

## **A. Definitions**

**ADLA** means an Authorised Dealer in foreign exchange with limited authority, which include Bureaux de Change, who are authorised by the Treasury to deal in foreign exchange for the sole purpose of facilitating travel related transactions.

**AFFECTED PERSON** means a body corporate, foundation, trust or partnership operating in the Republic, or an estate, in respect of which:

- (i) 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 the Republic; or
- (ii) 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 the Republic.

**AUTHORISED DEALER** means, in relation to any transaction in respect of gold, a person authorised by the Treasury to deal in gold and, in relation to any transaction in respect of foreign exchange, a person authorised by the Treasury to deal in foreign exchange.

**BLOCKED ACCOUNT** is an account to which regulatory restrictions have been applied.

**BUSINESS AND TECHNICAL SPECIFICATIONS DOCUMENT** means the document containing all the rules and technical specifications pertaining to the reporting of cross-border foreign exchange transactions.

**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.

**CUSTOMS** means Customs and Excise, a division of SARS.

**C.F.C. 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 Rulings or in terms of a specific authority granted by the Exchange Control Department. Funds standing to the credit of such an account are deemed to be local assets denominated in a foreign currency. The applicant has no right to these funds except to facilitate certain approved pay-ways or forced conversion to Rand, which Rand proceeds the resident then becomes entitled to.

**CIRCULARS** mean exchange control circulars issued by the Exchange Control Department to Authorised Dealers and/or ADLAs and other role players, setting out the conditions, permissions and limits applicable to foreign exchange transactions, which may be undertaken by Authorised Dealers, ADLAs and/or on behalf of their customers, as well as amendments to related administrative responsibilities.

**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 exchange with or for Rand.

## DOCUMENTARY EVIDENCE

- (i) Whenever documentary evidence is called for in any section of the Rulings, Authorised Dealers shall be obliged to ensure that such documentary evidence, which shall be obtained and scrutinised in connection with a relevant commercial or other transaction involving the purchase or sale of foreign exchange either spot or forward, shall, in terms of accepted trade usage, or established accounting, commercial or legal practice, be the best evidence for purposes of:
  - (a) Identifying the nature, category or class of the relevant transaction;
  - (b) proving and verifying the obligation(s) of each resident, who is a party to the relevant transaction, to make payment(s) of foreign exchange or to place such foreign exchange to the credit of any non-resident, who is a party to the relevant transaction and/or proving and verifying the right(s) of each resident, who is a party to the relevant transaction, to receive payment(s) of foreign exchange from or have such foreign exchange placed to its credit by any non-resident, who is a party to the relevant transaction;
  - (c) proving and verifying the amount(s) and timing of each foreign exchange payment or credit referred to in (b) above; and
  - (d) recording and establishing the name and address of each non-resident, who is a party to or who is involved in the relevant foreign exchange transaction.
- (ii) If the relevant transaction involving foreign exchange, as referred to in subsection (i) above, is recorded in a written agreement to which the relevant resident(s) and non-resident(s) are parties, the term “documentary evidence”, as utilised in the Rulings and which shall be obtained and scrutinised by Authorised Dealers in connection with foreign exchange transactions, shall, without derogating from the generality of the provisions contained in subsection (i) above, mean:
  - (a) The original of such written agreement duly signed by or on behalf of the parties thereto; and
  - (b) such further supporting or supplementary documents which shall in terms of established accounting, commercial or legal practice be required and generated to give practical effect to the relevant transaction; which supporting or supplementary documents shall include, but not necessarily be limited to relevant confirmatory letters, invoices, receipts, bills of lading or other documents of title, carriage contracts, letters of credit, guarantees, insurance contracts, permits, licences and/or bills of exchange.

Such original written agreement and supporting or supplementary documents, shall as a minimum requirement, identify and prove the various essential elements of the relevant foreign exchange transaction stipulated in subsections (i)(a), (b), (c) and (d) above.

