



14/6/2_2021

2021-01-04

Exchange Control Circular No. 1/2021

South African resident individuals and companies - loop structures

Following the Minister of Finance's announcement in the 2020 Medium Term Budget Policy Statement and in order to support South Africa's growth as an investment and financial hub for Africa, it is advised that the full 'loop structure' restriction has been lifted to encourage inward investments into South Africa; subject to the normal criteria applying to inward investments into South Africa and the reporting to the Financial Surveillance Department.

This reform is effective from 2021-01-01 and applies to private individuals and companies, including private equity funds that are tax resident in South Africa.

The following amendments have been made in the Currency and Exchanges Manual for Authorised Dealers (Manual):

Section B.2(B)(i)

The subsections (i), (j), (k) and (l) have been amended and replaced as follows:

- (i) Resident individuals 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 aforementioned party also has to view an independent auditor's written confirmation or suitable documentary evidence verifying that such transaction(s) is concluded on an arm's length basis, for a fair and

market related price.

- (j) Upon completion of the transaction in (i) above the Authorised Dealer must submit a report to the Financial Surveillance Department which 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.
- (k) 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.
- (l) Existing unauthorised loop structures (i.e. created by individuals prior to 2021-01-01) and/or unauthorised loop structures where the 40 per cent shareholding threshold was exceeded, must still be regularised with the Financial Surveillance Department.

Section B.2(C)(i)(f)

The current subsection (ee) has been deleted and replaced accordingly. New subsections (ff), (gg) and (hh) have been added. The current subsections (ff) to (oo) have been renumbered (ii) to (qq) while the current subsection (kk) has been deleted.

- (ee) Corporates 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 aforementioned party also has to view an independent auditor's written confirmation or suitable documentary evidence verifying that such

transaction(s) are concluded on an arm's length basis, for a fair and market related price.

- (ff) Upon completion of the transaction in (ee) above the Authorised Dealer must submit a report to the Financial Surveillance Department which 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.
- (gg) 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.
- (hh) Existing unauthorised loop structures (i.e. created by corporates prior to 2021-01-01) and/or unauthorised loop structures where the 40 per cent shareholding threshold was exceeded, must still be regularised with the Financial Surveillance Department.

Section B.2(C)(ii)(e)

The current subsection (gg) has been deleted and replaced accordingly. New subsections (hh), (ii) and (jj) have been added accordingly.

- (gg) Corporates 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 aforementioned party also has to view an independent auditor's written confirmation or suitable documentary evidence verifying that such transaction(s) is concluded on an arm's length basis, for a fair and market

related price.

- (hh) Upon completion of the transaction in (gg) above the Authorised Dealer must submit a report to the Financial Surveillance Department which 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.
- (ii) 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.
- (jj) Existing unauthorised loop structures (i.e. created by corporates prior to 2021-01-01) and/or unauthorised loop structures where the 40 per cent shareholding threshold was exceeded must still be regularised with the Financial Surveillance Department.

Section B.2(G)

The current subsection (ii) has been deleted and replaced accordingly. New subsections (iii) and (iv) have been added while the current subsections (iii) and (iv) have been renumbered accordingly.

- (ii) 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 aforementioned party also has to 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.

- (iii) The information called for in subsection (i) above must be furnished by the Authorised Dealer to the Financial Surveillance Department 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.
- (iv) 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.
- (v) Existing unauthorised loop structures (i.e. created by private equity funds prior to 2021-01-01) and/or unauthorised loop structures must still be regularised with the Financial Surveillance Department.

Section B.2(L)

The entire subsection has been deleted.

Section B.17(D)

The current subsections (ii), (iii) and (iv) have been amended while subsection (v) has been deleted accordingly.

- (ii) The foreign assets inherited may, on application, to the Financial Surveillance Department normally be retained abroad provided that the assets were held abroad by the deceased in compliance with the provisions of the Regulations.
- (iii) The approval of the Financial Surveillance Department to retain such foreign assets abroad will be granted subject to the condition that the foreign assets

may not be placed at the disposal of other residents.

- (iv) Where it is disclosed to the Financial Surveillance Department that the foreign assets inherited were held by the deceased in a manner contrary to the provisions of the Regulations, an application for regularisation of such assets must be submitted via an Authorised Dealer to the Financial Surveillance Department. If approved, the retention of such assets abroad is subject to the conditions that the assets will not be placed at the disposal of other residents.

Section I.3(B)(iii)(a)(mm)

The sentence has been deleted.

Section I.3(B)(iv)(a)(ee) and (ff)

The paragraphs have been deleted.

The amended Manual as well as guidelines documents for both individuals and business entities may be accessed on the South African Reserve Bank website: www.resbank.co.za by following the links: home>financial-surveillance>financial-surveillance-documents>manuals.

Acting Head of Department: Financial Surveillance