictions in place for foreign ownership of companies in Rwanda. Companies can be 100% foreign-owned and this ownership may be held by either legal or natural foreign persons. However, there is a requirement to have a resident director for all companies. The resident director does not have to be a Rwandan citizen but must be a legal resident of Rwanda.

3. Local management targets or restrictions

Limited relevance.

4. Other factors such as skills development, enterprise development, employee-related or procurement-related targets or restrictions

SKILLS DEVELOPMENT

Generally, there are no skills development requirements save for companies that apply for investment certificates and the resultant incentives. Usually training of local people will form part of the requirements for the investment certificates.

An investment certificate should be differentiated from a company registration certificate. An investment certificate is issued to an investor who applies for it. It provides incentives based on the amount of investment. This certificate is issued by the Investment Office of the Rwanda Development Board after a company has been registered by the Office of the Registrar General, also a department at the Rwanda Development Board.

There are no implications of not having the certificate, as it is simply an optional document to attract the incentives that an investor may want. Without it, an investor will be bound simply to the

general laws on taxation and immigration.

The conditions in investment certificates differ for each investor, but usually pertain to preferential tax rates, increased foreign employment without the need for the labour market test. In exchange, the investor is given targets regarding the amount of money to invest in the economy, and the number of locals to employ during the period of the investment.

Other regulated sectors such as electricity, mining and telecommunications usually include training of locals as a condition to renew licences. However, in our experience, no application for the renewal of a licence has been rejected based solely on the fact that the applicant has not demonstrated skills transfer.

EMPLOYMENT

Law No. 57 of 2018 on Immigration and Emigration in Rwanda and its enabling Ministerial Order No. 06/01 of 2019 relating to Immigration and Emigration, require work permits to be held by all foreign employees working in Rwanda. There are no exceptions to this requirement. The granting of work permits is subject to an employer proving the lack of local talent for a particular position.

International agencies, as well as companies and/or NGOs with contracts with the Government, may be given work permits with less requirements than provided under the laws.

The Ministry of Labour and Public Service periodically releases an Occupations on Demand List (ODL) which highlights skills that are lacking or in short supply in the local market. For these occupations, work permits are easily granted once a foreigner provides proof of skill. These permits are usually given for two years and are usually also freely renewed as long as the skill remains on the ODL.

For all other occupations, an employer is required to undertake a Labour Market Test. This is a procedure in terms of which a company must demonstrate that, after sufficient advertising, it has failed to find a Rwandan suitable for the position that must be filled. Usually a two-year permit will

be given, during which time the company will be required to train locals for this position.

The CEO or managing director of a foreign-owned company will be given a work permit fairly easily regardless of the skill level.

PROCUREMENT

There are no compulsory targets and restrictions for private companies. Law No. 62 of 2018 governing Public Procurement (Procurement Law), however, provides minimum amounts below which tenders can be offered only to local companies. Local companies are furthermore given a 15% preferential treatment over foreign companies in tenders that exceed the minimum threshold.

5. Foreign land ownership restrictions

Law No. 43 of 2013 governing land in Rwanda, provides that foreigners cannot own land under the freehold tenure, and can own land only under leases of a maximum of 30 years, which are renewable. This restriction also applies to companies which are majority (51%) foreign owned.

Rwandans are given up to 99-year leases, with freehold tenure restricted to investors. Individuals who had freehold at the time of the land reform maintained their freehold titles; however, if transferred, the new owner receives a leasehold title.

6. Reporting obligations

Limited relevance.

7. Penalties for non-compliance

Law No. 17 of 2018 governing companies in Rwanda provides a fine of up to RWF 5 000 000 (approximately USD 5 000) for failure to appoint a resident director. Regarding the work permits, there is no liability on the company but rather on the individuals without work permits. Individuals can be fined up to RWF 200 000 (approximately USD 200). Licensees also risk fines specified in specific licences for failure to meet licensing conditions.

Licences (above and beyond the Company Registration Certificate), are given in regulated sectors: banking, energy, insurance, mining, payment services, tourism, transport and water. A company cannot operate in such sector without a valid licence.

Local empowerment/ local content provisions in licences will be limited to number of locals to be trained and employed by a particular date (usually a percentage of the total employees). The risk of non-compliance is limited to fines as opposed to loss of licences.

