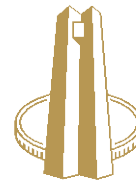


 P O Box 3125 Pretoria 0001 South Africa
 370 Helen Joseph Street Pretoria 0002
 +27 12 313 3911 / 0861 12 7272
 www.resbank.co.za



SOUTH AFRICAN RESERVE BANK
Financial Surveillance Department

14/6/2_2020

2020-11-24

Exchange Control Circular No. 17/2020

Statement on exchange control

The attention of Authorised Dealers in foreign exchange is drawn to the attached media statement (see Annexure A) advising that it is the intention of National Treasury, the South African Reserve Bank and the Financial Sector Conduct Authority to review Exchange Control Circular 15/2020 dated 2020-10-29 (see Annexure B) to provide clarification on the scope of changes to the announcement related to the reclassification of inward listed instruments.

Taking cognisance of the above, Exchange Control Circular 15/2020 is hereby suspended with immediate effect. All approvals granted on the basis of Circular 15/2020 are also suspended. The dispensation before Circular 15/2020 remains extant and in this regard kindly refer to Annexure C attached for the policy on inward listings.

Stakeholders and the public are invited to submit comments to sarbportfolio@resbank.co.za by 2020-12-15 on proposals to amend the circular in question. Input is also required on the selling of a derivative or exchange traded fund (ETF) where the underlying foreign asset is issued by a company not listed on a South African exchange as well as on the selling of an inward listed derivative or ETF where the underlying foreign asset is not listed on a South African exchange.

An updated circular in amplification of the foregoing will be issued in due course.

Head of Department: Financial Surveillance



MEDIA STATEMENT

Capital flow management framework update: Clarification of reclassification of inward listed instruments

National Treasury, the South African Reserve Bank (SARB) and the Financial Sector Conduct Authority (FSCA) intend to review Exchange Control Circular 15/2020 issued by the SARB, following the announcement by the Minister of Finance in the Medium Term Budget Policy Statement (MTBPS) Speech on 28 October 2020.

The review is limited to providing clarification on the scope of changes to the announcement related to the reclassification of inward listed instruments. This follows enquiries by various stakeholders having different interpretations on the extent that the Circular affects the foreign investment limits applicable to institutional investors, inter alia, retirement funds, collective investment schemes and insurers.

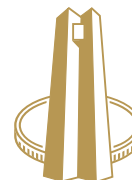
The MTBPS announcement aims to create an enabling environment that makes it easier for foreign investors to invest in South Africa, and support South Africa's growth as an investment and financial hub for Africa. The National Treasury would like to emphasize that the announced reforms to the capital flow management framework do not alter the prudential framework currently applicable to all regulated funds, including retirement funds, collective investment schemes and insurance.

The Circular issued on 29 October 2020 dealing with the reclassification of inward listed instruments is therefore suspended with immediate effect, to reduce the scope for ambiguity related to compliance with the prudential framework for regulated funds. An amended Circular will be issued following a period of public consultations. All approvals granted on the basis of Circular 15/2020 are also suspended. The dispensation before Circular 15/2020 remains extant.

Stakeholders and the public are invited to submit comments to sarbportfolio@resbank.co.za by 15 December 2020 on proposals to amend the Circular in question. Input is also required on the selling of a derivative or ETF where the underlying foreign asset is issued by a company not listed on a South African exchange.

Issued by the National Treasury, the South African Reserve Bank and the Financial Sector Conduct Authority
Date: 24 November 2020

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



SOUTH AFRICAN RESERVE BANK
Financial Surveillance Department

14/6/2_2020

2020-10-29

Exchange Control Circular No. 15/2020

Reclassification of inward listed debt and derivative instruments as well as exchange traded funds referencing foreign assets

Following the Minister of Finance's announcement in the 2020 Medium Term Budget Policy Statement Authorised Dealers are advised that all the remaining foreign classified debt and derivative instruments as well as exchange traded funds referencing foreign assets, that are inward listed on a South African exchange, traded and settled in Rand, will be reclassified as domestic. The classification of all inward listed shares on a South African exchange remains domestic.

The approval process in respect of the inward listing of all instruments on a South African exchange remains extant.

The outlay of Section H. of the Currency and Exchanges Manual for Authorised Dealers (Authorised Dealer Manual) was deleted and replaced to, inter alia, highlight the application procedure, adjudication process, conditions applicable to inward listing approvals and reporting requirements.

The following amendments have also been made to Sections B.2(H) and B.2(I) of the Authorised Dealer Manual:

Section B.2(H)(ii)(d)(cc)

The paragraph has been amended and replaced as follows:

'Rand denominated foreign assets may be acquired indirectly through investments with another domestic institutional investor.'

