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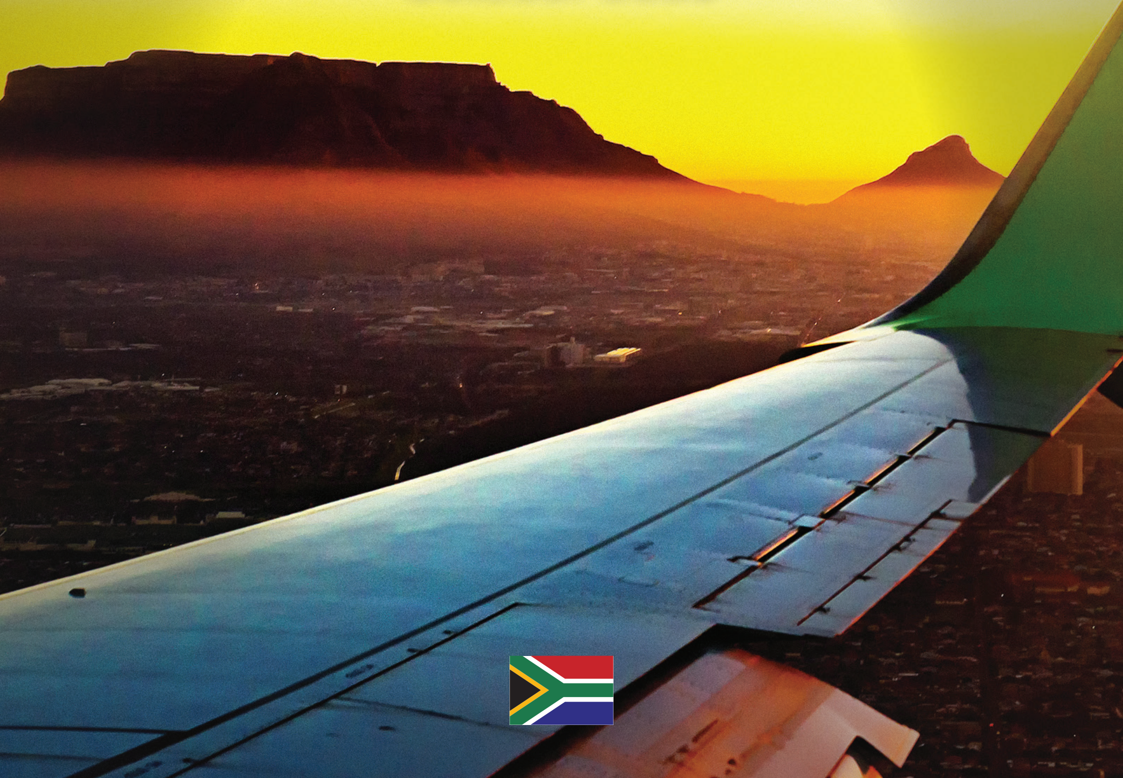
Cape Town

Cross Border Transaction Regulation (Exchange Control)