Currently, there are no criminal sanctions by law for failure to meet these requirements. To date, we are not aware of any fines for failure to comply with local empowerment requirements.

8. Proposed or contemplated changes to regulations

Limited relevance.

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BOWMANS

South Africa



BOWMANS

SOUTH AFRICA

1. Local empowerment obligations

Broad-based black economic empowerment (B-BBEE) is aimed at incentivising companies to promote the inclusion of black South Africans (being South African citizens who have been racially classified as African, Indian or Coloured) in the ownership, management and control of the country's economy. B-BBEE is not aimed at restricting foreign ownership or investment in the country.

The B-BBEE status required by most entities doing business in the South African market is primarily driven by commercial pressures rather than by regulatory requirements, although there are limitations on foreign participation in certain strategic sectors and in certain instances, B-BBEE minimum thresholds may be set. There are currently no restrictions on land ownership by foreigners in South Africa.

The Broad-Based Black Economic Empowerment Act, 2003 (BEE Act), is the principal legislation for the promotion and measurement of B-BBEE. The Codes of Good Practice (Codes) are published under the BEE Act and detail the manner in which B-BBEE must be measured in South Africa. There are also various sector-specific codes published under the BEE Act which detail the manner in which B-BBEE must be measured for businesses operating in particular sectors (although sector-specific codes generally apply the same broad principles as the Codes). Where a sector-specific code has been issued, businesses in that sector are required to apply the relevant sector code rather than the Codes.

In assessing B-BBEE, a scorecard (measurement) approach is used whereby the different aspects of B-BBEE, including ownership, management control, skills development, enterprise and supplier development (including preferential procurement), and socio-economic development, are accorded points to arrive at the B-BBEE score of a company. The Codes set out these indicators to measure B-BBEE and the weightings attached to these indicators.

The 'ownership' element in the Codes relates to the extent to which ownership interests (i.e. voting rights and economic interest) in a measured enterprise, are held by black people and black women specifically, and the extent to which such ownership interests are unencumbered by debt (referred to as net value).

The Codes provide that the general ownership compliance target, for which points are scored on a pro rata basis, is 25% plus one vote of the shares in the company held by black South Africans. Additional points are awarded for ownership held by black female South Africans (with an ownership compliance target of 10%).

Sector-specific codes may contain slightly different ownership targets.

The Codes also impose a sub-minimum threshold of 40% for the net-value target, failing which a penalty will be imposed in terms of which the measured enterprise will drop one B-BBEE level.

Other than in certain state licensing, permitting and authorisation processes, there is no hard law requiring that any private entity in South Africa must achieve a certain level of B-BBEE or that black people must hold a certain percentage of equity in a business.

There are also no sanctions for non-compliance under the B-BBEE legislative framework. However, B-BBEE compliance provides commercial benefits and is considered a business imperative, especially for companies doing business with government bodies and state-owned enterprises and, increasingly, with private sector customers.

2. Local ownership targets or restrictions

There are no general restrictions on foreign ownership in South Africa, although certain strategic sectors are subject to specific regulation, including local ownership targets. The list provides an illustration of the types of local ownership targets in licensing and approval processes in certain sectors.

SECTOR-SPECIFIC REQUIREMENTS

• Aviation

Under South African law, every commercial aviation carrier requires an air service licence. A domestic licence issued in terms of the Air Services Licensing Act, 1990, is required in respect of services operated within South Africa and an international carrier licence issued in terms of the International Air Services Act, 1993, is required in respect of services operated between South Africa and another state.

An applicant for a domestic licence must, if it is a juristic person, be incorporated in South Africa and non-residents may not hold more than 25% of the voting rights unless approved by the Minister of Transport. An applicant for an international carrier licence must, if it is a juristic person, be incorporated in South Africa and the voting rights must be substantially held by residents of South Africa unless approved by the Minister of Transport.

• Information, communications technology and telecommunications (including broadcasting)

The Electronic Communication Act, 2005, imposes limitations on foreign control of commercial broadcasting services and provides that a foreigner may not, whether directly or indirectly:

- exercise control over a commercial broadcasting licensee; or
- have a financial interest or an interest either in voting shares or paid-up capital in a commercial broadcasting licensee exceeding 20%.

