

The logo for Primerio, featuring the word "Primerio" in a white sans-serif font. The number "1" is stylized with a yellow and red gradient. The background is a dark grey, textured surface with a repeating pattern of raised, geometric shapes that resemble a honeycomb or a grid of triangles.

Primerio

Foreign Direct Investment Guides for Africa

Featured Jurisdictions:

Botswana, COMESA, EAC, Egypt,
Eswatini, Ethiopia, Kenya, Mauritius,
Morocco, Namibia, Nigeria,
Seychelles, South Africa, Tanzania,
Zanzibar, Zambia and Zimbabwe

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List of acronyms and abbreviations

ACF – African Competition Forum
 CCC – COMESA Competition Commission
 CCOPOLC – Competition and Consumer Policy and Law
 Committee
 CEMAC – Central African Economic and Monetary
 Community
 COMESA – Common Market for Eastern and
 Southern Africa
 EAC – East African Community
 ECOWAS – Economic Community of West African
 States
 ICN – International Competition Network
 SADC – Southern African Development Community
 WAEMU – West African Economic and Monetary
 Union

Preface

Consistent with international trends, foreign direct investment regimes are likely to play a more prominent role across the African continent. As more jurisdictions adopt and enforce merger control laws, the FDI regulatory framework is set to be bolstered across several territories as well.

Primerio is pleased to produce this user-friendly reference Guide which contains an overview of the current framework relevant to FDI analysis.

This Guide complements Primerio's African Merger Control Guide. The latest copy of Primerio's merger control Guide can be accessed [HERE](#).¹

We wish to thank all our partners who have contributed to this Guide.

Should you require any further information about this Guide, or Primerio's expertise and experience in Africa, please do get in touch.

Please visit our website <https://primerio.international/> for more information about our firm, its people and our track record.

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Botswana

1 What is the applicable legislative framework?

Companies Act, 2003;
Trade Act, 2003;
Industrial Property Act, 2010;
Copyright and Neighbouring Rights Act, 68:02; and
Acquisition of Property Act. 1995.

2 Who are the relevant agencies?

Ministry of Trade and Investment;
Botswana Investment and Trade Centre.

3 What is the definition of a foreign acquiring firm?

None of the relevant Acts provide a definition of a 'foreign acquiring firm'. However, a 'foreign acquiring firm' may generally be defined as a firm that acquires a lasting interest in a firm that is resident in an economy other than that of the acquiring firm.

4 Is there a separate Foreign Direct Investment Regime?

A foreign direct investment regime, that is separate from the merger regime, exists however, this distinction is informal and there is no specific foreign investment legislation. Instead, investment is regulated in accordance with various pieces of legislation.

5 Are there sector specific restrictions or overall restrictions?

The restrictions are sector specific, being regulated by various pieces of legislation, and include:

- In terms of the Companies Act, the requirement that any foreign company wishing to operate in Botswana must register with the Companies and Intellectual Property Authority and obtain the licenses prescribed by the Trade Act of 2008;
- Small-scale retail and manufacturing: The Industrial Development (Amendment) Regulations of 2008 as well as the Trade Act of 2008 reserve participation in this sector to citizens of Botswana or companies wholly owned by Botswana citizens;
- Small-scale mining: The Mines and Minerals Act of 1999 limits this sector to citizens of Botswana or companies wholly-owned by citizens of Botswana;
- The Petroleum (Exploration and Production) Act of 1981 provides that no licence shall be granted to or held by an individual who is not a citizen of Botswana or has not been

ordinarily resident in Botswana for a period of four years or by a company which has not established a domicile in Botswana.

Further, the Trade Act provides that a joint venture or a medium business enterprise between a citizen and a non-citizen may be granted a license in a reserved trade or business where the citizen has a minimum beneficial ownership of 51%. This restriction applies to 35 sectors across Botswana, including: specific government construction projects and certain activities related to road and railway construction and maintenance. A non-citizen may hold a majority interest in the joint venture or medium business enterprise upon approval by the Minister.

6 Are there any prescribed thresholds?

The Botswana Investment and Trade Centre prescribes a threshold of USD 500 000 for foreign investments.

Certain aspects of Botswana's foreign direct investment regime overlap with aspects of its merger control regime. For more information about Botswana's merger control regime, please access Primerio's Merger Control Guide [HERE](#)

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COMESA

7 What is the applicable legislative framework?

The Revised Investment Agreement for the COMESA Common Investment Area (“CCIA”)

8 Who are the relevant agencies?

The COMESA Common Investment Area Committee.

9 What is the definition of a foreign acquiring firm?

The Regulations do not provide the definition of a ‘foreign acquiring firm’. However, a ‘foreign acquiring firm’ may be generally defined as a firm that acquires a lasting interest in a firm that is resident in an economy other than that of the acquiring firm.

The CCIA defines a “COMESA investor” as a natural or juridical person of a member state making an investment in another member state, in accordance with the laws and regulations of the member state in which the investment is made.

10 Is there a separate Foreign Direct Investment Regime?

There is a separate foreign merger regime which is principally governed by the Revised investment Agreement for the COMESA Common Investment Area.

11 Are there sector specific restrictions or overall restrictions?

The objective of the CCIA is to limit and reduce restrictions associated with foreign investments into member states. However, Article 22 of the CCIA provides that restrictions can be applied to protect or enhance public welfare objectives, such as:

- National Security;
- Public morals;
- Human, animal or plant life or health;
- Environment; or
- Public health and safety.

Article 25 of the CCIA requires COMESA investors to comply with all the applicable domestic laws and measures of the host state. In this regard, the sector specific restrictions of member states are binding on foreign investors.

