South African Reserve Bank

Financial Surveillance Department

2018-02-22

Guidelines: South African Institutional Investors

(i) Institutions eligible for the foreign portfolio investment allowance

(a) All retirement funds, long-term insurers and collective investment scheme management companies are treated as institutional investors.

(b) Institutional investors are eligible for the foreign portfolio investment allowance and must comply with the reporting requirements as outlined below.

(c) Investment managers may elect to register with the Financial Surveillance Department as institutional investors. Registration is required for all investment managers wishing to invest funds offshore directly.

(d) To register with the Financial Surveillance Department as an institutional investor, an investment manager must be registered with the Financial Services Board as a discretionary manager or a stockbroker with a discretionary mandate registered with the JSE Limited.

(e) Investment managers who are not eligible for the foreign portfolio investment allowance, including all non-discretionary managers and discretionary managers who elect not to register as institutional investors with the Financial Surveillance Department will be able to acquire foreign asset exposure for their clients only through another domestic institutional investor. These investment managers are treated by the Financial Surveillance Department as intermediaries and are exempt from the reporting requirements.

(f) Investment managers are required to declare their status regarding registration with the Financial Surveillance Department when they invest with another domestic institutional investor.

(ii) The distinction between institutional assets and retail assets

(a) The reporting procedure requires that a distinction be made between institutional assets under management and retail assets under management.

(b) Institutional assets

(aa) Institutional assets refer to assets held or managed on behalf of other institutional investors.

(c) Retail assets

(aa) Retail assets refer to assets received from individuals and other entities such as companies, trusts, and include assets received indirectly through an intermediary, such as a linked investment service provider, nominee company or investment manager not registered as an institutional investor with the Financial Surveillance Department. All assets sourced from an intermediary must be identified as either institutional assets or retail assets applicable to the underlying client.

(iii) Application of foreign portfolio investment limits

(a) The limit on foreign portfolio investments by institutional investors is applied to an institutional investor's total retail assets under management. The foreign exposure of retail assets may not exceed 30 per cent in the case of retirement funds and the underwritten (non-linked) policy business of long-term insurers. Investment managers registered as institutional investors, collective investment scheme management companies and the investment-linked business of long-term insurers are restricted to 40 per cent of total retail assets. It should be noted that compliance with the foreign portfolio investment limit does not preclude an institutional investor from also having to comply with any relevant prudential regulations as administered by the Financial Services Board. In addition to the foreign portfolio investment allowance, institutional investors also qualify for an additional 10 per cent African allowance. See (iv) below in this regard.

(b) Authorised Dealers must ensure that when facilitating the transfer of funds on behalf of institutional investors, where such funds represent retail assets under management, the underlying retail clients' accounts are not debited for conversion purposes under any circumstances. A separate trust account, either in the name of the managing institution or an unrelated third party, must be debited for this purpose and the transaction must be reported in the name of the institutional investor in terms of the requirements of the Reporting System.

(c) Under no circumstances may retail clients have direct access to the foreign assets and all assets abroad must be registered in the name of either an offshore nominee company or the managing institution. The nominee company will hold the beneficial ownership on behalf of retail clients resulting in the retail clients not being able to transfer ownership of the foreign assets into their own names. It follows therefore that the only recourse that retail clients have to the managing institution is a domestic payment in Rand.

(d) A managing institution is a long-term insurer, collective investment scheme manager or investment manager that offers investment products to institutional and/or retail investors. Where an institution manages funds on behalf of another institution, the managing institution may, in principle, invest the funds of the originating institution offshore, subject only to the mandate agreed with the originating institution or otherwise outlined in the mandate of a pooled investment product. An originating institution is an institutional investor that qualifies for a foreign portfolio investment allowance that elects to invest in products offered by a managing institution, either directly or through an intermediary such as a non-discretionary investment manager or linked investment service provider.

(e) Institutional investors may participate in instruments issued by local entities in the offshore market whether priced in Rand or foreign currency on condition that the requirements of the Financial Services Board are complied with. These investments will be subject to the foreign portfolio investment limits.

