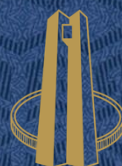
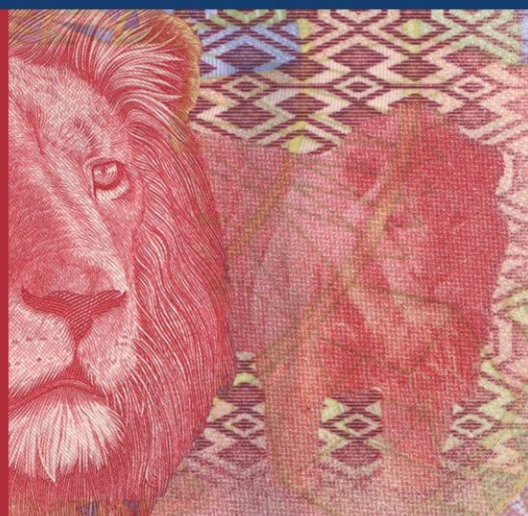


Currency and Exchanges guidelines for business entities

2019-10-31



South African Reserve Bank



South African Reserve Bank

Financial Surveillance Department

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Disclaimer

The Currency and Exchanges guidelines for business entities (guidelines) are issued to assist business entities and other interested parties by providing a general understanding of the exchange control system in the Republic of South Africa. It does not have any statutory force nor does it replace or supersede the Exchange Control Regulations (Regulations) promulgated in terms of section 9 of the Currency and Exchanges Act, 1933 (Act No. 9 of 1933) or any permission, exemption or condition granted or attached to certain transactions in terms of the Regulations.

The arrangements set out in the guidelines should in no manner be construed as absolving business entities from their duties and obligations under any other law, including but not limited to the Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998), the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001), the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004 (Act No. 33 of 2004).

The Financial Surveillance Department of the South African Reserve Bank (Financial Surveillance Department) views contraventions of the Exchange Control Regulations, as well as any actions to circumvent the permissions and conditions contained in the Currency and Exchanges Manual for Authorised Dealers in foreign exchange (Authorised Dealer Manual) and the Currency and Exchanges Manual for Authorised Dealers in foreign exchange with limited authority (ADLA Manual) in a serious light.

The Exchange Control Regulations, Orders and Rules, Authorised Dealer Manual and the ADLA Manual are available on the South African Reserve Bank's website: www.reservebank.co.za.

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Definitions

In the Currency and Exchanges guidelines for business entities, unless the context indicates otherwise:

ADLA means an Authorised Dealer in foreign exchange with limited authority, including Bureaux de Change, independent money transfer operators and value transfer service providers, who are authorised by the Financial Surveillance Department to deal in foreign exchange transactions as determined by the Financial Surveillance Department.

ADLA Manual means the Currency and Exchanges Manual for ADLAs issued by the Financial Surveillance Department to ADLAs under the powers delegated by the Minister of Finance. The ADLA Manual contains the permissions, conditions and limits applicable to the transactions in foreign exchange that may be undertaken by ADLAs and/or on behalf of their clients, as well as details of related administrative responsibilities.

Affected person means a body corporate, foundation, trust or partnership operating in South Africa, or an estate, in respect of which:

- (i) 75 per cent or more of the capital, assets or earnings thereof may be utilised for payment to, or to the benefit in any manner of, any person who is not resident in South Africa; or
- (ii) 75 per cent or more of the voting securities, voting power, power of control, capital, assets or earnings thereof, are directly or indirectly vested in, or controlled by or on behalf of, any person who is not resident in South Africa.

Africa means any country forming part of the African Union.

Authorised Dealer means, in relation to any transaction in respect of gold, a person authorised by the Financial Surveillance Department to deal in gold and, in relation to any transaction in respect of foreign exchange, a person authorised by the Financial Surveillance Department to deal in foreign exchange.

Authorised Dealer Manual means the Currency and Exchanges Manual for Authorised Dealers issued by the Financial Surveillance Department to Authorised Dealers under the powers delegated by the Minister of Finance. The Authorised Dealer Currency and Exchanges Manual contains the permissions, conditions and limits applicable to the transactions in foreign exchange that may be undertaken by Authorised Dealers and/or on behalf of their clients, as well as details of related administrative responsibilities.

Capital goods mean tangible items (property, plant and equipment) that:

- (i) are held for use in the production or supply of goods and services, for rental to others or for administrative purposes; and
- (ii) are expected to be used during more than one period.

CFC account means a Customer Foreign Currency account conducted by residents in the nostro administration of an Authorised Dealer, in terms of the provisions of the Authorised Dealer Manual or in terms of a specific authority granted by the Financial Surveillance Department. Such accounts are held onshore and represent local assets denominated in foreign currency.

CISCA means the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002).

CMA means the Common Monetary Area, which consists of Lesotho, Namibia, South Africa and Swaziland.

Cross-border foreign exchange transaction means the purchase or sale of foreign currency with or for Rand.

Customs means Customs and Excise, a division of the South African Revenue Service.

Emigrant means a South African resident who is leaving or has left South Africa to take up permanent residence or has been granted permanent residence in any country outside the CMA.

Financial assistance includes the lending of currency, the granting of credit, the taking up of securities, the conclusion of a hire purchase or a lease, the financing of sales or stocks, discounting, factoring, the guaranteeing of acceptance credits, the guaranteeing or acceptance of any obligation, a suretyship, a buy-back and a leaseback, but excluding:

- (i) the granting of credit by a seller in respect of any commercial transaction directly involving the passing of ownership of the goods sold from seller to purchaser; and
- (ii) the granting of credit solely in respect of the payment for services rendered.

Financial Surveillance Department means the Financial Surveillance Department of the South African Reserve Bank (responsible for the administration of exchange control on behalf of the Treasury).

Foreign bank account means a foreign currency bank account conducted by residents with a bank outside the CMA in terms of the provisions of the Authorised Dealer Manual or a specific authority granted by the Financial Surveillance Department.

Foreign currency means any currency other than currency, which is legal tender in South Africa, but excludes the currencies of Lesotho, Namibia and Swaziland. Foreign currency is deemed to include any bill of exchange, letter of credit, money order, postal order, promissory note, Rand to or from a Non-resident Rand account, travellers cheque or any other instrument of foreign exchange.

Foreign currency account means an account conducted by residents and non-residents in the nostro-administration of Authorised Dealers in terms of the provisions of the Authorised Dealer Manual or a specific authority granted by the Financial Surveillance Department.

Foreign direct investment means the objective of obtaining a lasting interest by a resident entity in one economy (direct investor) in an entity resident in an economy other than that of the investor (direct investment enterprise). The lasting interest implies the existence of a long-term relationship between the direct investor and the direct investment enterprise, and a significant degree of influence on the management of the direct investment enterprise. A direct investment enterprise is defined as “an incorporated or unincorporated enterprise in which a foreign investor owns 10 per cent or more of the ordinary shares or voting power of an incorporated enterprise or the equivalent of an unincorporated enterprise.”

Gold as referred to in Regulations 2 and 5 includes all forms of gold other than wrought gold, as well as ingots, amalgam, concentrates or salts of gold buttons and trade scrap. Gold as referred to in Regulation 3 includes wrought gold and gold coins.

HoldCo means South African holding company for African and offshore operations.

Immigrants mean natural persons who emigrated from countries outside the CMA with the firm intention of taking up or who have taken up permanent residence in South Africa.

Integrated form means the electronic or paper format of a contract between an Authorised Dealer or ADLA and its client resulting in a balance-of-payments reporting obligation. It includes a declaration to the effect that the information provided is true and correct.

ITAC means International Trade Administration Commission of South Africa established in terms of section 7 of the International Trade Administration Act, 2002 (Act No. 71 of 2002).

Long-term Insurance Act means the Long-term Insurance Act, 1998 (Act No. 52 of 1998), as amended, in respect of long-term insurance.

MRN means the Movement Reference Number issued by Customs.

Non-resident means a person (i.e. a natural person or legal entity) whose normal place of residence, domicile or registration is outside the CMA.

Non-resident area means all countries other than those included in the CMA.

Non-resident Rand means Rand to or from a non-resident account that may be deemed, in certain circumstances permissible elsewhere in the Authorised Dealer Manual, as an acceptable payment mechanism in lieu of foreign currency. It should be noted that non-resident Rand cannot in any manner be defined as foreign currency. It is purely Rand held in a non-resident account or Rand received from a non-resident source.

Non-resident Rand account means the Rand account of a non-resident conducted in the books of an Authorised Dealer.

Passenger ticket means a ticket issued in respect of travel arrangements, inclusive of electronically issued tickets (e-tickets).

Rand means the monetary unit of South Africa as defined in section 15 of the South African Reserve Bank Act, 1989 (Act No. 90 of 1989).

Regulations mean the Exchange Control Regulations, 1961 as promulgated by Government Notice R.1111 of 1961-12-01, as amended from time to time.

Related party means a party to a transaction that has a direct or indirect interest in the other party and has the ability to control the other party or exercise significant influence over the other party in making financial and operating decisions or both parties are under common control. For the purpose of the Authorised Dealer Manual, this includes transactions between parties that belong to the same group of companies such as parent, subsidiary, fellow subsidiary and/or an associate company.

Reporting System means the electronic FinSurv Reporting System used to transmit data to the Financial Surveillance Department in an agreed format.

Resident means any person (i.e. a natural person or legal entity) who has taken up permanent residence, is domiciled or is registered in South Africa. For the purpose of the Authorised Dealers Manual, this excludes any approved offshore investments held by South African residents outside the CMA. However, such entities are still subject to the financial surveillance rules and the Regulations.

Resident temporarily abroad means any resident who has departed from South Africa to any country outside the CMA with no intention of taking up permanent residence or who has not been granted permanent residence in another country, excluding those residents who are abroad on holiday or business travel.

Restricted Authorised Dealer means a person authorised by the Financial Surveillance Department to deal in foreign exchange utilising a locally issued credit card for permissible cross border transactions.

SADC means the Southern African Development Community consisting of Angola, Botswana, Democratic Republic of the Congo, Lesotho, Madagascar, Malawi, Mauritius, Mocambique, Namibia, Seychelles, South Africa, Swaziland, United Republic of Tanzania, Zambia and Zimbabwe.

SARS means the South African Revenue Service.

SARS Customs Declaration comprises the following set of documents:

- (i) **SARS Customs Declaration form**, which is the form used by Customs to verify importers or exporters' self-assessment of goods declared for a Customs procedure. The customs procedure is defined by the Procedure Category Code (A to L) in conjunction with the Customs Requested Procedure Code (RPC) on the declaration; and
- (ii) **SARS Customs Supporting documentation**, which is the commercial documents (e.g. suppliers invoice, regulatory permit, transport document, currency conversion/duty calculation worksheet) upon which the Customs Declaration form is completed; and

- (iii) **SARS Customs Status Notification**, which is the response issued by Customs (EDI Response Notification/Customs Release Notification) specifying the status or decision of Customs in respect of goods declared.

Securities include quoted stocks, shares, warrants, debentures and rights, as well as unquoted shares in public companies, shares in private companies, Government, Municipal and Public utility stocks, non-resident owned mortgage bonds and/or participations in mortgage bonds and short-term debt instruments. The terms scrip and share certificates include any temporary or substitute documents of title such as Letters of Allocation, Warrants, Letters of Allotments, Orphan Certificates, Balance Receipts and any other receipts for scrip.

Short-term Insurance Act means the Short-term Insurance Act, 1998 (Act No. 53 of 1998), as amended, in respect of short-term insurance.

South Africa means the Republic of South Africa.

Treasury means, in relation to any matter contemplated in the Regulations, the Minister of Finance or an officer in National Treasury who, by virtue of the division of work in National Treasury, deals with the matter on the authority of the Minister of Finance.

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1. Introduction

This document provides an overview of permissible foreign exchange related transactions and the applicable requirements for South African registered business entities when transacting with Authorised Dealers or ADLA within the parameters of their respective licenses.

The foreign exchange restrictions on South African resident business entities have over the last few years been liberalised with the intention to reduce the administrative burden for businesses undertaking foreign exchange transactions.

In this regard, the various dispensations and applicable disciplines listed hereunder are available to business entities to conduct cross-border foreign exchange business.

Enquiries must be directed to an Authorised Dealer or, where applicable, an ADLA. Any request to the Financial Surveillance Department must be channelled through an Authorised Dealer or ADLA. Full details applicable to the request must be provided to the Authorised Dealer or ADLA who will place a comprehensive request before the Financial Surveillance Department.

