


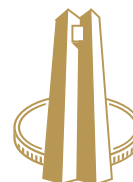
 P O Box 3125 Pretoria 0001 South Africa
 370 Helen Joseph Street Pretoria 0002
 +27 12 313 3911 / 0861 12 7272
 www.resbank.co.za



SOUTH AFRICAN RESERVE BANK
Financial Surveillance Department

14/6/2_2024

2024-02-26

Exchange Control Circular No. 2/2024

Statement on exchange control

We refer to the Minister of Finance's 2024 Budget Speech when it was announced that the National Treasury continues to modernise South Africa's capital flows management framework.

Further exchange control reforms were announced in Annexure E – Financial Sector Update of the Budget Review, which is attached for ease of reference as Annexure A.

In this context, a number of draft Circulars, in amplification of the foregoing, are attached as Annexure B. Interested parties are invited to submit comments on the draft Circulars, in the prescribed format as per Annexure C, to SARB-ExconCirculars@resbank.co.za by Thursday, 2024-03-28.

The input and comments received will be considered, after which the Financial Surveillance Department will issue the final Circulars, at which date the dispensations will become effective.

Acting Head of Department: Financial Surveillance

E

2024 BUDGET REVIEW

FINANCIAL SECTOR
UPDATE



national treasury
Department:
National Treasury
REPUBLIC OF SOUTH AFRICA

This annexure reports on steps to strengthen South Africa's framework to combat money laundering, the financing of terrorism and other financial crimes; reforms to support greater financial inclusion; measures to enhance climate-resilient investment; and other initiatives.

BUILDING CAPABILITY TO FIGHT FINANCIAL CRIMES AND EXIT GREY LISTING

In February 2023, the Financial Action Task Force (FATF) put South Africa on its "grey list" due to deficiencies in technical compliance and effectiveness of the country's system to combat money laundering and the financing of terrorism. This grey listing followed publication of the 2021 mutual evaluation report, in which the FATF identified compliance with 20 of the 40 FATF recommendations and deficiencies in all 11 measures of the effectiveness of the system. In response, government developed a strategy to build a financial system that is less vulnerable to abuse and where abuses are effectively prosecuted. This involves both legislative and regulatory changes, as well as improvements in the implementation and application of these laws and regulations.

Progress on technical compliance

In late 2022, government enacted two key legislative amendments to address the identified problem areas: the General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Act (2022) and the Protection of Constitutional Democracy Against Terrorist and Related Activities Amendment Act (2022). These amendments address most of the legislative deficiencies identified.

At its October 2023 plenary, the FATF formally re-rated 15 of the 20 deficiencies as no longer deficient, with 14 recommendations now fully or largely compliant, and one recommendation not applicable. Accordingly, South Africa needs to address five outstanding technical deficiencies in which the country is partially compliant. Government intends to address these by the end of October 2024.

Progress on effectiveness

Following the 2021 mutual evaluation report, South Africa agreed to implement an action plan with the FATF. Government is working closely with the FATF to implement the 22 items in the plan. These include improvements in government's capability to deal with financial crimes, including corruption, and the better use of beneficial ownership, digital and other information to assist investigations, asset recoveries and prosecutions. Once all items are implemented and the improvements are deemed sustainable, the FATF will reconsider the country's grey listing. South Africa provides the FATF with a progress report every four months.

The October 2023 FATF plenary noted that South Africa is making progress, including largely addressing two action plan items. Additional feedback will be received in the February 2024 FATF plenary. Addressing all the remaining actions and demonstrating that improvements are sustainable by February 2025 will require a significant effort from all the relevant South African authorities.

FINANCIAL INNOVATION TO IMPROVE COMPETITION AND INCLUSION

Government is taking steps to promote the adoption of digital payments, which will help to improve the lives and livelihoods of marginalised groups. Collaboration between the public and private sectors will be key to successful implementation.

Crypto asset policy

The Intergovernmental Fintech Working Group published a position paper on regulating crypto assets in June 2021. In 2024, the group will publish additions to include “stablecoins” as a particular type of crypto asset. It will conduct analytical work to understand the applicable use cases of stablecoins and to recommend an appropriate policy and regulatory response. The group will also finalise a diagnostic of the domestic stablecoin landscape and regulatory recommendations in line with relevant international standards and recommendations.

In 2023, the Financial Sector Conduct Authority (FSCA) and the Financial Intelligence Centre (FIC) began registering the service providers of crypto assets. This follows amendments made to the schedules of the FIC Act (2001) in late 2022 in line with FATF recommendations. In November 2023, the FSCA declared crypto assets to be a financial product, thereby requiring providers of financial services relating to crypto assets to be licensed by the FSCA. Licensing requirements include adherence to standards on fitness, propriety and reporting. In 2024, the FIC and FSCA will jointly increase enforcement of unlicensed service providers of crypto assets.