(f) Institutional investors are also permitted to hedge the currency risk in terms of making foreign portfolio investments offshore (i.e. hedging the anticipated conversion of Rand into foreign currency for transfer offshore in terms of the provisions of section D.1 of the Authorised Dealer Manual). The currency risk of the foreign portfolio investment and the currency risk in respect of the repatriation of funds may be hedged. However, the price risk of the underlying foreign portfolio investment may be hedged either in the foreign market or on the JSE Limited by utilising approved foreign referenced derivative products traded in Rand and issued by the JSE Limited.

(g) Institutional investors may not transfer Rand offshore. In order for an institutional investor to participate in Rand denominated instruments issued offshore, Rand would have to be converted to foreign currency and the resultant foreign currency be re-converted back to Rand in the offshore market to purchase the instrument. The initial conversion of Rand to foreign currency for the purchase of Rand denominated instruments issued offshore could be hedged locally, but the subsequent conversion back to Rand to purchase Rand denominated instruments issued offshore constitutes price risk and may be hedged either in the foreign market or on the JSE Limited by utilising approved foreign referenced derivative products traded in Rand and issued by the JSE Limited.

(h) Institutional investors may not repatriate Rand to South Africa.

Foreign currency proceeds in respect of foreign portfolio investments must be converted to Rand in South Africa with a local Authorised Dealer as the counterparty to the foreign exchange transaction.

(i) While Authorised Dealers are not required to scrutinise the quarterly asset allocation reports of institutional investors wishing to obtain foreign exposure, Authorised Dealers are obliged to ensure that they are dealing with a legitimate institutional investor. Therefore, prior to the transfer of any funds abroad, Authorised Dealers must ensure that their clients are indeed registered with the Financial Services Board by viewing their registration certificates. In addition, institutional investors must provide the Authorised Dealers with documentary evidence confirming the acceptance of their latest quarterly asset allocation reports by the Financial Surveillance Department.

(j) In instances where Authorised Dealers are unable to confirm the registration of an institutional investor with the Financial Services Board and/or obtain proof of acceptance of the quarterly asset allocation report, the matter must be referred to the Financial Surveillance Department.

(k) Foreign assets are defined by the Financial Surveillance Department as the sum of foreign currency denominated assets and Rand denominated foreign assets. Foreign currency denominated assets may be acquired directly through foreign currency transfers from South Africa.

(l) Rand denominated foreign assets may be acquired indirectly through investments with another domestic institutional investor or indirectly by acquiring approved inward listed investments, excluding inward listed shares, based on foreign referenced assets or issued by foreign entities, listed on the JSE Limited. (See section H. of the Authorised Dealer Manual for the definition of inward listed shares.)

(m) The originating institution or its administrator retains the responsibility for ensuring that both its direct and indirect foreign investments remain within the foreign portfolio investment limit. To ensure the consistent classification of foreign asset exposure, institutional investors are required to report their assets on a ‘look-through’ basis.

(n) Institutional investors must take cognisance that any position held as a result of active currency management transactions, not resulting in the actual pay away or receipt of currency (i.e. the ‘in-between trades’) is regarded as foreign asset exposure and must accordingly be marked off against their respective foreign portfolio investment allowances as well as being accounted for in the quarterly asset allocation reports.

(o) No transfers may be effected in respect of costs related to foreign portfolio investments, foreign held assets and liabilities by institutional investors without prior reference to the Financial Surveillance Department.

(iv) African allowance

(a) Institutional investors are also allowed to invest an additional 10 per cent of their total retail assets under management:

(aa) by acquiring foreign currency denominated portfolio assets in Africa directly through foreign currency transfers from South Africa. A separate registered fund or collective investment scheme in South Africa sanctioned by the Financial Services Board is preferred in instances where the institutional investor wishes to obtain direct African exposure by means of a pooling arrangement (e.g. an African fund set up specifically by a managing institution). It is, however, not a requirement that such a direct African exposure should always be undertaken through a separate fund (registered or unregistered);

(bb) by acquiring African assets indirectly through investments with another domestic institutional investor; or

(cc) indirectly by acquiring approved inward listed investments, excluding inward listed shares, listed on the JSE Limited and classified as ‘African’. (See section H. of the Authorised Dealer Manual for the definition of inward listed shares and criteria for 'African' classification).