2. Authorised entities

2.1 Authorised Dealers

The offices in South Africa of the under-mentioned banks are authorised to act, for the purposes of the Regulations, as Authorised Dealers:

Name of entity - Authorised Dealer
ABSA Bank Limited
Albaraka Bank Limited
Bank of China Johannesburg Branch
Bank of India
Bank of Taiwan South Africa Branch
Bidvest Bank Limited
BNP Paribas SA – South Africa Branch
Capitec Bank Limited
China Construction Bank, Johannesburg Branch
Citibank, N.A., South Africa
Deutsche Bank AG, Johannesburg Branch
FirstRand Bank Limited
Grobank Limited
Habib Overseas Bank Limited
HBZ Bank Limited

Name of entity - Authorised Dealer
HSBC Bank plc – Johannesburg Branch
Investec Bank Limited
JPMorgan Chase Bank (Johannesburg Branch)
Mercantile Bank Limited
Nedbank Limited
Sasfin Bank Limited
Société Générale
Standard Chartered Bank – Johannesburg Branch
State Bank of India
The Standard Bank of South Africa Limited

Restricted Authorised Dealer

The office in South Africa of the under-mentioned bank is authorised to act, for the purposes of the Regulations, as a Restricted Authorised Dealer in respect of permissible credit card transactions per the quoted sections of the Currency and Exchanges Manual for Authorised Dealers:

Name of entity – Restricted Authorised Dealer
African Bank Limited – Sections B.4(B) and B.16
Discovery Bank Limited – Sections B.4(B) and B.16

2.2 Authorised Dealers in foreign exchange with limited authority

The offices in South Africa of the under-mentioned entities are authorised to act, for the purposes of the Regulations, as ADLAs:

Name of entity – ADLA	Category of appointment
Imali Express (Pty) Limited	One
Forex World (Pty) Limited	Two
Global Foreign Exchange (Pty) Limited	Two
Inter Africa Bureau de Change (Pty) Limited	Two
Interchange RSA (Pty) Limited	Two
Master Currency (Pty) Limited	Two
Mukuru Africa (Pty) Limited	Two

Name of entity – ADLA	Category of appointment
Sikhona Forex (Pty) Limited	Two
Tourvest Financial Services (Pty) Limited	Two
Tower Bureau de Change (Pty) Limited	Two
Travelex Africa Foreign Exchange (Pty) Limited	Two
Cassava Fintech (Pty) Limited	Three (MTO)
Kawena Exchange (Pty) Limited	Three (VTSP)
Shoprite Money Transfers (Pty) Limited	Three (MTO)
Southeast Exchange Company (South Africa) (Pty) Limited	Three (MTO)
Terra Payment Services South Africa (RF) (Pty) Limited	Three (MTO)
WorldRemit South Africa (Pty) Limited	Three (MTO)
Hello Paisa (Pty) Limited	Four
Mama Money (Pty) Limited	Four

- * Category One : Travel related transactions only.
- Category Two : Travel related transactions and certain prescribed single discretionary allowance of R1 million per applicant within the calendar year and offer money remittance services in partnership with external money transfer operators.
- Category Three : Independent money transfer operator or value transfer service provider, facilitating transactions not exceeding R5 000 per transaction per day within a limit of R25 000 per applicant per calendar month.
- Category Four : A combination of the services provided by Category Two and Category Three ADLAs.

3. Transactions with Common Monetary Area residents

There are no foreign exchange restrictions between banks of the Common Monetary Area (CMA) member countries in respect of cross-border transactions amongst themselves. Lesotho, Namibia and Swaziland have their own monetary authorities and legislation. The application of exchange control within the CMA is governed by the Multilateral Monetary Agreement. Investments and transfers of funds in Rand from/to South Africa to/from other CMA countries do not require the approval of the Financial Surveillance Department.

CMA country currencies comprise of the following: South African Rand, Lesotho Maloti, Swaziland Emalangeni and Namibian Dollar.

4. Capital transfers

4.1 Outward foreign direct investments for private, public and listed companies

(a) Conditions applicable to foreign direct investments

South African registered private, public and listed companies (excluding sole proprietorships, partnerships, close corporations and trusts), as well as mandated state owned enterprises as defined in Schedule 2 of the Public Finance Management Act, 1999 (Act No.1 of 1999), are allowed to transfer capital for foreign direct investment purposes to any country outside the CMA, subject to certain conditions outlined herein.

While there is no monetary limit on the amount that can be transferred offshore, requests for investments not exceeding R1 billion per entity per calendar year must be submitted to an Authorised Dealer who will assesses the application for compliance with the stated conditions for approved outward investments.

Requests for investments exceeding R1 billion per entity per calendar year must be referred to the Financial Surveillance Department via an Authorised Dealer.

To qualify for the dispensation, business entities must, for statistical purposes, acquire at least 10 per cent of the foreign target entity's voting rights. Once approved, business entities may increase their approved equity interest and/or voting rights in the offshore target entity at any time, however, for classification purposes, should the applicants reduce or dilute their voting rights to below 10 per cent such information must be reported to from the Financial Surveillance Department.

South African business entities must be aware that they may not enter into a transaction or a series of transactions (Transactions), the purpose and/or effect of which is to export capital, directly or indirectly, from South Africa in contravention of the permissible dispensations granted to entities within the Authorised Dealer Manual. These Transactions, which invariably contravene the Regulations entail, among others, the formation by (or at the instance of) a resident entity of an offshore structure which, by means of a re-investment into the CMA, acquires shares or some other interest in a CMA company or CMA asset ('loop structures').

The above-mentioned Transactions result in or have the potential to result in the direct or indirect export of capital abroad by the resident entity to the non-resident company or other relevant non-resident trust or entity for the ultimate benefit of a resident, of dividends including dividends arising from increased profits, revenue reserves or capital

reserves accruing from the introduction of carefully selected CMA growth assets to a CMA company.

Outward investments that involve the creation of an unintended loop structure require prior approval from the Financial Surveillance Department. As an exception, South African private, public and listed companies are, on application to their Authorised Dealer, permitted to acquire up to 40 per cent equity and/or voting rights, whichever is the higher, in a foreign target entity, which may in turn hold investments in and/or make loans to 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 exceeding 40 per cent in total.

State owned enterprises may not use low tax jurisdictions as a conduit for outward foreign direct investments elsewhere in the world. This restriction is not applicable where the investment is made directly into low tax jurisdictions.

Passive real estate investments focused on achieving long-term appreciation of asset values with limited day-to-day management of the asset itself are excluded from this dispensation.

- (b) Additional conditions applicable to foreign direct investments:
 - (aa) All capital transfers must be converted to foreign currency in South Africa by an Authorised Dealer. Under no circumstances may Rand be transferred abroad.
 - (bb) The financial statements, financial accounts or income and expenditure statements of the foreign target entities and holding companies, as well as salient details of benefits generated as a result of the investment, must be reported via an Authorised Dealer to the Financial Surveillance Department on an annual basis.
 - (cc) In the event of the foreign investment being disposed of to non-residents, the net sale proceeds must be repatriated to South Africa under advice to the Financial Surveillance Department. Foreign investments to be disposed of to third party South African residents require the specific prior approval of the Financial Surveillance Department.
 - (dd) All matters relating to rights on new shares issued in foreign companies, changes in the nature of the target entity's business or where guarantees from South Africa have been issued and implemented, prior approval must be obtained from the Financial Surveillance Department, via an Authorised Dealer.
 - (ee) South Africa must remain the place of effective management for the

South African company and under no circumstances may the company re-domicile without the specific prior approval of the Financial Surveillance Department.

- (c) Financing of foreign direct investment expansion
 - (aa) The transfer of 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 within the R1 billion limit, as and when required, is permitted with recourse to South Africa. All unutilised amounts, additional capital requirements and/or expansion activities must be referred to an Authorised Dealer who may approve same, but has to report such matters to the Financial Surveillance Department.
 - (bb) Dividends declared by the offshore subsidiaries of South African companies may be retained abroad. If the foreign dividends are repatriated to South Africa, they may be retransferred offshore at any time and used for any purpose without recourse to South Africa, subject to an annual report to the Financial Surveillance Department. However, profits earned by foreign branches and offices must be repatriated to South Africa annually.
- (d) Investments not exceeding R1 billion per applicant entity per calendar year
 - (aa) The following documents and information must be provided to an Authorised Dealer in order for them to consider requests of this nature:
 - (i) the name and registration number of the applicant entity;
 - (ii) the names, domiciles and percentage equity interest of all the shareholders in the applicant company (only applies to private companies and excludes public and listed companies);
 - (iii) the applicant entity's latest available financial statements verifying, inter alia, the applicant's nature of business;
 - (iv) 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);
 - (v) the proposed structure through which the foreign target entity will be held, that is, directly from South Africa or via an interposed company; and
 - (vi) the name of the offshore target company and a description of what type of business it will be involved in.

- (aa) Investments exceeding R1 billion per applicant entity per calendar year. The applications to the Financial Surveillance Department, via an Authorised Dealer must, inter alia, include the following:
 - (i) the business plan of the applicant entity;
 - (ii) full details of the longer term monetary benefits (excluding dividend flows) to be derived by South Africa on a continuous basis, substantiated by cash flow forecasts;
 - (iii) a pro forma balance sheet of the offshore entity reflecting the financial position immediately prior to and after the investment from South Africa;
 - (iv) the percentage equity to be acquired in the foreign target entity as well as the percentage voting rights to be acquired;
 - (v) the names and domiciles of the shareholders of the applicant entity;
 - (vi) the proposed financial structure of the foreign entity to be acquired or to be established (i.e. issued share capital, loan funds, guarantees to be issued from South Africa or credit facilities to be availed of abroad and the respective amounts involved);
 - (vii) the manner in which the funds required will be employed; and
 - (viii) an estimate of the annual running expenses of the offshore entity.
- (f) Foreign portfolio investments by companies not exceeding R1 billion per applicant company
 - (aa) Authorised Dealers may approve requests by companies wishing to make bona fide new outward foreign portfolio 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.
 - (bb) All conditions and requirements as outlined in subsection 4.1(a) above, except for the passive real estate investments focused on achieving long-term appreciation of asset values with limited day-to-day management of the asset itself are excluded from this dispensation and the minimum requirement of 10 per cent, will apply to this dispensation.

- (cc) For statistical purposes, investments approved under this dispensation are for less than 10 per cent of the foreign target entity's voting rights and must be suitably reported.
- (dd) Foreign portfolio investments must be reported under category 830 - Details of payments not classified and in the description field insert 'Portfolio Investments'.
- (ee) Under no circumstances may local guarantees or suretyships be issued or South African assets encumbered under this dispensation.
- (ff) The financial statements and/or portfolio investment status report of the foreign target entities must be submitted to the Financial Surveillance Department on an annual basis.
- (gg) For classification purposes, any increase in the equity interest and/or voting rights in the foreign target entity from 10 per cent and above must be reported to the Financial Surveillance Department.
- (hh) Any transaction for an amount exceeding R1 billion per applicant company must be referred to Financial Surveillance Department for prior approval.

Note: This dispensation should not be confused with portfolio investments acquired by Institutional Investors in terms of their applicable foreign portfolio investment limits.

(g) Intellectual property transfers

The transfer of South African owned intellectual property by way of sale, assignment, or cession and/or the waiver of rights in favour of non-residents in whatever form, directly or indirectly, is not allowed without the prior approval of the Financial Surveillance Department. This restriction does not apply to technology, media, telecommunications, exploration and other research and development companies, who for capital raising purposes may assign intellectual property offshore provided that the registration remains in South Africa.

South African residents, excluding mandated state owned companies as defined in Schedule 2 of the Public Finance Management Act, 1999 (Act No. 1 of 1999) may sell, transfer and assign intellectual property to unrelated non-resident parties at an arm's length and a fair and market related price, provided they present to Authorised Dealers the sale, transfer or assignment agreement and an auditor's letter or intellectual property valuation certificate confirming the basis for calculating the sale price. The dispensation excludes sale and lease back agreements.

All inward funds emanating from such transactions must be repatriated to South Africa within a period of 30 days from the date of becoming entitled thereto and reported under category 210 on the FinSurv

Reporting System.

South African residents may license intellectual property to non-resident parties at an arm's length and a fair and market related price for the term of the agreement, provided that they present Authorised Dealers with the licence agreement and an auditor's letter confirming the basis for calculating the royalty or licence fee.

All royalties and/or fees emanating from such transactions must be repatriated to South Africa within a period of 30 days from the date of becoming entitled thereto and reported under category 201 on the FinSurv Reporting System.

The sale, transfer, assignment and/or licensing of intellectual property is subject to appropriate tax treatment.

Exemption from Regulation 10(1)(c) is, however, granted to institutions as defined in terms of the Intellectual Property Rights from Publicly Financed Research and Development Act, 2008 (Act No. 51 of 2008). Such institutions may transfer copyrighted material to an international publishing house when publishing an article in an international journal and/or transfer material in terms of a material transfer agreement provided the value of the transaction does not exceed R50 000. Authorised Dealers must refer transactions in excess of the stipulated amount to the Financial Surveillance Department.

4.2 International headquarter companies

Subject to registration with the Financial Surveillance Department via an Authorised Dealer for reporting purposes, newly established headquarter companies who meet the following shareholding and asset criteria may invest offshore without restriction:

- (a) no shareholder in the headquarter company, whether alone or together with any other company forming part of the same group of companies as a shareholder, may hold less than 10 per cent of the shares and voting rights;
- (b) no more than 20 per cent of the headquarter company shares may be directly or indirectly held by South African residents; and
- (c) at the end of each financial year, at least 80 per cent of the assets of the holding company must consist of foreign assets.

For the purposes of the requirements in (a) to (c) above, cash, cash equivalents and debt with a term of less than one year should not be taken into account.

Registration with the Financial Surveillance Department will remain valid for as

long as the requirements in (a) to (c) above are adhered to for the duration of both the year of assessment and all previous years of assessment.

Reporting of the extent of the foreign investments will be required for statistical purposes which must, inter alia, include the source of funds, new or existing funds, destination and loan funds from local sources. A detailed organogram and the latest available audited financial statements must be submitted to the Financial Surveillance Department via an Authorised Dealer on an annual basis.

Headquarter companies will be treated as non-resident companies other than for their reporting obligations. Transactions by South African entities with headquarter companies will, therefore, be viewed as transactions with non-residents.

Headquarter companies can freely borrow from abroad and such funds may be deployed either locally or offshore. These transactions are regarded as occurring outside South Africa.

4.3 South African holding company for African and offshore operations

Entities listed on the JSE Limited and unlisted entities may establish one subsidiary as a HoldCo to hold African and offshore operations subject to the following conditions:

- (a) registration with the Financial Surveillance Department via an Authorised Dealer;
- (b) the HoldCo must operate as a South African tax resident and be incorporated and effectively managed and controlled in South Africa;
- (c) the parent company may transfer up to R3 billion per calendar year to the HoldCo in respect of listed entities and R2 billion per calendar year to the HoldCo in respect of unlisted entities. Up to the afore-mentioned limits, there will be no restriction on transfers in and out of the HoldCo, provided that such transfers are not undertaken to avoid tax. Additional amounts of up to 25 per cent of the listed company's market capitalisation will be considered on application to the Financial Surveillance Department, provided that the entity is able to demonstrate benefits to South Africa.
- (d) Unlisted companies may also apply to the Financial Surveillance Department via an Authorised Dealer for additional funding, provided that they can demonstrate benefits to South Africa;
- (e) the HoldCo is allowed to freely raise and deploy capital offshore, provided that these funds are without recourse to South Africa. Additional domestic capital and guarantees will be allowed to fund bona fide foreign direct investments in the same manner as outlined in (c) above;
- (f) the HoldCo is allowed to operate as a cash management centre for South

African entities. Cash pooling is allowed without any restrictions and local income generated from cash management will be freely transferable; the HoldCo may choose its functional currency and operate a foreign currency account and a Rand denominated account for operational expenses; and

- (g) applications for the listing of the HoldCo and joint ventures will be considered by the Financial Surveillance Department.