Any prospective licensee in either the telecommunications or broadcasting sector is required, if it is a natural person, to be a South African citizen or if it is a legal entity (such as a company), to be incorporated in South African law and to have its principal place of business in South Africa.

It is a requirement under the Electronic Communications Act, 2005, for an individual licence applicant (not a class – general authorisation – licence registrant) to have at least 30% of its shares (or such higher percentage shareholding as specified in the invitation to apply) held by historically disadvantaged groups (HDP), which includes, but is not limited to, black people.

The HDP ownership requirements also apply where an individual licence is transferred subject to a transfer of control, amended or renewed. However, there is no ongoing obligation to maintain a particular level of ownership by HDPs.

Draft regulations on ownership and control in the telecommunications and broadcasting sectors propose setting new B-BBEE ownership requirements, including a minimum ownership requirement that will apply for the whole licence term and achievement of a level 4 B-BBEE status (possibly for both individual and class licensees, although this requires clarification).

• Mining

The Mineral and Petroleum Resources Development Act, 2002, creates a stand alone B-BBEE regime, as set out in the Mining Charter. The Minister of Mineral Resources will grant a new or renewed mining right to an applicant only if it has a minimum 30% black ownership at the licensing stage, comprising relevant community and employee ownership structures.

Holders of existing mining rights (granted prior to the implementation of the revised Mining Charter) that achieved 26% black ownership are recognised as compliant for the duration of the mining right.

Mining companies can place reliance on continuing consequences of empowerment transactions undertaken before September 2018. However, the recognition of continuing consequences does not apply to the transfer and renewal of mining rights.

- **Private security**

Although there are currently no local ownership restrictions in the private security industry, the Private Security Industry Regulation Amendment Bill proposes that at least 51% of the ownership of both existing and new security service providers must be held by South African citizens.

The Minister of Police will be empowered to prescribe a different percentage of ownership and control in respect of different categories of security business (e.g. response security, assets in transit, locksmiths, etc.), taking into account the security interests of South Africa. The President has not yet signed the proposed Bill (which has been pending since 2012) and it is not clear when, or if, it will come into effect.

3. Local management targets or restrictions

In terms of the measurements under the B-BBEE regime, a company can increase its score for management control if it increases the number of black directors on its board and, in particular, the number of black women on its board.

The number of black people who participate in all levels of management (executive, senior, middle and junior management) is also measured. Companies above a certain size have additional and separate obligations, in terms of the Employment Equity Act, 1998, to prepare employment equity plans and to submit returns regarding their progress on employment equity to the Department of Labour. These plans set targets which align to regional demographic requirements in respect of the companies' labour count.

In terms of the Private Security Industry Regulation Act, 2001, the management and executive functionaries of a company providing security services, as well as the members of its board, must be constituted by citizens or permanent residents of South Africa.

In terms of the Electronic Communications Act, 2005, not more than 20% of the directors of a commercial broadcasting licensee may be foreigners.

4. Other factors such as skills development, enterprise development, employee-related or procurement-related targets or restrictions

In terms of the Codes, companies are also measured in respect of:

- **Skills development**

Companies can score points for the amount of money spent on skills development programmes for black employees, the number of learnerships facilitated for black people (with additional points for black women and disabled people), money spent on bursary programmes, and the implementation of mentorship programmes.

- **Enterprise and supplier development**

Enterprise and supplier development includes preferential procurement-related targets, and measures the extent to which entities buy goods and services from black companies with strong B-BBEE recognition levels, who themselves comply with requirements in order to be classified as empowering suppliers.

It also involves contributions – both monetary and non-monetary – towards the development of businesses that are owned by black people, and black businesses who are suppliers. These contributions include, for example, making loans or providing preferential credit terms to black businesses and are intended to assist and accelerate growth and sustainability of black enterprises. Development targets are based on a percentage of net profit after tax.

Specific obligations relating to procurement, supplier and enterprise development for the mining sector are set out in the Mining Charter.

5. Foreign land ownership restrictions

There are currently no restrictions on the ownership of land by foreigners in South Africa. However, the Regulation of Land Holdings Bill, 2017 (Land Bill), proposes the prohibition of the acquisition of agricultural land by foreigners.

The Land Bill proposes allowing foreigners to enter into long-term leases in respect of agricultural land, but such leases cannot be less than 30 years or the natural life of the lessee and may not be subject to renewal periods in excess of 50 years.