12 Are there any prescribed thresholds?

As Article 25 of the CCIA requires COMESA investors to comply with all applicable domestic laws and measures of the host state, the threshold requirements, if any, of the respective COMESA member states are applicable to foreign investors.

13 Are there any exceptions?

Any exceptions provided for by the Domestic laws of COMESA member states are applicable.

Certain aspects of COMESA's foreign direct investment regime overlaps with aspects of its merger control regime. For more information about COMESA's merger control regime, please access Primerio's Merger Control Guide [HERE](#)

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EAC

1 What is the applicable legislative framework?

The Protocol on the Establishment of the East African Customs Union;
East African Community Competition Act 2006 (“Act”);
East African Community Competition Regulations, 2010.

2 Who are the relevant agencies?

East African Community (“EAC”);
East African Business Council.

3 What is the definition of a foreign acquiring firm?

The Act does not provide the definition of a ‘foreign acquiring firm’.

4 Is there a separate Foreign Direct Investment Regime?

Foreign Direct Investment does not have its own specific legislation but is rather governed by various other pieces of legislation. Despite this, the foreign direct investment regime is separate from the EAC merger regime.

5 Are there sector specific restrictions or overall restrictions?

Article 3(c) provides that the objective of the Customs Union is to enhance domestic, cross border and foreign investment in the Community.

However, Article 22(1) provides that a Partner State may, introduce or continue to execute restrictions or prohibitions affecting:

- The application of security laws and regulations;
- The control of arms, ammunition and other military equipment or items;
- The protection of human life, the environment and natural resources, public safety, public health or public morality; and
- The protection of animals and plants.

Further, each Partner State has its own regulatory regimes for foreign direct investment, which may include sector specific restrictions.

6 Are there any prescribed thresholds?

The threshold requirements, if any, of EAC Partner States are applicable to foreign investors – as provided by Article 22(1).

7 Are there any exceptions?

Exceptions provided for by EAC Partner States domestic foreign direct investment regulations would be applicable.

Certain aspects of EAC's foreign direct investment regime overlaps with aspects of its merger control regime. For more information about EAC's merger control regime, please access Primerio's Merger Control Guide [HERE](#)

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Egypt

1 What is the applicable legislative framework?

Investment Law No.72 of 2017 and its Executive Regulation;
Companies Law No. 159 of 1981 and its Executive Regulation; and
Capital Market Law No. 95 of 1992 and its Executive Regulation.

2 Who are the relevant agencies?

General Authority for Investment and Free Zones (“GAFI”); and

3 What is the definition of a foreign acquiring firm?

The Law and the Regulations do not provide a definition for a ‘foreign acquiring firm’.

4 Is there a separate Foreign Direct Investment Regime?

Egypt does have a separate foreign direct investment regime. However, there is no specific foreign direct investment legislation. Instead, foreign investment is regulated by the:

- Investment Law;
- Companies Law;
- Capital Market Law; and
- Commercial Laws.

5 Are there sector specific restrictions or overall restrictions?

Foreign investors and national investors are subject to the same regulations, as set out in Article 3 of the Investment Law. However, this equal treatment does not extend to:

- **hydrocarbon and real estate sectors:** which both require a joint venture to operate;
- **Tour guiding:** foreign nationals are prohibited from working as a tour guides without prior authorisation from the Ministry of Tourism;
- **Importing for the purpose of trade:** Law No. 7 of 2017 stipulates that wholly foreign investors cannot import goods and materials for the purposes of trade.
- **Travel agencies:** Law No. 120 of 1982 stipulates that foreign nationals can only act as a commercial agent once they have acquired Egyptian nationality;
- **Civil Aviation:** Shares held by foreign investors cannot exceed 40% in businesses

involved in either scheduled or non-scheduled international and internal air travel of passengers or cargo;

- project capital must be 100% Egyptian for airline agency tasks; and
- the maximum project capital that can be held by a foreign investor cannot exceed 49%;
- **Foreign employment:** The Companies Law restricts the number of foreign workers that a company may employ to 10% with earnings not exceeding 20% of the total salaries paid by the company to its workers. Foreign professional and administrative employees may comprise 25% of the employees with earnings not exceeding 30% of the total salaries paid by the company to these employees.
- **Oil and Gas:** The Government retains the right to 50% of the shares of all oil and gas operating companies.
- Additionally, foreign investors are limited in terms of land ownership. In this respect, no foreigners may acquire agricultural land and the acquisition of desert land is restricted to 10,000 feddans and 50,000 feddans (where one feddan is approximately one acre) for partnerships and joint stock companies respectively.

6 Are there any prescribed thresholds?

There are no threshold requirements for foreign investment.

Certain aspects of Egypt's foreign direct investment regime overlaps with aspects of its merger control regime. For more information about Egypt's merger control regime, please access Primerio's Merger Control Guide [HERE](#)

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Eswatini

1 What is the applicable legislative framework?

Investment Promotion Act of 1998.

2 Who are the relevant agencies?

Eswatini Investment & Trade Promotion Authority.

3 What is the definition of a foreign acquiring firm?

The Act does not provide for a definition of a 'foreign acquiring firm'.

4 Is there a separate Foreign Direct Investment Regime?

The foreign investment regime is separate from the merger regime and is regulated by the Investment Promotion Act of 1998.

5 Are there sector specific restrictions or overall restrictions?

In terms of section 19(1) of the Investment Promotion Act, any person, irrespective of whether they are a citizen or not, may freely and without restriction on ownership make an investment in any sector of the economy.

However, this freedom of investment does not extend to:

- the manufacture of firearms, ammunition, chemical and biological weapons, and other defence weapons;
- manufacture involving radioactive materials;
- the manufacture of explosives;
- manufacture involving hazardous waste treatment or disposal;
- security printing and minting.

6 Are there any prescribed thresholds?

There are no foreign direct investment thresholds.