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

- (a) Unlisted technology, media, telecommunications, exploration and other research and development companies may apply to the Financial Surveillance Department via an Authorised Dealer for approval to primary list offshore to raise foreign loans and capital for their operations, subject to the following conditions:
 - (aa) registration with the Financial Surveillance Department;
 - (bb) such a company must operate as a South African tax resident and be incorporated and effectively managed and controlled in South Africa;
 - (cc) intellectual property must remain registered in South Africa but may be assigned offshore, subject to appropriate tax treatment;
 - (dd) the offshore listed entity must secondary list in South Africa within two years following the successful offshore listing;
 - (ee) a report must be submitted to the Financial Surveillance Department on the status of the offshore listing; and
 - (ff) an annual report must be submitted to the Financial Surveillance Department on the operations including details of funds raised offshore.
- (b) Unlisted South African technology, media, telecommunications, exploration and other research and development companies may establish an offshore company to raise foreign funding for their operations, subject to the following conditions:
 - (aa) registration with the Financial Surveillance Department;
 - (bb) the established offshore company must be a tax resident in South Africa; full details of the percentage shareholding in the offshore company including the group structure must be provided; and

- (cc) an annual report must be submitted to the Financial Surveillance Department on the operations, including details of funds raised offshore.
- (c) Companies established in terms of (b) above, may in turn hold investments and/or make loans into South Africa.

4.5 South African private equity funds

Private equity funds that are members of the South African Venture Capital Association, mandated to invest outside the CMA, may apply to the Financial Surveillance Department, via an Authorised Dealer, for approval to invest offshore. 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.
- (d) Applications will also be considered by the Financial Surveillance Department where an unintended loop structure is created as a result of private equity funds investing in companies outside the CMA with a portion of their business in South Africa.
- (e) Institutional investors 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 the respective foreign portfolio investment allowances. The Financial Sector Conduct Authority Regulations governing the permissibility of these investments as part of their portfolios must also be complied with.

4.6 South African institutional investors

- (a) Institutions eligible for the foreign portfolio investment allowance

All retirement funds, long-term insurers and collective investment scheme management companies are treated as institutional investors. Institutional investors are eligible for the foreign portfolio investment allowance and must comply with the reporting requirements as outlined below.

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. To register with the Financial Surveillance Department as an institutional investor, an investment manager must be registered with the Financial Sector Conduct Authority as a discretionary manager or a stockbroker with a discretionary mandate registered with the JSE Limited.

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.

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

(b) The distinction between institutional assets and retail assets

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

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

(bb) Retail assets refer to assets received from, e.g. 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.

(cc) All assets sourced from an intermediary must be identified as either institutional assets or retail assets applicable to the underlying client.

(c) Application of foreign asset limits

The limit on foreign portfolio investments by institutional investors is applied to an institution'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 Sector Conduct Authority. In addition to the foreign portfolio investment allowance, institutional investors also qualify for an additional 10 per cent African allowance. See (d) below in this regard.

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.

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, therefore, follows that the only recourse that retail clients have to the managing institution is a domestic payment in Rand.

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. 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. An originating institutional investor is an institution 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 a linked investment service provider (LISP).

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

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). 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.

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, therefore, 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.

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.

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 Sector Conduct Authority 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.

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

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.

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 reference assets or issued by foreign entities, listed on the JSE Limited.

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. 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.

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.

(d) African allowance

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 Sector Conduct Authority 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'.

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.

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.

All institutional investors should ensure that their investments in African portfolio assets are also in compliance with the Financial Sector Conduct Authority's requirements and regulations.

(a) Reporting requirements

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

(aa) Quarterly asset allocation report

Institutional investors are required to submit quarterly reports of their asset holdings 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.

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.

All quarterly reports must be submitted within two 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.

In reporting on asset allocations, a '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.

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 15 days 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.

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.

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

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

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

- (i) an explanation for the contravention; and
- (ii) 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.

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

(cc) Managing institutions' information on institutional clients

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

- (i) all new institutional clients investing funds during the quarter; and
- (ii) all institutional clients who terminated investments during the quarter.

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

(dd) Audit requirements

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.

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 email to sarbportfolio@resbank.co.za. The audit reports must be submitted to the Financial Surveillance Department within a maximum period of six months after its financial year end.

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>Institutional investor auditor's report.

(e) Reporting format

To register for online submission of the quarterly asset allocation report an institutional investor must submit an email message to: sarbportfolio@resbank.co.za, specifying the wording: "Request for online registration" in the subject field.

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.

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 submit a request by sending an email message to sarbportfolio@resbank.co.za, specifying the wording "Request for bulk reporting specifications" in the subject field.

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

(f) Compliance

Institutional investors exceeding the permissible foreign portfolio investment limits are required to provide an explanation for the contravention and to propose corrective measures as part of the quarterly reporting requirements.

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

Compliance with the reporting requirements as outlined in (e) 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 failure to comply with the provisions of these regulations.”

Under the provisions of this Regulation, the following administrative sanctions may apply for:

- (aa) Non-submission of the quarterly report and/or list of institutional clients, including quarterly reports to be submitted by retirement fund administrators:
- (i) 2 per cent of the market value of foreign assets must 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 limit.
 - (ii) In cases where retirement fund administrators do not submit reports on behalf of their clients, such administrator will be liable for the payment of a fee.
- (bb) Non-submission of quarterly asset allocation information by the managing institution to the originating institution:
- (i) 2 per cent of the market value of the assets of the affected originating institution(s) must be placed with the managing institution to be deposited 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:
 - (i) 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 institutional investor 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:
 - (i) 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.

5. Procedures for treasury outsourcing companies and foreign exchange brokers

Treasury outsourcing companies and foreign exchange brokers must conduct their business through an Authorised Dealer. The guidelines for the conduct and regulating of treasury outsourcing companies and foreign exchange brokers, excluding interbank brokers who are appointed on application, are as follows:

- 5.1 Treasury outsourcing companies and foreign exchange brokers must obtain approval from the Financial Surveillance Department via an Authorised Dealer prior to commencing any foreign exchange business.

The treasury outsourcing company and foreign exchange broker application form 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>Guidelines>Treasury outsourcing companies/foreign exchange brokers application form.

5.2 The following conditions for conducting the business of a treasury outsourcing company and foreign exchange broker must be strictly adhered to:

- (a) the applicant must at all times be in possession of a valid Financial Services Provider license issued by the Financial Sector Conduct Authority.
- (b) a letter of compliance, on the official letterhead of the applicant signed by two senior officials, must be submitted to the Financial Surveillance Department on an annual basis, for the period ending 31 December of each year. The letter of compliance must be emailed to SARBToC@resbank.co.za, specifying the wording 'Treasury Outsourcing Company/Foreign Exchange Broker Letter of Compliance' in the subject field. The format of the letter of compliance can 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>Guidelines>Treasury outsourcing company/foreign exchange broker letter of compliance.
- (c) applicants may not buy or sell foreign currency for their own account and may not hold foreign currency or borrow or lend foreign currency;
- (d) applicants may only act in the market as intermediaries (never as a principal) and should accordingly match a principal client with an Authorised Dealer. Prior to such business being conducted they should be properly mandated to act as agents on behalf of their clients;
- (e) the services provided by applicants may include identifying, monitoring and mitigating foreign risks, as well as completing and handling documentation, general administration of client's foreign exchange exposure and concluding spot and/or forward transactions with an Authorised Dealer;
- (f) all foreign exchange transactions must be concluded and settled between the Authorised Dealer and the client. The client must at all times be the principal to all the foreign exchange transactions and the exchange rate must be determined by the Authorised Dealer);
- (g) the settlement of foreign exchange transactions must accordingly be accommodated through the bank account of the client and not that of the treasury outsourcing company or foreign exchange broker;
- (h) all cross-border reporting and documentary evidence must, at all times, be completed in the name of the client;
- (i) applicants must at all times when requested to do so be able to demonstrate a complete audit trail, including the actual clients' instructions, for all transactions booked on behalf of clients; any fees

charged for the services provided by the applicant must be invoiced and settled in Rand and fully disclosed to the client;

- (j) the requirements of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001) must be complied with by the Authorised Dealer and the treasury outsourcing company or foreign exchange broker concerned. In addition, the treasury outsourcing company or foreign exchange broker must comply with the requirements of the Financial Advisory and Intermediary Services Act, 2002 (Act No.37 of 2002);
- (k) the Financial Surveillance Department has the right at any stage to carry out an inspection of the applicant's activities, records, management controls and any other aspects deemed necessary; and
- (l) the Financial Surveillance Department may impose any further conditions it may deem necessary.

6. Import payments

6.1 Payment via credit and/or debit cards

Business entities may effect payment for small transactions (e.g. imports over the Internet) by means of a credit and/or debit card within the limit of R50 000 per transaction. Cardholders will, however, not be absolved from ad valorem excise and custom duties or from complying with the requirements imposed by Customs. Any singular transaction exceeding R50 000 may not be split to circumvent the limit applicable to this dispensation.

6.2 Payment via an Authorised Dealer

Business entities may purchase foreign currency to pay for the actual price of imported goods, bona fide freight charges, insurance cover as well as buying commissions and retainer fees due to agents, provided that the rate of commission or fee is normal in the particular trade concerned, together with any other incidental charges incurred in the purchase and shipment of the goods.

Where an import permit is required, business entities must ensure that a covering import permit issued by ITAC is obtained.

6.2.1 Payments for imports must be made against the following documentation:

- (a) commercial invoices issued by the supplier;
- (b) any one of the transport documents as prescribed by the International Chamber of Commerce Uniform Customs and Practice for Documentary Credits (UCP 600) and its supplement for electronic presentation, the eUCP, evidencing transport of the relative goods to South Africa; or

- (c) Freight Forwarders Certificate of Receipt or Freight Forwarders Certificate of Transport; and
- (d) consignee's copy of the prescribed SARS Customs Declaration. In lieu of the documents referred to in (b) and (c) above, arrival notifications issued by shipping companies may be tendered.

Since Botswana is a member of the Custom Union, imports from Botswana may be paid for against the commercial invoice issued by the supplier and the consignee's copy of the prescribed SARS Customs Declaration.

6.2.2 Freight payments together with exemptions

Business entities must ensure that original, final freight invoices are presented to an Authorised Dealer for payment. Under no circumstances may quotes and/or pro-forma invoices be presented for payment.

Freight payments that are expressed in foreign currency and are directly related to a specific import or export transaction may be settled between local entities (i.e. legal persons) in foreign currency.

Importers who do not conduct a CFC account or who have no inflow of foreign currency may purchase foreign currency in the spot market to pay freight charges to another resident provided that such resident has an obligation to pay freight charges in foreign currency.

Foreign currency held by a locally recognised ships' agent (including cash to master transactions), freight forwarder, marine insurance broker or tour wholesaler or operator for the ultimate benefit or account of a non-resident entity (e.g. a ship's owner, freight forwarder, insurance broker or insurance entity abroad) need not be offered for sale to an Authorised Dealer. These funds may be retained in a CFC account until distribution on behalf of or transfer to the non-resident beneficiary abroad.

Where a business entity is required to pay any interest on an overdrawn account by converting Rand into foreign currency, this must be done in the spot market.

6.3 Terms of payment for imports

- (a) Advance payments

Foreign currency in respect of advance payments to cover the cost of permissible imports, other than capital goods, against the presentation of an invoice may be provided by the entity's Authorised Dealer, provided that documentary evidence is presented to them in due course confirming that the goods have been received in South Africa.

The prescribed SARS Customs Declaration bearing the MRN must be submitted to the business entity's Authorised Dealer immediately after the goods have been received in South Africa.

(b) Capital goods

Foreign currency may be provided for advance payments up to 100 per cent of the ex-factory cost of capital goods to be imported not exceeding a total value of R10 million. Payment for the importation of capital goods in excess of R10 million may only be provided up to 50 per cent of the ex-factory cost of the goods to be imported. Business entities must confirm to their Authorised Dealer that the order would otherwise be refused and that such payment is normal in the trade concerned.

(c) Cash-on-delivery consignments

Business entities may purchase foreign currency in respect of advance payments and/or cash-with-order requests to cover the cost of permissible imports as well as for goods consigned by air on a cash-on-delivery basis, provided that within 14 days a copy of the relative transport document dated and signed by a member of the South African Association of Freight Forwarders is submitted to the entity's Authorised Dealer.

(d) Payments older than 12 months

Payments in respect of imports where the required import documents are older than 12 months may be effected via an Authorised Dealer, provided that no interest has been charged by the foreign supplier.

6.4 Computer software

6.4.1 Importation of computer software, local reproduction of computer software packages and maintenance

Business entities may import computer software and specific custom-made computer software products, including any licence fees which may be payable, against the production of documentary evidence confirming the purpose and amount payable. The payments must be effected via an Authorised Dealer. In addition, payment may be made in respect of software, which is downloaded via the Internet against documentary evidence confirming the purpose and amount payable.

6.4.2 Royalty payments to non-residents, including any licence fees that are payable from the local reproduction or copying of computer software packages may be effected provided that:

- (a) the licensor is an unrelated party (i.e. none of the parties have any direct and/or indirect interest or shareholding in each other); and

- (b) the application is accompanied by documentary evidence confirming the purpose and amount payable.

