

Will Regulation 28 be amended to accommodate Sarb's announcement on ETFs?

By [Amina Yuda](#)

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On 29 October 2020, the South African Reserve Bank (Sarb) published an exchange control circular (Circular 15/2020) which in effect reclassifies all remaining foreign debt and derivative instruments as well as exchange traded funds (ETFs) referencing foreign assets, that are inward listed on a South African exchange and are traded and settled in rand, as domestic.



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The Circular caused the market to understand that the cap of 30%, which existed before, would no longer apply and investors could effectively invest up to 100% of their retirement annuities and other retirement products in offshore assets. The issue with the purported effect that Circular 15/2020 has on retirement funds is that it is a deviation from the previous offshore limits as set by Regulation 28, read with the previous 30% cap set by the Sarb.

National Treasury has, on 24 November 2020, released a media statement in an attempt to deal with the confusion brought by the publication of Circular 15/2020 by suspending the circular with immediate effect to enable it, the Sarb and the Financial Sector Conduct Authority to review the circular in order to reduce the scope for ambiguity related to compliance with the prudential framework for regulated funds.

The National Treasury has advised that:

1. The review is limited to providing clarification on the scope of the changes to the announcement relating to the reclassification of inward listed instruments;
2. An amended circular will be issued following a period of public consultations;
3. All approvals granted on the basis of Circular 15/2020 are also suspended; and
4. The dispensation before Circular 15/2020 will apply during the suspension of Circular 15/2020.

In light of the suspension, National Treasury has called on stakeholders and the public to submit their comments on proposals to amend Circular 15/2020 to sarbportfolio@resbank.co.za by 15 December 2020. In addition, input on the selling of a derivative or ETF where the underlying foreign asset is issued by a company not listed on a South African exchange is requested.

Any concerns arising from the position as set out in Regulation 28 and Circular 15/2020 should be tested with the Sarb and National Treasury in this process of consultation. It will be interesting to note the amendments which may arise especially in light of the position of stakeholders on proposed manner in which funds should consider investing.

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