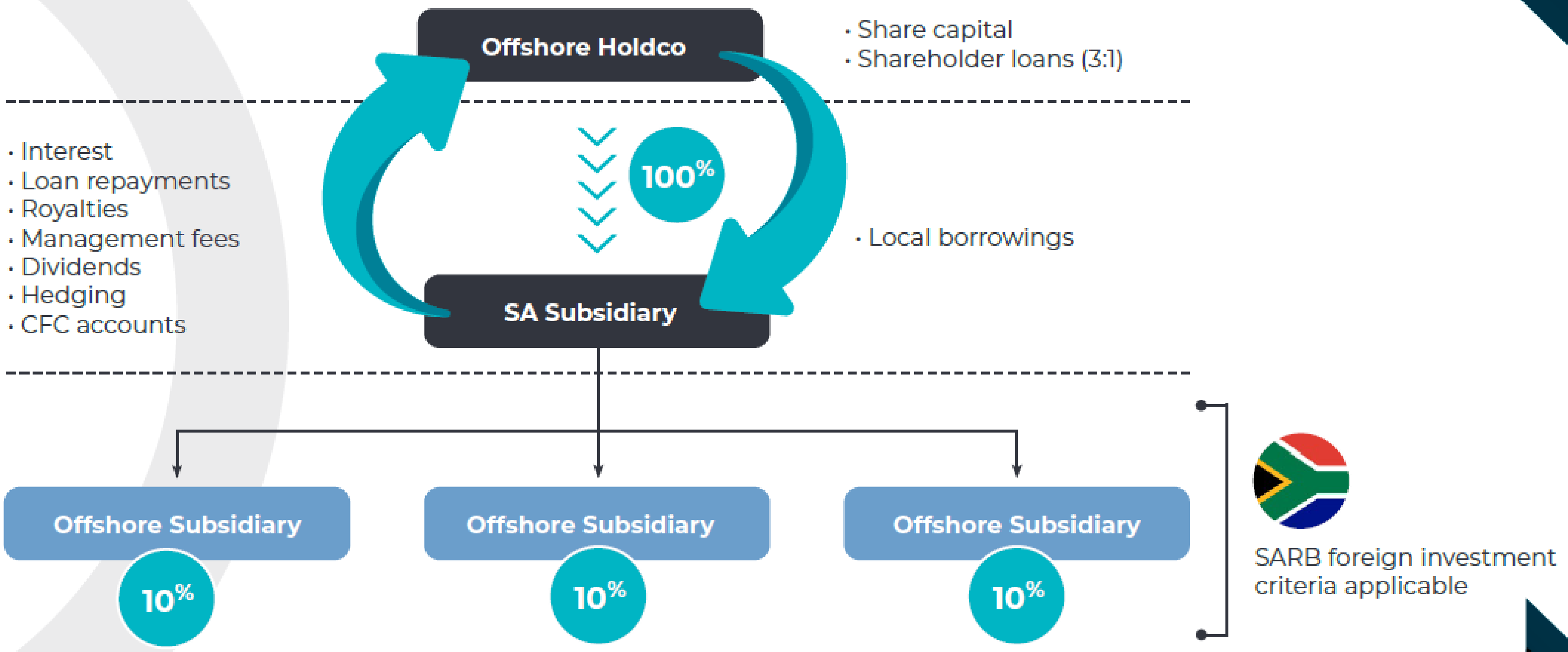
Banking & Financial Services

New and existing investors to South Africa should understand and comply with national and international financial services regulations and practices that govern the movement and flow of money and investments to, from, and within the country's borders.

Inward foreign direct investment

There are strict regulations that govern inward investment into South Africa and investors can choose one of many structures available to them. However, a typical structure would look like the following:



South African Reserve Bank (SARB) exchange control requirements on inward investments

Non-residents are free to invest into South Africa; however, to ensure disinvestment and dividend payments occur without delays, it's important to ensure the initial investment is introduced according to South African regulations. The following documents are typically required:

1. A copy of the sale of shares agreement.
2. Proof of incoming funds (inward Swift) related to the share purchase.
3. A copy of the share certificate to be endorsed.
4. An independent auditor's letter confirming that the sale of shares was conducted at arm's length and at fair market value.
5. A board resolution from the South African entity specifying the number of shares, the sale amount, and the recipient.
6. SARB prefers actual introduction of foreign cash from offshore over local gearing.

