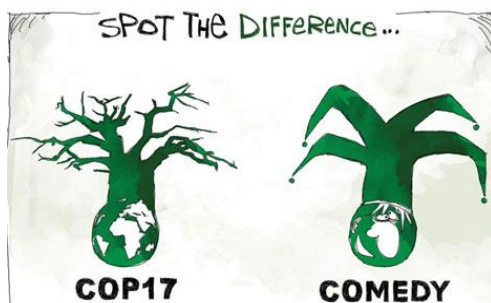




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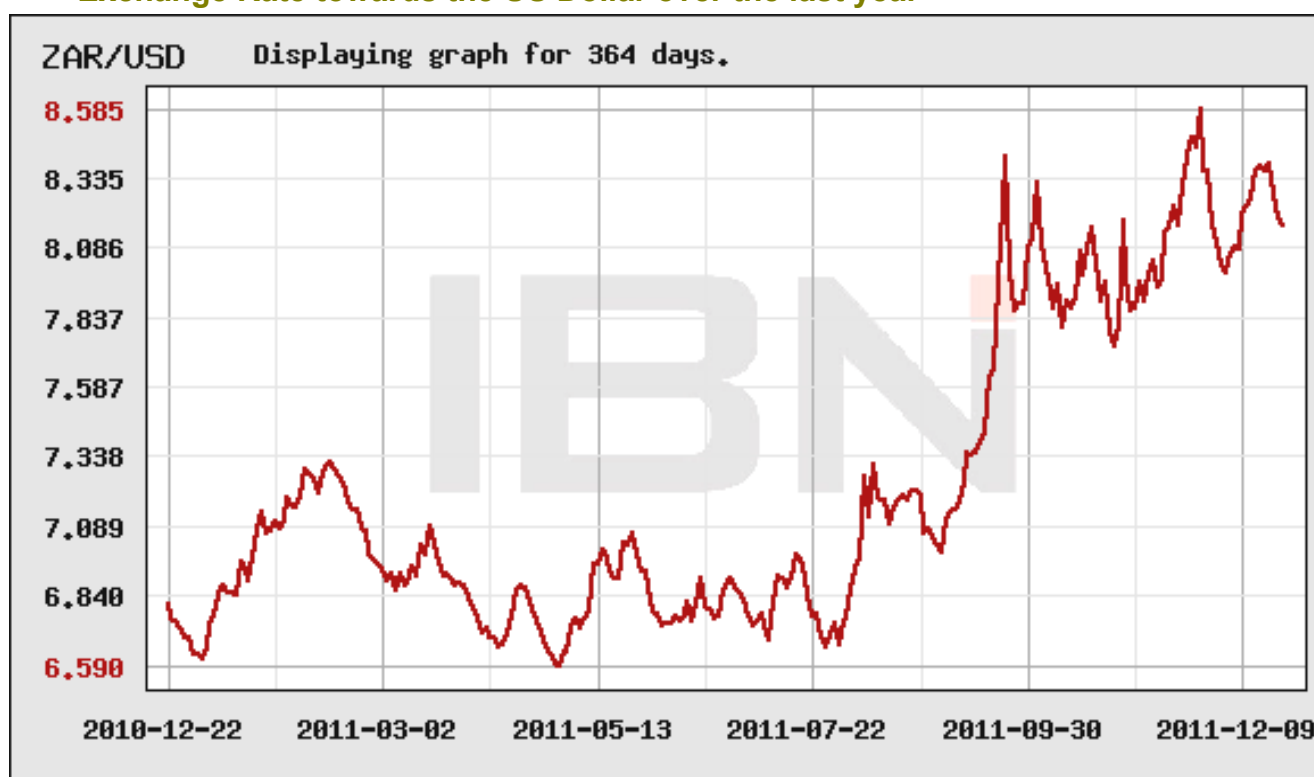
## 1. SOUTH AFRICA INDEX



### Exchange Rates on 22 December 2011

Euro	10.62
US Dollar	8.14
British Pound	12.77
Swiss Franc	8.67

### Exchange Rate towards the US Dollar over the last year



### Further Economic Indicators

Economic Growth (annual)	3.20%	↓	
Inflation Rate	5.70%	↑	
Prime Lending Rate	9.00%		
Repo Rate Reserve Bank	5.50%		
Budget Deficit	3.30%	↓	
Unemployment Rate (as per 1Q2011)	25.00%	↑	

## 2. CURRENT ISSUES

### Merry (?) Christmas, South Africa!

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It is this time of the year, 2011 that is, where for months we got inundated with visual images of Santa, angels and ornaments in order to prepare us for the Christmas break; and now it is finally here. A few days to go and 2011 will rest in peace, time to look back just before the remains of the annual turkey genocide will find their way to our tables.