7 Are there any exceptions?

The Act does not provide for any exceptions.

Certain aspects of Eswatini's foreign direct investment regime overlaps with aspects of its merger control regime. For more information about Eswatini's merger control regime, please access Primerio's Merger Control Guide [HERE](#)

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Ethiopia

1 What is the applicable legislative framework?

Investment Proclamation (No. 1180/2020) (“Proclamation”).

2 Who are the relevant agencies?

Ethiopian Investment Commission (“EIC”);

The Trade Competition and Consumers’ Protection Authority (“TCCPA”).

3 What is the definition of a foreign acquiring firm?

Although there it does not provide specifically for a foreign acquiring firm, the Proclamation defines a “Foreign Investor” as any of the following:

A foreign national;

An enterprise in which a foreign national has an ownership stake;

An enterprise incorporated outside of Ethiopia by an investor firm;

An enterprise established jointly by any of the above; or

An Ethiopian permanently residing abroad and preferring treatment as a foreign investor.

4 Is there a separate Foreign Direct Investment Regime?

The foreign direct investment regime is regulated in the:

- Investment Proclamation No. 1180/2020;
- Industrial Parks Proclamation No. 886/2015;
- Foreign Exchange laws;
- Various Tax laws;
- Labor Law Proclamation No. 377/2003;
- Commercial Registration and Business Licensing Proclamation no. 980/2016;
- Trade Practices and Consumer Protection No. 813/2013;
- Commercial Code of Ethiopia, Proclamation No.166/1960; and

- Civil Code of Ethiopia 1960.

5 Are there sector specific restrictions or overall restrictions?

Section 6 of the Investment Proclamation provides that an investor may engage in any area of investment except where it would be contrary to law, morals, public health or security. However, some sectors are specifically reserved for joint ventures with the government or for domestic investors

The following sectors require investments to be jointly made with the Government:

- Manufacturing of weapons, ammunition and explosives used as weapons or to make weapons,
- Import and export of electrical energy,
- International air transport services,
- Bus rapid transit, and
- Postal services excluding courier services.

There is an extensive amount of sectors exclusively reserved for domestic investors, with the most prominent examples being:

- Banking, insurance and microfinance businesses excluding capital goods finance;
- The transmission and distribution of electrical energy through the national grid system;
- Primary and middle level health services;
- Wholesale trade, petroleum, petroleum products;
- Construction and drilling services below Grade 1;
- Security services; and
- Brokerage services

Joint investment with domestic investors is required for the following sectors:

- Freight forwarding and shipping agency services;
- Domestic air transport service;
- Cross-country public transport service using buses with a seating capacity of more than 45 passengers;

- Urban mass transport service with large carrying capacity;
- Advertisement and promotion services;
- Audiovisual services, motion picture and video recording, production and distribution; and
- Accounting and auditing services.

6 Are there any prescribed thresholds?

Article 9(1) of the Proclamation provides that any foreign investor must allocate a minimum capital of USD200 000 for a single investment project to be able to invest in terms of the proclamation.

Where a foreign investor is jointly investing with a domestic investor, the minimum share capital requirement is USD150 000.

7 Are there any exceptions?

Article 9(4) of the Proclamation states that the minimum capital requirements do not apply to:

- Foreign investors re-investing their profits or generated from an existing enterprise in any investment area open to foreign investors;
- Persons elected as members of board of directors following the change of a private limited company to a share company; and
- A foreign investor buying the entirety of an existing enterprise owned by a foreign investor or the shares in that enterprise.

Certain aspects of Ethiopia's foreign direct investment regime overlaps with aspects of its merger control regime. For more information about Ethiopia's merger control regime, please access Primerio's Merger Control Guide [HERE](#)

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Kenya

1 What is the applicable legislative framework?

Constitution of Kenya 2010 (the “**Constitution**”)

Investment Promotion Act, 2004 (the “**Investment Promotion Act**”)

Companies Act, 2015 (the “**Companies Act**”)

Limited Liability Partnerships Act No. 42 of 2011 (the “**LLP Act**”)

Competition Act No. 12 of 2010 (the “**Competition Act**”)

Kenyan Competition (General) Rules, 2019 (“**General Competition Rules**”).

Employment Act 2007 (the “**Employment Act**”)

Kenya Citizenship and Immigration Act, 2011 (the “**Immigration Act**”)

Land Control Act (Cap.302) (the “**Land Control Act**”)

2 Who are the relevant agencies?

Kenyan Investment Authority (“**KIA**”);

Business Registration Service (“**BRS**”);

Kenya Revenue Authority (“**KRA**”); and

Business Regulatory Reform Unit.

3 What kind of entities can a foreigner establish in Kenya?

A foreigner can register the following entities in Kenya through the online BRS portal:

- A branch office of a foreign company; or
- A subsidiary of a foreign company through a limited liability company under the Companies Act or a limited liability partnership under the LLP Act.

4 What is the definition of a foreign acquiring firm?

The Investment Promotion Act does not provide the definition of a ‘foreign acquiring firm’.

However, the Investment Promotion Act defines ‘foreign investor’ as:

- A natural person who is not a citizen of Kenya;
- A partnership in which the controlling interest is owned by a person or persons who are not citizens of Kenya; or

- A company or other body corporate incorporated under the laws of a country other than Kenya.

5 Is there a separate Foreign Direct Investment Regime?

Kenya does not have separate foreign direct investment legislation but is rather regulated by the Investment Promotion Act.

6 Are there sector specific restrictions or overall restrictions?

Foreign investors can operate freely in most sectors, barring restrictions in the following sectors:

- Monopolistic state corporations;
- Aviation: Either the State or a Kenyan citizen (or both) must possess at least 51% of a company's voting rights; and
- Telecommunication: A foreign investor must issue a minimum of 30% of its shares to Kenyan locals within three (3) years of its license been issued.

