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# **Foreign Investments in South Africa A more technical Overview**

by

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## Table of Content

Table of Content .....	- 2 -
Introduction .....	- 3 -
1. Capital Transfer to South Africa .....	- 3 -
a. Bank Transfer .....	- 3 -
b. Cash .....	- 4 -
c. Cheques .....	- 4 -
2. Opening of Bank Accounts .....	- 4 -
3. Securing repatriation of capital .....	- 5 -
4. Securing repatriation of profits.....	- 5 -
5. Expatriation to other destinations than origin.....	- 6 -
6. Registration of Shares.....	- 6 -
7. Registration of Property Ownership.....	- 7 -
8. Unknown Mortgages or Servitudes .....	- 7 -

## Introduction

With an increasing amount of foreigners investing either on a private or a corporate scale in South Africa there is a group of questions that surface quite regularly. Beside the question of where to invest and for how long - which will not be answered in this brief - a lot of uncertainty still exists as to how secure capital and investment are or how interests can be secured. In order to structure the variety of questions in this regard, the following key questions shall serve as a guide line:

1. In which ways can I bring capital into South Africa?
2. Can I open and run a bank account?
3. How do I secure repatriation of capital?
4. How do I secure repatriation of profits?
5. Can profits or interest be expatriated to other destinations than the origin?
6. Who registers my shares and who has access to this information?
7. Who registers my Directorship and who has access to this information?
8. Where is the ownership of my property registered?
9. How can I be sure that there are no unknown mortgages or servitudes registered on my property?

## 1. Capital Transfer to South Africa

There are basically three ways of transferring capital to South Africa, Bank transfer, cash and cheques.

### a. Bank Transfer

The most common and widely used means of bringing capital to South Africa is via bank transfer using SWIFT.<sup>1</sup> The advantages are a better exchange rate for electronic money, traceable funds<sup>2</sup>, speed<sup>3</sup> and that the registration under a Reserve Bank approval<sup>4</sup> is

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<sup>1</sup> Society for Worldwide Interbank Financial Telecommunication

<sup>2</sup> via MT 100

<sup>3</sup> depending on the speed of the branch it can be in South Africa within 24 hours

<sup>4</sup> see chapter 3

easier. All that is needed is to fill out the transfer form with the local branch of the bank that holds the funds. The current costs for most of the European countries lie around € 30 per transfer.

### **b. Cash**

While international anti-money-laundering laws are getting tighter and the deposit of cash very often requires proof of origin and completion of various forms, South Africa is still not too stringent with the deposit of cash. The declaration procedures generally start when depositing more than € 80 000, but still the risk of transport, the bad exchange rate<sup>5</sup> and the overall general impression should be taken into account before moving cash.

### **c. Cheques**

Personal cheques or Bank cheques from Europe will not be accepted by any bank in South Africa, but there are certain ways in which cheques may be cleared through the issuing bank in Europe and credited via electronic transfer to the South African bank. With regard to the exchange rate the arriving funds after clearance are treated like funds submitted electronically, but it can take up to six weeks for clearance and the costs for clearing and collecting the cheque are quite high<sup>6</sup> compared to options a. and b.

## **2. Opening of Bank Accounts**

Any foreigner can open a bank account<sup>7</sup> in South Africa, provided he presents a valid passport and a utility bill<sup>8</sup> not older than 3 months. But this bank account will be limited in its functionality, because only money from outside the country can be transferred to the account and no Rand amounts may be deposited into it. Also no cheque book and no credit card can be issued, but a cheque card or debit card that bears the VISA or MASTERCARD symbol. These cards can be used like ordinary credit cards, but are

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<sup>5</sup> up to 10% less compared to transfers

<sup>6</sup> from € 100 and up

<sup>7</sup> the banks refer to it as a non-resident account

<sup>8</sup> any bill addresses to the ordinary residence of the foreigner, like water, rates, electricity or telephone

limited to the balance on the non-resident account. Since most foreigners have formed a company in South Africa the easiest way around these limitations is to open a bank account in the name of the company.