- (iii) If the relevant transaction involving foreign exchange is not recorded in a written agreement contemplated in subsection (ii) above, the term “documentary evidence”, as utilised in the Rulings and which shall be obtained and scrutinised by Authorised Dealers in connection with foreign exchange transactions, shall, without derogating from the generality of the provisions contained in subsection (i) above, mean the supporting or supplementary documents of the nature specified in subsection (ii)(b) above, provided that such supporting or supplementary documents shall, as a minimum requirement, identify and prove each of the essential elements of the relevant foreign exchange transaction referred to in subsections (i)(a), (b), (c) and (d) above.
- (iv) The directives contained in subsections (i), (ii) and (iii) above, shall not relieve Authorised Dealers from the duty of obtaining and scrutinising, in connection with any relevant foreign exchange transaction, such documents as may be specified and named in any of the sections of the Rulings or in any authority granted by the Exchange Control Department. Where the original set of documents is not available, Authorised Dealers may accept those produced by photocopying, faxing or printed copies of electronic documents.

**EMIGRANT** means a South African resident who is leaving or has left the Republic to take up permanent residence in any country outside the CMA.

**EMIGRANT BLOCKED ACCOUNT** means the account of an emigrant from the CMA to which exchange control restrictions have been applied.

**EXCHANGE CONTROL** means the Exchange Control 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 Rulings or a specific authority granted by Exchange Control.

**F.C. ACCOUNT** means a foreign currency account conducted by residents (natural persons only) and non-residents in the nostro administration of Authorised Dealers in terms of the provisions of the Rulings or a specific authority granted by the Exchange Control Department.

**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.

**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 enterprise, and a significant degree of influence on the management of the 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.

**FOREIGN EXCHANGE** means any currency other than currency, which is legal tender in the Republic, but excludes the currencies of Lesotho, Namibia and Swaziland. Foreign exchange must be deemed to include any bill of exchange, letter of credit, money order, postal order, promissory note, Rand to or from a Non-Resident Account, travellers cheque or any other instrument of foreign exchange.

**FOREIGN NATIONALS** mean natural persons from countries outside the CMA who are temporarily resident in the Republic, excluding those on holiday or business visits.

**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.

**IMMIGRANTS** mean natural persons who immigrated from countries outside the CMA with the firm intention of taking up or having taken up permanent residence in the Republic.

**INTEGRATED FORM** means the electronic or paper format of a contract between an Authorised Dealer and its customer resulting in a balance of payments reporting obligation and 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 (Act No. 71 of 2002).

**LOAN REPORTING SYSTEM** means the electronic system used by Authorised Dealers to report authorised new inward foreign loans and foreign trade finance facilities to the Exchange Control Department.

**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 ACCOUNT** means the 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 the Republic 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.

**REPORTING SYSTEM** means the electronic cross-border foreign exchange transaction reporting system or the credit and debit cards reporting system used to transmit data to the Exchange Control Department in an agreed format.

**REPUBLIC** means the Republic of South Africa.

**RESIDENT** means any person (i.e. a natural person or legal entity) who has taken up permanent residence, is domiciled or registered in the Republic. For the purpose of the Rulings, this excludes any approved offshore investments held by South African residents outside the CMA. However, such entities are still subject to Exchange Control Rules and Regulations.

**RESIDENT ACCOUNT** means the account of a person resident, domiciled or registered in the Republic, including that of a CMA resident.

**RESIDENT TEMPORARY ABROAD** means any resident who has departed from the Republic to any country outside the CMA, with no intention of taking up permanent residence in another country, but excluding those residents who are abroad on holiday or business travel.

**RULINGS** mean the Exchange Control Rulings issued to Authorised Dealers and ADLAs by the Exchange Control Department under the powers delegated by the Minister of Finance which contain the permissions, conditions and limits applicable to the transactions in foreign exchange, which may be undertaken by Authorised Dealers, ADLAs and/or on behalf of their customers, as well as details of related administrative responsibilities.

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

**SARS** means the South African Revenue Service.

**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 script 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 script.

**TREASURY** means, in relation to any matter contemplated in the Exchange Control 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.