The Land Bill further proposes that foreigners may acquire agricultural land where black persons hold a controlling interest in the land. All existing agricultural land held by foreigners would, in terms of the Land Bill, become subject to a right of first refusal held by the Minister for Rural Development and Land Reform and, should this right not be exercised, must be offered to South African citizens.

Land reform is a contentious issue in South Africa and the Land Bill has not progressed any further through the parliamentary processes since its introduction in 2017.

6. Reporting obligations

When a company presents any information in relation to its B-BBEE score, for example, in the context of a tender response, this must be supported by a certificate issued by an accredited verification or ratings agency, which certifies a measured entity's B-BBEE level and which is valid for a period of 12 months.

Listed companies are required to report annually on their B-BBEE compliance to the B-BBEE Commission. All major B-BBEE ownership transactions above a certain threshold (ZAR 25 million) must be submitted to the B-BBEE Commission for registration.

Certain sector-specific legislation requires information relating to compliance with ownership targets to be submitted to the relevant regulator for that sector.

7. Penalties for non-compliance

There are no penalties under the B-BBEE legislative framework relating to B-BBEE performance. However, there may be penalties in certain sectors where B-BBEE requirements, or minimum ownership targets, are imposed for licensing

or other authorisation purposes. The relevant sector-specific regulator may also refuse to grant a licence, or may suspend or withdraw a licence, in the event of non-compliance with B-BBEE requirements or minimum ownership targets.

Further, under the B-BBEE legislation, it is a criminal offence to engage in a fronting practice (i.e. where enterprises make representation that they have adopted B-BBEE initiatives in order to score points when, in substance, the initiatives have not been adopted) or to make deliberate misrepresentations in relation to a measured enterprise's true B-BBEE status.

The B-BBEE Commission will investigate alleged fronting practices and may refer such practices for prosecution. Fines for fronting may be up to 10% of a company's annual turnover.

8. Proposed or contemplated changes to regulations

In addition to the draft legislation discussed in this section, recent amendments to the Competition Act include provisions relating to the assessment by an executive body of acquisitions of acquisition of control by foreign acquiring firms (a firm incorporated or effectively managed outside of South Africa) over a national security interest.

This assessment is entirely separate to that of the existing merger control regime and focuses on the impact and adverse effects on national security interests that could be brought about by those transactions.

These amendments are not yet in effect and are expected to be brought into force by proclamation at a later date once, among other things, the specific national security interests covered are identified as well as the notification, processes and procedure to be followed are determined by the President (by way of regulations and notices).

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BOWMANS

Uganda



BOWMANS

UGANDA

1. Local empowerment obligations

Uganda's local empowerment framework presently covers land ownership and local content both in the petroleum sector and in government incentivisation of investments.

The Investment Code Act, 2019, grants the Minister of Finance Planning and Economic Development, powers to restrict the activities in which foreign investors can participate. The Act provides for the issuance of investment licences to eligible investors and regulates the grant of government incentives and other advancements to investors. Any restrictions passed by the Minister in this regard would only apply to investors seeking such benefits. This power is yet to be exercised.

A foreign investor includes a company that is not incorporated under the laws of an East African Community member state as well as one that is incorporated in Uganda but whose majority shares are held by individuals other than citizens of those member states.

In order to qualify for incentives, the investor should, among others, establish that at least 70% of the raw materials used are sourced locally and that at least 60% of its employees are citizens.

Although Parliament of the Republic of Uganda recently passed the National Content Bill, 2019, covering all licensable activities and sectors in the country, the Bill is yet to be assented to by the President and until then retains the status of a Bill.

The National Content Bill seeks to impose local content obligations on every licensable activity in Uganda. Should it be assented to, it will enjoin the Government and licensees in all sectors, to prioritise Ugandan persons and residents in public procurement; and to ensure skills and technology transfer to Ugandan entities.

The Bill defines an Ugandan company as one that is incorporated under the laws of Uganda, which is wholly owned, controlled by citizens of Uganda.

SECTOR-SPECIFIC REQUIREMENTS

- **Oil and gas**

Licensees are obligated to source specified goods and services locally from Uganda and to prefer Ugandan companies and individuals for their procurement needs. These services are listed in the schedule to the Petroleum (Exploration, Development and Production) (National Content) Regulations, 2016.

