

Country Guide

Namibia

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*GUIDE TO DOING BUSINESS IN:
NAMIBIA*

BY: KOEP & PARTNERS

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I. The Country At A Glance

The Republic of Namibia obtained its independence under United Nations Resolution Number 435 on 21 March, 1990, and as such is one of the youngest nations. The territory of Namibia includes the enclave, harbour and port of Walvis Bay and the offshore islands with effect from 1 March, 1994, when sovereignty of Walvis Bay was passed from the Republic of South Africa

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. 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.

Namibia is a multi-party democracy and the Constitution of the Republic of Namibia, 1990 is the supreme law. The Namibian population may be divided into three ethnic groups, namely black (87.5%), white (6%) and mixed (6.5%). The majority of the Namibian population belongs to the Ovambo tribe (about 50%). Other ethnic groups include the Kavango (9%), Herero (7%), Damara (7%), Nama (5%), Capriviian (4%), Bushment (3%), Baster (2%) and Tswana (0.5%). The country is predominantly Christian (between 80% and 90% of the population), with the remainder following indigenous beliefs. English is the official language in Namibia. There are, however, various other languages spoken, including Afrikaans, German, Otjiwambo, Otjiherero, Nama and Damara.

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. As at August 2016, the average exchange rate of the Namibia Dollar to the U.S. dollar was 13.3:1 and of the Namibia Dollar to the Euro 14.8:1.

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. Namibia is furthermore 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.

The Namibian economy is greatly dependent on the upstream minerals industry. The mining industry accounts for almost 8% of Namibia's GDP and more than 50% of its foreign exchange earnings. Namibia is a world-class producer of gem-quality rough diamonds, uranium oxide, special high-grade zinc and acid-grade fluorspar. It is also a producer of gold bullion, blister copper, lead concentrate, salt and dimension stone. 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 constituted about 10.7% of total Namibian exports. The government

encourages local sourcing of agriculture products. This industry has, however, shown very poor growth since Namibia became independent in 1990. The main agricultural products produced in Namibia include millet, sorghum, peanuts, grapes and livestock. Fishing is also an important industry in Namibia and has shown notable successes since independence. Notwithstanding this, however, the industry has stagnated. Other important industries in Namibia include petroleum (oil and gas), manufacturing, construction, tourism, transport, telecommunications and banking.

II. Investment Considerations

Since Independence, Namibia generally welcomed foreign investment and virtually all business activities were open to foreign investors. Namibia introduced the Foreign Investment Act in 1990, which is still in force and which affords protection to foreign investment and seeks to encourage foreign investment. Foreign nationals are protected by this legislation which guarantees the repatriation of funds and interest invested in Namibia.

Over the last few years, however, government has slowly started acquiring stakes in companies in various sectors, including mining, petroleum, tourism, telecommunication, energy and fishing. Furthermore, certain sectors are regulated and require a percentage local ownership, such as agriculture, energy and communications.

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 funding 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. A New Equitable Economic Empowerment Bill ("NEEEB") is currently being finalised by the Office of the Prime Minister.

Business in Namibia can be conducted through a number of different entities, most notably public and private companies, close corporations, branches of foreign companies registered in Namibia or business trusts. The Ministry of Industrialization, Trade and SME Development supervises industrial property and is responsible for the registration of companies, private corporations, patents, trademarks, and designs through its Business and Intellectual Property Authority (BIPA). 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.

III. The Namibian Legal System

Namibia was declared a German Protectorate 1884 and in 1890 the Imperial German Government assumed direct military and administrative control of Namibia by armed forces. At that stage Namibia was known as South-West Africa. South-West Africa remained a German colony until 1915, when it was occupied by the South African military forces at the request of the British Government. In 1919, South-West Africa became a Mandated Territory of South Africa. In terms of section 1(1) of Proclamation 21 of 1919, Roman-Dutch Law was made applicable in South-West Africa as is the case in South Africa. In 1990, Namibia finally gained its independence from South Africa. As a result of the control that South Africa had over Namibia for almost a

century, Namibian law is influenced to a large extent by South African law. The Namibian legal system is based on Roman-Dutch Law as developed in South Africa up to 1990 and also influenced to some extent by English Law as a result of the British colonial rule over South Africa from 1795 to 1910 (except between 1803 and 1806, when control of the Cape was briefly relinquished to the Dutch again). The Namibian legal system is therefore predominantly Civil Law with limited Common Law influence. The influence of German Law may also be seen in the Namibian approach to its mining and petroleum regulation. In terms of article 140 of the Constitution, all laws which were in force immediately before the date of independence remain in force until repealed or amended by act of Parliament or until they are declared unconstitutional by a competent court. As a result hereof, the pre-1990 South African law is still applicable in Namibia insofar as it is not inconsistent with the Constitution or an act of Parliament or declared invalid by a competent court. Article 66 further provides that both the customary and common law in force on the date of independence remain valid to the extent to which such customary or common law does not conflict with Constitution or any other statutory law.

