



REGULATORY

Cracking Down or Catching Up? South Africa's Approach to Crypto Regulation: Part 4 – Exchange Control Update

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In our [previous article](#) published on 28 October 2025, we identified the absence of exchange control rules for cross-border crypto asset ("crypto") transfers as being a significant regulatory gap. This followed the High Court ruling in *Standard Bank of South Africa v South African Reserve Bank & Others* 2025 (5) SA 289 (GP) (the "**SBSA decision**") which found that the Exchange Control Regulations, 1961 (the "**Exchange Control Regulations**") did not apply to crypto and that exchange control approval was therefore not required for the cross-border transfer of crypto. Although the South African Reserve Bank ("**SARB**") was granted leave to appeal to the Supreme Court of Appeal ("**SCA**") against the SBSA decision, legislative intervention now seems inevitable. This is confirmed by the fact that during the budget speech on 25 February 2026, Finance Minister Enoch Godongwana announced that the government will soon publish draft regulations under the Currency and Exchanges Act, 1933 to include crypto assets in the capital flow management regime and that crypto assets will be governed within the cross-border capital movement framework. This is in addition to existing regulations to combat money laundering and fraud. This article discusses this latest development.

Setting the Scene: the SBSA decision

To briefly recap, the facts in the *SBSA* decision are as follows: Leo Cash and Carry Proprietary Limited (a South African resident company) transferred 4,405.9783 Bitcoin (approximately R556 million) to a non-resident Seychelles-based crypto exchange. The SARB sought forfeiture

of related bank-held funds, alleging the transfer referred to contravened exchange control rules. The court considered whether crypto constituted (i) money or "currency" for purposes of Regulation 3(1)(c), which prohibits payments to non-residents without exchange control approval ("**Currency Payment Rule**"); and/or whether crypto constituted (ii) "capital" under Regulation 10(1)(c), which prohibits the export of capital without approval ("**Capital Export Rule**"). The court found in the negative on both scores and the forfeiture order was set aside.

The Budget Speech Announcement

Although not very informative, additional details are provided in Annexure E (Financial Sector Update) to the 2026 Budget Review, published on 25 February 2026 alongside the Budget Speech. Under "*Capital flows management framework*", it is indicated that the National Treasury will publish amendments to the Exchange Control Regulations, and that these will regulate transfers of crypto (such as Bitcoin and Ethereum) to non-residents. This was confirmed by Exchange Control Circular No. 3/2026 issued by the Financial Surveillance Department of the SARB ("**FinSurv**") on 3 March 2026.

If the anticipated amendments to the Exchange Control Regulations are consistent with the recommendations made by the Intergovernmental Fintech Working Group ("**IFWG**") as long ago as 2021, it is anticipated that they will place Crypto Asset Service Providers ("**CASPs**") on a similar footing as authorised dealers with limited authority, requiring them to authorise crypto transfers within clients' exchange control allowances and to report transfers to the FinSurv, although the precise mechanism will only be confirmed once the draft amendments are published.

Significance of the anticipated amendments

The anticipated amendments are expected to directly address the regulatory gap exposed by the *SBISA* decision. Rather than awaiting the outcome of the appeal, government has clearly opted to pursue a legislative amendment: the same approach taken by government after the decision in *Oilwell (Pty) Ltd v Protec International Ltd and Others* 2011 (4) SA 394 (SCA). In that instance, the Capital Export Rule was promptly amended to include intellectual property rights following the Court's decision that the rule (as framed at the time) did not include intellectual property rights.

The stated intent behind the anticipated amendments is to form part of the multi-layered approach to crypto regulation in South Africa. CASPs are already regulated under financial services and anti-money laundering legislation (including FAIS and FICA). The anticipated amendments are expected to bolster existing efforts to prevent money laundering and terrorist financing, thereby keeping South Africa off the Grey List.

One would expect the regulatory direction intimated by the Minister in February to align with the IFWG recommendations, which were quite explicit and wide ranging. If this happens, the anticipated amendments would integrate CASPs into the existing authorised dealer architecture and CASPs will be expected to administer clients' exchange control allowances for crypto transfers and report to the FinSurv.

What This Means for CASPs

Once the anticipated amendments take effect, CASPs will likely have to report crypto transfers to the FinSurv. The precise scope and format will only be clarified once the draft amendments are published. CASPs should however already assess whether their transaction monitoring and record-keeping systems can capture the required data. CASPs should review their FAIS, FICA, and contractual frameworks, including their Risk Management and Compliance Framework, their client agreements, vendor contracts (where certain duties or services are outsourced), and privacy notices. Gaps should be identified and consideration should be given to how exchange control monitoring, reporting, and authorisations will work in practice.

What This Means for Crypto Holders

Under the proposed framework, South African residents wishing to transfer crypto assets to non-residents – including to foreign exchanges – may need to do so within their exchange control allowances. Transfers may be subject to the single discretionary allowance (R2 million per calendar year), with transfers exceeding applicable allowances presumably requiring specific SARB approval.

Crypto holders should accordingly be aware that once the anticipated amendments take effect, cross-border crypto transfers will no longer take place in a regulatory vacuum: they are expected to be subject to the same Capital Flows Management Framework that governs the movement of conventional assets and currency to non-residents.

Bringing Clarity to Crypto: Updated Final Thoughts

In our previous article, we observed that a regulatory framework addressing crypto's exchange control treatment was "*long overdue*". The 2026 Budget Speech signals that this framework is finally on the horizon.

Questions remain: It is unclear whether the anticipated amendments will bring crypto within the ambit of the Currency Payment Rule or the Capital Export Rule, alternatively whether a new purpose-built provision will be introduced. The precise obligations for CASPs and their clients are also yet to be determined. The SBSA decision remains suspended pending the SCA appeal, and the announcement of the anticipated amendments may be seen as acknowledging that the existing Exchange Control Regulations do not apply to crypto, with potential implications for the SARB's appeal.

The regulatory direction is clear: CASPs should use the period before draft amendments are published to prepare their systems and review compliance frameworks. Crypto holders who have previously transferred crypto abroad without exchange control approval should seek legal advice before the new framework takes effect.

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



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