The Regulations define a Ugandan company as one that is 'incorporated under the laws of Uganda which provides value addition to Uganda, uses available local raw materials, employs 70% Ugandans; and is approved by the Petroleum Authority of Uganda'.

- **2. Local ownership targets or restrictions**

There are no general restrictions in place in respect of foreign ownership in Uganda save for some regulated sectors which expressly set out the nature and extent of such restriction. Besides the regulated sectors, the other express restrictions to foreign ownership relate to land ownership.

As such, a company can be 100% foreign owned in Uganda and there is no legal requirement to have a local shareholder or director, with the exception of certain regulated sectors as follows.

SECTOR-SPECIFIC REQUIREMENTS

- **Information, communications technology and telecommunications (including broadcasting)**

It is now a legal requirement under the new Telecommunications Licensing Framework, 2019, for licensed telecommunications companies to list on the Uganda Securities Exchange as a condition precedent to the grant of a National Telecommunications Operator Licence.

All existing licence holders as at May 2020, are required to apply for new licences and to list at least 20% of their shares on the Uganda

Stock Exchange, within two years of the date of issue of their new licences. The terms of listing for new players will be agreed upon on a case-by-case basis. The new framework was effective from June 2020.

- **Insurance**

The Insurance Act and Regulations do not restrict foreign ownership of companies licensed to conduct insurance business in Uganda save that it is a condition for licensing that a foreign company shall be licensed as an insurer or, if licensed, have its licence renewed if it demonstrates it has maintained, at all times, a paid-up capital of not less than:

- UGX 1 billion in the case of a life or non-life insurance business; or
- UGX 2.5 billion in the case of a reinsurance business.

- **Mining**

The Mining Act, 2003, provides that all minerals in Uganda are vested in the Government of Uganda in trust for the people of Uganda. The Mining Act restricts the grant of mineral rights to Ugandan citizens or companies registered or incorporated under the laws of Uganda. However, in practice, foreign-owned companies, can, upon successful application be granted temporal and time-bound rights of prospecting, exploration and mining under licence subject to the conditions set out in each licence.

- **Oil and gas**

State participation is required in the oil and gas sector and the terms are set out in production sharing agreements that are executed between the Government, through the Uganda National Oil Company, and the relevant oil and gas company. Terms relating to shareholding are agreed on a case-by-case basis and expressly set out in the respective agreement.

3. Local management targets or restrictions

Limited relevance.

4. Other factors such as skills development, enterprise development, employee-related or procurement-related targets or restrictions

Limited relevance.

5. Foreign land ownership restrictions

FREEHOLD AND LEASEHOLD TENURE

Shareholding structure has a bearing on issues of land ownership under the Land Act, 1998.

Foreign nationals and companies controlled by persons other than Ugandan nationals (i.e. foreigners) are only permitted to hold leasehold interest for only up to 99 years.

Foreigners by law cannot acquire freehold and Mailo tenure interest of land in Uganda. These land tenure systems are recognised by Article 237 (3) of the Constitution of the Republic of Uganda and section 2 of the Land Act (CAP 227 as amended). They are both registered to be held in perpetuity and are subject to statutory and common law qualifications (such as the right to sell, lease, mortgage, pledge, subdivide, create trusts, cater for third-party rights/ interests or otherwise dispose of the land).

However, being rooted in the allotment of land by the British Colonial Government pursuant to the 1900 Uganda Agreement, ownership of land under the Mailo tenure is distinct from ownership of developments on the land made by a lawful or *bona fide* occupant.

CUSTOMARY LAND TENURE

Similarly, the present legal regime on land ownership in Uganda does not permit non-citizens to acquire and hold interests in the customary tenure system. More than 80% of the land in Uganda is held under unregistered customary tenure. Despite the lack of registration, customary

tenure is recognised under article 237(1) of the Constitution of Uganda.

Foreigners who require access to customary land may obtain it through the grant of usage or other third-party rights over the land. This can be done if the family, community or association holding the land duly exercises their right to obtain a certificate of customary ownership or to convert the land from customary tenure to freehold tenure.

Article 237(4a) of the Constitution provides that all Ugandan citizens owning land under customary tenure may acquire certificates of customary ownership in a manner prescribed by Parliament. Subject to the restrictions contained therein, a certificate of customary ownership entitles the holder to sell, lease, mortgage, accord usufructuary rights over, or otherwise create third-party interests in the land.