Section B.2(H)(v)(c)

The entire section has been deleted.

The current subsections (d) to (f) have been renumbered (c) to (e).

Section B.2(H)(v)(d)(bb)

The entire section has been deleted.

The current subsections (cc) and (dd) have been renumbered (bb) and (cc).

Section B.2(I)(ii)(b)

The entire section has been deleted.

Section B.2(I)(iii)(a)

The paragraph has been amended and replaced as follows:

‘The Financial Surveillance Department defines foreign exposure for macro-prudential limit purposes as all foreign assets held where such assets are foreign currency denominated, except for the dispensations in (iv)(b) below, as well as foreign assets denominated in Rand, e.g. Rand denominated instruments issued offshore. Foreign exposure will therefore, inter alia, include the following:’

Section B.2(I)(iii)(a)(ee)

The entire section has been deleted.

Section B.2(I)(iii)(b)

The entire section has been deleted.

Section H.

The entire section has been deleted and replaced as follows:

(A) Introduction

- (i) Instruments that offer South African investors exposure to foreign referenced assets in Rand terms must be listed on a South African exchange. The types of instruments include equity, debt and derivatives. These instruments may only be denominated in Rand.
- (ii) These foreign referenced instruments may not be offered to South African investors on an over-the-counter basis.
- (iii) The listing of all instruments referencing foreign assets will require specific prior approval of the Financial Surveillance Department.
- (iv) 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.
- (v) The inward listing policy may not be used as a mechanism for a South African company to re-domicile offshore.
- (vi) Inward listings attract foreign direct investment to the domestic economy, grow market capitalisation and liquidity of South Africa's capital markets, support the New Partnership for Africa's Development initiative and support the enhancement of foreign investment diversification through domestic channels.

(B) Qualifying issuers of inward listed instruments

- (i) The following entities qualify to issue inward listed instruments on a South African exchange referencing foreign assets:
 - (a) non-resident entities;

- (b) local Authorised Dealers;
- (c) South African exchanges; and
- (d) CIS managers registered under Cisca to administer collective investment schemes.

(C) Classification of inward listed instruments

- (i) Approved inward listed shares, including exchange traded funds as well as debt and derivative instruments, traded and settled in Rand on a South African exchange, are classified as domestic.
- (ii) Should an investor opt to hold the shares of an inward listed company on an offshore exchange, the investment is deemed as foreign and may be acquired as follows:
 - (a) South African institutional investors, subject to the prevailing prudential limits.
 - (b) Authorised Dealers, subject to the prevailing macro-prudential limit.
 - (c) South African companies in terms of the foreign direct investment policy.
 - (d) South African individuals, subject to the applicable single discretionary or foreign capital allowance limits.

(D) Investors in inward listed instruments

- (i) The following entities may invest in inward listed instruments without restriction:
 - (a) South African institutional investors;

- (b) Authorised Dealers;
- (c) South African companies, trusts, partnerships and private individuals;
- (d) emigrants, subject to adhering to the emigration policy as outlined in section B.2(J) of the Authorised Dealer Manual; and
- (e) bona fide non-residents.

(E) Application procedure

- (i) Requests by a qualifying issuer to inward list an instrument on a South African exchange referencing foreign assets must be referred to the Financial Surveillance Department through an Authorised Dealer, for consideration.
- (ii) The application must include the following information, where applicable:
 - (a) confirmation that the qualifying issuer will comply with the conditions set out in subsection G. below;
 - (b) name of the Authorised Dealer responsible for the facilitation of the special styled vostro account reporting; and
 - (c) confirmation that the transaction has been cleared with all relevant regulatory authorities.
- (iii) Requests to inward list a company's shares on a South African exchange for the purpose of raising capital should be accompanied by the following information relating to the applicant company, in addition to the information called for in (ii) above:

(a) A draft pre-listing statement or prospectus outlining the following information:

(aa) registration and incorporation details;

(bb) the nature of the business of the company;

(cc) location and value of the assets;

(dd) details of the place of effective management of the company;

(ee) details of major shareholders (five per cent and above) including the extent of the direct and indirect South African shareholding as well as the mechanism through which such shareholding was acquired, if applicable;

(ff) the latest audited financial statements, where applicable;

(gg) details on how and where the listings proceeds will be utilised; and

(hh) information whether the applicant is registered as an external company in South Africa.

(b) Should the pre-listing statement or prospectus not contain any of the above requested information, same must then be included in the application.

(iv) Requests to utilise inward listed shares as acquisition currency must be accompanied by the following information, in addition to the information called for in (ii) and (iii) above:

(a) details on the trading history/track record of the applicant company;

- (b) specific details of the proposed transaction;
- (c) confirmation from an independent auditor that the transaction will be concluded on an arm's length basis and at a fair and market related price;
- (d) details on how the acquisition will benefit South Africa;
- (e) a copy of the pre and post structure of the applicant company; and
- (f) details on how the balance of the transaction will be funded where the purchase consideration is partially funded by shares.