South African companies are allowed to distribute dividends to non-resident shareholders in accordance with their percentage shareholding. This is conditional upon certain documentary evidence being presented and confirmation that the shares bear the non-resident endorsement. Endorsed share certificates are tangible proof of ownership in a company as they establish a direct and formal link between non-resident clients and their shareholdings. Endorsed share certificates are also needed to facilitate permissible disinvestment.

Foreign Loans

The SARB allows for the provision of foreign inward loans and all applications for inward foreign loans and foreign trade finance facilities must contain the following information:

1. Full details of the local borrower;
2. Full details of the foreign lender;
3. Domicile of the foreign lender;
4. Relationship between the foreign lender and the borrower;
5. Names, domicile and percentage held by each shareholder;
6. Denomination of the loan;
7. Currency and amount of principle sum;
8. Interest rate and margin. The following apply:

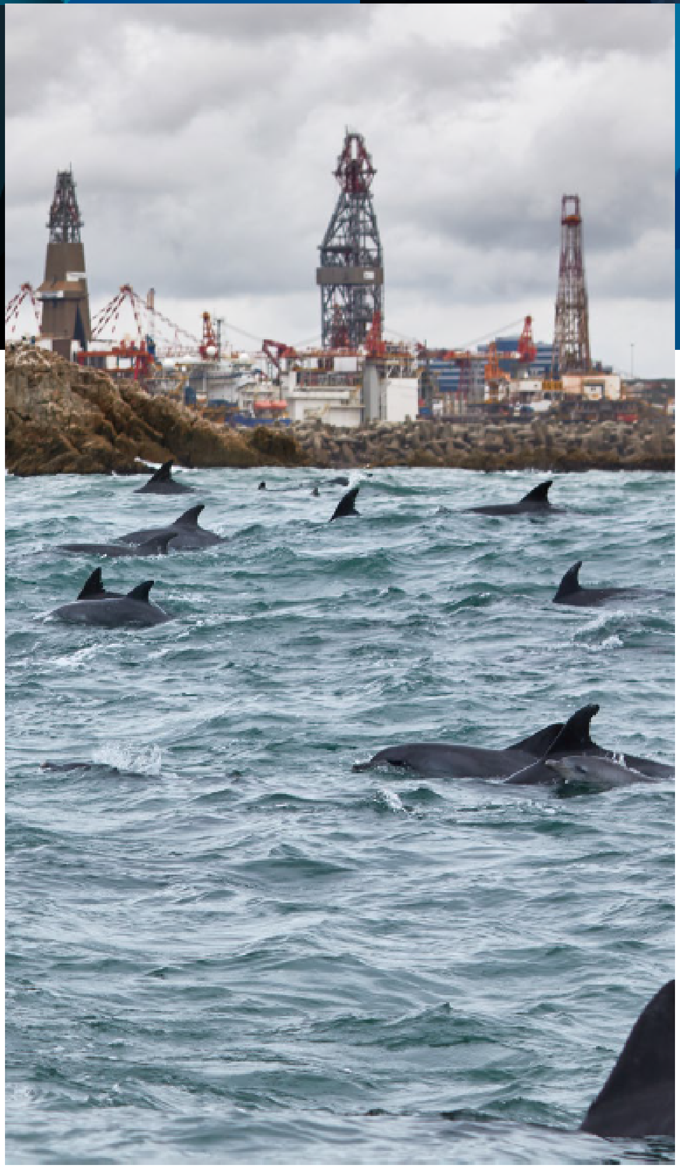
a. Third-party foreign denominated loans may not exceed base lending rate plus 3% as determined by commercial banks in the country of denomination.
b. Shareholders foreign-denominated loans may not exceed the base lending rate as determined by commercial banks in country of denomination.
c. Third-party rand-denominated loans may not exceed the base rate, i.e. prime plus 5%.
d. Shareholders rand denominated loans may not exceed the base rate.
e. Interest may not be Capitalised, compounded or amortized, without obtaining prior approval from the Financial Surveillance department of the SARB FinSurv.