Proprietors of customary land may also convert it into freehold tenure. According to section 9 of the Land Act (CAP 227 as amended), any person, family, community or association holding land under customary tenure on former public land may convert the customary tenure into freehold tenure in accordance with the Act. The conversion would entitle the proprietors to lease the land to non-citizens.

The devolution of customary tenure depends largely on the family, community or association's ability to agree on the exercise of their right to convert or certify. It also depends on their ability to agree on the terms upon which to grant third-party rights on the land. In the former case, statutory processes for conversion or certification involve public enquiries into the existence and nature of claims on the land and are duly concluded upon the issuance of a certificate of customary ownership or a freehold title (as the case may be). Like a freehold title, a certificate of customary ownership 'shall be taken to confirm and is conclusive evidence of the customary rights and interests specified in it'.

6. Reporting obligations

Limited relevance.

7. Penalties for non-compliance

Limited relevance.

8. Proposed or contemplated changes to regulations

Limited relevance.

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BOWMANS

Zambia



BOWMANS

ZAMBIA

1. Local empowerment obligations

Companies and state institutions with 25 employees or more are required to apply economic empowerment measures which include:

- identifying and eliminating employment barriers which adversely affect ‘targeted citizens’ as defined under the Citizens Economic Empowerment Act, 2006 (**CEE Act**);
- preparing and implementing employment equity plans in order to achieve employment equity;
- ensuring development of targeted citizens and implementation of training programmes; and
- making reasonable adjustments for targeted citizens to ensure that they enjoy equal opportunities and are equally represented at board and management levels as well as in the workforce.

2. Local ownership targets or restrictions

In terms of the CEE Act, the Ministry responsible for commerce, trade and industry is required to reserve specific areas for targeted citizens, citizen influenced companies (CIC), citizen empowered Companies (CEC) and citizen owned companies (COC).

A CIC is a company in which 5% to 25% of the equity is owned by Zambian citizens and in which Zambian citizens have significant control of the management of the company. A CEC is a company in which 25% to 50% of the equity is owned by Zambian citizens. A COC is a company in which at least 50.1% of the equity is owned by Zambian citizens and in which Zambian citizens have significant control of the management of the company.

These companies are given preferential treatment in accessing and being awarded tenders for procurement of goods or services by state institutions.

The requirements under the CEE Act are compulsory for state institutions, as well as employers who employ at least 25 employees.

Licences for foreign investors to engage in specific businesses are only granted to foreign

investors who have entered into a joint venture or partnership agreement with a Zambian citizen or a CEC. The term ‘specific businesses’ is defined by the President. The President is yet to issue regulations defining specific businesses.

3. Local management targets or restrictions

Limited relevance.

4. Other factors such as skills development, enterprise development, employee-related or procurement-related targets or restrictions

PROCUREMENT

In terms of the Citizen Empowerment (Preferential Procurement) Regulations, 2011:

- The Citizens Economic Empowerment Commission (CEEC) and the Zambia Public Procurement Authority (ZPPA) must reserve procurement for a CIC, CEC or COC when procuring goods with a value not exceeding ZMW 3 000 000 (approximately USD 166 666), building construction works with a value not exceeding ZMW 20 000 000 (approximately USD 1 111 111) and civil and roadworks with a value not exceeding ZMW 30 000 000 (approximately USD 1 166 666);
- procurement of a non-consulting service with a value below ZMW 1 000 000 (approximately USD 55 555) must be exclusively reserved for a CIC, CEC or COC unless it is not possible to acquire the services from a CIC, CEC or COC; and
- a foreign bidder who is awarded a contract is required to ensure that, where practical, at least 40% of its personnel are citizens.

One of the functions of ZPPA is to formulate preference and reservation schemes to promote the economic development of citizen bidders and suppliers in collaboration with the appropriate government institutions. ZPPA collaborates with CEEC under the Citizen Empowerment (Preferential Procurement) Regulations, 2011, to provide preference to citizens offering specific goods and services.

The Public Procurement Act, 2008, provides that a procuring entity must, before entering into any international agreement relating to procurement, obtain the approval of the Zambia Public Procurement Authority and the advice of the Attorney-General.