Further specific sectors require licenses to be issued by the relevant regulator:

- Banking; Only banks, financial institutions, the Government of Kenya, foreign governments, state corporations, foreign companies licensed to operate as financial institutions in their country of origin and non-operating holding companies approved by the Central Bank, may hold more than 25% of the share capital of a financial institution.
- Insurance; The Insurance Act states that no person can be registered as an insurer unless the person is a body corporate incorporated under the Companies Act, and at least one-third of the controlling interest, (whether in terms of shares, paid up share capital or voting rights, as the case may be), are held by:
 - Citizens of a partner state of the East African Community
 - A partnership whose partners are all citizens of partner states of the East African Community
 - A corporate body whose shares are wholly owned by citizens of partner states of the East African Community or the government.
- Mining; local products are given priority where the Mining Act requires the holder of a mineral right, in their dealings, to give preference to the maximum extent possible to materials and products made in Kenya, to services offered by Kenyan citizens and to companies or businesses owned by Kenyan citizens.
- Engineering; A foreign firm may only be registered as an engineering consulting firm if the firm is incorporated in Kenya and a minimum of 51% of its shares are held by Kenyan

citizens.

- Telecommunications;
- Betting;
- Construction;
- Import/export;
- Education;
- Healthcare
- Energy; and
- Nairobi Securities Exchange listed companies; Under the Capital Markets (Foreign Investors) Regulations, every legal entity that offers securities to the public or listed company shall reserve at least 25% of its ordinary shares for investment by local investors in the issuer or listed company.

7 Are there any prescribed thresholds?

Section 4(1)(b) of the Investment Promotion Act provides that a minimum of USD 100,000 is to be invested by a foreign investor in order to be entitled to an investment certificate from the KIA.

8 Are there any exceptions?

The USD 100,000 is not mandatory but rather entitles a foreign investor to an investment certificate.

9 Other matters

Some additional considerations for foreign investors:

- When registering a legal presence in Kenya through incorporation or by way acquisition of shares, foreign investors are required to register with the BRS and KRA.
- Kenyan companies are also required to submit details of their beneficial owners to the Registrar of Companies through the BRS. A beneficial owner is defined under the Companies Act to mean a natural person who ultimately controls or owns a legal person or arrangement. The criteria for identification of a beneficial owner under the Companies Act is as follows:
 - Holds at least 10% of the issued shares in a company, directly or indirectly.
 - Exercises at least 10% of the voting rights in a company, directly or indirectly.

- Holds a right, directly or indirectly, to appoint or remove a director of the company.
 - Exercises significant influence or control, directly or indirectly, over the company.
- Companies in Kenya must comply with the requirements of the Employment Act and the Immigration Act when hiring local or foreign staff and obtaining necessary tax registration from KRA for such staff.
 - The Constitution restricts foreign investors from acquiring freehold property in Kenya with the maximum tenure allows being a leasehold in interest of 99 years, while the Land Control Act restricts companies who have foreign shareholders from acquiring agricultural land.

Certain aspects of Kenya’s foreign direct investment regime overlaps with aspects of its merger control regime. For more information about Kenya’s merger control regime, please access Primerio’s Merger Control Guide [HERE](#)

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Mauritius

1 What is the applicable legislative framework?

Investment Promotion Act and its accompanying Regulations;
Economic Development Board Act and its accompanying Regulations.

2 Who are the relevant agencies?

Economic Development Board (“EDB”).

3 What is the definition of a foreign acquiring firm?

The Act does not provide the definition of a ‘foreign acquiring firm’.

4 Is there a separate Foreign Direct Investment Regime?

There is a separate foreign investment regime that is distinct from the merger regime, however, foreign direct investment does not enjoy its own legislation. Instead, foreign direct investment is governed by various pieces of legislation, including:

- The Investment Promotion Act;
- The Economic Development Board Act;
- Companies Act;

Foreign investment is also provided for by various investment Schemes, such as:

- Property Development Scheme;
- Integrated Resort Scheme;
- Real Estate Scheme;
- Invest Hotel Scheme;
- Smart City Scheme;
- SME Refund Scheme;
- Film Rebate Scheme;
- Mauritian Diaspora Scheme;

- Regulatory Sandbox License;
- Freight Rebate Scheme;
- Export Credit Insurance Scheme;
- Support for Trade Promotion & Marketing Scheme;
- VAR Refund Scheme;
- Africa Warehousing Scheme;
- E-Commerce Scheme; and
- National Regeneration Programme.

5 Are there sector specific restrictions or overall restrictions?

Foreign Investment in Mauritius is generally unrestricted. However, some business activities require a relevant licence to be issued – typically within the sale of alcohol.

6 Are there any prescribed thresholds?

Generally, there are no investment thresholds. However, the following schemes have the following thresholds:

- Property Development Scheme: purchasers of a property development schemes over USD 500 000 will receive a residence permit. Where this threshold is not met, owners can obtain a permit for up to ten years.

7 Are there any exceptions?

No exceptions are provided for.

Certain aspects of Mauritius's foreign direct investment regime overlaps with aspects of its merger control regime. For more information about Mauritius's merger control regime, please access Primerio's Merger Control Guide [HERE](#)

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Morocco

1 What is the applicable legislative framework?

Law No. 18-95 (“Investment Charter”);

1996 Code of Commerce;

Law No. 53-95 on Commercial Courts.

2 Who are the relevant agencies?

The Competition Council (“CC”);

The Moroccan Investment and Export Development Agency (“AMDIE”);

Agricultural Development Agency (“ADA”);

National Agency for the Development of Aquaculture (“ANDA”).