### 3. Securing repatriation of capital

In general investments in South Africa are done as Foreign Direct Investments and declared that way when brought into South Africa. Due to the existing currency regulations and restrictions the way around it in order to secure repatriation at any given time is setting up an agreement for a foreign loan<sup>9</sup> between the borrowing South African company and the foreign investor or one of his entities. This agreement has to be registered with the Reserve bank of South Africa and the investment may not be introduced into South Africa before final approval.<sup>10</sup> After the funds arrive in South Africa they have to be declared in a special form<sup>11</sup> so that the funds can be traced on repatriation as part of a foreign loan.

### 4. Securing repatriation of profits

Any profit generated in South Africa is of a South African source and therefore cannot fall under the foreign loan as it came into existence afterwards. Nevertheless the loan agreement that can be registered with the Reserve Bank<sup>12</sup> provides for an interest rate that the loan attracts which is usually limited to the prime lending rate in South Africa<sup>13</sup> and can be increased by another two percent under special circumstances. This means that currently<sup>14</sup> 12.5 % of the capital invested can be repatriated annually. Giving an example for an investment that yields its return after four years of 50 %, this profit could be repatriated solely under the interest provision of the foreign loan agreement since four years timed by 12.5 % allow for a maximum of 50 % as interest. For profits over and

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<sup>9</sup> easiest and cost-effective in the form of an acknowledgement of debt

<sup>10</sup> obtaining this approval takes between 5 and 25 working days

<sup>11</sup> BoP or Balance of Payment Form

<sup>12</sup> see previous chapter

<sup>13</sup> at the time of drafting this brief 10.5 % p.a.

<sup>14</sup> at the time of drafting this brief

above this threshold there are many other ways for other portions to be repatriated<sup>15</sup>, if they are not re-invested in South Africa.

## 5. Expatriation to other destinations than origin

Some investors may decide at a later stage<sup>16</sup> after their investment is running in South Africa to expatriate but not to repatriate capital and / or interest, meaning the funds are not being transferred back to the country of origin. In this case the investor would have to set up another entity for example in a country with preferential tax rates<sup>17</sup> and then he or his company, which was giving the foreign loan to South Africa, have to cede the loan to the new entity. This cession must then be registered with the Reserve bank of South Africa and henceforth capital and interest<sup>18</sup> may be "re"-patriated to the new destination. Only the lending investor or his lending company can decide where the capital goes and thus secures the expatriation path.

## 6. Registration of Shares

Shares of a Private Company (Pty) or a Public Company (Plc) in South Africa are not registered with CIPRO<sup>19</sup>, the South African registrar of companies. The share register is kept within the company and attended to either by the company secretary or the accounting officer. The share register has to start with share number one and has to reflect all changes of ownership since the incorporation of the company. Any shareholder and any director of the company has got the right to request a copy of the share register and the chartered accountant appointed for the year end balance sheets is required to reflect the current shareholding at the end of each financial year. Any other person would have to formally request such information, but the company is generally not obliged to reveal the share register.<sup>20</sup>

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<sup>15</sup> e.g. private and corporate travel allowances, investment allowances, invoice based transfers etc.

<sup>16</sup> e.g. for tax reasons

<sup>17</sup> or complete tax exemption like in Dubai

<sup>18</sup> as explained in the previous chapters

<sup>19</sup> Companies and Intellectual Property Registration Office

<sup>20</sup> except in cases by order of court

## 7. Registration of Property Ownership

Each property in South Africa has its ownership proven by its title deed or sectional title deed where sectional titles are concerned. These title deeds are handed out to the owner of the property or kept by a financial institution where a mortgage has been taken out. All title deeds are also registered with the Deed's Office and any party with or without a legitimate interest can access the register. Only specialised attorneys<sup>21</sup> have access to the Deed's Office and may register or deregister Deeds of Transfer. Thus it is virtually impossible to "steal" a property from somebody else.

## 8. Unknown Mortgages or Servitudes

Mortgage Bonds are not registered on the Title Deed but at the Deed's Office. Opposed to this all servitudes have to be registered on the Title Deed. Thus if a copy of the Title Deed is available other servitudes than those contained therein are non-existent. If a property is purchased and the Deed of Transfer is lodged the Purchaser can also be sure that there are no other Bonds<sup>22</sup> existing than those that had to be cancelled on transfer, since property in South Africa can only be transferred free of Bonds.

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<sup>21</sup> conveyancers

<sup>22</sup> Notarial or Mortgage

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