A procuring entity is generally required to use open national bidding, which is limited to citizens and local bidders for all procurements of works, goods and non-consulting services.

A local bidder or supplier is one who is licensed to undertake business activities in Zambia, but who is not a citizen supplier.

A procuring entity is generally required to use open national selection, which is limited to local and citizen bidders, in all procurements of consulting services. However, in limited circumstances, the selection may be opened to foreign bidders, provided that, where a foreign bidder is selected, it must partner with a citizen or local supplier/ bidder.

SECTOR-SPECIFIC REQUIREMENTS

• **Construction**

In terms of the National Council for Construction Act, 2003 (NCC Act), it is an offence to award a contract for construction works to a foreign company without the approval of the National Council for Construction (NCC). Further, subject to the NCC's best practice project assessment scheme and best practice contractor recognition scheme, a foreign company cannot be awarded a contract for construction works unless it undertakes the construction works in partnership or jointly with a Zambian company.

• **Mining**

Mining rights over areas between 6.68 hectares and 400 hectares are reserved to be granted to CICs, CECs and COCs. Artisanal mining can be undertaken only by Zambian citizens or co-operatives consisting only of Zambian citizens.

Similarly, gold panning certificates can only be granted to these persons. Furthermore, small-scale mining can be undertaken only by a CIC, CEC or COC. Only a Zambian citizen, CIC, CEC or COC can apply for a mineral trading permit and only mining licence holders and mineral trading licence holders may trade in minerals.

There are generally no restrictions in relation to large-scale prospecting licences, large-scale mining licences and mineral processing licences. However, the approval of any application for a large-scale mining will consider the applicant's undertakings in respect of employment, training and local business development. These undertakings will be included as a condition of the licence and the mining right holder must perform these undertakings.

• **Oil and gas**

In considering bids for the grant of a petroleum exploration licence, petroleum development licence or petroleum production licence, the Minister responsible for mines and minerals development will consider the bidder's proposals with respect to the employment and training of Zambian citizens and, in respect of a production licence, the applicant's intention to acquire goods and services from within Zambia. Furthermore, when considering an application for a petroleum exploration licence, the Minister will assess a bidder's proposal for the promotion of local business development.

Licence holders must, on a continuous basis, give preference to the maximum extent possible to materials and products made in Zambia and service agencies located in Zambia and owned by Zambian citizens or bodies corporate registered under the Companies Act. Licence holders must also give preferential employment to Zambian citizens to the maximum extent possible (consistent with safety, efficiency and economy).

5. Foreign land ownership restrictions

Limited relevance.

6. Reporting obligations

Limited relevance.

7. Penalties for non-compliance

Limited relevance.

8. Proposed or contemplated changes to regulations

Limited relevance.

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1. Local empowerment obligations

Limited relevance.

2. Local ownership targets or restrictions

The current position with regard to the Indigenisation and Economic Empowerment Act (CAP 14:33) (IEE Act) is that:

- the IEE Act will not apply to any business in the national economy other than designated extractive industries, namely extraction of diamonds and platinum; and
- in the diamond and platinum sectors, 51% has to be owned by a designated entity.

Designated entities are:

- Zimbabwe Mining Corporation;
- Zimbabwe Consolidated Diamond Company; and
- National Indigenisation and Economic Empowerment Fund.

Part of the 51% may be held by a community share ownership scheme or employee share ownership scheme or both.

The following transactions are prohibited unless 51% of the restructured business is owned by a designated entity and the designated entity is equitably represented on the board:

- merger or restructuring of shareholding that requires notification to the Competition Commission;
- acquisition of a controlling interest that requires notification to the Competition Commission;
- unbundling;
- relinquishment of a controlling interest except to a designated entity; or
- projected or proposed investment in a prescribed sector.

The Minister may permit (in writing) a business to:

- comply with the Act within such period as he or she may prescribe; or

- achieve indigenisation and empowerment quotas through the use of credits within and for such periods as the Minister may prescribe.

In its original form, the IEE Act required that at least 51% of the shares of every public company and any other business in Zimbabwe be owned by indigenous Zimbabweans.

The IEE Act and the Indigenisation and Economic Empowerment (General) (Amendment) Regulations, 2010 (Regulations), which are still in place but no longer provide for compulsory indigenisation except for the platinum and diamond mining sectors, provide for the establishment of:

- employee share ownership trusts;
- management share ownership trusts; and
- community share ownership trusts,

through which businesses could comply with ownership threshold requirements.

