



SUSTAINABILITY

Financial sector evolution: a snapshot of what's to come

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The horizon of the financial sector is one coloured by significant regulatory reform. Extensive reviews have been and are being conducted by the Prudential Authority ("PA"), the Financial Sector Conduct Authority ("FSCA"), the Financial Intelligence Centre ("FIC") and the South African Reserve Bank ("SARB") on various financial sector laws with a focus on encouraging innovation, competition, new market participants and fresh product offerings whilst ensuring appropriate supervision in a market that requires customers to be informed by service providers and to be treated fairly. At the forefront of the slew of pending legislation are reforms to the Financial Markets Act No. 19 of 2012 ("**FM Act**"), the National Payment System Act 78 of 1998 ("**NPS Act**") and banking legislation, with further reforms on the regulation of crypto assets and crypto asset service providers ("**CASPs**") following closely behind. Remaining alert to the impending changes is essential in such a rapidly evolving regulatory landscape with far-reaching consequences.

FM Act

The financial sector has changed significantly since the FM Act was first promulgated with the entry of new market participants and innovative product offerings becoming more prolific over the past few years.^[1] A review of the FM Act was therefore necessary to ensure that such developments were brought within the regulatory fold. The review of the FM Act was led by the Financial Markets Review Committee and involved input from the PA, FSCA and the SARB,^[2] the outcome of which was published by National Treasury in the report "Building Competitive Financial Markets for Innovation and Growth" ("**Report**") in 2020.^[3] The Report sets out various proposals for regulatory reform, one of which is expected to result in significant amendments to the FM Act, such as –

- an increase in the scope of market structures governed by the FM Act, including new trading platforms such as multilateral trading facilities;^[4]
- the classification of foreign currency as a financial asset to facilitate oversight on currency trading;^[5]
- clarification on the roles assumed by different regulators in the financial markets sector;^[6]
- clarification on competition-related issues and the treatment of digital assets;^[7] and
- alignment to global best practices in governance, transparency and operational resilience.^[8]

The FSCA, in recognising that certain of the proposed amendments require more urgent attention, has accordingly made use of joint standards and conduct standards under the Financial Sector Regulation Act 9 of 2017 ("**FSR Act**"), such as Joint Standard 1 of 2023^[9] and Joint Standard 1 of 2025,^[10] as interim measures while the amendment processes run their course.^[11]

NPS Act

The review of the NPS Act, as with the FM Act, is driven by the modernisation of the regulatory framework to accommodate new products and market participants in a meaningful and transparent manner. In the past almost 30 years, the payment industry has been the subject of rapid evolution with the rise of new technology and swifter payment methods which are not recognised in the NPS Act.^[12] Although South Africa was previously considered a pioneer in the payments industry, it has not unexpectedly fallen behind the prodigious pace of innovation both locally and globally.^[13] The SARB, in recognition of the evolving payment landscape, undertook a review of the NPS Act to recognise technological advancements within the safety and security of the National Payment System ("**NPS**").

In 2018, the SARB published "Vision 2025" in which it undertook to research and review the existing NPS regulatory framework and to develop new regulatory frameworks in line with domestic and international standards and principles.^[14] In this regard, it undertook to draft the NPS Bill by the end of December 2020, however, with the advent of the global pandemic, and significant changes in payment systems which coincided, and sometimes stemmed from the pandemic, both domestically and globally, it has been a challenge for the SARB to keep abreast of the proliferation of new technologies and to bring them within the ambit of the legislation in a meaningful way. It has not been announced when the NPS Bill will be released for public comment but it is anticipated to be in the near future.

In "Positioning the South African Reserve Bank's Payments Ecosystem Modernisation Programme: a strategic shift to a higher equilibrium" ("**PEM Programme**"), the SARB notes that the NPS Bill must, *inter alia*, enable non-banks to participate in the clearing and settling of payments within the National Payments System without requiring bank sponsorship^[15] to improve competition, innovation and efficiency, and which would be achieved by adopting an activity-based, as opposed to an entity-based, regulatory approach that supports a fair environment for competition.^[16] The PEM Programme will also promote modern payments architectures and systems like Payshap and a pre-funded settlement model^[17] for fast payments.^[18]

As an interim measure and to give effect to the PEM Programme, on 3 March 2025, the SARB published (i) a draft directive setting out the requirements for specific payment activities ("**Directive**"), and (ii) a draft exemption notice which designates specific payment activities as not forming part of the business of a bank as defined under the Banks Act 94 of 1990 ("**Exemption Notice**"), thereby indicating the removal of payment activities from bank exclusivity in National Payment System.

