

NAMIBIA

KOEP & PARTNERS



FIRM INFORMATION

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COUNTRY INFORMATION

Namibia is a vast but sparsely populated country with a total population of about 2.2 million spread over an area of approximately 824 292 square kilometres. Most of the population resides in the central and northern regions of the country which are cradled by the Namib Desert stretching along the cold Atlantic Ocean in the west and the Kalahari semi-desert along the eastern border with Botswana. The southern areas bordering on South Africa are also arid. The capital city is Windhoek which has an estimated population of about 300 000.

POLITICAL SYSTEM

Multiparty democracy.

LATEST GDP FIGURES

GDP: USD25.34 billion

GDP real growth rate: 4.5 %

GDP per capita (PPP): USD11 400.

INFLATION RATE

3.1% (2015).

INVESTMENT CLIMATE

The government has stakes (often 100% ownership) in companies in the following sectors: telecommunications (fixed and mobile voice and data services), energy, water, transport (air, rail and road), postal services, fishing, mining, petroleum and tourism.

Namibia welcomes foreign investment however and virtually all business activities are open to foreign investors. Namibia introduced the Foreign Investment Act in 1990 which affords protection to foreign investment and introduced an Investment Centre within the Ministry of Trade and Industry to streamline and encourage foreign investment. Foreign nationals are protected by this legislation which guarantees the repatriation of funds and interest invested in Namibia.

- New enterprises that export to countries outside the

Southern African Customs Union (SACU) can apply for Export Processing Zone (EPZ) status. The benefits of an EPZ enterprise are:

- relief from corporate income tax, import duties, VAT and stamp duties (but not on tax on employees' income and withholding tax on dividends)
- training grants of 75% of training costs
- foreign currency bank accounts free of exchange controls
- relief from certain Labour Act provisions

Foreign ownership of agricultural land is regulated. The government's land reform policy is shaped by two key pieces of legislation: the Agricultural (Commercial) Land Reform Act 6 and the Communal Land Reform Act 5. Recently a Land Bill was published which attempts to consolidate the two existing acts. The Land Bill (when passed as legislation) will have a major effect on foreigners investing in agricultural land in Namibia.

There is currently no legislation on Black Economic Empowerment (BEE) in Namibia. In July 2004 the Office of the Prime Minister announced that it was consulting on the content of a BEE policy and its legislative framework for the country. It was stated that once consultations had been finalised the draft policy document would be presented to the Cabinet for approval and thereafter a Bill would be presented to Parliament. A Transformational Economic and Social Empowerment Framework (TESEF) was prepared in May 2006. The goals of the TESEF were aimed at empowering previously disadvantaged Namibians and "Namibianising" the economy. The TESEF however never came into operation. In 2011 Cabinet adopted the New Equitable Economic Empowerment Framework ("NEEEF") to replace TESEF. The objectives of NEEEF are aimed at redressing past inequalities and providing measures for empowerment. Empowerment in terms of NEEEF revolves around five pillars of empowerment which is measured using a scorecard-approach. These are ownership, management control and employment equity, human resources and skills development, entrepreneurship development and community investment. NEEEF also deals with financing mechanisms.

These mechanisms are aimed at finding solutions to address developmental challenges and to broaden entrepreneurship



in Namibia. The proposed options are grants and incentives, state-facilitated lending, project financing, venture capital and targeted investment. In light of the policy framework set out by NEEEF, the Office of the Prime Minister prepared a New Equitable Economic Empowerment Bill (“NEEEB”), which was circulated during 2016 for public comment. The NEEEB, once it is promulgated as an Act of Parliament, will set out the general empowerment regulatory framework for Namibia.

The Development Bank of Namibia (DBN) provides finance for private sector start-ups and expansions, equity deals, bridging finance, enterprise development finance, trade finance, small and medium enterprises, public private partnerships, public sector infrastructure, local authorities, and bulk finance to responsible micro-finance providers. The DBN only finances Namibian participation in projects.

FORMS OF BUSINESS

- Private or public limited liability company
- Close corporation
- External company (branch of foreign company)
- Partnership
- Trading trust
- Sole trading
- Co-operatives

FORMATION OF A COMPANY

Companies, close corporations and external companies (branches of foreign companies) must be registered with the Registrar of Companies in Windhoek. Trustees of business trusts do not need any authorisation before they can commence their duties. The regulation of trusts is minimal. A trust deed must however be approved by the Master of the High Court who must also approve the trustees. A business generally has to register for various tax purposes such as Value Added Tax (VAT), import VAT, Pay as You Earn (PAYE), workmen's compensation as well as with the Social Security Commission. Trading licences are not required.