Where applicable minimum payments, advance payments and down payments are permissible, provided that the advance payments and down payments are recoupable from future royalties or fees payable.

Payment of percentage based fees are permissible provided that the client confirms it is normal in the trade concerned.

Maintenance payments applicable to computer software packages, in advance and/or retrospectively, against documentary evidence confirming the purpose and amount payable may be effected.

- 6.4.3 Extension of agreements previously authorised must be referred to an Authorised Dealer for approval.

6.5 Evidence of importation

Importers must produce the documentation listed under section 6.2.1 above to the Authorised Dealers at the time of making payment.

Where goods for which payment has been made from South Africa have not been or will not be consigned to South Africa within four months of the date of payment, the importer must within 14 days of the expiry of such period, advise the Authorised Dealer concerned in writing.

In cases where an importer fails to provide import documentation or to report the non-receipt of goods within the above-mentioned four-month period to the Authorised Dealer, foreign currency may cease to be provided to the importer until the matter has been satisfactorily resolved.

Any non-compliance will be reported to the Financial Surveillance Department who may issue an instruction to all Authorised Dealers that no foreign currency may be provided to such importer until the matter has been satisfactorily resolved.

6.6 Philatelic and numismatic imports

Business entities must approach their Authorised Dealers who may grant applicants foreign currency in payment of philatelic imports and other numismatic imports, excluding South African gold coins minted in 1962 and thereafter) imported from abroad.

The Authorised Dealer will furnish applicants with a letter of authority for submission to the appropriate government department. The government department concerned will endorse, on the face of the letter, the value of each parcel received in South Africa during the relative period.

When this authority has been fully used or on the date of its expiry, the relative letter of authority must be returned to the Authorised Dealer concerned before a new letter in respect of any subsequent period is issued.

Matters relating to the importation of medals, medallions, pendants and other similar non currency articles must be referred to ITAC.

6.7 Charges incidental to cancellation of orders, retention and/or resale of goods awaiting consignment in country of supply

Business entities must provide documentary evidence to an Authorised Dealer to effect payment for the expenses incurred.

6.8 Imports undertaking dispensation

The requirement for certain business entities to submit supporting documentation to their Authorised Dealers for every import payment may be dispensed with by applying for the imports undertaking dispensation. Requests to avail of this dispensation must be referred to the Financial Surveillance Department via an Authorised Dealer.

6.9 Buying commissions

Buying commissions may be effected to independent agents outside South Africa in foreign currency or in Rand to the credit of a Non-resident Rand account, provided that the entity confirms to the Authorised Dealer in writing that the rate of the commission or fee is normal in the particular trade concerned.

6.10 Documentation

All documentation required under subsection 6.2.1 must be retained by the business entity for a period of five years.

7. Exports

All exports to countries outside South Africa must be supported by the prescribed SARS Customs Declaration.

7.1 Business entities exporting goods to countries outside South Africa must comply with the following conditions:

- (a) sell goods exported within a reasonable time, but no later than six months from the date of shipment;
- (b) receive the full foreign currency proceeds not later than six months from the date of shipment;
- (c) receive payment in foreign currency or Rand from a Non-resident Rand account in the name of the non-resident and/or Rand from a vostro account

held in the books of the Authorised Dealer; offer to sell the full foreign currency proceeds to an Authorised Dealer within 30 days after becoming entitled thereto or retain the export proceeds indefinitely in a CFC account at an Authorised Dealer.

- (d) The exporter must report in writing to an Authorised Dealer the non-receipt of the full foreign currency proceeds, within the prescribed period, as well as the failure to sell the goods exported within six months from the date of shipment.
- 7.2 Business entities may approach their Authorised Dealers to grant credit up to a total of 12 months. Confirmation must be provided to an Authorised Dealer that the credit is necessary in the particular trade, that it is needed to protect an existing export market or to capture a new export market.
 - 7.3 Exports against payment in Rand may be accepted for all exports up to R25 000 per transaction. Where payment is tendered in Rand notes with a value in excess of R25 000 per transaction, business entities must obtain approval to accept such Rand notes from the Financial Surveillance Department via an Authorised Dealer.
 - 7.4 Exporters must accurately complete the prescribed SARS Customs Declaration (including the Custom Client/Code numbers (CCN) and Unique Consignment References (UCR)) for the monitoring of the receipt of export proceeds by the Financial Surveillance Department.
 - 7.5 Where goods are exported by rail, the prescribed SARS Customs Declaration must be completed.
 - 7.6 Passenger and goods transport vehicles may not be exported for sale outside the South African Customs Union (i.e. Botswana, Lesotho, Namibia and Swaziland) except by virtue of an export permit issued in terms of the International Trade Administration Act, 2002 (Act No. 71 of 2002). This excludes new vehicles exported by local manufacturers or their appointed agents. Exporters must ensure that goods exported on a temporary basis are returned to South Africa within six months from date of shipment. Business entities must, if requested by the Financial Surveillance Department or Customs be able to present original transport documents and Bills of Entry (Import) or tax clearance vouchers issued by the South African Post Office Limited, as evidence that the relevant goods or replacements have been returned or imported into South Africa.
 - 7.7 Replacement goods, short shipments and goods under guarantee may be sent abroad provided that:
 - (a) the full invoice value of the original shipment has been or will be received from the consignee;

- (b) the exporter is bound by guarantee or trade practice to make good the deficiency without charge; and
 - (c) where applicable, the replaced goods are being destroyed, reimported or sold abroad for payment in foreign currency or Rand from a Non-resident Rand account in the name of the non-resident and/or Rand from a vostro account held in the books of the Authorised Dealer.
- 7.8 Refunds may be effected to purchasers in countries outside South Africa representing final adjustments in respect of exports from South Africa (e.g. produce under-yields and weight adjustments), provided that evidence is produced showing that the full invoice price for the consignment has been received in foreign currency or in Rand from a Non-resident Rand account in the name of the non-resident and/or Rand from a vostro account held in the books of the Authorised Dealer.
- 7.9 Selling commissions may be effected to independent agents outside South Africa in foreign exchange or in Rand to the credit of a Non-resident Rand account. This authority is subject to the condition that the Authorised Dealer is satisfied that the export proceeds have or will be received in South Africa and the local business entity confirms to the Authorised Dealer in writing that the rate of the commission or fee is normal in the particular trade concerned.
- 7.10 Commissions or any other related expenses may not be set off against export proceeds unless specifically authorised by the Financial Surveillance Department.
- 7.11 The export of advertising matter and trade samples on a no-charge basis can be undertaken provided the goods are being shipped purely for advertising or promotional purposes.
- 7.12 In the case of manufactured goods registered with Customs for re-export to their country of origin for repairs or adjustments free of payment, same may be exported.
- 7.13 Goods for which no payment has been made may be transferred abroad to the original supplier, free of counter-value or re-exports for the supplier's account. Temporary export to African countries of used equipment is allowed. This must however, be to fulfil any contractual obligations and the equipment must be the contractor's own property. The equipment must be returned on completion of the contract.
- 7.14 Business entities are permitted to re-export to the original supplier, defective goods that have been paid for provided that it can be shown from the production of documentary evidence that the foreign supplier has agreed to:
- (a) replace the consignment on a no-charge basis with goods of an equivalent value (in such cases the applicant must, if necessary, be in possession of a permit to cover the importation of the replacement goods); or

- 7.15 refund the cost of the defective goods or to provide a credit note for the full value of the defective goods. Temporary exports to countries outside the CMA for which no payment is to be received in South Africa must, where required, be supported by the prescribed SARS Customs Declaration. These goods or replacement items must be returned to South Africa within a period of six months.
- 7.16 Requests to export any items or goods, with an insurance value in excess of R50 000, for which no payment will be received and where the items exported will not be returned to South Africa, must be referred to the Financial Surveillance Department.
- 7.17 The export of postage stamps and philatelic items must be regarded as a normal export transaction. The temporary export of such items for exhibition purposes may be effected provided that these items are returned to South Africa within a period of six months.
- 7.18 All matters relating to the export of gold coins, currency coins and numismatic items must be referred to the Financial Surveillance Department. As an exception, gold coins (excluding Krugerrand coins), currency coins and numismatic items may be exported within an overall limit of R300 per applicant, per calendar year.
- 7.19 The temporary export of gold coins, currency coins and numismatic items for exhibition purposes may be effected provided that these items are returned to South Africa within a period of six months.
- 7.20 Goods imported into South Africa and paid for may be exported subject to the completion of the prescribed SARS Customs Declaration.
- 7.21 Outward freight payment may be effected to non-resident owners or charterers of carrying vessels, aircraft or vehicles, provided that it can be satisfactorily established that the relative goods have either been sold on a Cost and Freight (CFR) or Cost, Insurance and Freight (CIF) basis against payment in foreign exchange or in Rand from a Non-resident Rand account in the name of the non-resident and/or Rand from a vostro account held in the books of the Authorised Dealer, or are being exported on consignment or exported under cover of the prescribed SARS Customs Declaration.
- 7.22 The export of diamonds for further processing abroad (e.g. cutting and grading) must be made under cover of the prescribed SARS Customs Declaration. The onus is on the exporter to produce documentary evidence, when requested to do so, confirming receipt of the diamonds returned to South Africa.

All conditions imposed by the South African Diamond and Precious Metals Regulator must be strictly adhered to.

8. Foreign currency holdings

8.1 Foreign assets and the retention of foreign currency balances abroad

Business entities are not permitted to place their foreign assets at the disposal of third parties normally resident in South Africa, without the specific prior approval of the Financial Surveillance Department (i.e. the sale in Rand or foreign currency of legally held foreign assets, gifts, donations and loans to other South African residents or the creation of 'loop structures').

Foreign currency may not be retained abroad unless specific approval is obtained from the Financial Surveillance Department or as provided for in the Authorised Dealers Manual. A serious view will be taken by the Financial Surveillance Department of any unauthorised retention of foreign currency balances, whether with foreign banks, overseas principals, agents or shippers.

9. Merchanting, barter and counter trade

9.1 Merchanting trade

Business entities wishing to engage in merchanting trade transactions must apply to an Authorised Dealer. If approved, a condition would be that the time-lag between paying funds to the foreign supplier (seller) and receiving funds from the foreign importer (buyer) must not exceed 60 days for trade with countries on the African continent and 30 days for trade with any other country.

Authorised Dealers must ensure that payment is received from the foreign importer (buyer), which must include the South African merchant's profit and must be received in foreign currency or Rand from a Non-resident Rand account in the name of the non-resident and/or Rand from a vostro account held in the books of the Authorised Dealer.

A copy of the relative agreement entered into between the parties concerned or a commercial invoice from the seller together with a commercial invoice from the South African merchant must be produced to confirm the arrangements.

In instances where the above-mentioned requirements cannot be complied with, a written application must be submitted via an Authorised Dealer to the Financial Surveillance Department, for consideration.

9.2 Barter and counter trade

Transactions of this nature must be referred via an Authorised Dealer to the Financial Surveillance Department for prior approval. Such requests must be supported by copies of the contracts entered into between the relative parties with a full explanation of the manner in which the values of the goods have been arrived at. Where an open market or world price exists, any deviation therefrom must be fully substantiated and motivated.

10. Income transfers to non-residents

10.1 Dividends, profits and current income due to non-residents

Income due to non-residents of the CMA may be transferred offshore provided that:

- (a) the transfer of dividends, profit and/or income distributions from quoted, non-quoted companies and other entities to non-residents is in proportion to the non-resident's percentage shareholding and/or ownership; and the transfer from South Africa of any income earned outside South Africa represents the profits of wholly-owned subsidiaries or of branches of South African registered companies, previously transferred to South Africa.

10.2 Interest

- (a) The transfer to non-residents of market related interest income on local debt securities owned, including interest bearing deposits held, with local financial institutions, may in terms of the provisions of the Authorised Dealer Manual, or in terms of a specific authority granted by the Financial Surveillance Department, be permitted, provided that documentary evidence of such indebtedness by a resident debtor is produced.
- (b) Interest income on loans granted to residents is transferable provided that the Authorised Dealer is satisfied that both the acceptance of the loan and the interest rate payable were approved by an Authorised Dealer or the Financial Surveillance Department.
- (c) Interest income in respect of funds held in trust accounts may be transferred via an Authorised Dealer against the production of documentary evidence confirming the amount involved.

10.3 Directors' fees

The transfer of directors' fees to non-residents is permissible provided that:

- (a) the application to the Authorised Dealer is accompanied by a copy of the resolution of the board of directors of the remitting company confirming the amount to be paid to the beneficiary; and
- (b) it can be shown that the beneficiary is a non-resident.

10.4 Income from trusts

The transfer of income from trusts created in terms of a Last Will and Testament and inter vivos trusts to non-residents is permitted via an Authorised Dealer.

10.5 Rentals

Income accruing to non-residents in the form of rental on their local fixed property and income from rental pool agreements in which they have an interest may be transferred abroad against the production of a copy of the rental or rental pool agreement, provided that the client confirms to the Authorised Dealer that the amount is reasonable in relation to the property in question.

10.6 Members' fees

The transfer of members' fees to non-resident members of close corporations is permitted, provided that:

- (a) the application to the Authorised Dealer is accompanied by a copy of the resolution of members of the remitting close corporation confirming the amount to be paid to the beneficiary; and
- (b) it can be shown that the beneficiary is a non-resident.

10.7 Royalties and fees payable by South African business entities

All royalties and fees payable to unrelated non-resident parties are freely transferable abroad as outlined below:

- (a) payment for services rendered by non-residents, including the reimbursement of airfares, accommodation and other costs directly associated with the rendering of the services in question are transferable;
- (b) prior to effecting payment, business entities must furnish an Authorised Dealer with a copy of the agreement entered into where available, but in all instances an invoice verifying the purpose and the amount involved from the relevant non-resident party must be presented;
- (c) where applicable, minimum payments, advance payments and down payments are permissible provided that the advance payments and down payments are recoupable from future royalties or fees payable;
- (d) payment of percentage based fees are permissible provided that the client confirms it is normal in the trade concerned;
- (e) the applicant entity must present a letter in respect of royalty payments, on an annual basis, from an 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; and business entities wishing to make royalty and fee payments to related parties abroad should submit a suitable application to the Financial Surveillance Department via an Authorised Dealer.

