



Exchange control: underwhelming uptake on foreign member funds dispensation

The exchange control dispensation announced in the 2014 national budget review regarding foreign member funds has been under-utilised.

A key benefit introduced for these funds is that exchange controls do not limit the extent to which foreign member funds may invest their clients' funds offshore. Therefore, unlike registered South African institutional investors, who may invest only a defined percentage of investors' funds offshore (depending on the business of the institutional investor), foreign member funds may invest all funds under management offshore if required.

Registered foreign member funds may source funding from:

- Non-residents;
- Institutional investors resident in South Africa (subject to their foreign investment limits set out above); and
- Private individuals (subject to an annual investment limit of R10 million).

A broad range of investment funds, including collective investment schemes and alternative in-

vestment funds (such as private equity, venture capital and hedge funds), are eligible for registration as a foreign member fund. Even though a foreign member fund is effectively treated as a non-resident for exchange-control purposes, a foreign member fund must be domiciled, managed and tax-compliant in South Africa, and is subject to registration with the Financial Services Board and the Reserve Bank.

A little over a year later, there has been little uptake by the funds community in establishing foreign member funds in South Africa. The reasons for this appear to be twofold. It appears that despite the existing exchange-control dispensation, funds cannot register with the Financial Services Board until the Reserve Bank and the Financial Services Board finalise additional regulations on the registration of foreign member funds. The other problem seems to be the lack of publicity given to the regime.

In our view, foreign member funds present a great opportunity for South African investment funds to attract further local and foreign

investments, by diversifying their product offering to include investment products with more (or complete) exposure to foreign assets. Investment funds will be able to do this in a less regulated environment, and thus without having to resort to the so-called "dual structures" that were used to carry investments by residents (through a South African fund) and non-residents separately (through an offshore fund).

This should mean that funds investing internationally from sub-Saharan Africa may, in future, consider establishing themselves in South Africa, as opposed to other competitor jurisdictions with less stringent exchange-control regimes, such as Mauritius.

Therefore, we eagerly await the additional regulations being developed by the Financial Services Board and the Reserve Bank, which will allow investment funds to take advantage of this dispensation.

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