A lot of people say it was a roller coaster, but was it really? It is also the end of the third quarter of the financial year 2011 / 2012, did that quarter set any new impulses?

No, no, no instead of Ho, ho, ho this Christmas! The South African economy was off to a good start, set to hike interest rates even, but what came as a relief to debtors and bondholders was only the result of a much graver situation. The South African economy is challenged, challenged by the need for sustainable growth in order to create jobs and to yield the needed revenue to finance from infrastructure projects to National Health Insurance. It is needed to fund education to provide skills locally, instead of having them to bring in from outside. It is needed to upgrade railway systems and expand power utilities.

The South African economy grew, no doubt, but only by 1.4% in the third quarter, which brings the overall growth for the first three quarters of the financial year 2011 / 2012 to 3.2 % and an outlook for the whole financial year not over 3%. South Africa needs a growth of at least 5% to reach some of the goals of the National Growth Plan, but where shall that growth come from?



It will not come out of South Africa itself! The South African economy is performing below its true potential. The manufacturing sector hardly utilizes 80% of its capacity, 10% of office space are empty and the formal labour force can hardly be called "fully employed". So once again – or even still – the impulse needs to come from outside. So who will come to the rescue?

The US is currently performing better than expected, but the looming change in the presidency and tight financial constraints across the board limit spending power and therefore demand. In addition the current growth is fragile and it will not need a lot to tilt it.



So then Asia? The growth is currently strong, employment on its way up and a possible slowdown of economic giant China unlikely. Pity that there is not enough trading partners in that area, but they might still come. That leaves us with the good (not so) old European Union.

Europe has accumulated too much public debt. It is in deep disagreement about the way forward. Its banks are short of capital and have difficulties funding. It has lost most of its internal growth dynamic, and bond investors have lost trust, draining away in droves and causing a liquidity crisis, with the European Central Bank wishing to stick to its purity and Germany sticking to its guns. Even the greatest optimists are holding their breath as long-term skeptics merely hold their noses, given the mess they observe daily.

So 2012 could for us be another 2008 or 1998, as an EU disruption would also sideswipe us. Help from Asia or the US is doubtful, internal growth seems unlikely to change in a major way. So, it calls for a wonder, or rather positive surprise, like a present..... Well, if it isn't the right time and day for that! Merry Christmas South Africa!!

### **South African Wish List for Santa**

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*Santa Clause, you dear old man,  
you must not look so sad,  
we know the year was not so great,  
but we have not been bad!*

*We have a lot of wishes though,  
so maybe you assist?  
It will make this a better place,  
by slapping well some wrist!*

*Please teach you all the taxi drivers,  
how traffic can be fun,  
respecting each and every other,  
beats any hit and run!*

*While traffic flow may all be smooth,  
a problem still occurs,  
if there is any rain drop falling,  
the driving can't get worse!*

*Demonstrators for our climate  
should not be beaten up,  
please save the hidings with your rut  
for politicians that's corrupt!*

*Though Zuma shows his love for China,  
we need to look at home,  
the local retail needs some focus,  
else they will be alone!*

*MTN and Vodacom,  
are bad as evil child,  
they lined their pockets with our money  
while signals going wild.*

*Eskom needs to feel today,  
that ignorance aint bliss,  
though candles are quite right for christmas,  
its power that we miss!*

*Wishing for the clubs hit hard,  
the biggest of all sacks,  
because its filled with evil bankers,  
that overcharged us max!*



**Do you like “Cuban Nights” ?**

*ICASA also is a case,  
where bums do need some heat,  
where our notebooks do connecting  
with inter-snailish speed!*

*And while you at it, please and go  
do have a look at tolls,  
for those who have work will be punished  
giving their thin Rand rolls!*

*Nepotism is no virtue,  
show them what is the price,  
as they screw up all our finance,  
they should get the rut thrice!*

*Leaves us now with the two good children  
that never stopped to rest,  
the names you hear are Trev and Zille,  
may their christmas be blessed!*

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No, no, no: don't get us wrong, it is not about music, dances or even the movie. It is about something much more special as experience than that! And it is already here, available in South Africa! Do we wake your interest?