3 What is the definition of a foreign acquiring firm?

The relevant legislation does not provide for a definition of a ‘foreign acquiring firm’.

4 Is there a separate Foreign Direct Investment Regime?

Yes. Foreign direct investment is regulated by Law 18-95 of October 1995, which constitutes the Investment Charter. The regime is implemented predominantly by AMDIE.

5 Are there sector specific restrictions or overall restrictions?

There are certain sector specific restrictions. The general rule in Morocco is that public establishments and enterprises may adopt specific regulations of their own if they adhere to the requirements of competition and transparency.

- Maritime and air transport: Morocco places a 49% limit on foreign investments concerning air and maritime transport companies and maritime fisheries.
- Agricultural land: Morocco prohibits foreigners from investing (i.e. owning) agricultural land (although a lease of such land may be entered into for up to 99 years).
- Natural resources: The government of Morocco has a monopoly on the extraction of phosphate as the Office Cherifien des Phosphates (OCP) is 95% owned by the state. The gas and oil sector also has specific restrictions, as the National Agency for Hydrocarbons

and Mines (ONHYM) retains a mandatory share of 25% of all development permits or exploration licenses.

- Banking: The Moroccan government is afforded the discretion to limit any foreign majority stakes in the capital of major domestic banks (although this discretion is yet to be exercised).

6 Are there any prescribed thresholds?

The Investment Charter does not provide for any foreign direct investment thresholds.

7 Are there any exceptions?

No exceptions are provided for.

Certain aspects of Morocco's foreign direct investment regime overlaps with aspects of its merger control regime. For more information about Morocco's merger control regime, please access Primerio's Merger Control Guide [HERE](#)

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Namibia

1 What is the applicable legislative framework?

Foreign Investment Act of 1990 (“FIA”)

2 Who are the relevant agencies?

Ministry of Industrialization and Trade (“MIT”).

3 What is the definition of a foreign acquiring firm?

The relevant legislation does not provide the definition of a ‘foreign acquiring firm’. However, a ‘foreign national’ is defined as:

- a person who is not a citizen of Namibia;
- a company incorporated under the laws of any country other than Namibia; or
- a company incorporated within Namibia in respect of which the majority of the issued share capital is beneficially owned by foreign nationals within the meaning of this definition.

4 Is there a separate Foreign Direct Investment Regime?

Yes. Foreign Direct Investments in Namibia falls under the auspices of the FIA.

5 Are there sector specific restrictions or overall restrictions?

Generally, all sectors are open to foreign investment. However, it is compulsory to have joint ownership between a local firm and foreign firm in the natural resources sector. Moreover, it is prohibited for investors to directly or indirectly own 50% or more of agricultural land in terms of the Land Reform Act.

Government procurements also typically require a certain percentage of local ownership.

6 Are there any prescribed thresholds?

The following requirements must be met in order to be eligible for the Certificate of Status Investment:

- An investment of at least NAD 2 million;
- Foreign investment in a Namibian firm must amount at least to 10% of its share capital;
- There must be a contribution towards Namibia's development objectives;

- Foreign investment must contribute to the Namibian economy in terms of employment opportunities, provision of training for Namibians, use of raw materials and locally produced goods;
- Foreign investment must create a potential for earning foreign exchange; and
- Investment must have a positive impact on the environment.

7 Are there any exceptions?

The Namibian government follows a fairly liberal foreign investment policy, thus not subjecting it to many exceptions. The government is, however tending towards foreign investments being partnered with Namibian-owned companies alternatively ensuring more than half of the employees of such a firm are Namibian.

Certain aspects of Namibia's foreign direct investment regime overlaps with aspects of its merger control regime. For more information about Namibia's merger control regime, please access Primerio's Merger Control Guide [HERE](#)

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Nigeria

1 What is the applicable legislative framework?

Nigerian Investment Promotion Commission Act Companies and Allied Matters Act 2020.

The Investments & Securities Act 2007

National Office for Technology Acquisition and Promotion Act Cap N62 LFN 2004 Foreign Exchange (Monitoring and Miscellaneous Provisions) Act Cap F34 LFN 2004 Companies Income Tax Act (CITA) Cap C21 LFN 2004

Personal Income Tax Act (PITA) Cap P8 LFN 2004

2 Who are the relevant agencies

Nigerian Investment Promotion Commission (“NIPC”).

3 What is the definition of a foreign acquiring firm?

There is no statutory definition of a ‘foreign acquiring firm’.

4 Is there a separate Foreign Direct Investment Regime?

There is no separate scheme or legislation for Foreign Direct Investment. Foreign participation in Nigeria could either be by way of Foreign Portfolio Investment or Foreign Direct Investment, which involves instances where a foreign company intending to do business in Nigeria is required to establish its business as a subsidiary of a foreign firm. This involves establishing a business enterprise and acquisition of business assets in Nigeria. Until incorporation, such foreign company cannot have a place of business in Nigeria, save for the receipt of notices and other documents as matters preliminary to incorporation.

Further, Nigeria does not have a formal foreign investment control regime or legislation. There are, however, various pieces of legislation that may apply to foreign investments, notably:

- Companies and Allied Matters Act 2020;
- Immigration Act, 2015;
- The Securities and Exchange Commission Rules 2013 (as amended);
- Nigerian Oil & Gas Industry Content Development Act 2010;
- Industrial Inspectorate Act, Cap. 18 LFN 2004;

- National Office for Technology Acquisition and Promotion Act, Cap. N62 LFN 2004;
- Nigerian Investment Promotion Commission Act 2004;
- Investment and Securities Act (ISA) 2004; and
- Federal Competition and Consumer Protection Act 2019.

5 Are there sector specific restrictions or overall restrictions?

Sector-specific restrictions are in place for industries deemed sensitive to national security, notably: oil and gas; arms and ammunition manufacturing; narcotic drugs and psychotropic substances; private security; engineering; and broadcasting.

