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Proposed New Capital Flow Management Regulations fail to live up to expectations

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On 17 April 2026, National Treasury and the South African Reserve Bank published the long awaited draft of the replacement to the Exchange Control Regulations, 1961 – the Capital Flow Management Regulations.

The joint media statement states that the "*amendments signal South Africa's readiness to modernise and adopt a 'positive bias' approach to managing cross-border capital flows through fewer transaction pre-approvals, a focus on reporting, the surveillance of high-impact and high-risk crossborder transactions, and the combating of illicit financial flows*".

This is truly a remarkable statement given that the draft regulations largely reflect the current Exchange Control Regulations.

The main differences between the old Exchange Control Regulations and the new Capital Flow Management Regulations are:

1. Inclusion of crypto assets as "capital", and an expansion of the definition of "capital" generally to include anything of a monetary value except immovable property;
2. Imposition of regulatory obligations on authorised crypto asset service providers;
3. A prohibition on all dealings in crypto assets between residents and non-residents, and a prohibition on dealing in crypto assets generally beyond an unspecified monetary threshold, except where the counterparty is an authorised crypto asset service provider;
4. Increased powers of enforcement;
5. An express provision to impose administrative sections on authorised dealers in foreign exchange and on authorised crypto asset service providers;
6. Inclusion of a framework to formalise exemptions from the draft regulations; and
7. Providing clarity on the criteria and process for regularising non-compliance with exchange controls generally.

Draft regulation 30 deserves special mention as a disappointment. It deals with the regularisation of non-compliance with exchange controls. As is the case with the current Regulation, it requires National Treasury or an authorised person to publish a notice of the types of contraventions that may be regularised. Therefore, the uncertainty regarding when the South African Reserve Bank will accept applications for regularisation of non-compliance or the penalty thresholds, persists.

Another disappointment is the treatment of Crypto assets. The draft regulations do not provide any insight in respect of the treatment of persons who already hold crypto assets acquired in Rand locally or abroad using their authorised foreign funds. These individuals could be

subject to significant restrictions on how they buy and sell crypto assets going forward.

The nature of the Exchange Control Regulations currently follows a so-called negative bias approach where all transactions involving foreign exchange, transactions with non-residents and exports of capital are prohibited unless otherwise provided by National Treasury or the Financial Surveillance Department of the South African Reserve Bank ("**FinSurv**"). Contrary to what National Treasury and the South African Reserve Bank have said the negative bias approach of the Exchange Control Regulations has been carried across to the draft regulations.

Many of these exemptions from the current Exchange Control Regulations are published by FinSurv in circulars and then included in the Currency and Exchanges Manual for Authorised Dealers, which can be found on the South African Reserve Bank's website. It is expected that the current exemptions will have to be formalised under the new draft regulation 23.

The final regulations will be published after taking into account any comments and National Treasury and FinSurv will then publish the exemptions to the regulations. The exemptions are currently being considered and are not yet available for comment. It is only once these exemptions are published that we will know if National Treasury and the South African Reserve Bank are serious about modernising the exchange control framework and adopting a positive bias approach to regulating foreign exchange transactions. For now, we can only conclude that the current negative bias approach to exchange controls will remain in the new Capital Flow Management Regulations.



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