



Cryptocurrency and Blockchain Regulation

South Africa



2023 Edition

Blockchain and Digital
Transformation in Africa.



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Note: The information provided here implicitly highlights various regulations and laws in the country that can potentially impact digital asset service providers operating in the country's crypto and blockchain landscape. While these laws do not explicitly address cryptocurrencies, they provide a foundation upon which regulations can be modified or adapted to accommodate the evolving crypto and blockchain landscape in the nation.

Overview

South Africa lacks cryptocurrency and blockchain regulations. As defined in several statutes and legislation, such as the South African Reserve Bank Act, National Payment System Act, and Financial Market Act, the regulatory system primarily focused on traditional financial and banking sectors. However, the South African government and regulatory bodies are actively considering cryptocurrency regulation for consumer protection, anti-money laundering, and other reasons. Without formal cryptocurrency regulations, using and trading cryptocurrencies is allowed, although people and businesses are advised to follow tax laws.



South African Reserve Bank Act (SARB)

The Bank's major goals are to foster balanced economic growth and monetary stability. It controls money supply and credit availability. It also safeguards currency value for long-term growth. The Bank can accept deposits, issue and destroy banknotes, oversee payment systems, and trade in financial instruments, precious metals, and foreign currencies. Money movement across borders is regulated by the Exchange Control Regulations[1].

[1] South African Reserve Bank, "Monetary Policy," [www.resbank.co.za](https://www.resbank.co.za/en/home/what-we-do/monetary-policy), 2021, <https://www.resbank.co.za/en/home/what-we-do/monetary-policy>.



National Payment System Act

The National Payment System (NPS) is a framework of procedures, regulations, institutions, and contracts that enables the transfer of funds between financial institutions. This includes all systems, mechanisms, procedures, and laws involved in making a payment from one user to another up until the ultimate settlement in the central bank's books[2]. The NPS Act defines a payment system as any arrangement that facilitates payments or money circulation. There are two categories of payment systems: high-value payment systems and retail payment systems. The settlement service is supported by a legal framework comprised of regulations, statutes, and contracts. The SARB can designate settlement systems and non-bank clearing system participants, but only banks can be settlement system participants. Clearing system participants and system administrators require authorization from the PSMB in order to participate in the NPS, whereas third-party payment providers must register with the PSMB via banks.

[2] South African Reserve Bank, "National Treasury," [www.treasury.gov.za](https://www.treasury.gov.za/publications/other/NPS%20Act%20Review%20Policy%20Paper%20-%20final%20version%20-%202013%20September%202018.pdf), 2018, <https://www.treasury.gov.za/publications/other/NPS%20Act%20Review%20Policy%20Paper%20-%20final%20version%20-%202013%20September%202018.pdf>.



Bank Act

The Banks Act 94 of 1990 allows banks to solicit or advertise public deposits. An individual or institution deposits money under an arrangement to repay an identical or partial amount upon demand, on a defined or indeterminate date, or under agreed-upon circumstances. South African banks must register with the PA. Unlicensed activity is illegal. The Banks Act, Financial Sector Regulation Act 9 of 2017, Mutual Banks Act 124 of 1993, Co-operative Banks Act 40 of 2007, and Co-operatives Act 14 of 2005 regulate South African banking[3]. Prudential and joint standards, bank, cooperative, and mutual bank regulations, directives, circulars, and guidance notes are secondary legislation. Banks, stokvels, and savings and credit groups with a common bond are exempt from the Banks Act under certain conditions.

[3] South African Government, "Banks Act (Previously Known as Deposit-Taking Institutions Act) 94 of 1990 | South African Government," [www.gov.za](https://www.gov.za/documents/deposit-taking-institutions-act-6-mar-2015-1030), 1990, <https://www.gov.za/documents/deposit-taking-institutions-act-6-mar-2015-1030>.



Financial Market Act

The South Africa's Financial Markets Act promotes fairness, efficiency, and openness. The finance minister and FSCA oversee markets, promote competitiveness, and reduce systemic risk. The Act includes international supervisory requirements but enables securities services innovation and reasonable constraints. "Traditional securities" now include Authority-prescribed instruments. The Minister can regulate unlisted securities, and the FSCA can grant foreign players conditional exemptions. As long as their laws are "similar" to South Africa's, the Act considers their implications. It licenses and regulates exchanges, clearing houses, trade repositories, securities trading and custody, and insider trading[4].

[4] South African Government, "Government Gazette REPUBLIC of SOUTH AFRICA," 2013, https://www.gov.za/sites/default/files/gcis_document/201409/36121a.pdf.



Collective Investment Schemes Control Act

The Collective Investment Schemes Control Act 45 of 2002 aims to regulate the formation and management of collective investment schemes, as well as to alter or repeal specific legislation and resolve incidental issues. The Act applies to hedge funds and permits individuals to invest money or assets in a portfolio, which is defined as a collection of assets that includes cash. The participating interest extends beyond a security[5].