10.8 Licence agreements involving the local manufacture of goods

Royalties and fees payable to non-residents (related and unrelated parties) in respect of licence agreements involving the local manufacture of goods are permitted subject to the following set criteria:

- (a) in respect of any new, renewed or amended licence agreement involving the local manufacture of goods, licensees must submit the royalty agreement in triplicate, supported by a statement furnishing the information called for in the questionnaire Form DTP 001 directly to the Technology Transfer (Royalties) Unit, Directorate of the Enterprise Organisation, Department of Trade and Industry, Private Bag X86, Pretoria, 0001 and not to the Financial Surveillance Department; the payments to be made must fall within the terms of the relative agreement and, where applicable, comply with any conditions laid down in the authority granted by the Department of Trade and Industry;
- (b) where applicable, minimum payments, advance payments and down payments are permissible provided that the client confirms that such payments are normal in the trade concerned and the advance payments and down payments are recoupable from future royalties or fees payable;
- (c) prior to any payments being effected, the licensee must present to an Authorised Dealer a copy of the approval letter granted by the Department of Trade and Industry together with an invoice from the licensor, verifying the purpose and the amount involved from the relevant non-resident party; and
- (d) for recurring payments, a letter from the independent auditors of the local applicant entity, confirming the amount or percentage transferred or to be transferred has been correctly calculated and is reasonable in the trade concerned, must be submitted to the Authorised Dealer effecting the transfer at least once per calendar year.

11. Omnibus travel facility

Business entities may make an application to Authorised Dealers and ADLAs to avail of an omnibus travel facility up to R20 million per calendar year for allocation to the entities' representatives for business travel purposes only, at the discretion of the relevant firm or company. At the beginning of each calendar year, the business entity should apply in writing, on the business entity's letterhead, to the Authorised Dealer or ADLA for permission to avail of an omnibus travel facility.

On each occasion during the calendar year that the representatives of the business entity will travel, an official letter from the business entity concerned authorising the proposed business visits to be undertaken and explaining the purpose of the proposed business trips must be presented to the Authorised

Dealer or ADLA. The person travelling on behalf of the business entity and availing of this facility must present a valid green bar-coded South African identity document or Smart identity document card together with the passenger ticket in their name to an Authorised Dealer or ADLA.

Funds availed of in terms of the omnibus facility may not be used for any other purpose than business travel. This allowance may not be deposited into a foreign bank account under any circumstances.

Any unused foreign currency must be resold within 30 days to an Authorised Dealer or ADLA on the traveller's return to South Africa. Where a traveller, however, has to go on recurring business trips within 90 days of the previous trip, any unutilised foreign currency notes may be retained for use during the next business trip.

Applications for facilities in excess of R20 million must be submitted to the Financial Surveillance Department via an Authorised Dealer or ADLA for consideration.

Representatives of entities availing of an omnibus travel facility also qualify in their personal capacity for a travel allowance within the single discretionary allowance limit of R1 million per calendar year.

12. Transfers to charitable, religious or educational bodies and to missionaries

Applications by charitable, religious or educational bodies registered as a non-profit organisation under the Non-Profit Act, 1997 (Act No. 71 of 1997) with the Non-Profit Organisation Directorate of Social Development for the transfer of funds to such bodies in countries outside the CMA should be submitted via an Authorised Dealer to the Financial Surveillance Department, with full particulars.

Religious bodies are permitted to transfer up to R20 000 per calendar year per beneficiary to missionaries, provided that a letter from a local registered religious body is presented to an Authorised Dealer confirming that the person is a missionary abroad.

13. Travel agents, tour operators, shipping and airline company transfers

13.1 General

Travel agents, tour operators and shipping and airline companies may not, without the permission of the Financial Surveillance Department, engage in any foreign exchange transactions. However, Travel agents and tour operators may effect transfers abroad on the basis indicated in 13.2 and 13.3 below. Shipping and airline companies may only effect bulk transfers abroad on the basis outlined in 13.4 below.

13.2 Sale of passenger tickets by travel agents and tour operators in South Africa

Travel agents and tour operators may not, except as provided for in (b) below, issue passenger tickets locally against payment in Rand for utilisation by a traveller whose journey does not commence from the CMA.

(a) Journeys by non-residents

(aa) Travel agents and tour operators may accept payment in foreign currency (either by foreign credit card or foreign currency payments to their bank account) by visitors to South Africa for passenger tickets for journeys from South Africa. Where payment is to be effected in Rand by such visitors, travel agents and tour operators must view documentary evidence to ensure that the relative funds represent the proceeds of foreign currency introduced into and exchanged in South Africa. No payment may be accepted to cover the cost of the fare of a non-resident for travel between destinations outside South Africa without the specific approval of the Financial Surveillance Department, unless payment is made in foreign currency or Rand from a Non-resident Rand account in the name of the non-resident and/or Rand from a vostro account held in the books of the Authorised Dealer.

(bb) Where a business entity wishes to pay for the cost of a passenger ticket for a single or return journey commencing outside the CMA to the CMA, payment for such ticket may either be transferred directly to a foreign travel agent or to an overseas airline company. Alternatively, the ticket may be issued and paid for in Rand in South Africa or the ticket may be issued abroad against a prepaid ticket advice paid for in Rand.

(cc) Travel agents and tour operators may alternatively arrange that passenger tickets be purchased via the Internet.

(b) Sale of passenger tickets for journeys between destinations outside South Africa.

(aa) Travel agents and tour operators may accept payment in Rand to cover the cost of passenger tickets for travel between destinations outside of South Africa in order to accommodate the following:

- (i) corporate clients and/or contractors who may need to second foreign based personnel or outsourced persons to fulfil contractual obligations;
- (ii) local clients with a global presence who wish to attend conferences and/or training;
- (iii) travel arranged by non-governmental organisations; and

- (iv) leisure bookings by travel agents via the Internet.
- (bb) The passenger ticket may be issued and paid for in Rand in South Africa or the passenger ticket may be issued abroad against a prepaid ticket advice paid for in Rand.
- (cc) Travel agents and tour operators may, alternatively, arrange that passenger tickets be purchased via the Internet.

13.3 Foreign exchange disbursements by travel agents and tour operators on behalf of travellers

- (a) Advance payments and/or payments in full

Travel agents and tour operators who wish to effect advance payments or payments in full in respect of independent or package tours offered to the public must produce documentary evidence to an Authorised Dealer in the form of an invoice or pro forma invoice from the foreign payee confirming the amount payable.

For the purposes of this subsection, as well as (b) below, a copy of an overseas invoice plus a covering invoice issued by a local travel agents and tour operators may be accepted by an Authorised Dealer when remitting funds abroad. The invoice issued by the local travel agents and tour operators must contain the name and residential address of the traveller, as well as the foreign currency and/or Rand amount.

- (b) Subsequent payments

Subsequent payments by travel agents and tour operators to cover any portion or the balance of a tour not transferred in (a) above may be permitted, provided that documentary evidence in the form of an invoice or pro forma invoice from the foreign payee confirming the amount payable is produced.

Travel agents and tour operators must, at the time of selling a tour to an individual, in respect of advance payments, and/or payments in full and subsequent payments obtain a written declaration from the party concerned to the effect that such party is fully conversant with the conditions pertaining to the issue of a travel allowance and is aware that the cost of any land arrangements paid for locally and/or abroad is deductible from the travel allowance which forms part of the single discretionary allowance limit of R1 million.

- (c) Cancellation fees

In respect of cancellation fees due to foreign payees, travel agents and tour operators must produce documentary evidence to an Authorised Dealer to effect such payments.

(d) Refunds in respect of unutilised bookings

Where payments for bookings abroad have been effected on behalf of a traveller who does not travel or does not utilise the bookings made and a refund is obtained, such reimbursement received by the travel agents and tour operators from abroad must be retransferred to South Africa within 30 days.

(e) Incentive tours

Travel agents and tour operators may effect payments, including advance payments, in respect of package tours offered by business entities to employees as part of an incentive scheme against the production of documentary evidence, as well as an official letter from the business entity concerned.

13.4 Bulk transfers by shipping and airline companies

The local offices of foreign shipping and airline companies may be allowed to transfer surplus funds abroad periodically against submission to Authorised Dealers of supporting statements giving details of freight and passenger fare collections, less local disbursements in respect of their vessels or aircraft and administrative expenditure. Shipping and airline companies must submit auditors' certificates confirming the items enumerated on the statements to their Authorised Dealers on an annual basis.

14. Insurance and pensions

As a general approach, business entities are not allowed to enter into any insurance contracts with foreign insurance companies. However, in view of the limited scope and extent of cover that is available in the South African insurance market, local insurance companies, intermediaries or brokers and Lloyd's correspondents are in certain instances allowed to place the risks with foreign insurance companies and with Lloyd's of London.

Registered South African insurance companies, intermediaries or brokers and Lloyd's correspondents approved by Lloyd's of London are reminded that the Authorised Dealer Manual does not absolve them from complying with all the relevant sections of the Long-term Insurance Act and the Short-term Insurance Act.

14.1 Reinsurance

Business entities may, via an Authorised Dealer, make payments in the prescribed manner to non-resident parties in respect of insurance premiums as stated below:

- (a) Local registered insurance companies may transfer abroad reinsurance premiums, excluding reinsurance premiums in respect of currency risk provided that the request is accompanied by a letter signed by two senior

officials of the company concerned, incorporating a declaration that the applicant is registered in terms of section 9 of the Short-term Insurance Act and has been issued with a registration certificate by the Registrar of Insurance as well as a declaration that the underlying transaction was entered into under an 'approved reinsurance policy' as defined in section 1(1) of the Short-term Insurance Act.

- (b) Local insurance intermediaries, including Lloyd's correspondents approved by Lloyd's of London, may transfer reinsurance premiums, excluding reinsurance premiums in respect of currency risk, provided that the request is accompanied by a letter signed by two senior officials of the intermediary firm and/or Lloyd's correspondent incorporating the names of the registered insurance and reinsurance companies on whose behalf the reinsurance is transacted, as well as a declaration by the registered insurer(s) concerned that the underlying transaction was entered into under an 'approved reinsurance policy' as defined in section 1(1) of the Short-term Insurance Act.
- (c) Lloyd's correspondents approved by Lloyd's of London may transfer insurance premiums, excluding insurance premiums in respect of currency risk, in respect of cover placed in its entirety with Lloyd's underwriters through a broker at Lloyd's, provided that the request is accompanied by a letter signed by two senior officials of the Lloyd's correspondent incorporating a declaration that the Lloyd's correspondent is authorised to conduct such insurance business as stipulated in the Short-term Insurance Act as well as a declaration that the underlying transaction was entered into with an underwriter at Lloyd's through a broker at Lloyd's.
- (d) Lloyd's correspondents approved by Lloyd's of London may transfer insurance premiums, excluding insurance premiums pertaining to currency risk, in respect of cover placed through a broker at Lloyd's that is not in its entirety underwritten by an underwriter at Lloyd's, provided that the request is accompanied by a letter signed by two senior officials of the Lloyd's correspondent declaring that the Lloyd's correspondent is authorised to conduct such insurance business as stipulated in the Short-term Insurance Act and a copy of a letter issued by the Registrar of Short-term Insurance, granting approval in terms of section 8(2)(d) of the Short-term Insurance Act to the intermediary and/or Lloyds correspondent to render services in relation to that short-term policy.

All requests for the remittance of insurance premiums referred to (a) to (d) above must be supported by documentary evidence (e.g. a statement of account, bordereau, slip or debit note) reflecting details of the insurance transacted and premiums payable.

All applications to remit reinsurance and/or insurance premiums abroad in respect of currency risk must be submitted to the Financial Surveillance Department via an Authorised Dealer for consideration.

14.2 Captive insurance companies

The establishment of captive insurance companies abroad requires the prior approval of the Financial Surveillance Department. Permission is also required to remit insurance and reinsurance premiums to such captives. Any such request must contain full particulars of the insurance and reinsurance to be transacted and be accompanied by a duly completed Form MPI. and documentary evidence (e.g. invoice, a statement of account). Such requests must be submitted to the Financial Surveillance Department via an Authorised Dealer.

Applications by onshore captive insurance companies to remit premiums in respect of the placement of reinsurance abroad must be submitted to the Financial Surveillance Department via an Authorised Dealer. Such applications must contain full particulars of the reinsurance to be transacted and documentary evidence (e.g. statement of account, bordereau, slip or debit note).

14.3 Insurance branches outside the Common Monetary Area

The registration of insurance branches outside the CMA requires the prior approval of the Financial Surveillance Department and notification to the Financial Sector Conduct Authority. Requests by registered local insurance companies to settle claims in South Africa under policies written by their authorised branches or agents outside South Africa and vice versa may be approved by Authorised Dealers. It is a condition that any foreign currency surplus to a branch's requirements must be repatriated periodically (but at least on an annual basis).

All South African insurance companies with branches or intermediaries outside the CMA must submit a statement to the Financial Surveillance Department by 31 March each year, giving particulars of their foreign currency assets and liabilities as at 31 December of the previous year.

14.4 Foreign currency working balances

Applications by South African insurance companies registered in terms of section 9 of the Short-term Insurance Act who wish to retain foreign currency premiums and any other foreign currency which accrues to them for settlement of claims under policies issued in foreign currency must be submitted to the Financial Surveillance Department via an Authorised Dealer. Such applications must, inter alia, also incorporate the following information:

- (a) the amount of the contingent liabilities (unexpired premiums) of the insurer or reinsurer concerned under unexpired foreign currency policies, calculated in accordance with the provisions of paragraph 4 of Board Notice 169 of 2011 on Prescribed requirements for the calculation of the values of the assets, liabilities and capital adequacy requirement of short-term insurers issued under item 2 of Part 1 of Schedule 2 of the Short-term Insurance Act;

- (b) the amount, as estimated by the insurer or reinsurer, of the liabilities in respect of claims under foreign currency policies which had been disclosed to the insurer or reinsurer but which had not been paid at any given date; and
- (c) the amount, as estimated in accordance with the method prescribed by the applicable authority, of the insurer or reinsurer's liabilities relating to claims under foreign currency policies which had arisen but had not been disclosed at any given date.