Unfortunately we have to inform you that just 350 South Africans have the chance to be involved in it. The lucky ones are SA National Defence Force (SANDF) officers who will be trained as immigration officers. They will be laterally transferred to the Department of Home Affairs from their military deployments. This is not a joke! It is a very specific pilot training programme for the Department of Home Affairs, which is part of overall training strategy accredited by the SA Qualification Authority (SAQA).



On 14<sup>th</sup> October 2011, a week after announcing the programme, Minister of Home Affairs Dr. Nkosazana Dlamini-Zuma had got a meeting with a question-answer round and then she gave two main reasons for the implementation of this project: In her opinion the Department of Home Affairs is mistakenly seen as a service organisation but it should be seen as a “Security Department with service component”.

The second issue concerns the gaps in the training of the immigration officers. There is no doubt about the worthiness of the second one, everybody, who has ever been into a Home Affairs Office, can confirm this.

The question is what this programme has to do with Cuba. The whole training will be lead by 12 Cuban specialists. They firstly will train 30 South Africans to become instructors and they all together will start with the mission “Cuban nights” or “Lets teach 350 military officers how to deal with immigration issues”. Minister Dlamini-Zuma was so kind at the conference in October this year to clarify the choice of “the specialists”. She argued that Cuba and Russia are managing their immigration problems very well. We should agree on that, the last information we have, there are no significant immigration problems. Probable reason is that the people living there want to leave these countries and not to immigrate there. Some readers might recall that Dlamini-Zuma also invited Cuban medical doctors to South Africa some 15 years ago to solve the shortage of basic health care in rural areas, when she was then the Minister of Health.

The announcement was met with unexpected opposition. The Public Servants' Association took the Department of Home Affairs to court. According to court papers, the department wants to "build" itself into a "security department" modelled on a cooperation agreement it signed with the Cuban government. However, the opposition pointed out that the whole project has been done “behind their backs”. They did not advertise any vacant posts, which is in contravention of public service regulations. The unbelievable experience for having the Cuban trainers for a year was estimated to cost between R 400 000 and R 500 000 per person. As we have already known “Everything is possible in Africa!” and we are absolutely sure about that, we just can wish “Good Luck” with the programme, and we will definitely hope for better outcome than Minister Dlamini- Zuma's Cuban doctor programme . Do you still like “Cuban nights”?



home affairs

Department:  
Home Affairs  
REPUBLIC OF SOUTH AFRICA



## South African Authorities are getting more formal

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We noticed that recently many processes have become more formal and strict. It feels at times as if there is new red tape, but in actual fact the current laws are merely applied in a more accurate way. Maybe we had it too easy before. This applies to various fields in which an investor needs to engage such as SA Revenue Services, the SA Reserve Bank, the Registrar of Companies but also the Department of Home Affairs.

Of course this can cause delays in any transaction and huge frustrations. We understand the reason behind this drive towards formalisation is to counter any personal influence-making on government officials (avoidance of corruption), but also to achieve certain quality and performance standards, all in all leading to accountability, reliability and predictability. Since the political change in 1994 many aspects of service delivery are perceived to have deteriorated in the public eye. There is the often cited lack of capacity, which is maybe rather a shortage of competent people. So quite simply put, like in a military organisation, the individual is less important than the function which needs to be fulfilled.

With reference to the immigration process, Home Affairs is desperately trying to get its house in order. Recently the department received its first "clean" audit in 20 years, meaning the financial affairs are in order. Many citizens can confirm that the issuing of passports, ID books, birth and marriage certificates have improved. Passports are usually sent within 2 weeks. In order to process large number of applications, the "system" must work.

Of course there are significantly less applications for residency in South Africa and they come from all over the world, with different documentation. Hence standardisation is not as easy, but at least the process can be made more transparent. The in June 2010 introduced "Track & Trace" system as well as the central call centre help to find out, what the status of an application is and equally important, where it is if not completed in time. At the same time though, we notice that the adjudication of permits has become very strict. If one document is not in order, the entire application is quickly refused. Also, in certain instances spouses and dependants of main applicants were processed simultaneously and this has for instance in case of retired people come to a stop. Although is more an inconsistency in the law, it is now strictly enforced. As they say with any reform: Before it gets better, it first gets tougher... Officials indicated, that the engine must first run smoothly, before they will allow any flexibility again. One would just hope that the people who set the new higher hurdles are going to perform according to their own standards, operate within reasonable response times are feeling accountable and responsible. And maybe investors can even ask for some efficiency and adherence to deadlines by the South African government.