There are generally no religious influences or prohibitions on the way business is conducted in Namibia. In terms of the Namibian Constitution, Namibia is a secular society and adheres to the principles of rule of law, the supremacy of the Constitution and the independence of the judiciary.

The judicial power in Namibia is vested in the Courts of Namibia, which consist of a Supreme Court, a High Court and the Lower Courts of Namibia. The Chief Justice presides over the Supreme Court, which may hear and adjudicate upon appeals emanating from the High Court, including appeals which involve the interpretation, implementation and upholding of the Constitution and the fundamental rights and freedoms guaranteed thereunder. The Supreme Court may also deal with matters referred to it for decision by the Attorney General or by Act of Parliament. The High Court has original and inherent jurisdiction to hear and adjudicate upon all civil disputes and criminal prosecutions, including constitutional cases and appeals from Lower Courts. The Labour Court is deemed to be a High Court in terms of the Labour Act.

The Lower Courts consist of the Magistrates Courts, Regional Courts, Periodical Courts, and various tribunals and special courts, such as the Immigration Tribunals and the special Court for Hearing Income Tax Appeals, District Labour Court, Children's Court, Maintenance Court, and Water Courts, which have been constituted by their respective parliamentary Acts to deal with particular matters. Their respective jurisdictions are defined in terms of the said Acts.

It is a fundamental principle of law that a court does not have any power over civil or criminal matters unless it falls within its jurisdiction. The Magistrate's Court can only give relief in matters in which it has jurisdiction in terms of the Act, and the High Court only has jurisdiction within the borders of Namibia. Whenever a matter is brought before a Namibian Court, it is necessary to allege that court's jurisdiction. If a court does not ordinarily have jurisdiction over a person, jurisdiction could in appropriate instances be founded or confirmed by means of arrest or attachment of goods.

The President, acting on the recommendation of the Judicial Service Commission, appoints the Chief Justice (in respect of the Supreme Court) and the Judge-President (who presides over the High Court) and such additional judges to the several Courts as the President may determine. The presiding officers of the Lower Courts are appointed in terms of the provisions of the various statutes regulating such Courts. A judge may be removed from office only by the President on recommendation by the Judicial Service Commission, and only on the grounds of mental incapacity or gross misconduct.

In addition to the Courts, the Constitution provides for an independent Ombudsman, who is appointed by the President on recommendation by the Judicial Service Commission. The Ombudsman acts as an independent investigator, mediator, advisor and above all guardian of the Constitution and the fundamental rights and freedoms thereunder

IV. Facilities and Infrastructure

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. There is an international airport in Windhoek and in Walvis Bay.

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.

Namibia's electricity grid currently supplies only about 40% of its population. Electricity in Namibia is generated mainly by thermal and hydroelectric power plants. 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.

V. Mining and Energy

In terms of article 100 of the Constitution of the Republic of Namibia, 1990, all natural resources (including minerals and petroleum) below and above the surface of the land and in the continental shelf and within the territorial waters and the exclusive economic zone of Namibia belong to the state, unless they are otherwise lawfully owned.

Mining in Namibia is regulated by the Minerals (Prospecting and Mining) Act 33 of 1992 ("Minerals Act"). Section 2 of this Act vests all rights in respect of minerals in the state. This Act furthermore provides for the administration of the minerals industry and access to mineral resources through various types of authorisations. 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.

