



SUSTAINABILITY

Out with the Old: South Africa's Proposed Overhaul of Exchange Controls and the Inclusion of Crypto Assets

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On 17 April 2026, in Government Notice No. 54520 under *Government Gazette* 7375, the Minister of Finance ("**Minister**") published the draft Capital Flow Management Regulations in terms of section 9(1) of the Currency And Exchanges Act 9 of 1933 ("**Draft Regulations**") for public comment.^[1]

The Draft Regulations follow the Minister's 2026 Budget Speech, which announced further exchange control reforms.^[2] These reforms aim to bring crypto assets within the capital flows management framework.^[3] The Draft Regulations complement two earlier regulatory developments, namely, (i) the Financial Sector Conduct Authority's declaration of crypto assets as a financial product in General Notice 1350 of 2022 in *Government Gazette* 47334, and (ii) the inclusion of crypto asset service providers as accountable institutions under Item 22 of Schedule 1 of the Financial Intelligence Centre Act 38 of 2001.^[4]

Once finalised, the Draft Regulations shall repeal and replace the existing Exchange Control Regulations published under Government Notice R1111 in *Government Gazette Extraordinary* 123 of 1 December 1961 ("**Excon Regulations**").^[5] The Draft Regulations shall have an impact on, *inter alios*, authorised dealers, crypto asset service providers as well as other affected parties who currently fall within the regulatory ambit of the Excon Regulations.

Importantly, the Draft Regulations, *inter alia* –

- provide for a monetary threshold which shall be published by the Minister for transactions regulated by the Draft Regulations,^[6] where a transaction/s relating to the purchase, sale, or loan of (i) foreign currency, (ii) gold, and (iii) crypto assets exceeding the value of the threshold –
 - may, in respect of the purchase, sale or loan of foreign currency and gold to any person other than an authorised dealer, only be conducted by an authorised dealer;^[7] and
 - may, in respect of the purchase, sale or loan of crypto assets to any person other than an authorised crypto asset service provider ("**CASP**"), only be conducted by an authorised CASP;^[8]

- state that any person other than (i) an authorised dealer, intent on buying, selling, borrowing, or lending foreign currency or gold must apply to an authorised dealer to do so;^[9] and (ii) an authorised CASP, intent on buying, selling, borrowing, or lending crypto assets must apply to an authorised CASP to do so;^[10]
- impose purpose-use restrictions and information-furnishing obligations on persons applying to an authorised dealer or CASP to buy, sell, borrow or lend (i) foreign currency, (ii) gold, or (iii) crypto assets (where applicable);^[11] to ensure that such foreign currency, gold or crypto assets are not used for any purpose other than the purpose for which they were acquired, as stated in that person's application to the authorised dealer or CASP;^[12]
- place (i) restrictions on the import and export of currency, crypto assets, gold and securities;^[13] and (ii) compulsory declaration requirements for all persons (a) about to enter the Republic of South Africa ("**South Africa**") who have currency, crypto assets, securities and gold in their possession and control;^[14] or (b) about to enter or leave South Africa, where such declaration is requested by an enforcement officer;^[15]
- allow enforcement officers to search any person and seize articles in that person's possession if that person (i) denies having any currency, crypto assets, gold or security in their possession, and (ii) is suspected to have such articles in their possession in contravention of the regulations for the import or export thereof;^[16]
- provide for the acquisition by either the National Treasury ("**Treasury**"), an authorised dealer or an authorised CASP of (i) foreign currency or crypto assets, or (ii) the right to receive payment of foreign currency or crypto assets, the value of which exceeds the monetary thresholds declared by the Minister;^[17]
- place an obligation on all persons in the South Africa that are in possession or control of a foreign asset or crypto asset, to declare such possession or control in writing to the Treasury or an authorised person within 30 days of being in possession of such foreign or crypto asset;^[18]
- restrict the export of capital, where the definition of 'capital' now includes crypto assets;^[19]
- allow for the granting of exemption and permissions by the Treasury or authorised person of persons or classes thereof from any of the provisions of the Draft Regulations that may be subject to certain conditions;^[20]
- provide for a controlled accounts regime, under which the Treasury or an authorised person may direct that payments owed by a person resident in the South Africa to a non-resident creditor (where such payments are precluded by the Draft Regulations) be paid into a controlled account opened with an authorised dealer or the Corporation for Public Deposits;^[21]
- restrict dealings in securities belonging to non-residents by, *inter alia*, prohibiting the acquisition, disposal, transfer or nomination of controlled securities (being securities registered in the name of, owned by, or in which a non-resident has an interest) without the permission of the Treasury or an authorised person;^[22]
- prohibit dealings in bearer securities and bearer options, including the acquisition, disposal, issuance and payment of dividends or interest in respect thereof, without an exemption or permission from the Treasury or an authorised person;^[23]
- control the issue of capital (which includes the raising of capital in the South Africa by the issue of securities, loans repayable by the issue or transfer of securities, and municipal borrowings) by prohibiting any issue of capital exceeding the determined threshold during any 12-month period without an exemption or permission from the Treasury or an authorised person;^[24]
- require that transactions with a branch or subsidiary of a business controlled from outside the South Africa be treated as if the branch or subsidiary were a separate person resident in the South Africa, subject to the same duties and obligations under the Draft Regulations;^[25]
- empower the Treasury or an authorised person to impose administrative sanctions on authorised dealers or authorised CASPs for non-compliance, including financial sanctions, public reprimands, suspension or revocation of appointments, disqualification of directors and senior management, restrictions on transactions, and orders to take remedial action;^[26]
- confer broad powers on the Treasury or an authorised person to attach money, crypto assets and other property, block accounts, and issue forfeiture orders in respect of suspected contraventions of the Draft Regulations, subject to compliance with the Promotion of Administrative Justice Act 3 of 2000;^[27]
- create criminal offences for, *inter alia*, contraventions of the Draft Regulations, non-compliance with any notice, order, permission, exemption or condition, obstruction and the making of false statements, with penalties including a fine not exceeding R1,000,000 and/ or imprisonment for a period not exceeding 5 years;^[28] and
- provide for administrative relief, under which the Treasury or an authorised person may authorise the regularisation of contraventions of the Draft Regulations through a voluntary disclosure process, subject to conditions including the payment of levies or administrative penalties.^[29]