The FIC Act requires accountable institutions to report all cash transactions exceeding R49 999 to the FIC, as this information may be valuable during criminal investigations. The authorities will consider measures to extend this requirement to transactions concluded with crypto assets.

Tokenisation

Tokenisation is the representation of assets such as securities and payment instruments on distributed ledger technology, commonly known as blockchain. The Intergovernmental Fintech Working Group is considering the impact of tokenisation on domestic financial markets. By June 2024, a paper providing an overview of tokenisation will be published. By December 2024, a discussion paper will be published that outlines the policy and regulatory implications of tokenisation and blockchain-based financial market infrastructure.

Supporting small and informal businesses through payments innovation

The National Treasury and the Reserve Bank, in collaboration with Switzerland’s State Secretariat for Economic Affairs and FinMark Trust, have developed practical interventions that will contribute to an inclusive payments digitalisation programme. The interventions will be implemented from 2024 to 2027. Partners will include financial service providers involved in specific markets and target a combination of new entrants or smaller providers and larger, more established service providers to ensure scalability. The initiative is made up of four digital payments pilot projects.

Project 1: Community digitalisation

Consumers in townships and rural areas primarily use bank accounts as mailbox accounts, withdrawing all money paid into the account instead of using it as a payments tool, while remaining reliant on cash. This tendency is compounded by small enterprises in these areas that deal almost exclusively in cash. This project will enable local merchants to establish the infrastructure needed for digital payments, such as internet connectivity and point-of-sale devices. The project will be piloted in Gauteng. Once the financial services and digital infrastructure footprint is mapped, interventions will be implemented to promote the use of digital payments and infrastructure. The aim is to increase acceptance and use of digital payments by merchants and consumers.

Project 2: Digitising informal and low-income worker payments

This project aims to digitise tips and other payment transactions for informal and low-income workers. About 2 million employees derive between 20 and 50 per cent of their total earnings from tips, and many others depend on tips to supplement their income. The pilot will test various digital tipping solutions in several sites where low-wage and informal workers are concentrated such as shopping centres, petrol stations and restaurants. This pilot will provide information allowing solutions to be adapted and improved. If successful, digital tipping approaches will be scaled up.

Project 3: Cross-border remittances

This project aims to combat money laundering and the financing of terrorism risks in cross-border remittances. At present, many cross-border traders use high-risk channels to send money across borders because of the high cost of formal transactions. On average, these payments attract a transaction fee of 7.6 per cent of the payment value relative to the G20 target of 3 per cent. The majority of these remittance transactions begin with cash, which has high handling costs for operators transferring the remittances. Digitising the initiation of such transactions is expected to reduce these costs. The pilot will focus on the main corridors for sending remittances to Lesotho, Malawi, Mozambique and Zimbabwe. In addition, the pilot will enable retailers and fintechs in South Africa to provide a digital store of value, such as digital deposit accounts or wallets, for migrants to transfer money digitally across borders. This will reduce the cost of these services and reliance on agents.

Project 4: Cross-border trade

This project aims to formalise access to finance for micro, small and medium-sized enterprises engaged in regional trade, with an initial focus on payments before expanding to include other financial needs. It targets the poor and specifically women, who make up a substantial proportion of cross-border traders in the Southern African Development Community region. It will facilitate low-value cross-border trade payments using existing regional infrastructure for remittance payments, and gather data needed to provide additional financial services. The pilot will encourage the use of new and innovative payments technologies for low-value cross-border trade, guided by the outcome of research on digital payment solutions.

RESPONDING TO CLIMATE RISKS AND WORKING TOWARDS NET ZERO

Economy-wide transition strategies and finance are required for South Africa to reach net zero carbon emissions by 2050. This includes financing support for high-emitting businesses and sectors to adopt cleaner technologies, increase energy efficiency and become greener over time. This transition finance will be met in part through the amounts committed by entities such as the International Partners Group, composed of countries that have endorsed South Africa's Just Energy Transition Investment Plan, such as France, Germany, the United Kingdom and the United States. In addition, regulatory frameworks such as the green finance taxonomy, published in 2023, will help incentivise the private sector to provide financing and prepare industry for climate risks.

A critical part of transition finance is transition planning, which sets out the steps individual firms need to take to ensure they can operate sustainably and in a manner that protects investor and stakeholder interests. In 2024, the National Treasury, working with the Sustainable Finance Initiative (previously the Climate Risk Forum), will publish principles for effective transition planning. These principles will be aligned with emerging international best practice.