14.5 Short-term insurance in foreign currency to business entities

Policies may be issued to residents by registered South African companies in foreign currency to cover risks incidental to:

- (a) aviation (hull only);
- (b) assets held outside the CMA with approval;
- (c) foreign travel;
- (d) marine and war, general average, salvage or other third-party liability under marine insurance and reinsurance (hull and cargo); and
- (e) imports and exports of physical goods (provided that the contract of sale is denominated in foreign currency and the resident party carries the risk).

Premiums may, however, only be paid in Rand and the insurance company concerned may apply to the Financial Surveillance Department for permission to convert such premiums into foreign currency.

Short-term insurance policies issued by tribunalised agents on behalf of Lloyd's of London may be issued in Rand or in any foreign currency.

In paying or arranging the payment of foreign currency claims to residents, insurance companies and intermediaries referred to above must ensure that the funds are converted to Rand within 30 days.

Where insurance policies have been issued to exporters of goods sold on Cost Insurance and Freight (CIF) terms, funds due by registered South African insurance companies in settlement of claims lodged by the buyers may be transferred abroad or, if authorised, released by the Authorised Dealer concerned from a CFC account.

14.6 Short-term insurance policies to non-residents

Policies may be issued to non-residents by registered South African insurance companies and intermediaries in Rand or in any foreign currency. Any funds due by registered South African insurance companies in settlement of claims

lodged by non-residents may be transferred abroad or, if authorised, released by the Authorised Dealer concerned from a CFC account.

Losses payable and account balances due by registered South African insurance companies on facultative and treaty reinsurance may also be transferred abroad or, if authorised, released by the Authorised Dealer concerned from a CFC account, provided that the request is supported by a statement of account reflecting details of the losses or account balances to be settled.

14.7 Long-term reinsurance to business entities

Registered long-term insurance companies may apply to an Authorised Dealer to remit long-term reinsurance premiums in respect of mortality and morbidity risks only, provided that the request is accompanied by a declaration signed by two senior officials of the company concerned confirming:

that the contract of reinsurance was entered into under an 'approved reinsurance policy' as defined in Schedule 3 to the Long-term Insurance Act and that the approval of the Registrar of Long-term Insurance has been obtained;

- (a) that the contract of reinsurance was entered into under an 'approved reinsurance policy' as defined in Schedule 3 to the Long-term Insurance Act and that the approval of the Registrar of Long-term Insurance has been obtained;
- (b) the name of the reinsurer with whom the reinsurance contract has been entered into; and
- (c) that the applicant is registered in terms of section 9 of the Long-term Insurance Act and has been issued with a registration certificate by the Registrar of Long-term Insurance.

14.8 Long-term insurance to business entities

Policies may be issued to residents by registered South African insurance companies or through local intermediaries in Rand only.

Foreign currency policies entered into in Sterling prior to 1958-05-08 may be continued and foreign currency may be made available against documentary evidence (e.g. premium renewal notice) for the payment of premiums. The proceeds of claims on existing foreign currency policies received abroad by residents from non-South African insurers must be converted to Rand within 30 days.

In paying or arranging the payment of foreign currency claims in respect of policies issued in Sterling prior to 1958-05-08 to residents of South Africa, registered South African insurance companies must ensure that the funds are converted to Rand within 30 days.

14.9 Long-term insurance to non-residents

Policies may be issued to non-residents by registered South African insurance companies or through local intermediaries either in Rand or in any foreign currency. This arrangement also applies to emigrants in respect of new policies issued after the date of emigration. Funds due to non-residents by registered South African insurance companies in settlement of claims and in respect of surrenders and loans granted may be transferred abroad. Foreign currency premiums received in this regard must be converted to Rand.

14.10 General

Registered South African insurance companies and intermediaries may remit funds for medical examination expenses, provided that the request is supported by the account from the non-resident medical practitioner and is addressed to the business entity. These transfers must be effected via an Authorised Dealer.

15. Guarantees

Business entities must approach an Authorised Dealer in respect of guarantees to be issued in favour of non-residents with the exception of capital guarantees (i.e. guarantees for outward foreign direct investment) and currency transfers guarantees. Requests for capital and currency transfer guarantees must be submitted to the Financial Surveillance Department via an Authorised Dealer.

Requests for extension of guarantees by business entities must be referred to an Authorised Dealer.

16. Acceptance of foreign banknotes and foreign currency travellers cheques

Travel agents, hotels, restaurants, shops and other persons whose business is directly related to the tourist industry may apply to an Authorised Dealer for permission to accept foreign banknotes and foreign currency travellers cheques from visitors to South Africa in payment of goods supplied and services rendered. A written undertaking that such foreign currency will be sold to an Authorised Dealer and/or an ADLA not later than the following business day after acquisition thereof must be presented to the Authorised Dealer. A record of all transactions must be kept and be available for inspection by the Financial Surveillance Department.

The authorised parties may not exchange currency offered by foreign tourists or any other party for Rand or any other currency without an underlying sale of goods and/or services rendered.

17. Gold

17.1 Export of gold jewellery by manufacturing jewellers

All applications for permission to export gold jewellery by manufacturing jewellers should be referred to the South African Diamond and Precious Metals Regulator in terms of the Precious Metals Act, 2005 (Act No. 37 of 2005).

Exporters should be aware that:

- (a) the full sale proceeds of all exports must be received in South Africa in foreign currency or Rand from a Non-resident Rand account in the name of the non-resident and/or Rand from a vostro account held in the books of the Authorised Dealer; and
- (b) each shipment for export must be supported by the prescribed SARS Customs Declaration.

17.2 Other exports of gold

All applications for permission to export gold in any form should be referred to the South African Diamond and Precious Metals Regulator in terms of the Precious Metals Act, 2005 (Act No. 37 of 2005).

17.3 Acquisition of gold for legitimate trade purposes

The acquisition of gold for legitimate trade purposes by e.g. manufacturing jewellers, dentists, is subject to the approval of the South African Diamond and Precious Metals Regulator. After receiving such approval, a permit must be obtained from SARS which will entitle the permit holder to approach Rand Refinery Limited for an allocation of gold.

The holders of gold, having received the approvals outlined above, are exempt from the provisions of Regulation 5(1).

17.4 Advances against gold

Payment of an instalment of the purchase price of gold sold to an Authorised Dealer is not regarded as an advance against gold and is permissible.

17.5 Krugerrand coins

All applications from overseas banks and other relevant entities for large quantities of Krugerrand coins should be referred to Rand Refinery Limited.

17.6 Marketing of South African gold

South African gold producers may elect to sell their total gold output to approved counterparties, once exempted by the Financial Surveillance Department from the provisions of Regulation 5.

The full export proceeds must be received in South Africa in foreign currency or Rand from a Non-resident Rand account in the name of the non-resident and/or Rand from a vostro account held in the books of the Authorised Dealer.

17.7 Importation of gold

All applications for the importation of gold must be referred to the South African Diamond and Precious Metals Regulator in terms of the Precious Metals Act, 2005 (Act No. 37 of 2005).

18. Hedging

Business entities who wish to hedge their import commitments must approach their Authorised Dealer in this regard.

Business entities may hedge their foreign exchange risk through an Authorised Dealer in a controlled manner through the active management of their currency exposures in the over the counter foreign exchange market.

Dealings in hedging instruments should not be undertaken for speculative purposes or as a means to circumvent the Regulations.

Business entities may not purchase spot foreign exchange to cover future commitments or accruals. As an exception, foreign currency may be purchased in the spot market for permissible transactions in respect of a firm and ascertainable underlying commitment, and may be credited to a CFC account if the funds are to be transferred abroad within a period of 30 days.

18.1 Active currency management for hedging contracts not exceeding 12 months

- (a) Foreign currency may be sold to or bought from an Authorised Dealer by entering into either a forward contract or a foreign exchange option contract subject to the following conditions:
 - (aa) the instruments are required to cover a direct underlying foreign exchange exposure and to manage possible losses arising from adverse movements in foreign exchange rates from a transaction that is:
 - (i) permissible in terms of the Authorised Dealer Manual;
 - (ii) in respect of which a specific authority has been granted by the Financial Surveillance Department; or
 - (iii) in respect of a business entity actively managing foreign exchange risk exposure, inter alia, in respect of import payments, export proceeds, service type payments or receipts, tenders, acquisitions, balance-sheet risk and loans.

- (bb) cover may not be granted for a period extending beyond 12 months, while contracts may, however, be entered into and exited at the business entities' discretion and need not run until the commitment or accrual has been met;
 - (cc) the same underlying commitment or accrual is not simultaneously covered forward;
 - (dd) in respect of all commitments or accruals, documentary evidence is provided to the Authorised Dealer at the time of 'pay away' confirming either the nature and extent of the commitment, or that foreign currency is definitely accruing and the nature and extent of such accruals; and
 - (ee) all settlements in terms of forward cover taken out which does not result in the physical conversion of currency to and from Rand, i.e. the so-called 'in-between trades' must take place in Rand.
- (b) Institutional investors should note that any open hedging position held is regarded as foreign 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.
 - (c) In respect of cover granted to local stockbrokers for foreign exchange transactions with non-residents on the JSE Limited, the period of such cover may not exceed 45 days from the date of the transaction as evidenced by brokers' notes.

18.2 Hedging contracts exceeding periods longer than 12 months

Foreign currency may be sold to or bought from an Authorised Dealer by entering into either a forward contract or a foreign exchange option contract, subject to the following conditions:

- (a) the instruments are required to cover a firm and ascertained foreign exchange commitment due to a non-resident or a foreign exchange accrual due from and payable by a non-resident arising from a transaction either:
 - (aa) permissible in terms of the Authorised Dealer Manual; or
 - (bb) in respect of which a specific authority has been granted by the Financial Surveillance Department;
- (b) cover may not be granted for a period extending beyond the due date of the underlying commitment or accrual, while contracts may be entered into at any time after the commencement of the commitment or accrual for the full amount or part thereof and need not run until the commitment or accrual has been met;

- (c) the same underlying commitment or accrual is not already covered forward;
- (d) prescribed import documentation is viewed or, when import documents are not available, a letter from the business entity signed by two responsible persons whose names and titles should appear below their signatures giving full details of the underlying commitment;
- (e) in respect of the accrual of the proceeds of exports, the period of cover granted may not extend beyond six months from the date of shipment, except where the Authorised Dealer concerned or the Financial Surveillance Department has granted permission for such proceeds to be received after six months. In addition, cover may also be granted in respect of any pre-shipment period;
- (f) where a dispensation has been granted by the Financial Surveillance Department to certain corporates to be exempted from the requirement to submit documentary evidence for trade related foreign exchange transactions (the imports undertaking dispensation), such dispensation also applies when concluding forward or foreign exchange option contracts in respect of those transactions;
- (g) in respect of all other commitments or accruals, documentary evidence is provided confirming either the nature and extent of that commitment, or that foreign currency is definitely accruing and the nature and extent of such accruals;
- (h) where the required documentary evidence is not available at the time of establishment of a forward or foreign exchange option contract, such documentation must be presented within 14 days;
- (i) for all documentation submitted in evidence of the foreign exchange commitment or accrual, in respect of which cover is availed of, the contract number and the period of the contract must be indicated; and business entities may cover forward up to 75 per cent of budgeted import commitments or export accruals in respect of the following financial year. Such requests must be referred to an Authorised Dealer who will furnish the business entity with more details regarding the terms and conditions applicable in this regard.

18.3 Interest rate risk and price risk

Business entities may approach their Authorised Dealer to arrange cover in respect of interest rate risk and price risk on commodities and metals.

Business entities who wish to hedge directly with an offshore counterparty require prior written approval of the Financial Surveillance Department.

19. Customer Foreign Currency and foreign bank accounts

19.1 Qualifying parties

The following business entities (legal persons) may open CFC accounts and special CFC accounts at an Authorised Dealer:

(a) Customer Foreign Currency account holders

Any South African entity (including ADLAs) that deals in foreign currency with the exception of those entities authorised in terms of section 14 above.

(b) Special Customer Foreign Currency account holders

(aa) The insurance industry to cater for foreign currency working balances in terms of section 14.4 above.

(bb) Local business entities involved in the importation and exportation of rough diamonds, crude oil, wrought gold and/or steel. Separate CFC accounts, clearly designated as 'Special CFC accounts' may, on application to an Authorised Dealer, be opened for these local business entities (i.e. legal persons). This is to facilitate the local settlement in foreign currency between such account holders in respect of transactions which will result or have resulted in the direct importation and/or exportation by one of the entities involved of rough diamonds, crude oil, wrought gold and/or steel.

