BANKING & FINANCE

Crypto asset regulation gaining traction in South Africa

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The Finance Minister, Enoch Godongwana published Government Notice 2800 of 29 November 2022 in *Government Gazette* 47596 ("**Notice**") to amend Schedules 1, 2 and 3 of the Financial Intelligence Centre Act 38 of 2001 ("**FIC Act**"). In terms of the Notice, several new entities have been classified as "accountable institutions" and accordingly included in Schedule 1 of the FIC Act.

The FIC Act, *inter alia*, requires accountable institutions to (i) verify the identity of a prospective client before the accountable institution enters into a transaction and/or business relationship with such a client, (ii) perform on-going identification verification on their clients and (iii) submit reports to the Financial Intelligence Centre ("**FIC**"). The FIC Act also prohibits accountable institutions from establishing a business relationship or concluding a transaction with an anonymous client or a client using a fictitious name.

Paragraph 22 of the Notice states that any person who carries on the business of one or more of the following activities or operations for or on behalf of a client, will now be classified as an accountable institution under the FIC Act —

1. exchanging a crypto asset for a fiat currency (i.e. government-issued currency) or *vice versa*;
2. exchanging one form of crypto asset for another crypto asset;
3. conducting a transaction that transfers a crypto asset from one crypto address (using the public cryptographic key that allows for the transfer of crypto assets between crypto addresses) or accounts to another crypto address;
4. safekeeping or administration of a crypto asset or an instrument enabling control over a crypto asset; and
5. participation in, and provision of, financial services related to an issuer's offer or sale of a crypto asset, (collectively "**Crypto Asset Service Providers**").

For purposes of paragraph 22 of the Notice, the definition of a "crypto asset" is a digital representation that has perceived value and can be traded or transferred electronically within a community of users of the internet who consider it as a medium of exchange, unit of account or store of value and use it for payment or investment purposes. The definition, however, specifically excludes a digital representation of a fiat currency or security as defined in the Financial Markets Act 19 of 2012.

The designation of Crypto Asset Service Providers as accountable institutions in terms of the Notice requires these Crypto Asset Service Providers to verify the identities of prospective crypto asset transactors, and as such, it will become legally impossible to deal anonymously with crypto assets in South Africa. The FIC may impose administrative sanctions (as set out in section 45C of the FIC Act) on accountable institutions who fail to comply with their statutory requirements.

The amendments set out in the Notice take effect on 19 December 2022.

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