RETIREMENT REFORM

Early access to retirement funds

Chapter 4 outlines the upcoming reforms as the two-pot retirement system is implemented. The two-pot retirement system will allow retirement fund members to make withdrawals from their retirement funds while they are still active members, so members need not resign to access part of their retirement benefits. Parliament recommended that early access to retirement funds be set earlier than 2025, as originally suggested. This reform is proposed to come into effect on 1 September 2024. The National Treasury aims to finalise the legislative process rapidly in the next few months to ensure that industry and regulators can prepare for implementation. Policy research and engagement continues on the outstanding auto-enrolment, mandatory enrolment and consolidation retirement reforms.

Unclaimed assets

At the end of 2022, the FSCA published a discussion paper, entitled *A Framework for Unclaimed Financial Assets in South Africa*, with recommendations to address high levels of unclaimed assets – assets for which the owner is unknown or cannot be contacted – in the financial system. The FSCA has considered stakeholder feedback on the discussion paper and will release a comprehensive response in early 2024. This feedback will inform the development of a framework for the identification, monitoring, management and reporting of unclaimed assets, including tracing of beneficial owners.

FINANCIAL INCLUSION AND DEPOSIT INSURANCE

The National Treasury will develop a national strategy on financial inclusion in 2024 based on the policy paper, approved by Cabinet in 2023, entitled *An Inclusive Financial Sector for All*. The strategy's goals will include deepening financial inclusion for individuals; improving access to

financial services for small, micro and medium-sized enterprises; and enabling diversification, competition and innovation in financial services.

In March 2023, the Corporation for Deposit Insurance was established to provide a framework to ensure depositors' funds are protected in the event of a bank failure. The establishment of this institution is one of the key amendments contained in the Financial Sector Laws Amendment Act (2021). The remaining provisions, including the provisions to enable the Corporation for Deposit Insurance to begin collecting premiums and other financial contributions, will be effective from 1 April 2024.

MEASURES TO BOOST LONG-TERM INVESTMENT

Capital flows management framework

The 2020 *Budget Review* outlined reforms to modernise the foreign-exchange system to maximise trade and investment benefits in a globalised capital environment and complement the African Continental Free Trade Agreement, to which South Africa is a signatory. The reforms were aligned to the Organisation for Economic Co-operation and Development (OECD) best-practice *Code of Liberalisation of Capital Movements*. The National Treasury, alongside the Reserve Bank, Prudential Authority and the FSCA, will evaluate the impact of these reforms on the prudential, fiscal and monetary policy frameworks. This research is intended to generate adjustments to improve alignment of the frameworks and may affect the pace at which these reforms continue to be implemented.

The following capital flows management reforms are proposed to foster the growth of high-potential and innovative businesses, promote trade and reduce trade-related red tape.

Fostering business growth

Authorised dealers – banks that are authorised to trade in foreign exchange – will be permitted to process requests by certain unlisted companies to establish an offshore company and/or have their primary listing offshore in order to raise foreign loans and capital for their operations up to a limit of R5 billion, in line with the foreign direct investment policy. Provided these companies operate in the fields of technology, media, telecommunications, exploration and other research and development, they will not require prior approval from the Reserve Bank. Investments exceeding R5 billion per company per calendar year require approval from the Reserve Bank's Financial Surveillance Department. The transfer of intellectual property offshore as well as the use of the share-swap mechanism will still require prior approval.

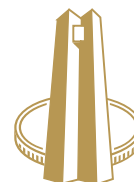
Promoting investment in the region

Authorised dealers will be permitted to allow South African private equity funds that are licensed with the FSCA to invest offshore up to a limit of R5 billion, in line with the foreign direct investment policy, without prior approval. Investments exceeding R5 billion per applicant company per calendar year require approval from the Financial Surveillance Department.

Promoting trade

To support greater trade, authorised dealers will be given greater discretion over certain payment arrangements for customer foreign currency accounts, provided they are satisfied that the relevant transactions are legitimate and have viewed suitable documentary evidence, subject to the relevant reporting to the Financial Surveillance Department.

- **Settlement of transactions:** Authorised dealers will be permitted to process transactions for customer foreign currency accounts for all current account payments.
- **Export proceeds:** Local agents of exporters of goods from South Africa will now be able to settle export proceeds due to the local exporters through the customer foreign currency accounts without prior approval from the Financial Surveillance Department.
- **Import payments:** Authorised dealers may allow resident entities purchasing goods via a local subsidiary of an offshore supplier (that has to import components from abroad) and/or agents to settle only the cost of the imported components in foreign currency through the respective customer foreign currency accounts without prior approval from the Financial Surveillance Department.
- **Related party agreements:** Authorised dealers will be permitted to process all related party agreements relating to current account payments if applicants provide suitable documentary evidence confirming that the agreements are in accordance with transfer pricing rules contained in section 31 of the Income Tax Act (1962), in line with the OECD Guidelines and subject to normal reporting requirements of the Financial Surveillance Department.