(b) Institutional investors may apply to the Financial Surveillance Department through an Authorised Dealer to acquire indirect African exposure through a foreign registered fund mandated to invest into Africa. The fund should be mandated to invest at least 75 per cent of funds under management into Africa. A copy of the mandate or prospectus must accompany such application.

(c) Applications will also be considered in instances, where institutional investors obtain indirect African exposure through investments in instruments issued by African entities that are listed on non-African exchanges to raise funds earmarked for use in Africa.

(d) All institutional investors should ensure that their investments in African portfolio assets are also in compliance with the Financial Services Board’s requirements and regulations. The provisions of subsection (G) above should also be adhered to.

(v) Reporting requirements

All institutional investors should submit the following to the Financial Surveillance Department:

(a) Quarterly asset allocation report

(aa) Institutional investors are required to submit quarterly reports of their asset holdings according to the major asset classes as at the end of each calendar quarter. In the case of retirement funds, the administrator must submit quarterly reports for each fund under its administration, unless otherwise instructed by the retirement fund.

(bb) The quarterly reports provide the primary mechanism for monitoring compliance. This framework supports a system of prudential regulation of foreign asset exposures and provides consistent, industry-wide statistics on the foreign diversification levels for all types of institutional investors.

(cc) All quarterly reports must be submitted within three months of the end of the calendar quarter to the Financial Surveillance Department either through an Authorised Dealer or via bulk or single direct reporting.

(dd) In reporting on asset allocations, the ‘look-through’ principle is applied to investments in collective investment schemes, long-term insurance policies and other investment products. This principle ensures the consistent classification of foreign asset exposure, whether acquired directly in foreign currency or indirectly through a domestic intermediary. For instance, a retirement fund holding foreign equities through a collective investment scheme registered locally should record such an investment as a Rand denominated foreign asset.

(ee) Managing institutions that manage assets on behalf of other institutional investors are required to report the asset allocation of such funds or policies to the originating institution as at the end of each calendar quarter within one month of each calendar quarter end. This information is necessary to enable the originating institution to ‘look-through’ to the underlying assets in compiling its quarterly reports.

(ff) In the case of long-term insurers, collective investment scheme management companies and investment managers, the quarterly report needs to reflect the allocation of retail assets and institutional assets under management, separately.

(gg) In the case of retirement funds the quarterly report relates to the allocation of total assets of the retirement fund.

(hh) Information required from institutional investors in excess of the foreign portfolio investment limit:

(1) Institutional investors that hold more than the maximum permitted limits on foreign portfolio investments should provide:

- an explanation for the contravention; and
- a clear indication of how and by when they intend to adjust their foreign asset holdings to fall within the limit on foreign portfolio investments.

(2) Where relevant, this information must be submitted as part of the quarterly asset allocation report.

(b) Managing institutions' information on institutional clients

(aa) Managing institutions are required to provide an updated list of all their institutional investors on a quarterly basis together with a list of:

(1) all new institutional clients investing funds during the quarter; and

(2) all institutional clients who terminated investments during the quarter.

(bb) The lists must be provided as part of the managing institution's quarterly asset allocation report.

(c) Audit requirements

(aa) Institutional investors holding portfolio assets, directly or indirectly, will also be required as part of their financial year-end audit to obtain an audit report from their external auditors assessing the institutional investor's quarterly asset allocation reports.

(bb) All institutional investors with total assets at fair value in excess of R6 million, will be required to submit the audit report to the Financial Surveillance Department either through their Authorised Dealer or by sending an e-mail to sarbportfolio@resbank.co.za.

(cc) The audit reports must be submitted to the Financial Surveillance Department within a maximum period of six months after its financial year end.

(dd) The formats of the audit reports may be downloaded from the South African Reserve Bank's website: www.reservebank.co.za, by following the links: Home>Regulation and supervision> Financial surveillance and exchange controls> Auditors reports and representation letters>Portfolio auditors reports.

(vi) Reporting format

(a) To register for online submission of the quarterly asset allocation report, an institutional investor must send an e-mail to sarbportfolio@resbank.co.za, specifying the wording "Request for online registration" in the subject field.