The following sector specific restrictions apply:

- **Oil and Gas:** The Nigerian Oil and Gas Industry Content Development Act defines a Nigerian Company as a Company registered in Nigeria in accordance with the provisions of the Companies and Allied Matters Act with not less than 51 percent equity shares owned by Nigerians. It further provides that Nigerian operators and indigenous service companies shall be given first consideration in the award of oil blocks, licenses and works in the sector. Thus, to be competitive in the awarding of contracts, at least 51 percent equity should be owned by Nigerian investors.
- **Private Security:** The Private Guards Companies Act 2004 specifies that foreign investors are prohibited from having an equity stake in a private security company in Nigeria.
- **Engineering:** A company and its employees who are engineers engaged in engineering services. One requirement for registration is that the company must have Nigerian directors registered with the COREN holding at least 55 percent of the company's shares. Further, expatriate engineers who are granted provisional registration cannot register a 100 percent-owned engineering consulting firm in Nigeria.
- **Broadcasting:** The National Broadcasting Commission Act 2004 specifies that, for a foreign investor to acquire a broadcasting license in Nigeria, the majority of its equity stake must be owned and operated by Nigerians and must not represent foreign interests.
- **Advertising:** Only a national advertising agency can advertise to the Nigerian market.
- **Aviation:** The Nigerian Civil Aviation Authority must approve that an applicant is a Nigerian citizen, or a company registered in Nigeria and controlled by Nigerian nationals in order for an aviation license or permit to be granted.

- **Pharmacy:** Non-Nigerian citizens can only be registered by the Pharmacists Council if the applicant's country allows for the reciprocal registration of Nigerians and where the person has been a resident in Nigeria for at least 12 months.

Additionally, the provisions of the Nigerian Investment Promotion Commission Act 1995 do not apply to the following sectors of investment:

- Production of arms and ammunition and the like;
- Production of and dealing in narcotic drugs and psychotropic substances;
- Production of military and parliamentary wears and accoutrement (including Police and the Customs, Immigration and Prison Services); and
- Further items as determined by the Federal Executive Council.

6 Are there any prescribed thresholds?

There are no foreign direct investment thresholds.

7 Are there any exceptions?

The Act does not provide for any exceptions.

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Seychelles

1 What is the applicable legislative framework?

Seychelles Investment Act, 2010 (“Act”);

Reserved Economic Activities Policy, 2020;

The Seychelles Investment (Economic Activities) Regulations, 2014.

2 Who are the relevant agencies?

Seychelles Investment Board (“SIB”);

Investment Appeal Panel.

3 What is the definition of a foreign acquiring firm?

The relevant legislation does not provide for a definition of a ‘foreign acquiring firm’.

4 Is there a separate Foreign Direct Investment Regime?

A separate foreign investment regime, distinct from the merger regime, exists however, this regime does not enjoy its own legislation. Instead, foreign direct investment is governed by the Investment and Export Promotion Act and various other legislation, including:

- Access to Information Act;
- Beach Control Act;
- Town and Country Planning Act;
- Licensable Activities and Licensable Fees Payable;
- Companies Ordinance (Amendment) Act;
- Seychelles Investment Policy;
- Licenses Act;
- Beneficial Ownership Act; and
- Anti-Money Laundering Act

5 Are there sector specific restrictions or overall restrictions?

The Seychelles Investment (Economic Activities) Regulations provide for sector specific ownership restrictions:

- Accommodation (16 - 24 rooms): foreign equity is limited to 80%.
- Cinnamon extraction: foreign equity is limited to 49%.
- Construction Class II: foreign equity is limited to 49%.
- Dive Operators (with 4 to 5 aboard) or yachts: foreign equity is limited to 49%.
- Electrical contractor: foreign equity is limited to 49%.
- Letting services of furnished accommodation (11 – 24 rooms): foreign equity is limited to 80%.
- Live aboard boats (of 4 and 5): foreign equity is limited to 49%.
- Natural Oil extraction: foreign equity is limited to 49%.
- Maintenance and repair services of office machinery and equipment: foreign equity is limited to 49%.
- Mechanical engineer: foreign equity is limited to 49%.
- Plumber: foreign equity is limited to 49%.
- Tour Operators: foreign equity is limited to 49%.

6 Are there any prescribed thresholds?

There are no prescribed thresholds.

7 Are there any exceptions?

No exceptions are provided for.

Certain aspects of Seychelle's foreign direct investment regime overlaps with aspects of its merger control regime. For more information about Seychelle's merger control regime, please access Primerio's Merger Control Guide [HERE](#)

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South Africa

1 What is the applicable legislative framework?

Protection of Investment Act No. 22 of 2015;
Competition Act No. 89 of 1998 (as amended) (“Act”).

2 Who are the relevant agencies?

- Competition Commission (“Commission”);
- Competition Tribunal “Tribunal” (“Tribunal”);
- Competition Appeal Court (“CAC”); and
- National Security Committee (“Committee”).

3 What is the definition of a foreign acquiring firm?

The Act defines a ‘foreign acquiring firm’ as an acquiring firm that has been incorporated, established or formed under the laws of a country other than South Africa or whose place of effective management exists outside of South Africa.

4 Is there a separate Foreign Direct Investment Regime?

A separate foreign invest regime, distinct from the merger regime, exists however foreign direct investment does not enjoy its own legislation. Instead, foreign direct investment is primarily governed by the Protection of Investment Act.

5 Are there sector specific restrictions or overall restrictions?

Foreign investors are mostly free to invest in any economic sectors with limitations to foreign ownership existing in the following sectors:

- Agriculture;
- Fisheries and Marine;
- Broadcasting and print media;
- Defence force;
- Energy and Mineral Sources;

- Telecommunications;
- Real estate; and
- Transport.

