



South African Reserve Bank

## Financial Surveillance Department

2016-05-10

### **Guidelines to Authorised Dealers in respect of genuine new foreign direct investments of up to R1 billion per company per calendar year**

Authorised Dealers are advised that, to enable them to assist their customers in dealing with requests for outward foreign direct investments, where the cost of such new investment does not exceed R1 billion per company per calendar year, guidelines for the standard conditions applicable to new approved foreign direct investments is set out below.

Authorised Dealers may approve requests by mandated parastatals, as defined in Schedule 2 of the Public Finance Management Act, 1999 (Act No.1 of 1999) and companies wishing to make bona fide new outward foreign direct investments into companies, branches and offices outside the CMA, including requests that fall outside their current line of business, where the total cost of such investments does not exceed R1 billion per company per calendar year.

#### **1. Investments into newly established and newly acquired foreign companies**

1.1 When considering requests of this nature, Authorised Dealers must have the following documents and information in their possession:

- (a) The name and registration number, as well as the names and domicile of the shareholders, of the applicant company;
- (b) the applicant company's latest available audited Financial Statements verifying, inter alia, the applicant's nature of business;

- (c) details of how the investment will be funded, e.g. cash to be transferred and reflected as share capital or shareholders loans, guarantees to be issued, as well as forms NEP to be attested, if applicable;
- (d) an outline of the anticipated benefits of the foreign direct investment; and
- (e) the proposed structure through which the foreign target entity will be held, including details of existing or new foreign holding companies.

1.2 The following criteria must be strictly applied by Authorised Dealers when considering these requests:

- (a) Parastatals may not use tax haven countries as a conduit for outward foreign direct investments elsewhere in the world. This moratorium is not applicable where the investment is made directly into a tax haven country;
- (b) at least 10 per cent of the foreign target entity's voting rights must be obtained;
- (c) passive real estate investments are excluded from this dispensation; and
- (d) foreign currency denominated facilities may be extended by Authorised Dealers to South African companies for the financing of approved foreign direct investments.

Where Authorised Dealers are in doubt, such requests must be referred to the Financial Surveillance Department.

1.3 At the time of approving the investment, Authorised Dealers must report the following information to the Financial Surveillance Department:

- (a) The name and registration number of the applicant company and its nature of business;

- (b) name and domicile of the foreign target entity and its nature of business, also specifying whether this is the establishment of a new or an investment into an existing foreign entity;
- (c) the percentage equity interest and voting rights acquired in the foreign target entity;
- (d) an outline of the anticipated benefits to the Republic;
- (e) details of how the investment will be funded, e.g. cash to be transferred and reflected as share capital or shareholders loans, guarantees to be issued, as well as forms NEP to be attested, if applicable. Where cash is to be transferred from South Africa, the amount and transaction reference number must be reported to the Financial Surveillance Department;
- (f) where applicable, the registered name and domicile of any foreign domiciled holding company, established to hold the target investment; and
- (g) where a new investment is made without funds being transferred from South Africa, the proposed investment must still be approved in terms of points 1.1 (a) to (e) and be reported in the same manner as outlined above.

1.4 Authorised Dealers must inform their customers of the following conditions which are applicable to these investments:

- (a) The audited Financial Statements of the foreign target entities and holding companies, as well as salient details of benefits, must be submitted to the Financial Surveillance Department on an annual basis;
- (b) the Financial Accounts of approved foreign branch operations and the Income and Expenditure Statements of approved foreign offices, as well as salient details of benefits, must be submitted to the Financial Surveillance Department on an annual basis;

