Business entities and registration procedures
The most common business entities in South Africa are:

1. Companies
2. Close corporations
3. Partnerships and sole traders
4. Joint ventures
5. Local branch of a foreign company
6. Business trusts

1. Companies (private and public)
These entities may be public (limited) or private (proprietary limited), and are the most common investment vehicles for foreign investors operating in South Africa. They exist as separate legal entities from their shareholders and/or members. No distinction is made in the Companies Act between companies that are locally owned and those that are foreign owned and, once formed, a company has an unlimited lifespan.

Both public and private companies must be incorporated and registered with the Registrar of Companies. Companies incorporated in South Africa must have a registered office and maintain certain statutory and accounting records in South Africa. If the accounting records are maintained outside of the Republic, the company must receive financial information and returns that will enable the statutory financial statements to be prepared.

Approval of the name of the company must be obtained from the Registrar of Companies before incorporation. Public companies may offer their shares for sale to the public, although they need not be listed on the stock exchange or the public to hold an interest in their shares.

The number of shareholders is unlimited, there are no restrictions on the transfer of their shares, and they must file a copy of their annual financial statements with the Registrar of Companies, which are available for public inspection.

Private companies, on the other hand, may not offer their shares for sale to the public. The right of transfer of their shares is restricted and the number of members is limited to 50. Private companies are not required to file their annual financial statements with the Registrar of Companies; thus, they are not available to the general public. They must include the word "Proprietary" or (Pty) at the end of the registered name immediately before the word "Limited" or "Ltd". For both types of companies, an audit by a registered accountant and auditor is obligatory.

The Companies Amendment Act, 1999 (Act 37 of 1999) makes provision for:
• A company to acquire its own shares under certain circumstances, thereby providing a mechanism to restructure the company’s capital and unlock shareholder value;
• Disclosure of beneficial interest in securities to enable companies to ascertain who its shareholders are; and
• The mandatory appointment of a company secretary for all public companies, excluding a share block company.
In order for the company to buy back its own shares, the following conditions must be met:

- The company’s articles of association must permit share buy backs
- Shareholders must be circularized regarding the proposed buy back, and a special resolution must be passed by the shareholders authorising the buyback
- The company should be solvent and liquid (otherwise the directors will be jointly and severally responsible); and following the buyback, the company’s share capital should not consist wholly of redeemable shares.

1.1 Registration requirements
All required registration forms may be purchased from a stationer dealing in statutory forms for approximately R100. To reserve a name, a CM5 application form (duplicate copies are no longer required), stamped with R50 in revenue stamps, must be submitted to the Registrar’s office. In order to save time and costs, it is recommended that three to four alternative names be furnished in order of preference. A preliminary search can be done on the Companies and Intellectual Property Registration Office of South Africa (CIPRO) website.

Following approval, the name will be reserved for a period of two months. Within this period, the documents for incorporation should be submitted. An extension of one month may be granted with the submission of the CM6 form, stamped R20 in revenue stamps. The Registrar must receive the application for extension before the end of the first two-month period.

Legal and other professional fees relating to the registration of a company depend on the complexity of the individual application. For ordinary applications, without complications, legal costs start at about R4 500. Standard versions of a memorandum and articles of association are included in the Companies Act. A company may choose to submit its own version. However, this may slow down the approval process, as they would require close examination by the Registrar’s office.

All companies must have an independent auditor to produce annual financial statements. At the time of incorporation, the auditor is required to sign an acceptance of the office. Registration applications must be submitted by hand to the Office of the Registrar in Pretoria. If no errors or omissions are made, the application will be processed in three (3) to five (5) business days.

A complete application includes:
- Copy of an approved CM5
- Power of attorney (if an attorney is used or if more than one subscriber exists)
- CM22 (notice of postal address and registered office address), in duplicate
- Memorandum and articles of association, in duplicate (one copy bound in book form and certified by a notary public)
- CM1 certificate of incorporation
- CM2 (first page of memorandum of association), stamped with a minimum registration fee of R350, plus R5 per R1 000 of share capital or part thereof and/or R5 per 1 000 shares if no-parvalue shares
- CM44 (signature page for subscribers)
- CM46 (certificate to commence business), stamped R60
• CM47 for each director is being conducted by the members who must be natural persons (i.e. individuals). Another company, close corporation or trust cannot, therefore, own a close corporation. In a close corporation, the members have the rights and obligations of both shareholders and directors, and consequently, ownership and management of the corporation are not separated.