EXCHANGE CONTROLS

After independence Namibia remained part of the South African Rand Common Monetary Area which includes South Africa, Lesotho and Swaziland. Although the Namibian Dollar was introduced as the country's official currency in 1993, the South African Rand remains legal tender for an indefinite period. The two currencies are also freely exchangeable on a one for one basis in Namibia. For as long as Namibia remains part of the Common Monetary Area its foreign exchange transactions must be conducted in accordance with South African exchange control policies and regulations. If Namibia withdraws from the Common Monetary Area it is likely that exchange control provisions similar to those in South Africa will be introduced. Exchange control in Namibia is administered by the Bank of Namibia (the central bank of Namibia) in conjunction with the South African Reserve Bank and through authorised dealers, commercial and merchant banks.

Exchange control approval is required for all transactions by Namibian residents (whether natural or juristic persons) which

involve the transfer of assets to countries outside the Common Monetary Area. Residents are not allowed to transact business in foreign currencies. Transactions may be invoiced in foreign currencies but payments must be made in local currency. There are also certain limitations on the amount of local currency available for residents each year in respect of foreign travel and study.

With regard to non-residents:

- no restrictions apply when foreign funds are introduced into Namibia as share capital
- share certificates must be endorsed “Non-Resident”
- companies owned by non-residents should observe a ratio of share capital to fixed assets of 1:1
- the introduction of loan funds from abroad is subject to specific exchange approval

TAXATION

Normal tax is levied on the taxable income accruing to companies, trusts and individuals from sources within or deemed to be within Namibia. The standard corporate tax rate is a flat rate of 32%. Individuals are taxed on a sliding scale. The maximum tax rate for individuals is 37%. Insurance companies are effectively taxed at 12.8% of investment income and mining companies at 37.5% (although diamond mines are effectively taxed at 55%). There is no capital gains tax or estate duty. There is no taxation on local dividends from companies and distributions from close corporations paid to residents but dividends accruing to foreign residents are subject to a non-resident shareholders' tax. The rate of this tax is 10% if the beneficial owner of the shares is a company which holds directly or indirectly at least 25% of the capital of the company paying the dividends. In all other cases the rate is 20%. Royalties paid to non-residents are subject to a 10.5% withholding tax. The Income Tax Third Amendment Act 15 of 2011 came into force on 30 December 2011. It introduced a 10% withholding tax on interest earned by foreigners at Namibian Banks or Unit Trust schemes and the new section 35A introduces a 10% withholding tax on certain services, management and consultancy fees rendered by foreigners.

Double tax agreements may override Namibian withholding taxes as well as taxation of deemed source income. Namibia has double tax treaties with Botswana, France, Germany, India, Malaysia, Mauritius, Romania, Russia, South Africa, Sweden and the UK. Namibia is currently negotiating treaties with Belgium, the Seychelles, Singapore, Zambia and Zimbabwe.

VAT is charged at an effective rate of 15%. The import of goods or services is subject to VAT at 15% unless the goods or services are exempt. Imports by areas declared as Export Processing Zones are exempt from VAT. The export of goods is not subject to VAT. Customs duty is also payable.

LEGAL SYSTEM

Namibian law is based on Roman and Roman-Dutch law and is, because of the country's history, influenced by South African



law and to a certain extent by German and English law. Because the Namibian legal system shares its roots with the South African legal system and has developed in close connection to the South African legal system much use is made of South African case law and authorities when interpreting and applying Namibian law. Namibia adheres to the principles of rule of law, the supremacy of the Constitution and the independence of the judiciary.

INTELLECTUAL PROPERTY

Rights to intellectual property are protected under Namibian law largely by statute but also at common law. Some of the statutes overlap with the common law and with each other. Patents and designs are governed by an old South African Act, the Patents Designs, Trade Marks and Copyright Act 9 of 1916. New legislation (the Industrial Property Act 1 of 2012) has been passed but is not yet in force.

Trademarks are governed by the Trademarks Act 48 of 1973. Regulations specify the procedures to be followed by applicants and protection is afforded from the date of filing if the application is granted. The common law recognises that an unregistered mark used by a trader which distinguishes such trader's goods or services from those of others is of a proprietary nature and deserves protection. The Trademarks Act recognises such common-law rights by preserving the right to bring an action for passing off of the unregistered mark.

Any of the works listed in the Copyright and Neighbouring Rights Protection Act 6 of 1994 are eligible for copyright protection. Copyright comes into existence without registration and the Act prohibits the unauthorised reproduction, publication, broadcast, performance, transmission or adaptation of a literary, dramatic or musical work. Special provision is made for the protection of artistic works and of sound recordings, cinematograph films, television and sound broadcasts, published editions of works and computer programs.

FINANCIAL SERVICES/INSURANCE

Namibia has a well-established insurance industry which is to a great extent inherited from and interlinked with the South African insurance industry. Insurance is divided into long-term insurance (pertaining to life insurance, health, disability, funeral or sinking fund policies) and short-term insurance (relating to fire, marine, aviation, vehicles, guarantee and personal accident, sickness, general liability, damage to property, goods in transit, credit, railway rolling stock, legal expenses and expropriation and confiscation of property, personal and co-insurance business). Long-term and short-term insurance and the registration, cancellation and carrying on of business in relation thereto are regulated by the Long-Term Insurance Act and Short-Term Insurance Act.