Banking legislation

In the "Regulatory Strategy 2025-2030" ("**Strategy**") published by the PA in August 2025, the PA outlined its regulatory and supervisory priorities for the period 2025 to 2030. As part of the Strategy, the PA plans to implement a 'revised mutual banks regulatory framework' and a 'comprehensive and updated regulatory framework' for co-operative banks and co-operative financial institutions.^[19] The above revisions indicate the inclusion of the principle of proportionality in the deposit-taking sector where regulatory requirements are scaled according to the nature, size, complexity and risk profile of the affected entities.^[20] The PA is currently developing prudential standards to reflect the above principle and it remains to be seen if the Strategy will result in amendments to the Mutual Banks Act 124 of 1993 and/ or the Co-Operative Banks Act 40 of 2007.

Crypto regulation

In May 2025, the High Court of South Africa in *Standard Bank of South Africa v South African Reserve Bank and Others*,^[21] declared that crypto assets do not fall within the ambit of currency or capital surveillance and regulation under the Exchange Control Regulations, 1961.^[22] The ruling has, however, been suspended pending the outcome of the appeal launched by the SARB and National Treasury in the Supreme Court of Appeal. It is anticipated that interim measures will ensue to address the regulatory lacuna created by the judgment and long-term legislative reforms will be undertaken to bring crypto assets within the remit of the SARB.

The PA has identified the need to enhance the regulatory and supervisory frameworks relating to the crypto-asset exposures of financial institutions.^[23] This follows the publication in 2022 by the Basel Committee on Banking Supervision of a standard dealing with the requirements for the prudential treatment of banks' crypto-asset exposures and which is anticipated to be adopted and implemented by member jurisdictions by 1 January 2026.^[24] Accordingly, the PA is currently drafting a prudential standard and related disclosure requirements to regulate banks' crypto asset exposures. The prudential standard is likely to require banks to disclose crypto asset holdings and to hold regulatory capital against such exposure.^[25] The PA has acknowledged that fintech will be the most disruptive force in its supervisory environment,^[26] and that it will be focusing on developing the regulation of crypto-assets, stablecoins, open finance and artificial intelligence^[27] to bring such technologies within its purview.

In September 2025, the Johannesburg Stock Exchange ("JSE") released draft amendments to the JSE Debt and Specialist Listing Requirements ("Draft Listing Amendments"). The amendments were proposed (i) in response to a position paper regarding the regulation of crypto assets ("Position Paper") published by the Intergovernmental Fintech Working Group ("IFWG") in 2021, which was updated in 2025 and (ii) as a result of the JSE's research regarding international regulation of crypto assets.^[28] Recommendation 23 of the Position Paper required licensed exchanges to ensure that their rules and listing requirements cater for the listing of securities that reference crypto assets, in manner satisfactory to the FSCA.^[29] The Draft Listing Amendments will, *inter alia*, allow issuers of exchange traded notes^[30] and exchange traded funds^[31] to reference spot crypto assets in a direct or indirect manner and on a whole or partial basis.^[32]

Conclusion

The financial sector faces wide ranging regulatory reform in the very near future. With incoming amendments to the abovementioned legislation in addition to the Conduct of Financial Institutions Bill being finalised for submission to Parliament, and the draft General Laws (Anti Money Laundering and Combating Terrorism Financing) Amendment Bill, 2024 being published last year for comment,^[33] the potential changes are vast and very far-reaching. It is therefore essential that market participants are aware of these impending changes to stay afloat in the sea of change.