14/6/2_2024

Draft Exchange Control Circular

Customer foreign currency accounts - Settlement, on an agent basis, in foreign currency between resident entities

We refer to Exchange Control Circular No. 2/2024 and the announcement made by the Minister of Finance in Annexure E of the 2024 Budget Review, wherein it was mentioned that trade, in particular regional trade, is hampered by onerous red tape and approvals. Some of the red tape relates to applications which must be considered by the Financial Surveillance Department of the South African Reserve Bank.

Following the above, Authorised Dealers will now be permitted to process requests by local agents of exporters of goods from South Africa to settle export proceeds in foreign currency over customer foreign currency (CFC) accounts of resident exporters.

In addition, Authorised Dealers will be permitted to process requests by resident entities, excluding state-owned companies, purchasing goods from local suppliers that have to import certain or all of the components from abroad, to settle only the cost of the imported component(s) in foreign currency over the respective CFC accounts.

The following amendments to the Currency and Exchanges Manual for Authorised Dealers (Authorised Dealer Manual) are outlined:

Section E.(B)(v)

A new sub-section has been added as follows:





- (v) Settlement, on an agent basis, in foreign currency between resident entities over CFC accounts
 - (a) Local agents of exporters of goods from South Africa are allowed to settle export proceeds over CFC accounts of resident exporters, subject to the following conditions:
 - (aa) The applicant company must act as an agent for the exporter on an ongoing basis.
 - (bb) All settlements in foreign currency for goods exported must be over CFC accounts.
 - (cc) At the time of settling the export proceeds over the CFC account, the onus rests on the local agent to present an Authorised Dealer,

where the agent's CFC account is kept, with the local exporter's invoices reflecting the net amount (less the agent's commission) that are to be settled to the local exporter's CFC account concerned.

- (dd) Kindly note that the local agent may not fund its own CFC account from South Africa and where applicable, may in need only hedge the exchange rate exposure in respect of the commission portion to be earned from the export proceeds.
 - (ee) The producer of the goods exported may, provided it is its intention to convert the export proceeds to Rand, cover forward its own exchange rate exposure.
 - (ff) When permitting the transfer of funds between CFC accounts at different Authorised Dealers, such transfers may only be made by means of the appropriate SWIFT client transfer message type as explained in section E.(B)(ii)(a)(gg) of the Authorised Dealer Manual.
- (b) Resident entities, excluding state-owned companies, purchasing goods from local suppliers that have to import certain or all of the components from abroad, may settle only the cost of the imported component(s) in foreign currency over the respective CFC accounts, subject to the following conditions:
- (aa) The applicant company must act as an agent and/or facilitator for the local end-user and/or importer in respect of the importation of the goods.
 - (bb) Settlement may not be in respect of any other domestic value-added process.
 - (cc) The provisions of section E.(B) of the Authorised Dealer Manual must be adhered to.
 - (dd) Only the party that will have to convert Rand to foreign currency to settle such transactions may be permitted to hedge its exposure in respect of the particular transactions. The party facilitating the importation of the goods will not be permitted to enter into hedging transactions in respect of the foreign commitments resulting from such transactions.
- (c) Authorised Dealers should ensure that all other provisions of the Authorised Dealer Manual regarding imports, exports and hedging are fully complied with.

The amended Authorised Dealer Manual and guidelines document may be accessed on the South African Reserve Bank website, www.resbank.co.za, by following the path: Home>What we do>Financial Surveillance>Financial Surveillance documents.

Acting Head of Department: Financial Surveillance

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SOUTH AFRICAN RESERVE BANK
Financial Surveillance Department

Draft Exchange Control Circular

Royalties and fees payable by South African resident entities to non-residents

We refer to Exchange Control Circular No. 2/2024 and the announcement made by the Minister of Finance in Annexure E of the 2024 Budget Review. In a continuous effort to reduce red tape and since the Transfer Pricing rules are included in South African tax legislation, South African residents would no longer be required to obtain prior approval from the Financial Surveillance Department (FinSurv) of the South African Reserve Bank to remit royalties and fees payable to related non-resident parties.

The requirement for minimum payments, advance payments and down payments to be recouped from future royalties or fees payable has also been dispensed with, provided the Authorised Dealer concerned is satisfied that the fees payable are normal in the particular trade concerned.