(b) Subsequently, the interactive web-page may be accessed from the South African Reserve Bank's website: www.reservebank.co.za, by following the links: Home>Regulation and supervision>Financial surveillance and exchange controls> Online Services>Electronic Submission of Asset Allocation Reports.

(c) In addition, technical specifications enabling retirement fund administrators to report electronically in bulk format have been developed. Retirement fund administrators wishing to make use of this facility must send an e-mail to sarbportfolio@resbank.co.za, specifying the wording "Request for bulk reporting specifications" in the subject field.

(d) On receipt of the request in (c) above, the retirement fund administrator will be assisted with the development of an interface to facilitate bulk reporting on behalf of retirement funds.

(vii) Compliance

(a) Institutional investors exceeding the permissible foreign portfolio investment limits are required to provide:

(1) an explanation for the contravention; and

(2) a clear indication of how and by when they intend to adjust their foreign asset holdings to fall within the limit on foreign portfolio investments as part of the quarterly reporting requirements, where relevant.

(b) The Financial Surveillance Department will consider the reasons for the contravention and the proposed corrective measures.

(c) If these measures are deemed to be unacceptable, the Financial Surveillance Department will issue further directives that may include the repatriation of income and/or capital.

(d) Compliance with the reporting requirements as outlined in (v) above will be enforced as outlined hereunder:

The Exchange Control Regulation 18 states:

"Provision of security

18. (1) The Treasury or a person authorised by the Treasury, may order any person to provide security, in such form and in such amount as the Treasury may determine, that he will comply, either generally or in respect of any particular transaction, with the provisions of any of these regulations specified by the Treasury or by a person authorised by the Treasury.

(2) Where any person who has provided security in terms of this regulation, has failed to comply with the provisions of the regulations in respect of which the security has been provided, the Treasury may direct that the said security shall be forfeited for the benefit of the National Revenue Fund.

The forfeiture of such security shall not prevent any other action against the person concerned for his/her failure to comply with the provisions of these regulations."

(e) Under the provisions of Regulation 18, the following payments may apply:

(aa) Non-submission of quarterly report, and/or list of institutional clients, including quarterly reports to be submitted by retirement fund administrators:

(1) 2 per cent of the market value of foreign assets to be deposited in foreign currency with the South African Reserve Bank by purchasing such foreign currency in the spot market. The deposit will be non-interest bearing and will be included as a foreign asset in the calculation of the institutional investor's foreign exposure. Once the Financial Surveillance Department is satisfied that all the outstanding quarterly returns and/or lists of institutional clients have been received, the deposit will be returned to the institutional investor concerned. Such deposit must, however, be converted back to Rand in cases where the institutional investor is exceeding the prescribed limit.

(2) In cases where retirement fund administrators do not submit reports on behalf of their clients, such administrator will be liable for the payment of the penalty.

(bb) Non-submission of quarterly asset allocation information by the managing institution to the originating institution:

(1) 2 per cent of the market value of the assets of the affected originating institution(s) placed with the managing institution to be deposited by the managing institution in Rand with the South African Reserve Bank. The deposit will be non-interest bearing. Once the Financial Surveillance Department is satisfied that all outstanding quarterly asset allocation information has been communicated to the affected originating institution(s), the deposit will be returned to the managing institution.

(cc) Exceeding the foreign portfolio investment limits as a result of market movements and/or a reclassification of assets without corrective measures being in place:

(1) 5 per cent of the market value of the foreign assets to be deposited in foreign currency with the South African Reserve Bank by purchasing such foreign currency in the spot market. The deposit will be non-interest bearing. Once the Financial Surveillance Department is satisfied that sufficient corrective measures are in place or the institutional investor is within the applicable limit, the deposit will be returned to the institution concerned for conversion back to Rand.

(dd) Direct contravention of limits on foreign assets, including misrepresentation of facts in certifying the Financial Surveillance Department compliance via the quarterly reports:

(1) 5 per cent of the market value of the foreign assets to be deposited in foreign currency with the South African Reserve Bank by purchasing such foreign currency in the spot market. The deposit will be non-interest bearing and will have a tenor of 12 months, after which such deposit will be returned to the institution concerned. However, should the institution be involved in any misconduct or in breach of the foreign portfolio investment limits during the period stated, the deposit will be forfeited for the benefit of the National Revenue Fund.