[5] South African Government, "Collective Investment Schemes Control Act," 2002, https://www.gov.za/sites/default/files/gcis_document/201409/a45-020.pdf.



FAIS Act

The 2002 Financial Advisory and Intermediary Services Act (FAIS) governs financial service providers (FSPs') consumer contacts. It mandates FSP licensing, a code of conduct, and fit and appropriate regulations. The act protects consumers, regulates selling and advice-giving, ensures proper information disclosure, and regulates financial services. FAIS mandates FSP registration, representative credentials, compliance and record-keeping standards, enforcement and complaint mechanisms, and the Financial Advisory and Intermediary Services Ombud[6]. Disclosure, guidance, transparency, cost information, yearly reports, and remedies are consumer rights. They must also produce identification and sign contracts carefully.

[6] South African Government, "Financial Advisory and Intermediary Services Act 37 of 2002 | South African Government," [www.gov.za](https://www.gov.za/documents/financial-advisory-and-intermediary-services-act), 2002, <https://www.gov.za/documents/financial-advisory-and-intermediary-services-act>.



FIC Act

South Africa's National Financial Intelligence Centre (FIC) collects, analyzes, and shares financial intelligence. The 2001 FIC Act created it to fight money laundering, terrorism financing, and crime proceeds. FIC reports to Parliament and Finance Minister.

The FIC's duties include identifying illicit proceeds, enforcing the FIC Act, sharing information with relevant authorities and international agencies, facilitating regulatory body supervision, formulating money laundering and terrorism financing policy, advising the Minister of Finance, and upholding international obligations on anti-money laundering and terrorism financing.

The FIC Act mandates client identification, record-keeping, reporting, and internal compliance. The FIC gathers intelligence for law enforcement and tax agencies from suspicious transactions.

The 2010 FIC Act amendments required accountable and reporting institutions to register with the FIC, gave the Entity and supervisory bodies inspection and penalty authority, established appeals process and board, and aligned South Africa with Financial Action Task Force anti-money laundering and terrorism financing standards[7].

[7] National Government of South Africa, "Financial Intelligence Centre (FIC) - Overview," nationalgovernment.co.za, 2001, <https://nationalgovernment.co.za/units/view/227/financial-intelligence-centre-fic#:~:text=The%20FIC>.



Value-Added Tax Act

The VAT264 form was modernized, simplified, and aligned with VAT revisions in the Taxation Laws Amendment Act, 2022. VAT Connect also has a December 2022 bulletin. The Government Gazette has established a VAT Domestic Reverse Charge (DRC) on expensive metal since July 1, 2022. Value-Added Tax (VAT) is an indirect tax on economic consumption. Vendors charge VAT on taxable supplies and deduct VAT paid on them. VAT is calculated during production, distribution, and imports[8].

[8] SARS, "Value Added Tax," South African Revenue Service, 2023, <https://www.sars.gov.za/types-of-tax/value-added-tax/>.



Income Tax Act

The legislation streamlines income and donation taxation. It collects individual taxes, allows employers to deduct certain tax liabilities from employee paychecks, establishes provisional tax payments, and allocates tax payments to the National Revenue Fund. It also handles related issues[9].

[9] South African Revenue Service, "Income Tax and the Individual," 2006, <https://www.sars.gov.za/wp-content/uploads/Ops/Guides/LAPD-IT-G01-Arc-2018-01b-Guide-on-Income-Tax-and-the-Individual-Issue-3-Archived-2018.pdf>.



Securities Transfer Tax (STT) Act

The Securities Transfer Tax Act taxes securities transfers. It covers company shares, depositories, and member interests. Tax is 0.25%. Listed securities purchased or transferred through a member or participant may be taxed, with the recipient possibly liable. The issuing corporation may recoup taxes from recipients of unlisted securities. SARS e-STT reporting, and payment must be done on time. Noncompliance may incur interest and fines[10].

[10] South African Revenue Service, "Securities Transfer Tax | South African Revenue Service," SARS, February 4, 2021, <https://www.sars.gov.za/types-of-tax/securities-transfer-tax/>.



Companies Act

South African enterprises are affected by the Companies Act 2008, which took effect on 1 May 2011 after delays. It revamps company regulations. The Memorandum of Incorporation (MOI) replaces the "Memorandum and Articles of Association" and establishes relationships between companies, shareholders, and directors. The new Act compelled pre-existing corporations to update their Memorandum. CCs must become "Pty Ltd" companies. The Companies Act now trumps shareholder agreements. Without changing the Memorandum, shareholders agreements cannot overrule the Memorandum and Companies Act. Company law promotes Bill of Rights compliance and economic growth in South Africa through entrepreneurship, innovation, investment, and responsible management. Companies need dependable and effective regulation[11].

[11] Companies and Intellectual Property Commission, "Companies Amendment Regulations 2023 – the CIPC Hereby Announces the Promulgation of Amendments to the Companies Act 71 of 2008, as Amended. | CIPC," CIPC, 2023, <https://www.cipc.co.za/?p=19396>.

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