Comments on the Draft Regulations are to be submitted on or before 18 May 2026.^[30]

[1] See the Draft Regulations available on <https://www.treasury.gov.za/public%20comments/CapFlow/> (accessed on 21 April 2026).

[2] See paragraph 1 of Exchange Control Circular No. 3 of 2026 published by the South African Reserve Bank on 3 March 2026, available at <https://www.resbank.co.za/en/home/publications/publication-detail-pages/circulars/exchange-control-circulars/2026/excon-circ-3-2026> (accessed on 20 April 2026).

- [3] See page 5 of Annexure A of Exchange Control Circular No. 3 of 2026.
- [4] See page 5 of Annexure A of Exchange Control Circular No. 3 of 2026.
- [5] See section 32 of the Draft Regulations and the joint Media Statement published by the National Treasury and the SARB on 17 April 2024, available at <https://www.resbank.co.za/en/home/publications/publication-detail-pages/media-releases/2026/capital-flow-comment> (accessed on 20 April 2026).
- [6] See section 31 of the Draft Regulations.
- [7] See section 2(1) of the Draft Regulations.
- [8] See section 3(1) of the Draft Regulations.
- [9] See section 2(4) of the Draft Regulations.
- [10] See section 3(4) of the Draft Regulations.
- [11] See sections 2(4) and 3(4) of the Draft Regulations.
- [12] See sections 2(5) and 3(5) of the Draft Regulations.
- [13] See sections 4 and 5 of the Draft Regulations.
- [14] See section 5(1)(a) of the Draft Regulations.
- [15] See sections 4(2) and 5(1)(b) of the Draft Regulations.
- [16] See sections 4(3), 4(5), 5(1)(c), 5(2) and 5(3) of the Draft Regulations.
- [17] See section 8 of the Draft Regulations.
- [18] See section 10 of the Draft Regulations.
- [19] See the definition of 'capital' in section 1, section 12 and 17 of the Draft Regulations.
- [20] See section 23 of the Draft Regulations.
- [21] See section 6 of the Draft Regulations.
- [22] See section 15 of the Draft Regulations.
- [23] See section 16 of the Draft Regulations.
- [24] See section 17 of the Draft Regulations.
- [25] See section 18(1) of the Draft Regulations.
- [26] See section 21 of the Draft Regulations.
- [27] See section 24 and 25 of the Draft Regulations.
- [28] See section 29 of the Draft Regulations.
- [29] See section 30 of the Draft Regulations.
- [30] See the joint Media Statement published by the National Treasury and the SARB on 17 April 2024.



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