Most types of risk can be insured in Namibia and the reinsurance business has gained ground in the country in recent years, in particular since the introduction of the State owned National Re-Insurance Company and the Namibia Financial Institutions Supervisory Authority (NAMFISA).

TREATIES AND BILATERAL AGREEMENTS

Namibia has ratified, acceded to, or is a member of various treaties and international agreements. In terms of article 144 of the Constitution of the Republic of Namibia, an international agreement binding upon Namibia forms part of Namibian law.

MEMBERSHIP OF INTERNATIONAL AND REGIONAL ORGANISATIONS

Namibia is a full member of a number of international and regional organisations including: United Nations (UN) and its agencies, International Monetary Fund (IMF), World Bank, World Trade Organisation (WTO), African Union (AU), The Southern African Development Community (SADC), Southern African Customs Union (SACU), British Commonwealth of Nations and the Lomé Convention.

ROAD AND TRANSPORT

Namibia has modern civil aviation facilities, an extensive well-maintained land transportation network and an important seaport at Walvis Bay. Construction continues to expand two major road arteries, the Trans-Caprivi and Trans-Kalahari Highways which will further open up the region's access to Walvis Bay.

WATER

Article 100 of the Namibian Constitution vests all natural resources including water in the State. The control, conservation and use of water for domestic, agricultural, urban and industrial purposes are regulated by statute. The Namibia Water Corporation Limited (NamWater) is a State-owned company dealing with bulk water supply and providing water-related services and facilities.

ENERGY

During the pre-independence period large areas of Namibia, including offshore, were leased for oil prospecting. Natural gas was discovered in 1974 in the Kudu Field off the mouth of the Orange River. The field is thought to contain reserves of over 1.3 trillion cubic feet of gas. In 2009 the government announced changes to the ownership structure of the Kudu project. Tullow Oil Plc which owned 70% of the Kudu gas field saw its stake drop to 31%. Japanese firm ITOCHU Corporation which owned 20% of the project now owns 15%. The Namibian government through state petroleum firm the National Petroleum Corporation of Namibia (NAMCOR) has a stake in Kudu, together with Tullow Oil Plc and Itochu. Plans are also underway to build the country's first combined cycle power station near Oranjemund. With power shortages facing the Southern African region the government has stated its commitment to develop the Kudu gas field. However, the supply of electricity in the short to medium term remains a challenge.

Namibia has a well-developed legislative framework governing the upstream and downstream oil business. Currently there are



thirteen companies exploring for oil and gas.

Namibia's electricity grid currently supplies only about 40% of its population. Electricity in Namibia is generated mainly by thermal and hydroelectric power plants. A number of new licences have been issued in respect of renewable energy generation, particularly photovoltaic power generation. Fourteen of these licences have been issued under the Renewable Energy Feed-in Tariff project of the Electricity Control Board.

TELECOMMUNICATIONS

The telecommunications industry in Namibia is regulated by the Ministry of Works, Transport and Telecommunication. Overall Namibia has a good telephone and radio frequency system and makes use of local broadcasting channels and wired and wireless internet connections. Telecom Namibia Limited is the national telecommunications operator established in August 1992 and wholly owned by the government but functioning as a commercialised company.

TOURISM

Namibia generally attracts eco-tourists with the majority visiting the Caprivi Strip, Fish River Canyon, Sossusvlei, the Skeleton Coast Park, Sesriem, Etosha Pan and the coastal towns of Swakopmund, Walvis Bay and Lüderitz. There are many lodges and reserves to accommodate eco-tourists.

MINING

Mining accounts for 8% of the GDP but provides more than 50% of foreign exchange earnings. Rich alluvial diamond deposits make Namibia a primary source for gem-quality diamonds. Namibia is the fourth-largest exporter of nonfuel minerals in Africa, is one of the world's largest uranium producers and the producer of large quantities of lead, zinc, tin, silver, and tungsten. The mining sector employs only about 3% of the population.

AGRICULTURE

Although Namibian agriculture (excluding fishing) contributed between 5% and 6% of Namibia's GDP for the past five years about 35-40% of the population depends on subsistence agriculture for its livelihood. Animal products, live animals and crop exports constitute about 10.7% of total Namibian exports. The government encourages local sourcing of agriculture products. Retailers of fruits, vegetables, and other crop products must purchase 27.5% of their stock from local farmers.

LABOUR RELATIONS

Employment relationships are regulated by the Labour Act (which applies to all employees, including foreign employees). Namibia has subscribed to various International Labour Organisation (ILO) conventions. In terms of the Namibian Constitution all persons have the right of freedom of association, which includes the freedom to form and join associations or unions. No employee may be dismissed without a valid and fair reason and without following a fair procedure. It is unfair

to dismiss an employee because of the employee's sex, race, colour, ethnic origin, religion, creed or social or economic status, political opinion or marital status. Foreign employees require a work visa if they intend to stay for a short while in Namibia (about three to six months). It is usually valid for three months and can be renewed a maximum of three times.

