



national treasury

Department:
National Treasury
REPUBLIC OF SOUTH AFRICA

**“A review framework for cross-border direct investment in South Africa”
Discussion document**

National Treasury is releasing a discussion document entitled “A review framework for cross-border direct investment into South Africa”.

Many developing and developed countries have explicit measures that define the policy and/or regulatory framework for cross border direct investment into such countries and address the specific public interest considerations arising from cross border direct investment.

In some instances, more priority is given to industries or sectors considered to be of strategic importance to the economy and that are relevant to the future plans of that country. These policy measures take the form of explicit legislation and/or regulation that articulate the conditions within which FDI is expected to have net benefits for the country.

Currently, South Africa does not have a coherent policy framework for the regulation of cross-border direct investment in general or investment in particular sectors of the economy which may be regarded as strategic.

This policy gap means that responses within different departments on the position of Government on investments that affect national interests have lacked a formal coordinated framework and in many instances, there has been an over reliance on the application of exchange controls to assess the net benefits of cross-border investments.

In this context, the existing set of regulations that affect cross-border direct investment raises three major (and inter-related) concerns:

- The regulation of sensitive cross-border mergers and acquisitions is opaque and relies in part on exchange control rules on the structure of transactions rather than a clear statement of public interest objectives and process.
- Approvals for the re-domiciling or cross-border restructuring of South African companies have been considered on a case-by-case basis and the framework for assessing public interest has lacked transparency.
- Policy towards inward investments in strategic industries or companies is not well-defined, with a need for greater harmonisation with sectoral regulations affecting both domestic and foreign investors.

National Treasury has conducted a review and developed a discussion paper which proposes that a new policy framework and regulations targeted at the specific public interest issues raised by cross border direct investments into South Africa be developed.

The overall objectives of such a policy framework would align with the broader macro-economic objectives of Government including the maintenance of an open environment for foreign direct

investment while addressing the specific public interest considerations emanating from cross border direct investments for the country.

This is important taking into account the need to support the growth of South African companies into multinationals from a domestic base in a way that benefits the South African economy; attract new capital into the country, while balancing the need to ensure that cross border investment into South Africa is in the public interest.

In particular, the proposed policy framework has the following objectives:

- To encourage new inflows of foreign capital - with expected benefits for employment, growth and competition - while safeguarding public interests relating to strategic cross-border acquisitions and corporate restructuring
- To support consistency in policy on inward investment across government departments
- To support the growth of South African companies domestically and abroad with long-term benefits for the South African economy
- To provide policy certainty for investors through the transparency of decision-making
- To support the overall policy framework for the management of the macroeconomic benefits and risks arising from cross-border capital flows

The proposed policy framework will apply only to certain forms of cross-border acquisitions and related restructurings of existing South African businesses. It is intended to provide a transparent mechanism for assessing the balance of public interests in the case of these complex investments and will not, in general, unduly restrict foreign ownership of South African firms.

Importantly, foreign investors seeking to establish new businesses in South Africa (greenfield FDI) will not be subject to any new regulations under the envisaged policy framework.

It is envisaged that the development of a revised policy framework would have positive spin-offs for the domestic economy by encouraging competition; providing a framework for consistency in policy across government departments and certainty for investors; and reduced lobbying while ensuring that South Africans benefit from the opportunities created by cross-border investment.

Invitation for comments

Comments on the discussion document are invited from all interested stakeholders. Written comments should be sent to: financial.policy@treasury.gov.za or faxed to 012 315 5206 on or before the 30 April 2011.

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