6 What is the applicable legislation for the intervention of mergers involving foreign acquiring firms?

Section 18A of the Act, although not in effect, provides for the intervention of mergers involving foreign acquiring firms.

In terms of section 18A, the President must establish a Committee to consider whether the implementation of mergers involving foreign acquiring firms would have an adverse effect on South Africa's national security interests.

7 Are there any prescribed thresholds?

There are no prescribed thresholds.

8 Are there any exceptions?

No exceptions are provided for.

Certain aspects of South Africa's foreign direct investment regime overlaps with aspects of its merger control regime. For more information about South Africa's merger control regime, please access Primerio's Merger Control Guide [HERE](#)

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Tanzania

1 What is the applicable legislative framework?

Tanzania Investment Act No. 26 of 1997 (“Act”).

2 Who are the relevant agencies?

Tanzania Investment Centre (“TIC”).

3 What is the definition of a foreign acquiring firm?

The Act does not provide for a definition of a ‘foreign acquiring firm’.

The Act defines a ‘foreign investor’ as:

“in the case of a natural person means a person who is not a citizen of Tanzania, and the case of a company, a company incorporated under the laws of any country other than Tanzania in which more than fifty percent of the shares are held by a person who is not a citizen of Tanzania, and in the case of partnerships, means a partnership in which the partnership controlling interest is owned by a person who is not a citizen of Tanzania”.

4 Is there a separate Foreign Direct Investment Regime?

There is a separate foreign invest regime that is distinct from the merger regime, however foreign direct investment does not enjoy its own legislation. Instead, foreign direct investment is primarily governed by the Tanzania Investment Act.

5 Are there sector specific restrictions or overall restrictions?

Foreign investors are subject to sector specific restrictions, including:

- Media: the maximum amount of capital participation is 75% whilst Tanzanian media stations can be, at a maximum, 49% foreigner owned. Foreign investors cannot be shareholders in Tanzanian newspapers.
- Telecommunications: Telecommunication companies must list at least 25% of their shares on the Dar es Salaam Stock Exchange.
- Mining: foreign mining firms must have at least 5% equity from indigenous Tanzanian companies and must allow the government to have a 16% share. Where a foreign company provides goods or services to the mining sector, they must establish a joint

venture and an indigenous Tanzanian company must have a minimum 20% share. Further, Gemstone mining is limited to Tanzanian companies (unless a waiver is granted)

- Tourism: foreign investors are prohibited from the tourism sector.
- Fisheries and Maritime: Port service licences are only granted to Tanzanian companies, foreign-owned ships cannot participate in local trade and only Tanzanians can be licensed as a shipping agent.

6 Are there any prescribed thresholds?

For protection under the Tanzania Investment Act, a minimum investment value of USD500 000 is required for projects which are wholly owned by foreign investors or a joint venture

An additional category of investors includes, 'strategic' and 'special strategic' investors and must be approved by the National Investment Steering Committee to enjoy additional fiscal and non-fiscal incentives. The thresholds required to be regarded as either a 'strategic' or 'special strategic' investor are:

- Strategic: Projects wholly owned by a foreign investor or a joint venture with a minimum investment capital of USD50 Million
- Special strategic: A minimum investment capital of USD300 Million, the creation of at least 1500 direct local employment with a satisfactory number of senior positions in projects that do not require sophisticated technology and the capability to significantly generate foreign exchange earnings, produce significant import substitution goods or supply of important facilities necessary for the development of the social, economic and financial sector.

7 Are there any exceptions?

No exceptions are provided for.

Certain aspects of Tanzania's foreign direct investment regime overlaps with aspects of its merger control regime. For more information about Tanzania's merger control regime, please access Primerio's Merger Control Guide [HERE](#)

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Zanzibar

1 What is the applicable legislative framework?

Zanzibar Investment Promotion and Protection Authority Act No. 14 of 2018 (“Act”).

2 Who are the relevant agencies?

Zanzibar Investment Promotion Authority (“ZIPA”).

3 What is the definition of a foreign acquiring firm?

The Act does not provide for a definition of a ‘foreign acquiring firm’.

4 Is there a separate Foreign Direct Investment Regime?

There is a separate foreign investment regime that is distinct from the merger regime however, foreign direct investment does not enjoy its own legislation. Instead, foreign direct investment is primarily governed by the Zanzibar Investment Promotion and Protection Authority Act.

5 Are there sector specific restrictions or overall restrictions?

Section 20(1) of the Act provides that all business activities shall be open to any investor, unless otherwise prohibited.

Section 20(3) provides that some sectors may be reserved only for Zanzibaris with the Fourth Schedule identifying these as:

- Barber shop, hair dressing and beauty salon;
- Wholesale and retail shop;
- Tour operator;
- Restaurant (besides special cuisine restaurants);
- Guest house;
- Travel agency;
- Small scale cultivation;
- Gift and curio shop;
- Office or household cleaning and housekeeping services;

- Office or household security services;
- Ice cream shops;
- Soft and hard drink shops;
- Stuff or goods supply services; and
- Small scale fishing.

Additionally, Casinos and Gambling businesses are prohibited as a result of religious and traditional values.

6 Are there any prescribed thresholds?

The Fourth Schedule to the Act provides a capital investment threshold of USD300 000 for foreign investors to be able to engage in any business not expressly reserved for Zanzibaris (listed above).

7 Are there any exceptions?

The Act does not provide for any exceptions.

Certain aspects of Zanzibar’s foreign direct investment regime overlaps with aspects of its merger control regime. For more information about Zanzibar’s merger control regime, please access Primerio’s Merger Control Guide [HERE](#)

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Zambia

1 What is the applicable legislative framework?

The Zambia Development Agency Act, 2006 (“Act”) is the principal Act that has been amended by the Zambia Development Agency (Amendment) Act, 2012; and the Zambia Development Agency (Amendment) Act, 2013.