The following provisions must at all times be strictly adhered to:

- (i) no more than two local business entities (i.e. one buyer and one seller) may be party to any transaction to be so settled and both parties must obtain permission from their respective Authorised Dealers to conduct Special CFC accounts for such transactions;
- (ii) one of the parties to transactions to be so settled must be a registered importer and/or exporter of the commodity in question. The Authorised Dealer of the importer and/or exporter should be presented with suitable documentary evidence to this effect;
- (iii) the commodities to be so acquired must be destined for exportation or importation by one of the parties concerned and documentary evidence to this effect should be presented to the Authorised Dealer in whose books such a party conducts or wishes to conduct a Special CFC account;
- (iv) only the aforementioned transactions may be settled over such Special CFC accounts; and

- (v) only the party that will have to convert Rand to foreign exchange in order to settle such transactions may be permitted to hedge its exposure in respect of the particular transactions. It follows that the party that will export or import the commodities may not be permitted to enter into hedging transactions in respect of their accruals or commitments resulting from such transactions.
- (cc) Local business entities who are oil and gas rights holders and whose sole trade relates to exploration and production (i.e. extraction only) may open and conduct CFC accounts without any restriction on the nature of transactions passing over the account, provided that all requirements relating to reporting in terms of the Reporting System are adhered to. The opening of CFC accounts for any other purpose requires prior approval from the Financial Surveillance Department via an Authorised Dealer.
- (c) Permissible set-offs and/or debits over Customer Foreign Currency accounts

The following payments may be set-off against CFC account balances:

- (aa) imports and software electronically downloaded, including all costs related thereto;
- (bb) the payment of expenses such as commission, freight, insurance and demurrage that are expressed in a foreign currency;
- (cc) advertising, exhibition or trade-fair expenses;
- (dd) charges for repairs and adjustments to goods exported temporarily; charges in connection with legal disputes;
- (ee) examination fees where the account holder is responsible for the payment thereof;
- (ff) fees in respect of services rendered;
- (gg) fees in respect of the registration of drugs;
- (hh) royalties and fees arising from the use of patents, designs and trademarks;
- (ii) subscriptions; and
- (jj) technical service payments.

19.2 Foreign bank accounts

Business entities may, via an Authorised Dealer, open and operate foreign bank accounts, subject to the following conditions:

- (a) only South African companies that have legal or bona fide sources of income abroad are permitted to open foreign bank accounts;
- (b) all foreign credits to such bank accounts are subject to repatriation within 30 days of accrual except in respect of foreign-earned dividends that are exempted;
- (c) funds that accrue in foreign bank accounts must be in respect of transactions permissible in terms of the Authorised Dealer Manual or a specific authority granted by the Financial Surveillance Department;
- (d) applicants must give a written undertaking to Authorised Dealers that no debits other than transfers to South Africa, debits permissible in terms of a specific authority from the Financial Surveillance Department or bank charges will be passed over the foreign bank accounts; and
- (e) business entities must ensure that the foreign bank accounts have been conducted within the ambit of the aforementioned conditions.

The Financial Surveillance Department reserves the right to instruct the business entity concerned to close any foreign bank account and for any funds accumulated therein to be repatriated to South Africa in the event of the above-mentioned conditions not being complied with.

20. Securities control

20.1 General

The principal objective in controlling non-resident owned securities is to ensure that residents requiring funds outside the CMA do not obtain such funds by purchasing securities in the CMA and selling them abroad without accounting for the proceeds in foreign currency or Rand from a Non-resident Rand account in the name of the non-resident and/or Rand from a vostro account held in the books of the Authorised Dealer. In addition, since all income due to non-residents on their securities is freely transferable, the aim is to ensure that non-residents do not purchase securities from residents other than through approved channels at a fair market price. Since exchange controls on non-residents have been abolished, the onus rests on the South African buyer or seller of securities to prove that the transaction was concluded on an arm's length basis at a fair and market related price.

In this regard, it is necessary to segregate securities owned by non-residents from securities owned by residents in both certificated and uncertificated environments.

The control over the acquisition or disposal of non-resident securities is exercised by an Authorised Dealer placing the endorsement 'non-resident' on securities owned by non-residents or in which non-residents have an interest. The effect of this endorsement is to ensure that in the event of a disposal by

the non-resident of its interest, the payment may be transferred abroad or credited to a Non-resident Rand account.

Business entities (including stockbrokers and trust companies) may not act as a nominee for a non-resident purchasing shares or securities in South Africa unless permission has been obtained via an Authorised Dealer from the Financial Surveillance Department to act in this capacity.

Business entities of the CMA who deal in securities may not register an address outside the CMA without the specific prior written approval of the Financial Surveillance Department via an Authorised Dealer.

Residents may under no circumstances have local dividends on South African registered shares paid outside the CMA without specific prior written approval from the Financial Surveillance Department.

20.2 Listings on the JSE Limited

- (a) South African registered companies, excluding banks and/or bank holding companies, may apply to an Authorised Dealer to primary list on the JSE Limited. Business entities should approach an Authorised Dealer for further details in this regard.
- (b) Listed South African companies may, on application to an Authorised Dealer, be permitted to undertake capitalisation issues, reverse listings, issue shares for cash, undertake rights issues or claw-back offers and acquire assets from or dispose assets to a non-resident. In this regard, business entities should approach their Authorised Dealers for guidance regarding the applicable conditions.
- (c) Business entities should note that the following transactions require the prior approval of the Financial Surveillance Department via an Authorised Dealer before the JSE Limited considers such requests:
 - (aa) the listing of a bank and/or bank holding company;
 - (bb) the issue of bearer securities;
 - (cc) restructures, mergers and changes in control where non-residents are involved;
 - (dd) the listing of a quoted South African company on a foreign stock exchange;
 - (ee) the listing of an external company on the JSE Limited;
 - (ff) the listing of warrants;
 - (gg) the issue of hedge securities;

- (hh) the delisting of a company listed on the JSE Limited;
 - (ii) the declaration of a dividend in specie or special dividend for any purpose; and
 - (jj) the elimination of 'odd lot' minority shareholders through the mechanism of consolidations and/or subdivisions of share capital.
- (d) Foreign companies with offices in South Africa may under no circumstances record and/or change either the ownership or the address of securities from an office of an issuer outside South Africa to an office of an issuer within South Africa without the specific approval of the Financial Surveillance Department.
- (e) Business entities who own shares listed on the JSE Limited may under no circumstances have dividends paid outside the CMA without specific approval from the Financial Surveillance Department.

20.3 Dealings by business entities on foreign stock exchanges

- (a) South African securities may be exported by resident entities for sale abroad only through the medium of an Authorised Dealer, whose duty it will be to ensure that the sale proceeds are repatriated to South Africa.
- (b) Business entities are not permitted to purchase securities abroad, except as permitted in section 4. Certain arrangements are, however, in force providing for controlled dealings by stockbrokers.
- (c) Major corporates may apply via an Authorised Dealer to the Financial Surveillance Department to establish primary listings offshore. Guidelines in this regard can be obtained from an Authorised Dealer.
- (d) South African listed companies may apply to an Authorised Dealer to secondary list on foreign exchanges and/or list depository receipt programmes in the offshore market. Business entities should approach an Authorised Dealer for further details in this regard.
- (e) The issuance of, or dealing in, bearer securities or bearer options without the specific approval of the Financial Surveillance Department is prohibited.

21. Investments in approved inward listed instruments on the JSE Limited

21.1 Introduction

Instruments that offer South African investors exposure to offshore referenced assets in Rand terms must be listed on the JSE Limited. These foreign referenced instruments may not be offered to South African investors on an over the counter basis. Types of instruments include equity, debt and derivatives. These instruments may only be denominated in Rand.

Non-resident entities, local Authorised Dealers and the JSE Limited are allowed to issue inward listed instruments referencing foreign assets on the JSE Limited. Local collective investment scheme management companies registered with the Financial Sector Conduct Authority and regulated under Cisca are only allowed to inward list exchange traded funds referencing foreign assets on the JSE Limited. These entities require prior written approval of the Financial Surveillance Department in respect of all issuances of inward listed instruments.

An Authorised Dealer wishing to facilitate the cross-border reporting of inward listed transactions requires prior written approval of the Financial Surveillance Department and will have to comply with the specific reporting requirements of the Financial Surveillance Department.

Approved inward listed shares are classified as domestic and inward listed debt and derivative instruments referencing a foreign asset are classified as foreign. The full nominal value of instruments classified as foreign should be marked off against the respective foreign investment allowances of institutional investors and Authorised Dealers.

Institutional investors are allowed to invest in approved inward listed shares without affecting their permissible foreign portfolio investment allowance. They may invest in other approved inward listed instruments based on foreign referenced assets or issued by foreign entities, listed on the JSE Limited using the permissible foreign portfolio investment allowances. Institutional investors may also invest an additional 5 per cent of their total retail assets in approved African inward listed instruments.

Authorised Dealers may invest in approved inward listed shares without affecting their macro-prudential limit. They may invest in other approved inward listed instruments subject to the macro-prudential.

South African corporates, trusts, partnerships and private individuals may invest in approved inward listed instruments without restriction.

Inward listed debt and derivative instruments referencing a foreign asset are classified as foreign in nature for the full nominal value of such instrument.

It is envisaged that inward listings will attract foreign direct investment to the domestic economy, increase market capitalisation and liquidity in the local capital market, support the New Partnership for Africa's Development initiative and support the enhancement of foreign investment diversification through domestic channels.

Inward listed shares mean the following products listed on the JSE Limited.

Product	Details
Ordinary shares/equities including A,B and N shares	Shares that are listed on the JSE and settled in Rand.

Product	Details
Preference shares/debentures	If the company is already listed on the JSE Limited and the preference shares/debenture is compulsory convertible.
Linked units/participatory interest/real estate investment trusts (REITS) and loan stock companies	If the company is already listed on the JSE Limited primary or secondary.
Exchange Traded Funds (ETFs)	An instrument that tracks a basket of shares, as long as they track an index or shares that are made up of companies already listed on the JSE Limited. This must be valid for all the shares in the index.
Warrants	As long as they represent an underlying share or basket of shares already listed on the JSE Limited.
Share instalments	As long as they represent an underlying share or basket of shares already listed on the JSE Limited.
Derivatives – equities indices	A future or option which is listed against an index that represents companies already listed on the JSE Limited.
Derivatives – single stock futures and options	A future or option that is listed against a single security of a company which is already listed on the JSE Limited.
Derivatives – dividend futures and options	A future or option on a dividend of a company that is already listed on the JSE Limited.
Krugerrand coins	Listed and traded on the JSE Limited in Rand.
Current commodity derivatives (i.e. white maize)	Listed and traded on the JSE Limited in Rand.

21.2 Measures applicable to inward listed equity issues, debt and derivative instruments on the JSE Limited

(a) Equity issues

(aa) Acquisition issue

Foreign companies may, on application, be allowed to use their shares as acquisition currency

South African institutional investors, Authorised Dealers, corporates, trusts, partnerships, emigrants and private individuals may accept the shares.

(bb) Issue of shares for cash (capital raising through an initial public offering)

The foreign entity must open a special designated vostro-styled account (designated account) with an approved Authorised Dealer for the duration of the listing on the JSE Limited, for purposes such as receiving and recording the capital raised in terms of the Prospectus, effecting dividend payments. This is essential to ensure compliance with the Reporting System requirements.

(cc) Rights offers

South African institutional investors, Authorised Dealers, corporates, trusts, partnerships, emigrants and private individuals may exercise their rights in terms of a rights offer.

(dd) Deployment of capital

The capital must be deployed as soon as possible but not later than one month after being raised and recorded in the designated account.

Failure to deploy the capital within the stipulated period must be reported to both the Financial Surveillance Department and the JSE Limited, who will require to be furnished with the reasons for the delay in deploying the capital, as well as the expected date of deployment of such capital.

(b) Debt issues

(aa) Capital raising through new debt listings

Issuers of debt instruments must open a special designated vostro-styled account (designated account) for the duration of the listing with an approved Authorised Dealer for purposes such as receiving the capital raised, effecting coupon payments, redemption payments. This is essential to ensure compliance with the Reporting System requirements.

(bb) Criteria for 'African' Debt

'African' debt encompasses debt securities issued and listed on the JSE Limited by African governments, African public entities, African local authorities, African development agencies and by non-African development institutions where the funds raised are earmarked for use in Africa.

(cc) Deployment of capital

The capital must be deployed as soon as possible but not later than one month after being raised and recorded in the designated account.

Failure to deploy the capital within the stipulated period must be reported to both the Financial Surveillance Department and the JSE Limited, who will require to be furnished with the reasons for the delay in deploying the capital, as well as the expected date of deployment of such capital.

(c) Derivative issues

The listing of and trading in derivative instruments are subject to the following conditions:

- (aa) for every buyer there should be a seller;
- (bb) the loss for one party is paid as the profit of the counterparty;
- (cc) participants may not hedge their exposures by physically trading in the underlying referenced asset, unless that particular asset is also inward listed on the JSE Limited; and
- (dd) all settlements should take place locally in Rand.

22. Local financial assistance to affected persons

22.1 Introduction

Regulation 3(1)(e) and (f) prohibits the granting of local financial assistance to, and the acceptance of collateral from, affected persons. The party granting local financial assistance to non-residents or affected persons must obtain exemption from the provisions of the Regulations. It is, therefore, the lender's responsibility to establish whether or not a prospective borrower is an affected person or a non-resident.

22.2 Availing of local financial assistance

Business entities who are affected persons as defined below may apply to an Authorised Dealer for local financial assistance.

An affected person means a body corporate, foundation, trust or partnership operating in South Africa, or an estate, in respect of which:

- (a) 75 per cent or more of the capital, assets or earnings thereof may be utilised for payment to, or to the benefit in any manner of, any person who is not resident in South Africa; or
- (b) 75 per cent or more of the voting securities, voting power, power of control, capital, assets or earnings thereof, are directly or indirectly

vested in, or controlled by or on behalf of, any person who is not resident in South Africa.

There is no restriction on the amount that may be borrowed locally in instances where an affected person wishes to borrow locally from an Authorised Dealer to finance a foreign direct investment into South Africa or for domestic working capital requirements.

Where the funds to be borrowed are required for financial transactions and/or the acquisition of residential property in South Africa, a 1:1 ratio will apply, i.e. for every R1 in cash or assets that a non-resident introduces or owns, such non-resident may borrow an equivalent amount in the local market. As an exception to the aforementioned, non-residents living and working in South Africa may apply for local financial assistance in respect of the acquisition of residential property without the requirement to comply with the 1:1 ratio, subject to normal lending criteria. An Authorised Dealer must be approached for further details in this regard.

Financial transactions, inter alia, include the purchase and sale of any securities (listed or unlisted), repurchase agreements and any derivative transactions on securities. If facilities are granted for the acquisition of fixed property, such facilities may not be increased at any stage based on a revaluation of the property in question.