2. Close Corporations
Close corporations may have up to 10 members. In general, few formal requirements are imposed on close corporations. The capital of close corporations is called a "contribution". A close corporation is not subject to the stringent capital maintenance rules applicable to share capital in companies. The interest of a member of a close corporation is represented by a percentage, which is established on registration of the founding statement, and which may be changed by the registration of an amended founding statement.

Members of a close corporation enjoy limited liability, which may be lost if they violate certain provisions of the Close Corporations Act. The Companies Act and the Close Corporations Act both allow the conversion of a company to a close corporation and the reverse. They also provide that the legal entity continues after the conversion. Reporting requirements for close corporations are not as onerous as those for companies. A statutory audit is not required; however, the close corporation must have an accounting officer who must report that the annual financial statements are in agreement with the accounting records.

2.1 Registration requirements (Close Corporation)
Close corporations are required to register with the Registrar of Close Corporations. The reservation of a name is similar to that of a company. No auditors are required for the registration of Close Corporations and lawyers are not necessary. The corporation will need to appoint an accounting officer.

Due to the great number of applications received by the Registrar’s office - up to 650 daily - approval takes five (5) business days. Applications may be submitted either by mail or by hand and should include the founding statement application, the CK1 form in duplicate and an approved CK7 form, and an original letter of consent from the accounting officer.

3. Partnerships and sole traders
Partnerships and sole traders are subject to few statutory requirements, but the partners and the traders generally do not have the protection of limited liability. However, in a partnership in which not all the names of the partners are disclosed, the undisclosed partners may limit their liability to third parties to the amount of their contribution to the partnership.

Under the Companies Act, any unincorporated company, association or partnership may not consist of more than 20 persons, except in the case of certain professional partnerships, where there is no limitation on the number of partners.

Registration is not required and there are no statutory reporting requirements, except that for tax purposes financial statements must be produced in sufficient detail to enable tax assessments to be made by the South African Revenue Service.
4. **Joint ventures**
A joint venture is a contractual relationship between two or more enterprises engaged in a trade or business that does not qualify as a partnership.

5. **Local branch of a foreign company**
With the exception of banking and insurance companies, any foreign company may establish a place of business and carry on its activities in South Africa without forming a separate locally incorporated company. The establishment of a branch requires registration with the Registrar as an "external company" under Section 32 of the Companies Act within twenty-one (21) days after the establishment of a place of business in the Republic.

5.1 **Registration requirements**
The application requirements to establish a branch include:
- A completed application form
- A certified copy of the memorandum and articles of association of the company and a certified translation in one of the official languages of the Republic
- A notice specifying the registered office
- A notice of the name and address of the person authorised to accept service on behalf of the company. The legal costs should be less expensive than for incorporating a South African company.

A registered office must be established in South Africa and the company must appoint a South African resident to act as its legal representative. A local auditor must be appointed and audited financial statements in respect of the South African branch, together with a certified copy of the most recent financial statements prepared under the requirements of its country of incorporation, must be filed with the Registrar of Companies. In certain circumstances, an exemption may be granted in respect of these filing requirements.

5.2 **Local equity participation**
There are no local equity requirements, except for major banking institutions where local control is required by government policy. However, in the case of business entities with non-resident ownership equal to or greater than 75%, restrictions exist in relation to local borrowings and debt equity ratios. The company will be taxed at a flat rate of 29%, but no Secondary Tax on Companies (STC) is payable. An external company is taxed on 50% of its net capital gain.

6. **Business trusts**
In South Africa, the Trust Property Control Act, 1988 governs the formation and operation of trusts. Through a trust, trustees for the benefit of nominated beneficiaries can carry on a business. The trust affords limited liability in that neither the trustees nor the beneficiaries are liable for the obligations thereof.

The trust does not have a separate legal personality (other than for taxation purposes). The trust assets vest in the trustees who hold them for the benefit of others. A trust is usually formed by means of a trust deed that needs to be lodged with the Master of the High Court. No trustee can act in the capacity of a trustee until a written authorisation is obtained from the Master. The Master can request security, but exemption is usually granted.
The benefit of a trust is that the onerous provisions of the Companies Act do not apply. A trust need not submit financial statements and does not have to appoint an auditor. There is no limit on the number of trustees or beneficiaries that are permitted.

There are income tax benefits in making use of a trust. Where income is distributed by a trust, it is considered the income of the recipient and is taxed in the hands of the recipient, and not the trust. In this way, effective splitting of income can be achieved, subject to the tax avoidance provisions of the South African income tax legislation.

Distributions to beneficiaries of profits of the trust are not subject to STC, as with companies and close corporations. A trust is taxed on 40% of its net capital gain.

Further information:

**Companies and Intellectual Property Registration Office of South Africa (CIPRO)**

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