

New exception to the loop structure prohibition for private individuals

By [Leanne Mostert](#), [Keith Veitch](#), [Donald Fisher-Jeffes](#), and [Cameron MacKenzie](#)

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South Africa's exchange control regulations generally prohibit South African residents from holding an interest in a foreign company which, in turn, holds any interests or assets in a Common Monetary Area (CMA) country (so-called "loop structures").



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There is an exception to the loop structure prohibition which is generally referred to as the "FDI dispensation". In terms of the FDI dispensation, South African companies (but not private individuals) can collectively acquire up to 40% of the equity and/or voting rights in a foreign entity which may hold investments and/or make loans into any CMA country, subject to a number of reporting and disclosure requirements.

In terms of Exchange Control Circular No. 18/2019, dated 31 October 2019, the Financial Surveillance Department has now extended a similar dispensation to private individuals such that private individuals are permitted individually or collectively to acquire up to 40% equity and/or voting rights in a foreign entity which, in turn, may hold investments and/or make loans into any CMA country.

The key effect of this circular is that private individuals can now avail themselves of an exception to the prohibition on loop structures (provided they stay within the 40% threshold) without needing to interpose a South African company between themselves and the foreign entity, as has been the case until now. This change will allow for more viable options for establishing or altering cross-border structures which include South African entities and shareholders and will generally simplify the creation of such structures where South African individual shareholders are concerned.

If you have or intend to establish such a cross-border structure, we can advise on the applicability of this new dispensation (in conjunction with the other exceptions and dispensations that have a bearing on loop structures) and prepare any required applications for approval.

ABOUT THE AUTHOR

Leanne Mostert, Keith Veitch, Donald Fisher-Jeffes, and Cameron MacKenzie at Webber Wentzel

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