9. Purpose of the loan;
10. Details of the type of security required (if any);
11. Tenor. (This is the fixed future date the loan will be repaid on. Where the loans will be repaid in instalments, the date of the first instalment should be provide as well as the interval of the instalments, e.g. 12 monthly instalments.)
12. A copy of the loan agreement if available or applicable - (A loan agreement is required in all instances where the loan amount is R10 million and over);
13. Full details of early repayment options, as well as currency switch options (if any);
14. In the case of trade finance facilities, written confirmation from the borrower that the relative import or export transaction is not being financed elsewhere. The details of any commitment fees, raising fees and/or any other administration fees payable by the borrower, which may not exceed a 5% cap, may be approved by the bank, subject to the production of loan agreement verifying the above. However, the full loan proceeds must be received before any of the fees are paid. Where these fees need to be paid upfront, it is necessary to apply to the FinSurv for approval;
15. Branch name and account details of lender;
16. Declaration confirming the below (in the event of a business entity, the declaration must be made on a company letterhead);

a. The loan funds to be introduced are not funds for which amnesty has been granted and/or foreign inheritances;
b. Details of whether there is a direct or indirect South African interest from South Africa in the offshore entity party (investor);
c. Where a loop back into South Africa has been achieved, the following must be noted:

i. An offshore investment by an SA resident (i.e. individual or entity) up to 40% in the offshore target would not be permissible prior to February 2018.
ii. An offshore investment by a SA resident (i.e. individual or entity) in excess of 40% in the offshore target/structure would not be permissible prior to 1 January 2021.
iii. In either of these instances, a regulation from the FinSurv will need to be sought.
iv. The loan funds will not be invested in sinking funds.
v. (A sinking fund is an account where the funds in the account are not immediately used but set aside and earmarked for a specific long-term future purpose).

All requests must be supported by a completed application form.



Inward Foreign loan Adjudication process

The following criteria must be strictly applied by Authorised Dealers (AD; i.e. a Bank) when adjudicating applications for inward foreign loans and foreign trade finance facilities. Any deviation will require prior approval from the SARB (FinSurv) via an AD.

1. The tenure of each loan must be at least one month.
2. The interest rate for third-party foreign denominated loans may not exceed the base lending rate plus 3% or, in the case of shareholder loans (the base lending rate is determined by commercial banks in the country of denomination).
3. The interest rate in respect of rand-denominated loans may not exceed the base rate, i.e. prime plus 5% on third-party loans or the base rate, in the case of shareholders loans.
4. The fixed interest rate linked to the base rate, if applicable, may not exceed the interest rate mentioned above. Approved inward foreign loans should always be adjusted in line with the set criteria.
5. The loan funds may not be invested in sinking funds. (A sinking fund is an account where the funds in the account are not immediately used but set aside and earmarked for a specific long-term future purpose).
6. No upfront payment of commitment fees, raising fees and/or any other administration fees are payable by the borrower.

Applications to be submitted to the SARB (FinSurv) via an AD.

Additionally, ADs must submit an exchange control application to SARB on behalf of the client in the following instances:

1. Regularisation of all unauthorised inward foreign loans and foreign trade finance facilities.
2. Loan draw-downs, capital and interest payments, where the funds originate from or are deposited to non-resident accounts. These transactions are not reportable on the Cross Border Reporting system.
3. Loan draw-downs, capital and interest payments for foreign trade finance facilities for imports/exports where the transactions will not be recorded on the reporting system. A quarterly schedule must be submitted detailing funds drawn against the facility as well as all repayments effected.
4. Any other instances where the reporting system will not reflect changes to the original loan.
5. Any unauthorised increase/decrease of the principal amount of the foreign loan.
6. Capitalisation of interest.
7. Compounding of interest.
8. Conversion of the loan to share capital.
9. Applications by affected persons, where the repayment of a shareholder's loan will result in the local entity becoming "overborrowed" in terms of the local financial assistance ratio.
10. Consolidation of loans.
11. All loans where commitment fees, raising fees and/or any other administrative fees exceed 5% of the principal sum.
12. Early capital redemptions.
13. Issuance of redeemable preference shares to non-residents.
14. All cases where the criterial outlined in point number (4) cannot be met.

The SARB has further requirements for ADs to uphold when dealing with foreign inward loans. These are illustrated in the diagram below.

The Trade and Investment Desk's strategic partner, Rand Merchant Bank (RMB), provides comprehensive financial solutions to new and existing investors, encompassing foreign exchange, corporate transactional banking, investment banking, and more. Additionally, RMB has extensive advisory capabilities including mergers and acquisitions, capital raising, and debt and equity capital markets transactions, such as commercial paper, bonds, convertible bonds, and initial public offerings (IPOs). Therefore, through this partnership, investors gain easy access to a broad range of services.

As a global financial services provider with a presence in Africa, the UK, USA, China and India, RMB's partnership with the Desk offers a unique advantage, leveraging their expertise in foreign exchange trading and corporate finance to drive growth and success.

You can contact the Trade and Investment Desk for banking, financial service offerings and advisory support designed to support your investments.

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