



Namibia (General Business)

Overview

- Located in the South-West of Africa, Namibia is the 35th largest country in land area and has the fifth lowest population density in the world.
- Namibia possesses a wide variety of different natural resources. Its natural resources exports include, among others, diamonds, oil and gas, zinc and copper.
- Namibia's government was democratically elected and the country is known for its political stability.
- Namibia's currency, the Namibian Dollar, is generally stable and linked to the South African Rand, which remains legal tender in Namibia since the introduction of the Namibian Dollar.
- Namibia has demonstrated strong economic performance when compared to similar countries. Namibia's economy was not significantly affected by the COVID-19 pandemic.
- Foreign investments are encouraged in Namibia, the government has introduced extremely competitive incentive regimes and investor-friendly legislative framework.
- Namibia's credit risk rating is one of the lowest in Africa (BB).

Membership of regional and international treaties and organizations

Namibia is a member of 47 international organisations, including:

- The World Trade Organization (WTO)
- The World Bank
- British Commonwealth of Nations
- The Lomé Convention
- United Nations (UN)
- International Monetary Fund (IMF)
- African Union (AU)
- The Southern African Development Community (SADC)
- Southern African Customs Union (SACU)

Legal environment

- Namibia's legal system is based on Roman-Dutch law, but it is also highly influenced by South African common law.
- Namibia's written Constitution is liberal, democratic and modern. It has only been amended twice since it came into effect on 21 March 1990.
- Namibia's Constitution enshrines the right to private property but allows the State to expropriate property in the public interest.
- Article 100 of Namibia's Constitution recognizes the sovereign ownership of natural resources.

Namibia Investment Centre (NIC)

- The NIC was established in 1990 by the Ministry of Trade under the Foreign Investment Act No. 27 of 1990.
- The NIC's major role is to promote foreign direct investment, offering services such as applications for work permits and assistance in finding premises or facilitating joint ventures between local and foreign companies.

Business entities

- Namibian companies are regulated by the country's Companies Act, based on the South African Companies Act and English Company Law.
- Companies must be registered with the Registrar of Companies in the Ministry of Trade and Industry in Windhoek.
- Companies must pay an annual duty calculated by reference to their issued share capital.
- Companies are obliged to maintain certain statutory and accounting records.
- The different forms of companies that can be incorporated include public companies, private companies, branches of foreign companies, closed corporations, partnerships, sole proprietorships and business trusts. No restrictions on the number of shareholders apply.

Taxation

- The standard Corporate income tax is fixed at 32%. Mining companies are subject to different tax rates: 37.5% (or 50% for diamond mining companies plus a 10% surcharge).
- Income tax on dividends differentiates between local and foreign shareholders: local shareholders are exempt from such tax whereas income tax on dividends for foreign shareholders vary between 10% (when the shareholder holds more than 25% of shares of the company) and 20% in other cases.
- Transfer pricing legislation has been in place since 2005.
- Thin capitalization rules apply (Section 95A(2) of the Income Tax Act).
- There are no capital gains and no estate duty taxes.
- Namibia is a signatory to several double taxation treaties, including with Botswana, France, Germany, India, Malaysia, Mauritius, Romania, Russia, South Africa, Sweden and UK.

Exchange controls

- Namibia is part of the Common Monetary Area that includes Lesotho, Eswatini and South Africa.
- Investments from South Africa to other countries in the Common Monetary Area are exempt from exchange control approval, however, approval from the host country might be needed.
- Exchange controls are determined by the Ministry of Finance and carried out by the country's central bank, the Bank of Namibia, via authorized dealers.
- There are different rules for residents of the Common Monetary Area (no restrictions on trade and exchange in this case) and non-residents.
- There are no restrictions on trading of dividends and profits, however, they are controlled by the Bank of Namibia.
- Non-residents of the Common Monetary Area require exchange control permission to obtain loan funds from abroad (but not for equity funding), as well as payment of royalties, technical and management fees.
- Namibia's exchange control regulations are as strict as South Africa's regulations (a requirement applicable to all members of the Common Monetary Area).

Bilateral investment treaties (BITs)

Namibia has entered into bilateral investment treaties with:

- Austria
- France
- Germany
- the Netherlands
- Switzerland
- Spain

Some of which afford protection against expropriation.