[1] Keynote address by Kamlana U "Shaping market integrity through robust and adaptive regulation" (22 August 2025) <https://www.fscsa.co.za/News%20Documents/SAIFM%20Regulatory%20Summit%202025%20-%20Keynote%20address%20by%20Mr%20Unathi%20Kamlana.pdf> [accessed 28 July 2025] page 3

[2] Media Statement by National Treasury "New submission date: consultation on a discussion paper" (19 March 2020) https://www.treasury.gov.za/comm_media/press/2020/2020031901%20New%20Submission%20Date%20of%20Consultation%20on%20a%20Discussion%20Paper.pdf [accessed 9 September 2025] page 1

[3] National Treasury "Building competitive financial markets for innovation and growth" (2020) https://www.treasury.gov.za/comm_media/press/2020/FINANCIAL%20MARKETS%20ACT%20REVIEW.pdf [accessed on 9 September 2025]

[4] Ibid. Multilateral trading facilities are electronic platforms that operate as an alternative to traditional exchanges. They connect buyers and sellers to trade financial instruments such as derivatives and those which lack an official market

[5] Ibid

[6] Kamlana U (2025) page 3

[7] Ibid

[8] Ibid

[9] Titled "Amendments to Joint Standard 2 of 2020 – Margin Requirements for Non-Centrally Cleared Over-The-Counter Derivative Transactions"

[10] Titled "Criteria for the exemption of an external central counterparty and external trade repository from the provisions of the FMA"

[11] Kamlana U (2025) page 4

[12] Page 1 of the SARB "Review of the National Payment System Act 78 of 1998" (September 2018) <https://www.treasury.gov.za/publications/other/NPS%20Act%20Review%20Policy%20Paper%20-%20final%20version%20-%202013%20September%202018.pdf> [accessed 2 September 2025]

[13] SARB "Positioning the South African Reserve Bank's Payments Ecosystem Modernisation Programme: a strategic shift to a higher equilibrium" (2025) <https://www.resbank.co.za/content/dam/sarb/publications/other-publications/2025/pem-position-paper.pdf> [accessed 10 September 2025] page 3

[14] Page 5 of the "The national payment system framework and strategy, vision 2025: action plan" (2018) published by the SARB <https://www.resbank.co.za/content/dam/sarb/what-we-do/payments-and-settlements/Vision%202025%20-%20Action%20Plan.pdf> [accessed 4 September 2025]

[15] PEM Programme page 8

[16] PEM Programme page 7

[17] Pre-funding occurs when settlement participants provide funding to a central point. Payments between settlement participants are then made using these pre-funded deposits to settle a payment before the actual settlement would take place, usually in a few days

[18] <https://www.rmb.co.za/news/how-upcoming-payments-regulation-changes-will-impact-companies-and-consumers> [accessed on 4 September 2025] and PEM Programme page 8

[19] Page 12 of the Strategy <https://www.resbank.co.za/content/dam/sarb/what-we-do/prudential-regulation/pa-regulatory-strategy/PA%20Regulatory%20Strategy%202025-2030.pdf> [accessed 10 September 2025]

[20] Page 11 of the Strategy

[21] 2025 (5) SA 289 (GP)

[22] Published under the Currency and Exchanges Act No. 9 of 1933

[23] Page iv of the Strategy

[24] Page 12 of the Strategy

[25] Page 42 of the Strategy

[26] Page 10 of the Strategy

[27] Page 20 of the Strategy

[28] Page 2 of the JSE "*Proposed Amendments to the JSE Debt and Specialist Listing Requirements*" (September 2025)

[29] Ibid

[30] An exchange traded note is defined in the Draft Listing Amendments as an investment product, in the form of a note, that reflects the linear (on a one for one basis) performance of underlying securities or benchmarks, such as shares or bonds, an index, an exchange rate or a commodity and is backed by the creditworthiness of the issuer

[31] An exchange traded fund is defined in the Draft Listing Amendments as a fully funded (unleveraged) fund, registered in terms of Collective Investment Schemes Control Act 45 of 2002, tracking the performance of a specified security, index or currency or a company tracking a commodity

[32] Page 5 of the Draft Listing Amendments

[33] The Bill will amend, *inter alia*, the FSR Act and the Financial Intelligence Centre Act 38 of 2001



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