When an affected person avails of local financial assistance from various lenders, a designated (lead) bank (i.e. an Authorised Dealer of the affected person's choice), must be appointed by the borrower to coordinate the overall borrowing facilities.

22.3 Short-term trade finance extended by a local authorised dealer to a non-resident directly related to the export of goods or services from South Africa

To encourage exports from South Africa, Authorised Dealers may apply to the Financial Surveillance Department to extend short-term finance facilities, denominated in Rand or a foreign currency, to a non-resident importer or their banker abroad.

22.4 Finance facilities extended by a local authorised dealer not related to the export of goods and services from South Africa

- (a) Foreign currency denominated finance facilities extended to non-residents for utilisation outside South Africa are not subject to the requirements of Regulation 3(1)(e) and (f).
- (b) Rand denominated finance facilities extended to non-residents for utilisation within South Africa are subject to the conditions as outlined in section 22.2 above.

23. Borrowing abroad by residents

23.1 Approval process

Business entities may approach Authorised Dealers to obtain approval to avail of inward foreign loans and foreign trade finance facilities from any non-resident, subject to the specific criteria applicable to inward foreign loans being adhered to. Such loans must be recorded via the Loan Reporting System by the Authorised Dealer concerned.

(a) Application requirements

All applications for inward foreign loans and foreign trade finance facilities must, inter alia, contain the following information:

- (aa) full names of the local borrower;
- (bb) identity number or temporary resident permit number or registration number of the borrower;
- (cc) full names of the foreign lender;
- (dd) domicile of the foreign lender;
- (ee) relationship between the foreign lender and the borrower;
- (ff) denomination of the loan;
- (gg) currency and amount of principal sum;
- (hh) interest rate and margin;
- (ii) purpose of the loan;
- (jj) details of the type of security required, if any;
- (kk) tenor. In instances where a loan will be repaid at a fixed future date, the date on which the loan will be repaid must be provided. Where a loan will be repaid in instalments, the date of the first instalment should be provided as well as the interval of the instalments (e.g. monthly/quarterly);
- (ll) copy of the loan agreement, if available and/or applicable;
- (mm) confirmation that there is no direct or indirect South African interest in the foreign lender;
- (nn) full details of early repayment options, as well as currency switch options, if any;

- (oo) in the case of foreign trade finance facilities, written confirmation from the borrower to the effect that the relative import or export transaction is not being financed elsewhere; and
 - (pp) details of any commitment fees, raising fees and/or any other administration fees payable by the borrower.
- (b) Criteria applicable to inward foreign loans

The following criteria must be strictly complied with:

- (aa) The tenor of each loan must be at least one month;
 - (bb) the interest rate in respect of third party foreign denominated loans may not exceed the base lending rate plus 3 per cent or, in the case of shareholders' loans, the base lending rate as determined by commercial banks in the country of denomination;
 - (cc) the interest rate in respect of Rand denominated loans may not exceed the base rate, i.e. prime rate, plus 5 per cent on third party loans or the base rate, in the case of shareholders' loans;
 - (dd) the fixed interest rate linked to the base rate, if applicable, may not exceed the interest rate mentioned in (bb) or (cc) above. In this regard, approved inward foreign loans should always be adjusted accordingly in line with the set criteria;
 - (ee) the loan funds to be introduced may not represent or be sourced from a South African resident's foreign capital allowance, legitimate foreign assets, legitimate foreign earnings retained abroad, funds for which amnesty had been granted in terms of the Exchange Control Amnesty and Amendment of Taxation Laws Act, 2003 (Act No. 12 of 2003) and/or foreign inheritances;
 - (ff) there may not be any direct/indirect South African interest whatsoever in the foreign lender;
 - (gg) the loan funds may not be invested into foreign sinking funds;
 - (hh) no upfront payment of commitment fees, raising fees and/or any other administration fees are payable by the borrower; and
 - (ii) the abovementioned fees may be paid from South Africa once the loan funds have been received and converted into Rand locally provided that such fees do not exceed 5 per cent of the principal sum.
- (c) Applications to be submitted to the Financial Surveillance Department

In the following instances Authorised Dealers must submit an application to the Financial Surveillance Department for consideration:

- (aa) regularisation of all unauthorised inward foreign loans and foreign trade finance facilities; loan drawdowns, and capital and interest payments where the funds originate from or are deposited to non-resident accounts. These transactions are not reportable on the Reporting System;
- (bb) loan drawdowns, capital and interest payments in respect of foreign trade finance facilities for imports or exports where the transactions will not be reported;
- (cc) any other instances where the Reporting System will not reflect changes to the original loan;
- (dd) any other instances subsequent to the original loan approval to reflect changes to the original loan, interest rate, capital repayments to non-resident third parties other than the original lender on record with Financial Surveillance Department and instances where funds are draw-down or are to be received from parties other than the original lender;
- (ee) any unauthorised increase or decrease of the principal amount of the foreign loan;
- (ff) capitalisation of interest;
- (gg) compounding of interest;
- (hh) conversion of the loan to share capital;
- (ii) consolidation of loans;
- (jj) all loans where commitment fees, raising fees and/or any other administrative fees exceed 5 per cent;
- (kk) early capital redemptions;
- (ll) issuance of redeemable preference shares to non-residents;
- (mm) bond issues;
- (nn) interest and/or capital repayments to non-resident third parties other than the original lender on record with Financial Surveillance Department; and
- (oo) all cases where the criteria outlined in (b) above cannot be met.

(d) **Capital repayments**

Business entities may approach an Authorised Dealer to repay inward foreign loans and foreign trade finance facilities, inclusive of those approved by the Financial Surveillance Department.

Capital repayments must be made strictly in accordance with the terms of the loan.

23.2 Trade finance, long-term loans and working capital loans extended by Authorised Dealers

Business entities wishing to avail of trade finance, long-term loans and working capital loans in foreign currency must approach an Authorised Dealer in this regard.

23.3 Fraudulent practices (e.g. advance-fee fraud)

Any applications for foreign currency to meet the purported cost of raising fees or administrative charges payable in advance and which relate to proposed borrowing abroad by residents must be referred to the Financial Surveillance Department via an Authorised Dealer. Such applications must contain full details of the terms of the proposed loan together with the original documentary evidence submitted in support of the request.

24. Miscellaneous payments

Business entities may apply to an Authorised Dealer to remit abroad payments as mentioned below against the production of documentary evidence confirming the amounts involved.

24.1 Advertising, exhibition, sponsorship and trade fair expenses

Advertising and exhibition fees, inclusive of sponsorship fees, in respect of participation in trade fairs outside the CMA.

24.2 Charges for repairs and adjustments to goods temporarily exported

Manufactured goods registered with Customs for re-exporting to their country of origin for repairs or adjustments.

24.3 Charges in connection with legal disputes

Legal fees, court costs and upfront deposits for legal work incurred outside the CMA.

24.4 Insurance and road accident fund claims due to non-residents

Claims payable to non-residents as a result of injury, loss or damages suffered while visiting South Africa. In the event of the recipient being an emigrant, the funds must be credited to an emigrant's capital account.

24.5 Court judgment payments

Payments due to non-residents in terms of or as a result of any judgment granted by a court in South Africa.

24.6 Examination fee payments

Examination fees payable to schools, universities or similar educational institutions or examining bodies abroad whose exams are being held in South Africa.

24.7 Medical expenses

Medical examination expenses in respect of prospective contract workers and immigrants, provided that the account from the non-resident medical practitioner, addressed to the resident corporate entity, is submitted in support of the request.

24.8 Refunds

- (a) Refunds paid by SARS due to non-resident entities.
- (b) Pension payments that have been received from outside the CMA after the demise of a resident beneficiary.
- (c) Refunds in respect of orders, tour reservations, registration fees, erroneous payments and overpayments by non-residents.
- (d) Any other refunds not exceeding a total value of R100 000 per calendar year due to non-residents involving related parties.

24.9 Registration of drugs

Fees due by pharmaceutical companies registered in South Africa in respect of the registration of drugs outside the CMA.

24.10 Rental and lease payments

Rental and lease payments in respect of capital goods utilised inside or outside South Africa to fulfil any contractual obligations.

24.11 Sport events

Entrance fees for participation in international sporting events.

24.12 Subscriptions

- (a) Current membership and affiliation fees to recognised medical, engineering and other technical, learned or international societies.
- (b) Club subscriptions.
- (c) Current subscriptions for international business or technical information services, supplied via data or telephone lines to visual display units and printers.

24.13 Technical service payments

Fees, including reimbursements of air fares to CMA countries, due in respect of non-residents brought to South Africa for the specific purpose of installing or repairing specialised machinery and equipment, or for commissioning and supervising the installation thereof, as well as training local personnel in this regard.

24.14 Tender documentation

Fees payable to acquire tender documentation in order to tender for contracts outside the CMA.

24.15 Transportation costs and cash floats

Ship disbursements, landing fees, fuel costs, emergency repair costs, toll fees and other fees related to the transport of goods.

In cases where a business entity must effect these payments on a regular basis in cash to non-residents or on behalf of non-residents, a cash float in foreign currency not exceeding the equivalent of R100 000 may be accorded by an Authorised Dealer. The cash float may be replenished against the presentation of documentary evidence confirming the utilisation of foreign currency from the cash float for these purposes.

Business entities may make advance payments via an Authorised Dealers in foreign currency not exceeding the limit mentioned above to non-resident petroleum and concession companies where cards will be issued to allow for payment of petrol and toll fees respectively. The accounts may be replenished against the representation of documentary evidence confirming the purposes for which the funds were utilised.

24.16 Registration of agrochemical products

Registration fees in respect of agrochemical products registered outside the CMA.

24.17 Visiting artistes, entertainers, sportsmen and other similar professionals

The net earnings of foreign artistes, entertainers, sportsmen and other similar professionals engaged by residents may on departure be transferred abroad by Authorised Dealers, provided that they view documentary evidence from SARS confirming that all tax commitments have been met.

Where a contract requires that an upfront or advance payment be transferred prior to completion of the non-resident's contractual obligations, such payment may only be credited to an Escrow account and may only be released proportionately after the completion of each performance.

24.18 Foreign contract payments

Business entities are permitted to pay expenses such as salaries, accommodation costs incurred abroad by residents as a result of their foreign contractual obligations. A copy of the relevant foreign contract must be presented to an Authorised Dealer.

24.19 Conference, congress and seminar fees

Business entities are permitted to pay conference, congress and seminar fees (including ad hoc short-term courses presented at foreign entities) to non-residents in respect of local or international events, provided that documentary evidence from the foreign beneficiary is submitted to an Authorised Dealer.

24.20 Employment contracts involving non-residents

Business entities that are required to transfer funds abroad in respect of employment contracts involving non-residents employed in and outside of South Africa may approach an Authorised Dealer to allow such payments.

24.21 Commission and/or brokerage on investments introduced into South Africa from abroad

Fees in respect of investments introduced into South Africa from abroad are permissible, provided that the business entity confirms in writing that the rate at which such payments are calculated is market related.

24.22 Mould payments

- (i) Payments in respect of the design and/or manufacturing of moulds not exceeding R100 000. A copy of the underlying agreement must be viewed and the Authorised Dealer should, prior to effecting the payment, be satisfied that:
 - (a) the mould is manufactured by the foreign supplier;
 - (b) it is only for a once-off design and manufacturing of the mould; and

- (c) the mould is required to manufacture goods to be imported by the applicant.

24.23 Miscellaneous payments

Miscellaneous payments within a limit of R100 000 per transaction via an Authorised Dealer to non-residents, not specifically dealt with elsewhere in this document, may be effected. Suitable documentary evidence must be presented to an Authorised Dealer substantiating the amount and nature of the liability.

25. Company recharge arrangements in connection with share option schemes

Any recharge arrangements in connection with a foreign parent company share incentive or share option schemes must be referred to the Financial Surveillance Department via an Authorised Dealer.

26. Cross-border foreign exchange transaction reporting requirements

Business entities must note that the reporting of all cross-border foreign exchange transactions by an Authorised Dealer and/or ADLA to the Financial Surveillance Department is compulsory. Accordingly, business entities must provide full details pertaining to the relevant cross-border transaction as requested by the Authorised Dealer and/or ADLA concerned.

The objective of the Financial Surveillance Department Reporting System is to ensure accurate and comprehensive reporting of all data by Authorised Dealers and ADLAs on transactions, irrespective of the amount, for compilation of:

- (a) balance-of-payments statistics by the Economic Research and Statistics Department of the South African Reserve Bank;
- (b) foreign debt statistics and repayment profiles to support monetary policy decisions; and
- (c) statistical information relating to the nature, volume and values of the various cross-border flows and to provide the appropriate information for economic and financial management decisions, as well as planning and policy formulation.

26.1 Integrated form

Business entities must complete an integrated form in respect of all cross-border transactions at an Authorised Dealer or ADLA.

When the authorised representative of the business entity is physically present at the Authorised Dealer or ADLA, the integrated form must be completed and signed by the authorised representative in respect of all inward and outward

payments.

When the authorised representative is not physically present to complete and sign the integrated form, the Authorised Dealer or ADLA may complete and sign the integrated form either physically or electronically, provided that the Authorised Dealer or ADLA has been authorised or mandated to do so by means of a letter, a facsimile message, an email message or by a recorded telephonic message to act on the business entity's behalf.

26.2 Declaration

The following declaration is included in the integrated form to be signed by the authorised representative of the business entity:

"I, the undersigned....., hereby declare that:

1. have read this document and know and understand the contents thereof;
2. the information furnished above is in all respects both true and correct;
3. the currency applied for will only be used for the specific purpose stated herein;
4. the documentation presented in support of this application is in all respects authentic;
5. I have been informed of the limit applicable to the above transaction and confirm that this limit will not be exceeded as a result of the conclusion of this transaction; and
6. I consent to this information being provided to the South African Revenue Service and/or the Financial Intelligence Centre."

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