Taking security - general

- It is possible to take security over both immovable and movable assets.
- General security agreement can be entered into but it only creates a personal right of the creditor to be granted security and does not create effective security over the relevant assets.
- Security bonds (mortgage and notarial) rank in the order in which they were executed but waiver of priority is possible. Registration of security bonds at the Deeds Registry is necessary and takes around 14 days.
- Security can be taken (by way of cession and/or pledge) over receivables, cash in bank accounts and companies' shares.
- Security trust is recognized under the laws of Namibia but the role is usually with an SPV created for that purpose.

Taking security - movables

Effective security over movable assets may be created by:

- (i) handing the movable asset over to the creditor (transfer of possession) by way of possessory pledge: upon execution of a pledge agreement, the pledgor must hand over the pledged assets to the pledgee (transfer of possession) and the pledge will not be valid without delivery of the assets (where not feasible, a symbolic transfer is possible provided the pledgee is granted control over the pledged asset(s)), or
- (ii) if delivery of the secured asset is not possible, registering a notarial bond over the secured movable asset: a creditor may register either (i) a general notarial bond over all of the movable assets of the debtor, or (ii) a specific notarial bond over an identified asset of the debtor. A notarial bond is prepared by a notary public and must be executed at the Deeds Registry by the debtor (or duly authorized attorney) and attested by the Registrar of Deeds.

Taking security - immovables

- Security over immovable property is taken by registering a mortgage bond over such property. In accordance with the legal principle of superficies solo cedit, everything that is permanently attached to the property forms part of the property and will also be covered by the mortgage bond. A mortgage bond must be executed in the presence of the Registrar of Deeds either by the owner of the property, or by a duly appointed attorney. The Registrar will attest the bond in the presence of the owner (or attorney). One mortgage bond can only secure receivables arising from the same obligation and can cover future debt (covering bond).

Choice of law and dispute resolution

- Foreign court judgments are enforceable in Namibia by the institution of a new action in a Namibian court.
- According to the Enforcement of Foreign Civil Judgements Act 218 of 1994, foreign court judgements of designated countries are recognised in Namibia (South Africa is currently the only designated country for this purpose).
- Signatory to the Multilateral Investment Guarantee Agency (MIGA).
- Signatory to the International Centre for the Settlement of Investment Disputes (ICSID) since 1998, however deposit of its ratification is still pending.

Mayer Brown is a distinctively global law firm, uniquely positioned to advise the world's leading companies and financial institutions on their most complex deals and disputes. With extensive reach across four continents, we are the only integrated law firm in the world with approximately 200 lawyers in each of the world's three largest financial centers—New York, London and Hong Kong—the backbone of the global economy. We have deep experience in high-stakes litigation and complex transactions across industry sectors, including our signature strength, the global financial services industry. Our diverse teams of lawyers are recognized by our clients as strategic partners with deep commercial instincts and a commitment to creatively anticipating their needs and delivering excellence in everything we do. Our "one-firm" culture—seamless and integrated across all practices and regions—ensures that our clients receive the best of our knowledge and experience.

Please visit [mayerbrown.com](https://www.mayerbrown.com) for comprehensive contact information for all Mayer Brown offices.

Mayer Brown is a global services provider comprising associated legal practices that are separate entities, including Mayer Brown LLP (Illinois, USA), Mayer Brown International LLP (England), Mayer Brown (a Hong Kong partnership) and Tauil & Chequer Advogados (a Brazilian law partnership) (collectively the "Mayer Brown Practices") and non-legal service providers, which provide consultancy services (the "Mayer Brown Consultancies"). The Mayer Brown Practices and Mayer Brown Consultancies are established in various jurisdictions and may be a legal person or a partnership. Details of the individual Mayer Brown Practices and Mayer Brown Consultancies can be found in the Legal Notices section of our website. "Mayer Brown" and the Mayer Brown logo are the trademarks of Mayer Brown.

© 2022 Mayer Brown. All rights reserved.

Attorney Advertising. Prior results do not guarantee a similar outcome.

Americas | Asia | Europe | Middle East

[mayerbrown.com](https://www.mayerbrown.com)