The following amendments to the Currency and Exchanges Manual for Authorised Dealers (Authorised Dealer Manual) are outlined:

Section B.3(C)

The subsection has been amended to read as follows:

- (i) The following payments in respect of royalties and fees payable to non-resident parties (e.g. the use of foreign owned technology, intellectual property and for services rendered by non-residents) are permissible:

- (a) payment for services rendered by non-residents, including the reimbursement of air fares, accommodation and other costs directly associated with the rendering of the services in question, not specifically dealt with elsewhere in the Authorised Dealer Manual;
 - (b) where applicable, minimum payments, advance payments and down payments, provided that such payments are normal in the trade concerned; and
 - (c) payment of percentage-based fees, provided it is normal in the trade concerned.
- (ii) Prior to effecting any payments, Authorised Dealers should, where applicable, view a copy of the agreement entered into. In all instances an invoice, verifying the purpose and the amount involved, from the relevant non-resident party should be presented.
- (iii) With regard to transactions involving related parties, Authorised Dealers must view documentary evidence confirming that such transactions are concluded at arm's length and at fair and market related prices.
- (iv) Authorised Dealers must ensure that the purpose for which the funds are used abroad is reported under the correct category on the FinSurv Reporting System.
- (v) All transactions executed under this dispensation where payments are made to related non-resident parties must be indicated in the subject field as 'Related party payment' with the description 'Related party payment' when reporting the transactions on the FinSurv Reporting System.
- (vi) In addition to (v) above, a return must be submitted to the Financial Surveillance Department on a quarterly basis, providing the name and registration number of the applicant entity and the name of the related party in respect of all related party agreements considered by the Authorised Dealer during the period stated.

- (vii) The applicant entity must present a letter in respect of royalty payments, on an annual basis, from their independent auditor, confirming the amount or percentage transferred over a 12-month period to the Authorised Dealer. This arrangement only applies where the applicant entity has made recurring payments in terms of a royalty agreement.

Section B.3(C)(ii)

The subsection has been deleted.

Section B.3(C)(iii)

This subsection has been amended and renumbered as (ii) as follows:

- (ii) Authorised Dealers may approve the extension of agreements authorised in (i) above as well as agreements previously approved by the Financial Surveillance Department, provided that the agreement originally entered into makes provision for an extension or an addendum to the agreement is viewed confirming the extension thereof.

Section B.3(D)(i)(c)

This subsection has been amended to read as follows:

- (c) where applicable, minimum payments, advance payments and down payments are permissible provided that such payments are normal in the trade concerned.

Section K.(K)





A new subsection has been added as follows:

- (K) Return of related party agreement(s). See subsection B.3(C)(v) of the Authorised Dealer Manual.

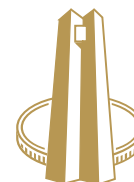
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14/6/2_2024



SOUTH AFRICAN RESERVE BANK
Financial Surveillance Department

Draft Exchange Control Circular

South African Private Equity Funds

We refer to Exchange Control Circular No. 2/2024 and the announcement made by the Minister of Finance in Annexure E of the 2024 Budget Review, wherein it was mentioned that through engagements with high growth firms, constraints that these firms face in raising capital in international venture capital markets have been raised. This has led to some of the firms establishing businesses offshore entirely.

Having regard to the announcement by the Minister of Finance and to encourage these firms to establish offshore entities from a domestic base, Authorised Dealers may process requests by South African private equity funds that are licensed with the Financial Sector Conduct Authority to invest offshore up to R5 billion per applicant company per calendar year in line with the outward foreign direct investment policy, without prior approval from the Financial Surveillance Department. Private equity funds seeking to invest offshore in excess of R5 billion per applicant company per calendar year require approval from the Financial Surveillance Department.

The following amendments to the Currency and Exchanges Manual for Authorised Dealers (Authorised Dealer Manual) are outlined:

Section B.2(G)

The section has been amended as follows:

- (i) Authorised Dealers may approve requests by private equity funds that are licensed with the Financial Sector Conduct Authority and mandated to invest

outside the CMA, where the total cost of such investments does not exceed R5 billion per company per calendar year.

- (ii) When considering requests of this nature, Authorised Dealers must have the following documents and information in their possession:
 - (a) a copy of the local en-commandite partnership's mandate to invest outside the CMA or, in the case of a local fund running parallel with an offshore fund, a copy of the co-investment agreement between the local and foreign partnership;
 - (b) cash flow projections for a 36-month period indicating the amount of capital to be exited from South Africa for investment purposes; and
 - (c) the percentage equity interest and voting rights acquired in the foreign target entity.
- (iii) The private equity funds will be subject to the following conditions:
 - (a) the amounts to be externalised may be invested as share capital and/or shareholders loans and/or guarantees. An intermediary company, domiciled in a foreign jurisdiction may be interposed to hold investments by the private equity fund in the foreign target entity. Any other avenue of investing offshore through, for example foreign trusts, would require the specific prior approval of the Financial Surveillance Department;
 - (b) the local partnership representing the South African investors must obtain a minimum of 10 per cent of the voting rights in each of its investments to be made into Africa and/or outside Africa. In the context of a 'dual fund' where the private equity fund is managed from South Africa, the minimum 10 per cent requirement may be measured on a fund-wide basis after the conversion of investment rights into voting rights;
 - (c) the voting rights in the foreign target entity may not be diluted below 10 per cent, except in instances where all of the shareholding in the foreign

target entity is sold, which should be for a fair and market related price and the net sale proceeds thereof must be repatriated to South Africa in terms of the provisions of Exchange Control Regulation 6, under advice to the Financial Surveillance Department;