2 Who are the relevant agencies?

The Zambia Development Agency (“ZDA”).

3 What is the definition of a foreign acquiring firm?

The Act does not provide the definition of a ‘foreign acquiring firm’. However, the Act defines ‘foreign investor’ as: “a person who makes direct investment in the country and who in the case of a natural person is not a citizen or permanent resident of Zambia, and in the case of a company, is incorporated outside Zambia”.

4 Is there a separate Foreign Direct Investment Regime?

The Zambian foreign direct investment regime is distinct from its merger regime and is governed by the Zambia Development Agency Act. In addition to the Act, the foreign investment regime is also regulated by:

- The Constitution of Zambia (Amendment) Act, 2016;
- The Companies Act, 2017; and
- The Public-Private Partnership Act, 2009.

5 Are there sector specific restrictions or overall restrictions?

Firstly, section 59 of the Act provides that to be entitled to incentives provided under the Act, the investor must hold a license, permit or certificate of registration. However, the ZDA states that there are no laws or practices which discriminate against foreign investors by prohibiting or restricting foreign investment in any sector of the economy. However, this is limited in the following sectors:

- Telecommunications: foreign investors who operate a domestic cellular telephone network must offer 10% of its shares on the Lusaka Stock Exchange; and
- Specific approvals are required to produce weapons, coins, dangerous substances, and security documents.

6 Are there any prescribed thresholds?

There are no general investment thresholds. However, Section 56 of the Act provides that a minimum investment in a priority sector of USD 500 000 is required for an investor to be entitled to incentives specified under the Income Tax Act and the Customs and Excise Duty Act.

Section 57 of the Act provides that any machinery or equipment acquired by a business entity conducting business in a priority sector or a rural enterprise is amenable to exemptions from customs duty as provided under the Customs and Excise Duty Act.

7 Are there any exceptions?

The Act does not provide for any exceptions.

8 What is the applicable legislation for the intervention of mergers involving foreign acquiring firms?

The Act does not provide for the intervention of mergers involving foreign acquiring firms.

Certain aspects of Zambia's foreign direct investment regime overlaps with aspects of its merger control regime. For more information about Zambia's merger control regime, please access Primerio's Merger Control Guide [HERE](#)

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Zimbabwe

1 What is the applicable legislative framework?

Zimbabwe Investment and Development Agency Act [Chapter 14:37]¹ (“ZIDA Act”).

Companies and Other Business Entities Act [Chapter 24:31]; and

Exchange Control Act [Chapter 22:15];

2 Who are the relevant agencies?

Zimbabwe Investment Development Agency (“ZIDA”); and

The Reserve Bank of Zimbabwe;

3 What is the definition of a foreign acquiring firm?

The Act does not provide the definition of a ‘foreign acquiring firm’.

4 Is there a separate Foreign Direct Investment Regime?

The Zimbabwean foreign direct invest regime is distinct from the merger regime. However foreign direct investment does not enjoy its own legislation but is rather primarily governed by the Zimbabwe Investment and Development Agency Act.

5 Are there sector specific restrictions or overall restrictions?

Section 13 of the ZIDA Act provides that the Agency shall accord foreign investors and their investments treatment which is no less favourable than that it accords, in like circumstances, to domestic investors with respect to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of their investments. Accordingly, section 12 of the ZIDA Act provides that foreign investors may invest in any and all sectors of the economy, in the same form and under the same conditions as those imposed on Zimbabweans.

An exception to section 12 exists in instances where there are special economic zones which² include, but are not limited to:

- Agricultural production of food and cash crops;
- Transport;
- Retail and wholesale trade;
- Barbershops, hairdressing and beauty salons;

¹ The Act repeals the Acts of Parliament that contained investment laws, these are the Zimbabwe Investment Authority Act [Chapter 14:30], the Joint Ventures Act [Chapter 22:22] and the Special Economic Zones Act [Chapter 14:34].

² The principal statute regulating mergers in Zimbabwe, whether local or involving foreigners. At least one of the transacting entities must reside in Zimbabwe.

- Employment agencies;
- Estate agencies;
- Valet services; and
- Grain milling, bakeries, tobacco grading and packaging, milk processing and provision of local arts marketing and distribution.

Section 2A of the Indigenisation and Economic Empowerment Act provides that the Act does not apply to businesses specified in Section 3(1) and those in the reserved sector of the economy. It also provides that any person is free to invest in any of the businesses not included in the reserved sectors and in Section 3(1). Section 3(1) provides that the State will take ownership of 51% of the shares of businesses involved in the extraction of minerals. This is also universal, and does not apply to foreigners alone.

6 Are there any prescribed thresholds?

No thresholds are prescribed.

7 Are there any exceptions?

The ZIDA Act does not provide for any exceptions.

8 Investor Protection and Dispute Resolution

The law provides that parties may either settle disputes domestically, in terms of the Arbitration Act [Chapter 7:15], or internationally if such an arrangement had been previously agreed between the parties.

Where a Bilateral Investment Agreement was in force before the enactment of the ZIDA Act, parties may submit their disputes against Zimbabwe to a dispute settlement mechanism under an investment treaty between Zimbabwe and their home country. This is possible provided the foreign investments established in Zimbabwe prior to the ZIDA Act were registered with the Agency no later than 12 months after the ZIDA Act became effective – 6 February 2020.

Certain aspects of Zimbabwe's foreign direct investment regime overlaps with aspects of its merger control regime. For more information about Zimbabwe's merger control regime, please access Primerio's Merger Control Guide [HERE](#)

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