October 2025



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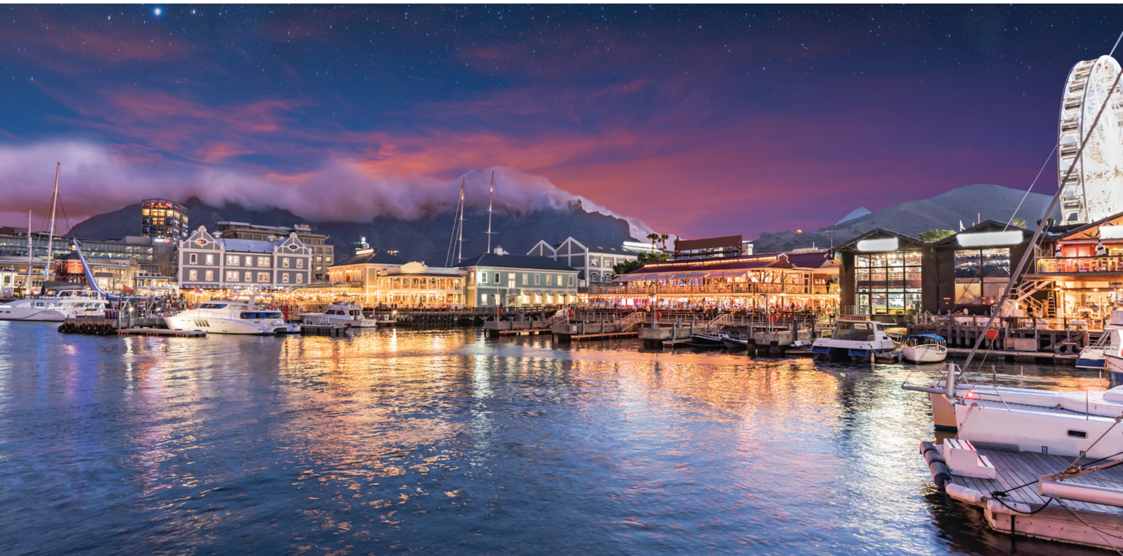
Introduction

This Guide is developed in partnership between Dentons and Wesgro, the official tourism, trade and investment promotion agency for Cape Town and the Western Cape. Dentons is a global law firm with a strong presence in South Africa, providing comprehensive legal services across multiple practice areas, including corporate law, tax and regulatory compliance. The firm brings extensive expertise in cross-border transactions, exchange control regulations and financial services law. Wesgro works to promote investment and trade in the Western Cape, supporting businesses in navigating South Africa's regulatory landscape and fostering economic growth in the region.

1.1. South Africa's exchange control regime has long served as a key instrument for safeguarding the country's balance of payments, maintaining financial stability, and regulating capital flows across its borders. The country's exchange control framework is part of a globally recognized approach to managing capital flows and financial stability. Rooted in the Currency and Exchanges Act, 1933 **("Currency and Exchanges Act")** and administered by the South African Reserve Bank **("SARB")**, South Africa's exchange control framework has evolved from a protectionist system to one that increasingly aligns with international norms. Recent reforms reflect a clear trend toward liberalisation, enhancing investor confidence while maintaining safeguards against illicit financial flows and systemic risk.

2. Regulatory Framework

2.1. The Currency and Exchanges Manual for Authorised Dealers (the **"Manual"**) set out requirements that must be satisfied by authorised dealers to process transactions without referring it to the Financial Surveillance Department (**"FSD"**) for specific approval. Authorized dealers are commercial banks and other financial institutions formally appointed by the SARB to administer exchange control on its behalf. Their role is to process foreign exchange transactions in line



with the Manual, ensuring compliance with exchange control regulations. Transactions falling outside the parameters set out in the Manual must be referred to the FSD for specific exchange control approval

2.2. The regulatory framework is generally applicable to any natural person or legal entity who is a permanent resident, is domiciled or is registered in South Africa **("residents")**. Non-residents are not directly subject to exchange control. South African subsidiaries and registered external companies are treated as South African residents and thus subject to exchange control

2.3. The Common Monetary Area **("CMA")** comprises of South Africa, Namibia, Lesotho, and eSwatini, where Rand transfers between these countries do not require approval from the FSD and are free from foreign exchange restrictions among CMA banks. New procedures have recently been introduced to enhance compliance with Financial Action Task Force **("FATF")** recommendations, aimed at strengthening anti-money laundering and counter-terrorism financing measures.

3. Typical Transactions that Require Exchange Control Approval

3.1. Acquisition of Shares by Non-Residents in South African Companies

3.1.1. Non-residents typically acquire shares in South African companies by way of share purchases or subscribing for shares.

3.1.2. In both cases, the non-resident must obtain exchange control approval for the holding of shares in a South African company. The process entails the non-resident applying to an authorised dealer for the endorsement of the original share certificate as "non-resident", indicating that it is held by a non-resident. Endorsement is generally a formality as long as the prescribed requirements are met, and in practice it generally takes up to two weeks.