- (d) South Africa should remain the 'place of effective management' for the local partnership and under no circumstances may the partnership redomicile without the specific prior approval of the Financial Surveillance Department;
- (e) South African owned Intellectual Property may not be transferred by way of sale, assignment or cession and/or waiver of rights in favour of non-residents in whatever form, directly or indirectly, without prior approval from the Financial Surveillance Department;
- (f) dividends declared by the foreign target entity after 2004-10-26 may be retained offshore and used for any purpose, without any recourse to South Africa. 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. The Financial Surveillance Department, however, on an annual basis require to be advised of all dividends declared by the offshore operation, the amounts repatriated to South Africa or alternatively the dividend amounts retained abroad together with an indication of how such funds were utilised offshore;
- (g) guarantees from South Africa may be issued, provided that the combined value of such guarantees, share capital and/or shareholders' loans do/does not exceed the amount authorised at any one time;
- (h) private equity funds with authorised foreign assets may invest in South Africa, provided that where South African assets are acquired through an offshore structure (loop structure), the investment is reported to an Authorised Dealer as and when the transaction(s) is finalised as well as the submission of an annual progress report to the Financial Surveillance Department via an Authorised Dealer. The Authorised Dealer must also

view an independent auditor's written confirmation or suitable documentary evidence verifying that such loop transaction(s) is concluded on an arm's length basis, for a fair and market related price;

- (i) the information called for in subsection (h) above must be furnished to the Authorised Dealer and should, inter alia, include the name(s) of the South African affiliated foreign investor(s), a description of the assets to be acquired (including inward foreign loans, the acquisition of shares and the acquisition of property), the name of the South African target investment company, if applicable and the date of the acquisition as well as the actual foreign currency amount introduced including a transaction reference number;
- (j) in addition, all inward loans from South African affiliated foreign investors must comply with the directives issued in section I.3(B) of the Authorised Dealer Manual;
- (k) institutional investors and Authorised Dealers must be aware that in terms of the 'look-through' principle, any offshore acquisitions held indirectly via the local private equity fund must be marked off against their respective prudential limits. In this regard, the Financial Sector Conduct Authority Regulations governing the permissibility of these investments for institutional investors as part of their portfolios must also be complied with;
- (l) upon completion of each 12-month period the local partnership must, through an Authorised Dealer, advise the Financial Surveillance Department of the exact amount of capital (debt and equity) exported for each offshore investment made, the name of each foreign target investment, the foreign target entities' domicile and the percentage voting rights obtained in each foreign target entity;
- (m) the local partnership must also on an annual basis demonstrate to the Financial Surveillance Department the economic benefit that South Africa derived as a result of the offshore investments made (i.e. the management fees that the South African private equity fund manager





received from the foreign investors, any other fees that accrued to South Africa as a result of the offshore investments made, dividends and all other realisations from the foreign target entity and full details of the proceeds received on the disposal of the foreign target entities); and

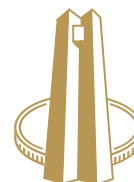
- (n) the audited Financial Statements of the foreign target entity invested into must be submitted to the Financial Surveillance Department on an annual basis.
- (iv) Private equity funds that are licensed with the Financial Sector Conduct Authority and mandated to invest outside the CMA, where the total cost of such investments exceeds R5 billion per investment per calendar year, require the prior written approval of the Financial Surveillance Department. The following information must accompany such applications:
 - (a) a copy of the local en-commandite partnership's mandate to invest outside the CMA or, in the case of a local fund running parallel with an offshore fund, a copy of the co-investment agreement between the local and foreign partnership;
 - (b) cash flow projections for a 36-month period indicating the amount of capital to be exited from South Africa for investment purposes; and
 - (c) the percentage equity interest and voting rights acquired in the foreign target entity.
- (v) Authorised Dealers may process requests by private equity funds wishing to make bona fide new outward foreign portfolio investments offshore where the total cost of such investments does not exceed R5 billion per private equity fund per calendar year. The provisions of subsection (iii) above, except for (iii)(b) and (iii)(c), must strictly be adhered to. Outward foreign portfolio investments that exceed R5 billion per private equity fund per calendar year must be referred to the Financial Surveillance Department for prior approval.