## The “Dalai Lama Saga” or “How SA sees its Foreign Policy”

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Peace Nobel Price winner and former archbishop Desmond Tutu came up with the idea of inviting the Dalai Lama to his 80<sup>th</sup> birthday recently. The former anti-apartheid activist surprised his fellow freedom fighters, now in charge of governing our country, completely with this move.

A saga, not unknown to our clients arose. As the Dalai Lama is citizen of a non-visa-exempt country, he needed to apply for a visa. So his representatives drove to the nearest South African mission somewhere in India. In fact they drove there at least 3 times to find themselves in typical red tape. First they were there too early to apply and send away. At the second attempt, certified copies of the passport were not good enough to assess the applicant. Finally, the officials dragged their feet and an embarrassing debate started, which government department needs to make a decision. The current minister of home affairs, previously in charge of foreign affairs immediately sensed a political dilemma and pushed the responsibility to foreign affairs. Rightfully they indicated that they are not in charge of visa. Well, actually nobody really know to which department SA immigration officials belong, as they are part of home affairs but operate out of a diplomatic office. Most officials we are dealing with actually have 2 email addresses, one from each department.

At the end, nobody seemed responsible and the Dalai Lama withdrew his visa application one day before Tutu's birthday “To save South Africa further embarrassment”. Again, nothing new for our clients, that they are left sweating until the very last moment to hear, if their permits are approved or not. On a bigger scale, it also shows the problem we have: If two heads of department cannot come to an agreement, who will be in ask to make a decision? Their direct superior – which in this case is President Zuma. He has been silent on the matter until today. In his typical fashion, he rather waited until the matter went away. Why should he ever make a decision? South African foreign policy leans strongly towards China. Diplomatic ties with Taiwan have been cut and surely the Daila Lama is not receiving support. But there is no official policy communicated, again, no clear position anybody could count on. We do understand the attractiveness and we witness many Chinese activities now also in South Africa, from China Malls to Wind and Solar Park, and even a high speed train to be built connecting Johannesburg and Durban. In absence of a clear foreign policy it becomes obvious that South Africa is moving away from the old Europe. I have witnessed the 1994 presidential inauguration of Nelson Mandela and after many years of isolation, our TV commentators could not identify any visiting heads of state really. But the colourful ones were mentioned every two minutes, such as Fidel Castro or Muammar Gaddafi. Little did I know at the time, that South Africa would struggle to support the liberation movement in Libya and bring in Cuban immigration officials 17 years later.

## Deadline for PAIA Manuals

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The *Promotion of Access to Information Act* (PAIA), 2000 came into effect in March 2001 with the exception of sections 10, 14, 15 and 51, which came into operation in February 2002. The Act grants a special mandate to the South African Human Rights Commission (SAHRC) to promote the right to access information of public and private bodies and monitor the compliance of these bodies with the legislation. According to the Act all public and private companies are required to compile and submit to SAHRC a manual as set out in section 51 indicating the records held by the company and how these can be accessed. It is necessary for the manual to be available at the company's offices and on its website. Further information as to what should be included in the manual can be found in the section 51 of the Act as well as on the SAHRC website.

HAVE YOU  
COMPLETED  
YOUR  
**PAIA**  
**MANUAL**  
?

Despite the fact that the Act came into operation in 2002, an exemption to compile the above manual was granted to all private companies except those employing 50 or more employees, pertaining to certain business sectors as indicated in Schedule 1 Column 1 of the Act as well as companies with a certain level of turnover as mentioned in Schedule 1 Column 2 of the Act.

This exemption, however, expires on **31<sup>st</sup> December 2011**, which means that all previously exempt private bodies are now required to complete and submit the manuals within the deadline. The Act also sets out penalties for non compliance, but SAHRC has not imposed such fines to date. If you should require any additional information please don't hesitate to contact IBN, we will be happy to advise you and assist you with the compilation of the manual.

## Illegal but not without Rights

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Recent Labour Court rulings have challenged a principle that was previously seen as an integral part of South African common law, namely the *ex turpi causa* rule, which stipulates that those undertaking illegal activities cannot claim damages in virtue of those activities. More specifically, the Court ruled that persons in possession of an unlawful contract of employment still fall under the protection of the Labour Relations Act.