- (c) in the event of the foreign investment being disposed of, the net sale proceeds must be repatriated to South Africa in terms of the provisions of Regulation 6, under advice to the Financial Surveillance Department;
- (d) expansion of the target entity's business is permitted, provided that such expansion is without recourse to South Africa;
- (e) a South African company is permitted to acquire from 10 to 20 per cent equity and/or voting rights whichever is the higher, in a foreign target entity, which may in turn hold investments and/or make loans into any CMA country. This dispensation does not apply to foreign direct investments where the South African company on its own or where several South African companies collectively hold an equity interest and/or voting rights in the foreign entity which exceed 20 per cent in total;
- (f) South African owned Intellectual Property may not be transferred by way of a sale, assignment or cession and/or the waiver of rights in favour of non-residents in whatever form, directly or indirectly, without prior Financial Surveillance Department approval;
- (g) applicants may increase their approved equity interest and/or voting rights in the offshore target entity subject to the provisions of paragraph (i) below. Applicants may not reduce or dilute their voting rights below 10 per cent, without prior Financial Surveillance Department approval;
- (h) any change in the nature of the target entity's business must be reported to the Financial Surveillance Department;
- (i) requests to transfer the unutilised portion of the authorised amount to foreign target entities and/or to increase an applicant's approved equity interest and/or voting rights in an offshore target entity may be approved by Authorised Dealers provided that:
  - (aa) the amount to be remitted will not result in the applicant exceeding the permissible foreign direct investment limit of R1 billion;

- (bb) full details of such additional funding as well as the purpose thereof must be forwarded by the Authorised Dealer to the Financial Surveillance Department; and
- (cc) only the actual investment amount as well as any associated costs may be transferred upfront. Any additional funding requirements within the R1 billion limit may only be authorised for transfer abroad as and when the funds are required.
- (j) profits earned by foreign branches and offices must be repatriated to South Africa annually, since these entities have not been exempted from the provisions of Regulation 6;
- (k) in terms of the provisions of Regulation 6, parastatals and companies are obliged to receive their pro rata share of excess profits by way of a dividend on an annual basis and to repatriate same to South Africa. Dividends declared by offshore subsidiaries of South African Companies after 2004-10-26 may be retained offshore and used for any purpose, without any recourse to South Africa, except as provided for in paragraph (m) below. Such dividends repatriated to South Africa after 2004-10-26 may be retransferred abroad at any time and used for any purpose, provided that there is no recourse to South Africa, except as provided for in paragraph (m) below;
- (l) all dividends declared by the offshore operation(s), the amounts repatriated to South Africa or alternatively the dividend amounts retained abroad together with an indication of how such funds were utilised offshore should be reported to the Financial Surveillance Department on an annual basis;
- (m) dividend proceeds may be used to acquire from 10 to 20 per cent equity and/or voting rights, whichever is the higher, in a foreign target entity, which may hold investments and/or make loans into any CMA country. This dispensation does not apply to foreign direct investments where the South African company holds an equity interest and/or voting rights in excess of 20 per cent;

- (n) where guarantees from South Africa have been issued and such guarantees are implemented, full details of the circumstances giving rise thereto must be reported to the Financial Surveillance Department immediately;
- (o) the original share certificates of the foreign target company (and holding company, where applicable) must be lodged with the Authorised Dealer approving the investment. In instances where the applicant company needs the foreign shares as collateral for foreign borrowings/debt abroad or for the disposal of the foreign investment, the share certificates may be released; and
- (p) South Africa must remain the place of effective management for the applicant company and under no circumstances may the applicants re-domicile without the specific prior approval of the Financial Surveillance Department.

The Financial Surveillance Department reserves the right to instruct the applicant company to dispose of the foreign investment and for the proceeds to be repatriated to South Africa, in the event of the above-mentioned criteria and conditions not being complied with.

## **2. Investment into newly established foreign branches and offices**

The same criteria as outlined in 1 above are applicable, together with the following specific conditions:

- 2.1 An Income and Expenditure Statement of the branch/office operation together with a progress report on an annual basis must be submitted to the Financial Surveillance Department. The progress report should, inter alia, reflect full particulars of all the exports/services channelled through the office from the Republic during the period under review.
- 2.2 All export/service proceeds must be accounted for in an approved manner and within the prescribed time period.

- 2.3 Profits earned by the foreign concern must be repatriated to South Africa annually.
- 2.4 Where the criteria as set out above are not adhered to, the Financial Surveillance Department reserves the right to call upon the foreign branch/office to be closed and any proceeds to be repatriated to South Africa.