The amended Authorised Dealer Manual and guidelines document may be accessed on the South African Reserve Bank website, www.resbank.co.za, by following the path: Home>What we do>Financial Surveillance>Financial Surveillance documents.

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Draft Exchange Control Circular

Customer foreign currency accounts: Set off arrangements

We refer to Exchange Control Circular No. 2/2024 and the announcement made by the Minister of Finance in Annexure E of the 2024 Budget Review, wherein it was mentioned that trade, in particular regional trade, is hampered by onerous red tape and approvals. Some of the red tape relates to applications which must be considered by the Financial Surveillance Department of the South African Reserve Bank.

Following the above, Authorised Dealers will be permitted to process legitimate foreign transactions in respect of all current account payments to be paid from customer foreign currency (CFC) accounts.

The set offs and/or debits may only be processed provided that the Authorised Dealer concerned has satisfied itself that the transactions are permissible in terms of the various sections of the Currency and Exchanges Manual for Authorised Dealers (Authorised Dealer Manual) or in respect of which a specific authority has been granted by the Financial Surveillance Department.

The following amendments to the Authorised Dealer Manual are outlined:

Section B.13(B)(ii)

The sub-section has been amended as follows:

- (ii) Selling commissions may be set off against export proceeds that were credited to a CFC account.

Section E.(B)(iii)

The sub-section has been amended as follows:

- (a) The following payments may be set off against single CFC account balances:
 - (aa) imports and software electronically downloaded, including all costs related thereto; and
 - (bb) all legitimate current account payments may be permitted by an Authorised Dealer to be paid from a CFC account.
- (b) The set offs and/or debits referred to above may only be processed provided that the Authorised Dealer concerned has satisfied itself that the transactions are permissible in terms of the various sections of the Authorised Dealer

Manual or in respect of which a specific authority has been granted by the Financial Surveillance Department.

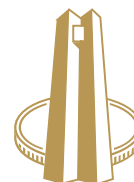
- (c) In instances where foreign currency is purchased in the spot market for permissible transactions in respect of a firm and ascertainable underlying commitment or the maturity proceeds of hedging contracts are credited to a CFC account, the onus is on clients of Authorised Dealers to ensure that such funds are transferred abroad within a period of 30 days. Authorised Dealers must ensure that this dispensation is not abused.

The amended Authorised Dealer Manual and guidelines document may be accessed on the South African Reserve Bank website, www.resbank.co.za, by following the path: Home>What we do>Financial Surveillance>Financial Surveillance documents.

Acting Head of Department: Financial Surveillance

Draft for comment

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P O Box 3125 Pretoria 0001 South Africa
370 Helen Joseph Street Pretoria 0002
+27 12 313 3911 / 0861 12 7272
www.resbank.co.za



SOUTH AFRICAN RESERVE BANK
Financial Surveillance Department

14/6/2_2024

Draft Exchange Control Circular

Technology, media, telecommunications, exploration and other research and development companies

We refer to Exchange Control Circular No. 2/2024 and the announcement made by the Minister of Finance in Annexure E of the 2024 Budget Review, wherein it was mentioned that through engagements with high growth firms, constraints that these firms face in raising capital in international venture capital markets have been raised. This has led to some of the firms establishing businesses offshore entirely.

Further to the above and to encourage these firms to establish offshore entities from a domestic base, Authorised Dealers may approve requests by technology, media, telecommunications, exploration and other research and development companies that are verified as such in writing by the South Africa Startup Act Movement Steering Committee to invest offshore up to R5 billion per company per calendar year in line with the outward foreign direct investment policy, without prior approval from the Financial Surveillance Department. Technology, media, telecommunications, exploration and other research and development companies seeking to invest offshore in excess of R5 billion per company per calendar year require prior approval from the Financial Surveillance Department.

It should, however, be noted that the offshore entity established for such investments must remain a South African tax resident and be incorporated and effectively managed and controlled in South Africa. Furthermore, the transfer of South African owned intellectual property to related parties offshore as well as the utilisation of share-for-share exchange transactions still require prior approval from the Financial Surveillance Department.

The following amendments to the Currency and Exchanges Manual for Authorised Dealers (Authorised Dealer Manual) are outlined:

Section A.1

The following definition has been added as follows:

Technology, media, telecommunications, exploration and other research and development company means a South African resident, privately held company that is verified as such in writing by the South Africa Startup Act Movement Steering Committee as a consequence of substantially meeting the following requirements:

- (a) it is newly established and/or is an early-stage growth company based on a holistic consideration of various objective factors, including its age, relatively small size (e.g., number of employees and customers), annual revenue, and ability to attract venture funding and other funding typically reserved for start-ups;
- (b) it has its operational entity based in South Africa;
- (c) it does not distribute its profits at present, and has not done so in the past;
- (d) its mission statement predominantly or exclusively concerns innovative products or services, where innovative products or services are defined as per the Organisation for Economic Co-operation and Development definition of innovation. A company that operates in the information and communications technology (ICT) sector or is a tech-enabled start-up including agritech, edtech, fintech, insure tech, tech marketplaces, smart mobility, green tech, health tech, amongst others, will generally fall within this definition; and
- (e) it is not the result of a company merger or split-up, or of a business or branch transfer, the primary purpose of which is to enable access to this dispensation.