3.1.3. Without the "non-resident" endorsement, dividends cannot be paid to non-resident shareholders, nor can the proceeds of the disposal of shares be repatriated to the non-resident shareholder. Additionally, the endorsement must be effected within 30 days of acquiring the shares, failing which certain penalties may apply. It may be necessary to apply to the FSD for retrospective endorsement of the share certificates.

3.1.4. When endorsing share certificates as "non-resident", the authorised dealer must be satisfied that:

3.1.4.1. the non-resident is the owner of the shares;

3.1.4.2. the funds used to purchase the shares originated from outside of South Africa; and

3.1.4.3. the purchase price was negotiated on an arm's length basis and represents fair market value.

3.1.5. A key objective in controlling non-resident owned securities is to ensure that non-residents do not purchase securities from residents other than through approved channels at a fair and market related price.

3.1.6. The regulatory framework applies to securities registered in the name of a non-resident as well as securities in the name of a resident acting as a nominee for a non-resident.

3.2. Loans by Non-Residents to South African Residents

3.2.1. South African residents are not permitted to incur borrowings from a non-resident unless exchange control approval has been obtained.

3.2.2. The application for approval must be submitted to an authorised dealer. The criteria for approval typically includes the following:

3.2.2.1. the interest rate in respect of foreign currency denominated loans may not exceed the base lending rate plus 3% or, in the case of shareholders' loans, the base lending rate, as determined by commercial banks in the country of denomination;

3.2.2.2. the interest rate in respect of any Rand denominated loans may not exceed the base rate (being the prime rate) plus 5%, or the base rate in the case of shareholders' loans; and

3.2.2.3. no upfront payment of commitment fees, raising fees and/or any other administration fees must be payable by the borrower – such 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% of the principal sum.

3.2.3. If the requirements set out in the guidelines are not satisfied, then approval of the FSD will be required.

3.2.4. Without exchange control approval, it will not be possible to repatriate any capital or interest.

3.3. Guarantees to Non-Residents and Guarantees issued by Non-Residents

3.3.1. Generally, South African residents can only issue guarantees to non-residents with the specific approval of the FSD.

3.3.2. Authorised dealers may issue guarantees to non-residents on behalf of residents for transactions that are permissible in terms of the guidelines, without reference to the FSD or upon approval from FSD.

3.3.3. Capital guarantees and currency transfer guarantees require specific approval from the FSD.

3.3.4. Authorised dealers may also grant local financial assistance to South African residents who are not "affected persons" against guarantees issued by non-residents. An "affected person" is a body corporate, foundation, trust or partnership operating in South Africa, or an estate, in respect of which:

3.3.4.1. 75% 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

3.3.4.2. 75% 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.

3.3.5. Payments in respect of guarantee fees payable on guarantees issued by non-residents may be effected provided that the fee is market related or falls within an approved percentage of the guarantee amount based on existing market practice.

3.4. Intellectual Property

3.4.1. Transferring 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, whether it be directly or indirectly, is not allowed without the prior written approval of the FSD unless specifically exempted in the guidelines.

3.4.2. Authorised dealers may approve sales, transfers and assignments to unrelated non-residents at arm's length and market-related prices, provided they review the agreement and supporting documentation (e.g. auditor's letter or valuation certificate). Sale and leaseback agreements are excluded from the above transactions.

3.4.3. 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.

3.5. Royalties Payable by South African Residents to Non-Residents

3.5.1. South African residents are permitted to license intellectual property to non-residents, if in accordance with the applicable exchange control requirements. Authorised dealers must be satisfied that the license agreement was concluded at an arm's length and at a fair and market related price, and the authorised dealer must view the licence agreement and an auditor's letter confirming the basis for calculating the royalty or licence fee.

3.5.2. 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.

