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FLOW MANAGEMENT

# Digital assets enter exchange control arena

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ON April 17, the National Treasury published the Draft Capital Flow Management Regulations, 2026 for public comment.

These draft regulations mark a significant regulatory tightening on the use and movement for crypto assets in South Africa, focused on managing capital flows through a risk-based approach.

The draft regulations further cover foreign currency, gold, and broader capital movements, imposing stringent restrictions on the purchase, sale, lending, declaration and export of such assets, threatening sanctions such as forfeiture to the state in cases of non-compliance.

The proposed regulations, amongst other objectives, aim to bring crypto-assets within the exchange control framework to address risks and ensure oversight of emerging financial instruments, clarify exemptions, permissions, and conditions; and impose administrative sanctions for non-compliance.

The draft document sets out clear rules governing who may buy, sell, lend, receive, or export crypto assets, as well as foreign currency, and gold where certain thresholds are exceeded — without specifying what these thresholds will be.

The draft also introduces requirements for when National Treasury approval must be obtained and what information should be disclosed when requesting approval.

Where a person acquires crypto assets through an authorised crypto asset service provider for a specific purpose and no longer needs all or part of those assets for the stated purpose, they must immediately offer those assets for sale to the National Treasury or an authorised crypto asset service provider.

Following on from South Africa's implementation of the Crypto Asset Reporting Framework (CARF) on 01 March 2026, South Africans involved in crypto transactions or holding digital assets should also anticipate increased scrutiny and enhanced information sharing among tax authorities, emphasizing the necessity for precise tax reporting and compliance in their income tax returns.

The proposed regulations grant wide enforcement powers to officials.

Enforcement officers may search any person or property where there are reasonable grounds to suspect possession or control of currency, crypto assets, gold, or securities intended for unlawful export. Such officers may also confiscate crypto, foreign currency and gold should they suspect the assets will be removed from South Africa in contravention of the regulations.

For purposes of enforcement, an "enforcement officer" includes Customs and Excise officials, immigration officers, officials from the Border Management Authority, members of the South African Police Service, and any person authorised in writing by National Treasury.

Offences include non-compliance with the regulations, failure to comply with official notices or permissions, obstruction of officials, and the negligent or intentional submission of false or incorrect declarations.

Penalties are severe, including fines of up to R1 million, imprisonment of up to five years, or both, or a sum equal to the value of the money, crypto asset, or property, whichever is the greater.

It appears these penalties take inspiration from South African tax laws, and SARS, whereby penalties of up to 200% may be imposed for understatements of taxable income, and criminal charges imposed for non-compliance with a tax act.

National Treasury and SARB emphasise that the proposals align with the 2026 Budget Review, which confirmed the intention to include crypto assets in the capital flows management framework, complementing regulation by the Financial Sector Conduct Authority (FSCA), which officially declared crypto assets (like Bitcoin and Ethereum) to be "financial products" under law from October 2022.

The Financial Intelligence Centre (FIC) has also designated crypto asset service providers as accountable institutions subject to supervision, including reporting, registration, and enforcement obligations.

In a joint media statement, National Treasury and SARB further notes: "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 cross-border transactions, and the combating of illicit financial flows.

"This shift will align South Africa with international best practice, while also managing various risks using a risk-based approach and existing macroprudential tools."

The proposed regulations address gaps in the current framework, including in relation to cross-border crypto asset transactions, and will complement existing regulation by the FSCA and FIC.

They introduce new and amended definitions; transitional arrangements; administrative sanctions on regulated entities; increased penalties; the removal of any ambiguity regarding the declaration of foreign assets; and the removal of restrictions on dealing in securities belonging to non-residents. The amendments also address uncertainty regarding local businesses controlled from outside of South Africa.

National Treasury states that the promulgation of the final Capital Flow Management Regulations of 2026, and their replacement of the Exchange Control Regulations of 1961, will enable the implementation of the capital flow management framework as announced earlier by the Minister of Finance.

The relevant manuals will be updated, and various exemptions will be considered and granted to enable the transition to a more risk-averse and restrictive approach.

That being said, certain measures already successfully implemented in other countries, may be adopted to mitigate financial harm to South Africa's economy, considering there are around 5,8 million South Africans engaging in cryptocurrency-related activities both locally and offshore.

With the deadline for public comment being 18 May 2026, South Africans are reminded that the days of thinking your crypto activity is hidden, is long gone. Between National Treasury, SARB, SARS, and the over-120 jurisdictions with whom South Africa have information sharing agreements, the end goal is full financial transparency.

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