Section B.2(F)

The section has been amended as follows:

- (i) Authorised Dealers may approve requests by South African technology, media, telecommunications, exploration and other research and development companies that are verified as such in writing by the South Africa Startup Act Movement Steering Committee to primary list offshore to raise foreign loans and capital for their operations within a limit of R5 billion per company per calendar year.
 - (a) At the inception of the transaction, the following information must be furnished to the Authorised Dealer:
 - (aa) the name(s) of the foreign target entity(ies);
 - (bb) description of what type of business the foreign target entity(ies) will be involved in;
 - (cc) details of the envisaged investment; and
 - (dd) full details of the percentage shareholding in the foreign target entity(ies) including the group structure must be provided.
 - (b) The following conditions must be adhered to:
 - (aa) such a company must operate as a South African tax resident and be incorporated and effectively managed and controlled in South Africa;
 - (bb) the foreign listed entity must secondary list in South Africa within two years following the successful offshore listing;
 - (cc) a report must be submitted to the Financial Surveillance Department on the status of the foreign listing, foreign operations,

details of all the agreements entered into, details of funds raised offshore and funds introduced; and

(dd) the financial statements of the foreign listed entity must be submitted to the Financial Surveillance Department annually.

(ii) Authorised Dealers may approve requests by unlisted South African technology, media, telecommunications, exploration and other research and development companies that are verified as such in writing by the South Africa Startup Act Movement Steering Committee to establish a foreign company to raise funding for their operations within a limit of R5 billion per company per calendar year.

(a) At the inception of the transaction, the following information must be furnished to the Authorised Dealer:

(aa) the name(s) of the foreign target entity(ies);

(bb) description of what type of business the foreign target entity(ies) will be involved in;

(cc) details of the envisaged investment; and

(dd) full details of the percentage shareholding in the foreign target entity(ies) including the group structure must be provided.

(b) The following conditions must be adhered to:

(aa) such a company must operate as a South African tax resident and be incorporated and effectively managed and controlled in South Africa;

(bb) a report must be submitted to the Financial Surveillance Department on the status of the foreign operations, details of all the





agreements entered into, details of funds raised offshore and funds introduced; and

- (cc) the financial statements of the foreign listed entity must be submitted to the Financial Surveillance Department annually.
- (iii) South African owned intellectual property may not be transferred by way of sale, assignment or cession and/or waiver of rights in favour of related non-resident parties in whatever form, directly or indirectly, without prior approval from the Financial Surveillance Department.
- (iv) Companies established in terms of (ii) above, may in turn hold investments and/or make loans into South Africa (loop structures), provided the transaction is for a fair and market related price.
- (v) Should the funding of the transaction(s) be structured in any other manner than that permitted in the Authorised Dealer Manual, for instance, by way of share-for-share exchange transactions, prior approval from the Financial Surveillance Department must be obtained.
- (vi) Transactions in terms of (i) and (ii) above where the total cost of such investments exceeds R5 billion per company per calendar year, require the prior approval of the Financial Surveillance Department. The information furnished in (i)(a) and (ii)(a) above must accompany the application to the Financial Surveillance Department.

The amended Authorised Dealer Manual and guidelines document may be accessed on the South African Reserve Bank website, www.resbank.co.za, by following the path: Home>What we do>Financial Surveillance>Financial Surveillance documents.

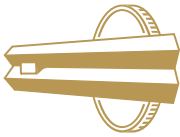
Acting Head of Department: Financial Surveillance



 P O Box 3125 Pretoria 0001 South Africa
 370 Helen Joseph Street Pretoria 0002
 +27 12 313 3911 / 0861 12 7272
 www.resbank.co.za

14/6/2_2024

2024-02-26



SOUTH AFRICAN RESERVE BANK
Financial Surveillance Department

Comments on reforms announced in Annexure E of the 2024 Budget Review reflected in the draft Exchange Control Circulars

Due date for comments: Thursday, 2024-03-28

1. Commentator details

Entity/individual name	
Industry/sector	
Name of contact person	
Telephone number of contact person	
Email address of contact person	

2. Comments

Title of the Exchange Control Circular/Annexure no.	Paragraph of the Exchange Control Circular selected for comments	Proposed amendments	Motivation for the proposed amendments