(F) Adjudication process

- (i) Requests to inward list instruments on a South African exchange referencing foreign assets will be considered by the Financial Surveillance Department on receipt of an application submitted through an Authorised Dealer taking into account, inter alia, factors pertaining to the overall national and economic interest of South Africa.
- (ii) The compliance with the terms and conditions for the submission of an application to inward list an instrument referencing foreign assets on a South African exchange should not be construed as an indication that the application will necessarily be approved.
- (iii) The Financial Surveillance Department could refer an application to the National Treasury for their consideration.
- (iv) The Financial Surveillance Department will provide written notice of the decision in respect of an application to inward list an instrument referencing foreign assets on a South African exchange, to the applicant through an Authorised Dealer.

(G) Conditions applicable to inward listing approvals

- (i) Conditions applicable to approvals in respect of the inward listing of shares
 - (a) All capital raised must be deployed within 30 days of being raised and recorded in the designated account, in a manner that does not cause any distortions and/or volatility to the exchange rate.
 - (b) The placement of shares may only take place at market related prices and in Rand terms, where applicable.
 - (c) The applicant company must appoint an approved Authorised Dealer to facilitate the reporting via the special styled vostro account in respect of funds raised.
 - (d) Inward listed shares acquired on a South African exchange may not be moved to an offshore exchange unless specific prior approval is obtained from the Financial Surveillance Department.
 - (e) In the event of a capital reduction/share buyback transaction or the delisting of an inward listed company from a South African exchange, all South African shareholders must be paid in Rand in South Africa. A notification to this effect must be submitted to the Financial Surveillance Department for record purposes.
 - (f) South African investors may exercise their rights in terms of a rights offer without restriction.
 - (g) Emigrants may exercise their rights in terms of a rights offer without restriction, subject to the provisions of section B.2(J) of the Authorised Dealer Manual.

- (h) The utilisation of shares as acquisition currency in the purchase of Common Monetary Area assets, any capital raising exercise by means of a new issue, rights offer, etc., as well as the issue of new shares in lieu of a cash dividend, require prior written approval of the Financial Surveillance Department.
- (i) All settlements should take place locally in Rand
- (ii) The following condition, in addition to (i) above, is applicable to approvals in respect of the inward listing of shares utilised as acquisition currency to purchase Common Monetary Area assets:
 - (a) The transaction must be concluded on an arm's length basis and at fair and market related prices.
- (iii) Conditions applicable to approvals in respect of the inward listing of debt instruments
 - (a) All capital raised, must be deployed within 30 days of being raised and recorded in the designated account, in a manner that does not cause any distortions and/or volatility to the exchange rate.
 - (b) The applicant company must appoint an approved Authorised Dealer to facilitate the reporting via the special styled vostro account in respect of funds raised.
 - (c) All settlements should take place locally in Rand.
- (iv) Conditions applicable to approvals in respect of the inward listing of derivative instruments
 - (a) For every buyer there should be a seller.
 - (b) The loss for one party is paid as the profit of the counterparty.

- (c) Participants may not hedge their exposures by physically trading in the underlying referenced asset unless that particular asset is also inward listed on a South African exchange.
- (d) All settlements of derivative contracts should take place locally in Rand.
- (v) Conditions applicable to approvals in respect of the inward listing of exchange traded funds by CIS managers
 - (a) Only exchange traded funds referencing foreign assets may be inward listed on a South African exchange by local CIS managers.
 - (b) All settlements should take place locally in Rand.

(H) Reporting requirements

- (i) All issuers of inward listed shares must furnish the Financial Surveillance Department through the Authorised Dealer concerned with the following information within three months after the expiring of the authority granted:
 - (a) Details on the capital raised through an initial public offering.
 - (b) Information on the deployment of the listing proceeds.
 - (c) Confirmation that the intended benefits to South Africa have been realised.
- (ii) Issuers of inward listed debt and derivative instruments based on foreign referenced assets must furnish the Financial Surveillance Department through the Authorised Dealer with the following information within three months after the expiring of the authority granted:

- (a) Details on the capital raised through an initial public offering, if applicable.
- (b) Information on the deployment of the listing proceeds.
- (iii) All secondary trades will be reported directly to the Financial Surveillance Department by the South African exchanges in terms of standing arrangements.