The two most prominent cases in this regard are *Discovery Health v Commission for Conciliation, Mediation and Arbitration and Others* (2008) 29 ILJ 1480 (LC) and *Kylie v Commission for Conciliation, Mediation and Arbitration and Others* [2010] 7 BLLR 705 (LAC).



In both cases an employee has been dismissed due to the reason that their work permit had expired and so the contract had become invalid. In the first case, the Court decided that an employment relationship exists even in the absence of a valid contract and according to section 23 of the Constitution everyone, including persons employed unlawfully, has the right to fair labour practices. This was confirmed by the Labour Appeal Court in the second case, adding that this was true even in cases where the work in question was illegal. For employers this means that the unlawfully employed are legally entitled to fair treatment just like other employees and any employee without exception can make valid claims under the Labour Relations Act. It is also important to bear in mind that an invalid work permit is not a sufficient reason to dismiss an employee and all relevant rules and regulations must be complied with.

### 3. BUSINESS OF THE MONTH

#### Blaauwklippen Wine Estate

Blaauwklippen, nestled on the slopes of the Stellenbosch Mountain, is one of the oldest wineries in South Africa dating back to 1682, and is situated in the picturesque town of Stellenbosch.



Stellenbosch is widely regarded as South Africa's quality wine producing region. The name "Blaauwklippen" was derived from the Dutch words "blauwe klippe", meaning blue rocks, as the stones on the farm has a distinctive blue shimmer due to the high granite content in them. Blaauwklippen wines can be recognised by the carriage motif on all the labels. This emblem embodies everything they believe in: quality, tradition and elegance. Blaauwklippen also boasts one of the biggest collections of antique horse drawn carriages, wagons and buggies in South Africa and during season carriage rides are offered to the public. Visit the Blaauwklippen Family Market which takes place weekly, every Sunday from 10:00 until 15:00. The market sells amazing fresh produce, ready made delicacies and crafts.



You are most welcome to create a picnic basket from the products available at the market, sit back and enjoy the live music. The very popular evening restaurant, Cape Kitchen opened for Summer trading on the 19<sup>th</sup> of October, and will be open for dinner from Wednesdays until Fridays starting on the 19<sup>th</sup> of October until the 13<sup>th</sup> of April 2012.

Prices range between R40 and R60 for starters, R90 and R120 for mains and R35 to R50 for dessert. The Blaauwklippen Barouche restaurant is trading seven days a week and has recently launched their new breakfast menu. The menu caters for everyone whether you like a healthier start or prefer the more substantial Farmhouse breakfast. They also added a Kiddies breakfast to the menu, so please bring the whole family. The Blaauwklippen tasting room is open 7 days a week including on public holidays for wine sales, except the 25<sup>th</sup> of December and the 1<sup>st</sup> of January – we hope to welcome you soon for a tasting of our wines, brandy and award winning Before & After Aperitif - a “bottled memory” of cellar master Rolf Zeitvogel’s grandmother’s Black Forest Kitchen during the Festive Season. A sensuous flavour fusion of Cinnamon and Christmas spice create the backbone of this sophisticated brandy fortified aperitif. Enjoy neat or on the rocks as a classic before & after dinner drink or use it as an ingredient in cocktails and special food dishes. We sell it from the cellar door for R195 per bottle, and it would make a great Christmas gift. Blaauwklippen is also widely regarded as the South-African market leader when it comes to the production of Zinfandel, a grape varietal that enjoys immense popularity in the USA. The Blaauwklippen Zinfandel portfolio includes three products: A classic, sophisticated red wine, a red noble late harvest and a white Zinfandel that made history in 2007 by becoming the first white style Zinfandel in South Africa.

For bookings or more information:

please call (021) 880 0133 or visit [www.blaauwklippen.com](http://www.blaauwklippen.com)



#### 4. IBN WEBPAGE

After IBN has launched a variety of destination within the social media (see report in Monthly Brief 10/2011), now it was time for a revamp of our webpage at [www.ibn.co.za](http://www.ibn.co.za). You will find the latest overview over important topics like the new company law that came in force this year, immigration permits as well as BEE requirements and a lot more other legal and economic information.

The library continues to offer latest legal documents, our IBN information leaflets, which are (still!) to download free of charge as well as basic economic data, short news and the ever so important exchange rates for major currencies.

We are looking forward to see you there, enjoy browsing our part of the world wide web!



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