The upstream petroleum industry in Namibia is primarily regulated by the Petroleum (Exploration and Production) Act 1991 (Act 2 of 1991) ("Petroleum Act"). The Petroleum Act provides for the reconnaissance, exploration, production and disposal of petroleum as well as the control over petroleum. It provides that all rights in respect of petroleum vest in the State notwithstanding any right with regard to the ownership of the land where the petroleum is found. 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's electricity grid currently supplies only about 40% of its population. Electricity in Namibia is generated mainly by thermal and hydroelectric power plants. The REFIT (Renewable Energy Feed-In Tariff) program was initiated by the Electricity Control Board and NamPower to coordinate the efforts of the multiple Independent Power Producers (IPPs) who had been granted generation licenses in Namibia within the last few years. The Projects are in their final stages, with financial close to be reached by May 2016. The result will be approximately 17 IPPs with projects of a maximum of 5MW each, to be constructed within the coming months. The Tariffs in respect of the projects were predetermined and set by the ECB, as were the Power Purchase Agreements concluded with each IPP.

VI. Environment

The mission of the Ministry of Environment and Tourism is to maintain and rehabilitate essential ecological processes and life support systems, to conserve biological diversity and to ensure that the utilisation of natural resources is sustainable for the benefit of all Namibians, both present and future, as well as the international community. This is also provided for in the Constitution. A major step in the legislating of environmental policy in Namibia was taken when the Environmental Management Act 7 of 2007 ("EMA") finally came into operation on 6 February 2012. Recently, agencies and bodies have started to take the enforcement of environmental law much more seriously than in the past. There is a general realisation of the importance of sound environmental laws and policies, and attempts are made at reforming the existing, out-dated environmental laws.

Environmental permits and licences are required for a range of activities, including for dealing with explosives, water, hazardous substances, substances that may cause atmospheric pollution, fish, honey, activities taking place in classified forests and atomic energy. The EMA also states that the Minister of Environment and Tourism may list activities which may not take place without an environmental clearance certificate. This list was published on 6 February 2012 when the EMA came into operation and covers a wide range of activities. None of these activities may be undertaken without an environmental clearance certificate.

VII. 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. The threshold for VAT registration is N\$500,000. 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.

VIII. 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.

IX. Financial Services and 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).

X. 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.

Foreign ownership of agricultural land is limited. The government's land reform policy is shaped by two key pieces of legislation, namely the Agricultural (Commercial) Land Reform Act 6 of 1995 and the Communal Land Reform Act 5 of 2002. A Land Bill was published recently, 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

XI. Employment

Labour and employment law in Namibia is governed by the Labour Act 11 of 2007. This is a comprehensive Act for employees and employers. The Act further encompasses the Basic Conditions of Employment. Employees are prohibited from working for more than 45 hours in any week. Employees must be remunerated for any overtime work done at the rate of at least one and one-half times the employee's basic wage and double the employee's basic wage if the employee works overtime on a Sunday or a public holiday. Employees are entitled to at least 24 consecutive working days' annual leave on full basic salary in each year. Employees are further entitled to sick and compassionate leave of at least day for every 26 days worked if the employee has worked for 12 months or less and at least 30 working days for employees who have worked for more than 12 months. Women are entitled to maternity leave of at least 12 weeks.

Employees and Employers have statutory duties to which they are expected to comply with. Additionally, employers are expected to adhere to a set standard of fair dismissal when dismissing employees. Employees are entitled to a severance package of at least one week's remuneration for each year the employee provided continuous service to the employer. The Labour Act further establishes Trade Unions and Employer's organisations as well as dispute resolutions methods including arbitration methods. The Act also establishes

labour institutions such as the Labour advisory council, the labour court, Labour Commissioner, Labour Inspectorate equipped to deal with labour matters exclusively.

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.

Immigration law in Namibia is governed by the Immigration Control Act 7 of 1993. In terms of the Act, any person entering Namibia must present a valid passport at the immigration point at a border post or the airport. All applications for visas and permit must be submitted to the Ministry of Home Affairs and Immigration. Tourists may apply for a tourist visa which enables them to visit Namibia for 90 days in a year. Tourists from certain countries including South Africa, Australia, Great Britain, Germany, Angola, United States of America, Canada and Japan etc do not require a tourist visa when visiting. Persons who wish to carry on profession or employment in Namibia including volunteer work must have a valid work or business visa in their passport. A business visa is required for business activities including but not limited to potential investors, business people attending conferences, attending short conferences (less than 90days) etc. A work visa is required for persons who enter Namibia for the purpose of carrying on employment. A work visa is valid for 3months only and if the person wishes to extend their employment time, an application for a work permit must be done.