(I) Subsequent requests applicable to existing inward listed instruments

- (i) An application must be submitted to the Financial Surveillance Department through an Authorised Dealer in respect of subsequent requests applicable to existing inward listed instruments, including the following:
 - (a) Utilisation and reporting details of the previous authority.
 - (b) Information on the deployment of the listing proceeds relating to the previous capital raising, if not previously provided under subsection (H) above, if applicable.
 - (c) Reason(s) for the current request.
 - (d) Value of current request.

(J) Special dispensation to local brokers to facilitate the trading of inward listed shares

- (i) Local brokers are allowed to purchase inward listed shares offshore and to transfer such shares to the South African section of the register as a book-building exercise and to enhance liquidity on a South African exchange.

- (ii) This dispensation is confined to inward listed shares and brokers may warehouse such shares for a maximum period of 30 days only.

The amended Authorised Dealer Manual and guidelines document may be accessed on the South African Reserve Bank website: www.resbank.co.za by following the links: Home>Regulation and supervision>Financial surveillance and exchange controls>Currency and exchanges documents.

Acting Head of Department: Financial Surveillance

Suspended for public consultation

H. Inward listings on the JSE Limited**(A) Introduction**

- (i) 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.
- (ii) 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.
- (iii) 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.
- (iv) 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.
- (v) 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 10 per cent of their total retail assets in approved African inward listed instruments.
- (vi) 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 limit as defined in section B.2(I) of the Authorised Dealer Manual.
- (vii) South African corporates, trusts, partnerships and private individuals may invest in approved inward listed instruments without restriction. Emigrants may also invest in approved inward listed instruments without restriction, subject to the provisions of section B.2(J) of the Authorised Dealer Manual.

- (viii) 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.
- (ix) Inward listed shares mean the following products listed on the JSE Limited:

No	Product	Details
1.	Ordinary shares/equities including A,B and N shares	Shares which are listed on the JSE Limited and settled in Rand.
2.	Preference shares/debentures	If the company is already listed on the JSE Limited and the preference share/debenture is compulsory convertible.
3.	Linked units/participatory interest/ real estate investment trusts (REITS) and loan stock companies	If the company is already primary or secondary listed on the JSE Limited.
4.	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.
5.	Warrants	As long as they represent an underlying share or basket of shares already listed on the JSE Limited.
6.	Share instalments	As long as they represent an underlying share or basket of shares already listed on the JSE Limited.
7.	Derivatives - Equities indices	A future or option that is listed against an index that represents companies already listed on the JSE Limited.
8.	Derivatives - Single stock futures and options	A future or option that is listed against a single security of a company that is already listed on the JSE Limited .
9.	Derivatives - Dividend futures and options	A future or option on a dividend of a company that is

No	Product	Details
		already listed on the JSE Limited.
10.	Krugerrand coins	Listed and traded on the JSE Limited in Rand.
11.	Current commodity derivatives (i.e. White Maize)	Listed and traded on the JSE Limited in Rand.

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

(i) Equity issues

(a) Acquisition issue

- (aa) Foreign companies may, on application, be allowed to use their shares as acquisition currency.
- (bb) South African institutional investors, Authorised Dealers, corporates, trusts, partnerships and private individuals may accept the shares without restriction.
- (cc) Emigrants may also accept the shares without restriction, subject to the provisions of section B.2(J) of the Authorised Dealer Manual.

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

- (aa) 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 of receiving and recording the capital raised in terms of the prospectus, effecting dividend payments, etc. This is essential to ensure compliance with the Reporting System requirements.

(c) Rights offers

- (aa) South African institutional investors, Authorised Dealers, corporates, trusts, partnerships and private individuals may exercise their rights in terms of a rights offer without restriction.
- (bb) Emigrants may also exercise their rights in terms of a rights offer without restriction, subject to the provisions of section B.2(J) of the Authorised Dealer Manual.

(d) Deployment of capital

- (aa) The capital must be deployed as soon as possible but not later than one month after being raised and recorded in the designated account.
- (bb) Failure to deploy the capital within the stipulated period must be reported to 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.

(ii) Debt issues

(a) Capital raising through new debt listings

- (aa) 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 of receiving the capital raised, effecting coupon payments, redemption payments, etc. This is essential to ensure compliance with the Reporting System requirements.

(b) Criteria for 'African' debt

- (aa) '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.

(c) Deployment of capital

- (aa) The capital must be deployed as soon as possible but not later than one month after being raised and recorded in the designated account.
- (bb) Failure to deploy the capital within the stipulated period must be reported to 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.

(iii) Derivative issues

- (a) 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.

(C) Special dispensation to local brokers to facilitate the trading of inward listed shares

- (i) Local brokers are allowed to purchase inward listed shares offshore and to transfer such shares to the South African section of the register as a book-building exercise and to enhance liquidity on the JSE Limited.
- (ii) This dispensation is confined to inward listed shares and brokers may warehouse such shares for a maximum period of 30 days only.

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