The Regulations, in particular, provide that any such trust will be taken into consideration ‘when assessing the extent to which a business has achieved or exceeded the minimum indigenisation and empowerment quota’.

The Regulations state that where any business in Zimbabwe with a net asset value equal to or greater than USD 500 000 does not have 51% of its shares or controlling interest held by indigenous Zimbabweans, that business must submit a provisional indigenisation plan, to the Minister of Youth, Indigenisation and Economic Empowerment (Minister of Indigenisation) or the relevant line minister, setting out how and when the business will implement the minimum quotas. The Minister of Indigenisation can set a controlling interest of less than 51% provided a maximum time in which the business attains the 51% requirement is set at the same time.

MERGERS AND RELINQUISHMENT OF A CONTROLLING INTEREST

No merger or restructuring of the shareholding of two or more related or associated businesses, acquisition by a person of a controlling interest in a business, nor any unbundling or demerger of

two or more businesses (if the business resulting from this unbundling or demerger is above the prescribed threshold – currently USD 500 000), will be approved unless:

- 51% in the merged or restructured business is held by indigenous Zimbabweans; and
- the indigenous Zimbabweans are equitably represented in the governing body of the merged or restructured entity.

The IEE Act provides further that no relinquishment by a person of a controlling interest in a business, if the value of the business is at or above the prescribed threshold (USD 500 000), will be approved unless the controlling interest is relinquished to indigenous Zimbabweans.

INVESTMENT IN A PRESCRIBED SECTOR

The IEE Act provides that no projected or proposed investment in a prescribed sector of the economy, for which an investment licence is required in terms of the Zimbabwe Investment Authority Act (CAP 14:30), will be approved unless a controlling interest in the investment is reserved for indigenous Zimbabweans.

The prescribed sectors/ entities include: advertising agencies, agriculture, bakeries, barber shops and hairdressing and beauty salons, employment agencies, estate agencies, grain milling, local art and craft, marketing and distribution, milk processing, retail and wholesale trade, tobacco grading and packaging, tobacco processing, transport (including passenger road, freight, water, air and rail) and valet services.

3. Local management targets or restrictions

Limited relevance.

4. Other factors such as skills development, enterprise development, employee-related or procurement-related targets or restrictions

Companies in the business of mineral exploitation are obliged to issue 10% of their equity to a community share ownership trust and inject seed capital for the development and funding of

income-generating projects to ensure sustainability and continuity of the trust.

The IEE Act obliges all government departments, statutory bodies, local authorities and all companies to procure at least 51% of their goods and services, required to be procured in terms of the Procurement Act (CAP 22:14), from businesses in which a controlling interest is held by indigenous Zimbabweans.

Further, where goods and services are procured in terms of the Procurement Act from businesses in which a controlling interest is not held by indigenous Zimbabweans, the IEE Act provides that any subcontracting must occur in favour of businesses in which a controlling interest is held by indigenous Zimbabweans.

Zimbabwe has implemented an indigenisation policy which aims to place control of existing and new businesses with indigenous Zimbabweans.

5. Foreign land ownership restrictions

While foreign land ownership is not restricted, Government has adopted a policy of indigenous ownership of agricultural land.

The Land Acquisition Act (CAP 20:10) allows for the acquisition of commercial farms by Government with fair compensation. However, the new Constitution of Zimbabwe, 2013, permits agricultural land to be expropriated without compensation.

6. Reporting obligations

The Minister Indigenisation may require any business to submit an indigenisation assessment form on an annual basis for the purposes of carrying out an empowerment assessment rating.

7. Penalties for non-compliance

Non-compliance with the IEE Act and the Regulations is an offence, punishable by a fine or imprisonment (of the directors/ partners) not exceeding three months.

8. Proposed or contemplated changes to regulations

Although the IEE Act and Regulations are still in place, they have been amended to remove compulsory equity-based indigenisation except in respect of diamond and platinum mining. Even in terms of diamond and platinum mining, the Minister of Finance, while presenting last year's budget, indicated that compulsory equity-based indigenisation was going to be removed from such sectors. The relevant legislation to liberalise diamond and platinum mining has, however, not yet been gazetted.

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