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Cracking Down or Catching Up? South Africa's Approach to Crypto Regulation: Part 3 – Exchange Control

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Introduction

Crypto assets ("**crypto**") exist in a unique regulatory space. Unlike traditional currency, crypto is not issued by central banks. Crypto can however be used in similar ways to traditional currency: it can be traded, used for payments, investing, security, or capital raising.

No single law governs crypto in South Africa. Instead, regulation is fragmented across various laws, demanding that organisations understand this legal landscape.

This article is the third in a series on crypto regulation. The first article, available [here](#), delved into the regulation of crypto as a form of payment. The second article, available [here](#), considered the impact of financial services laws as well as anti-money laundering and counter terrorism laws on crypto regulation. In this article, we map exchange control considerations for crypto asset services providers ("**CASPs**").

How does crypto fit into the Exchange Control Regulations?

The Exchange Control Regulations, 1961 (the "**Regulations**" and each a "**Regulation**") are amongst others concerned with restricting the transfer of funds and financial capital assets that are held in South Africa, out of South Africa. More specifically in this context, (i) Regulation 3(1)(c) provides that a South African resident may not pay a non-resident without exchange control approval (the "**Currency Payment Rule**"); and (ii) Regulation 10(1)(c) prohibits the export of capital without exchange control approval (the "**Capital Export Rule**").

Crypto can readily be transferred from a digital wallet on a South African crypto exchange, to a foreign crypto exchange (a "**Cross-Border Crypto Transfer**"). This poses the question, is the crypto so transferred "*capital*" and therefore subject to the Capital Export Rule; and / or is it "*currency*" and therefore subject to the Currency Payment Rule? If the answer to either is yes, a Cross-Border Crypto Transfer will require exchange control approval.

Latest developments in crypto exchange control treatment

The aforementioned question was dealt with in the decision of the High Court in *The Standard Bank of South Africa v The South African Reserve Bank (SARB) & Others* (047643/2023) [2025] ZAGPPHC 481 (15 May 2025) (the "**SBSA decision**"). The case concerned the validity of a forfeiture order issued by the South African Reserve Bank ("**SARB**") in respect of funds held by the applicant, The Standard Bank of South Africa ("**SBSA**"), and the sixth respondent, Nedbank Limited, but belonging to a company called Leo Cash and Carry Proprietary Limited ("**LLC**"). The SARB issued the forfeiture order after LLC had transferred 4,405.9783 Bitcoin to the value of R556 million out of South Africa to a Seychelles-based crypto exchange, which constituted a Cross-Border Crypto Transfer.

The central question in the matter before the court was whether the Cross-Border Crypto Transfer contravened the Currency Payment Rule and / or the Capital Export Rule, i.e. was LLC required to obtain exchange control approval for the transfer?

Does the Currency Payment Rule apply to a Cross-Border Crypto Transfer?

The court rejected the SARB's argument that crypto was "*currency*" for purposes of the Currency Payment Rule, deeming such a construction "*strained and impractical*". The court recognised that crypto was not legal tender in South Africa and that considering crypto to be currency presented practical challenges, such as determining if it must be declared when entering or leaving South Africa. The court noted the global nature of crypto as "*codes on a digital ledger*" that exist anywhere and everywhere. This is different from the types of currency that is covered by the Currency Payment Rule, like securities and bank notes.

Given the punitive nature of the Regulations and its view that crypto is not "*currency*", the court found "*no room for an unnatural and fictitious*" interpretation namely that the Currency Payment Rule should apply to a Cross-Border Crypto Transfer.

Does the Capital Export Rule apply to a Cross-Border Crypto Transfer?

The court held that on any interpretation of the Regulations – much less a restrictive one – there is no room for regarding crypto to be "*capital*" for purposes of the Capital Export Rule. The court agreed with SBSA that a regulatory framework addressing crypto is long overdue: crypto has been in existence for over 15 years and the SARB has to date taken no steps to regulate it. Nevertheless, the court could not usurp the functions of the legislature in that regard.

In its interpretation of the Capital Export Rule, the court referred to the decision of the Supreme Court of Appeal in *Oilwell (Pty) Ltd v Protec International Ltd and Others* 2011 (4) SA 394 (SCA) ("**Oilwell**"). In *Oilwell*, the court applied a restrictive interpretation to the Capital Export Rule, finding that intellectual property ("**IP**") rights were not "*capital*", and exchange control approval was therefore not required for its transfer out of South Africa. Following the *Oilwell* decision, the exchange control authorities swiftly responded by amending the Capital Export Rule so that the transfer of IP rights now explicitly fall within the ambit of the Capital Export Rule.

The impact of the **SBSA** decision

The court concluded that LLC, in making the Cross-Border Crypto Transfer/s, did not contravene either the Currency Payment Rule nor the Capital Export Rule, and it set aside the SARB's forfeiture order.

We were informed by the SARB that it has been granted leave to appeal the *SBSA* decision directly to the SCA, suspending the High Court decision pending the outcome of the appeal. It therefore remains to be seen whether the decision and reasoning of the High Court will be upheld or struck down. As of the date of this article, the date of the SCA appeal has yet to be set.

The *SBSA* decision highlighted a major gap in the Regulations as regards crypto. It is therefore possible that the Regulations will be amended such that the Currency Payment Rule and / or the Capital Export Rule apply to a Cross-Border Crypto Transfer, similar to what happened regarding IP rights following the *Oilwell* decision.

Bringing clarity to crypto: final thoughts

South Africa has taken significant steps to regulate crypto by bringing CASPs under both AML (FICA) and financial services (FAIS) frameworks, establishing compliance requirements for CASPs. Crypto is not recognised as legal tender in South Africa, although more businesses are beginning to accept crypto as a form of payment. Despite this, the most significant *lacunae* in the crypto regulatory landscape is in relation to exchange control considerations as highlighted in this article.

As the regulatory framework continues to evolve, crypto businesses must stay informed of their compliance obligations and the accompanying risks.

For assistance with your crypto needs, feel free to contact a member of our team.



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