3.5.3. Royalties which are? payable to unrelated non-resident parties are freely transferable provided that, inter alia, the applicant entity presents a letter to an authorised dealer, annually, from an independent auditor, confirming the amount or percentage transferred over a 12-month period. This arrangement only applies where the applicant entity has made recurring payments in terms of a royalty agreement.

3.5.4. Royalty and fee payments to non-resident related parties do not require specific approval from the FSD. However, such transactions must be concluded at arm's length and at a fair and market related price. Additionally, prior to effecting any royalty or fee payments to non-resident related parties, an authorised dealer must view a copy of the agreement entered into and an invoice (presented by the non-resident party) verifying the purpose and the amount involved. The authorised dealer must be provided with confirmation from the senior management of the South African resident party that transfer pricing documentation is maintained as prescribed by the South African Revenue Service.

3.6. Loop Structures

3.6.1. A loop structure refers to a cross-border investment arrangement where a South African resident (individual or entity) uses authorised foreign assets to establish an offshore structure, which then reinvests in South Africa. This reinvestment can take the form of acquiring shares, assets, or providing loans to South African entities.

3.6.2. Historically, South African residents, including individuals, companies, trusts, and private equity funds were prohibited from using authorised foreign assets to acquire interests in CMA, or to reintroduce such funds as loans to CMA residents. A limited exception allowed up to 40% equity or voting rights in a foreign entity investing in South Africa.

3.6.3. Now, the guidelines permit resident individuals with authorised foreign assets to invest in South Africa via offshore structures (loop structures), subject to:

3.6.3.1 Reporting the transaction to an authorised dealer once finalised;

3.6.3.2 Annual progress reports to the SARB;

3.6.3.3 Independent auditor confirmation that the transaction was at arm's length and market related; and

3.6.3.4 Authorised dealer reporting to SARB with full transaction details.

3.6.4. Unauthorised loop structures must still be regularised with the FSD, and the updated provisions apply to corporates and private equity funds, but not to trusts.

3.7. Transfer pricing: Intra-Group Loans and Tax Regulations

3.7.1. A transfer price generally refers to the value assigned to goods or services exchanged between related parties. Transfer pricing itself is neither inherently positive nor negative, it is simply a practical mechanism required when entities engage in intercompany transactions.

3.7.2. Section 31 of the Income Tax Act 58 of 1962 requires that the pricing of certain international transactions between connected persons or associated enterprises be aligned with the arm's length principle when calculating taxable income. This means that the transfer price should reflect what would have been agreed upon between independent parties in a comparable open market transaction. The Act also outlines the tax implications where pricing does not meet this standard. It is highly advisable for investors to compliance with the regulations set out by the Act in the aforementioned provision.

4. Conclusion

4.1. South Africa's exchange control regime is evolving toward greater liberalisation, with recent reforms easing administrative burdens for investors. However, compliance remains critical, and investors should work closely with Authorised Dealers and legal advisors to ensure smooth cross-border transactions.

About the Partners

Wesgro

Wesgro is the official tourism, trade and investment promotion agency for Cape Town and the Western Cape. The investment team assists Western Cape companies seeking expansion, South African companies investing in the region and foreign companies entering the market for the first time. Wesgro offers a comprehensive range of services to investors, including providing market intelligence, navigating South Africa's policy and regulatory landscape, assisting with site location identification, addressing regulatory challenges and facilitating referrals to specialist advisory services such as legal firms, recruitment agencies and property professionals.

Dentons

Dentons is the world's largest global law firm, connecting talent to opportunity across more than 80 countries. As a trusted legal partner to investors, Dentons South Africa combines local insight with global reach to help clients navigate complex legal and regulatory environments. The firm advises across key sectors such as finance, energy, infrastructure, real estate, technology and private equity, offering expertise in corporate and commercial law, mergers and acquisitions, employment, competition and regulatory compliance. With a strong track record in supporting businesses entering or expanding in Africa, Dentons helps investors establish operations, secure project financing and achieve sustainable growth.

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For further information on setting up or expanding your business in Cape Town & the Western Cape, please contact Wesgro's Investment Team

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