

SARB lifts the ban on “loop structures” for individuals and coporates.

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The Minister of Finance announced in his Budget Speech on 26 February 2020 that the South African Reserve Bank (SARB) would relax some of its current restrictions in order to simplify cross border trade and financial flows.

This was confirmed in Exchange Control Circular No. 1/2021 issued on 4 January 2021 where it was noted that the restriction of loop structures in relation to resident individuals, companies and private equity funds has been lifted “to encourage inward investments into South Africa” and “to support South Africa’s growth as an investment and finance hub for Africa”. The effective date of this change is 1 January 2021.

The relevant amendments have been made to the Currency and Exchange Manuals for Authorised Dealers.

A “loop structure” is a structure where a South African resident directly or indirectly through a non-resident entity holds assets in South Africa or in the common monetary area (CMA). The CMA consists of South Africa, Namibia, Lesotho and Eswatini (previously known as Swaziland).

It is noted that under the previous regulations South African residents were permitted to invest in these structures provided that individual or company held a maximum of 40% of the equity and/or voting rights in that non-resident company. The change in the regulations now removes this 40% restriction however approval must still be sought from Fin-Surv (a division of SARB) through the resident’s authorised dealer. In addition, the investment into South Africa must be through the use of authorised foreign assets.

Existing unauthorised “loop structures” which were set up with authorised foreign assets but the 40% threshold was exceeded are not automatically regularised but may also be regularised upon the resident requesting approval from ^[1]**Fin-Surv** through his/her authorised dealer.

In order to obtain approval of a loop structure the South African resident will be required to provide details of the structure such as –

- **the name/s of the South African affiliated foreign investor/s;**
 - **a description of the assets to be acquired (including inward foreign loans);**
 - **the name of the South African target investment company (if applicable);**
 - **the date of acquisition; and**
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- **the actual foreign currency amount introduced including the transaction reference number.**

The applicant will also be required to furnish an independent auditor's written confirmation or suitable documentary evidence to verify that the transaction was concluded on an arm's length basis.

Whilst individuals, companies and private equity funds are now able to invest in loop structures, trusts are still prohibited from such investments.

This circular also indicates that foreign assets inherited from a resident estate must be declared and can be retained abroad provided the original South African owner had properly regularised that asset and the asset will not be placed at the disposal of other residents. Where the asset inherited was not properly regularised, which would include "loop structures" in excess of the abovementioned 40% restriction that was in place prior to 1 January 2021, such assets may be regularised and retained abroad provided it will not be placed at the disposal of other residents.

The relaxation on loop structures is welcomed as it will likely assist in enhancing cross border trade which will hopefully boost our struggling economy. Please contact your nearest PKF office should you require further information.

^[1]**FinSurv** means the Financial Surveillance Department of the SARB responsible for the administration of exchange control on behalf of the Minister of Finance or an officer of Treasury who, by virtue of the division of work in Treasury, deals with the matter on the authority of the Minister of Finance.

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