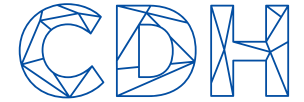


# Technology & Communications

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Implications for crypto asset service providers from High Court ruling on crypto and exchange control



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## Implications for crypto asset service providers from High Court ruling on crypto and exchange control

In the case of *Standard Bank of South Africa v South African Reserve Bank and Others* (047643/2023) [2025] ZAGPPHC 481 (delivered 15 May 2025), the Gauteng High Court ruled that South Africa's current Exchange Control Regulations do not apply to cryptocurrency transactions. Although the ruling has been suspended pending an appeal, the judgment carries significant implications for crypto asset service providers, crypto exchanges, fintech, and institutional players operating in the crypto asset space.

The case underscores South Africa's cautious yet progressive stance on crypto assets and the urgent need for legal frameworks that ensure both consumer protection and financial stability.

### Background

The dispute arose after the South African Reserve Bank (SARB) declared funds held in Standard Bank and Nedbank accounts, both belonging to Leo Cash and Carry (Pty) Ltd (LCC), forfeited to the state under Regulation 22B of the Exchange Control Regulations. LCC was among the companies that were under investigation for foreign cryptocurrency exchanges by the SARB's Financial Surveillance Department.

The SARB alleged that LCC's crypto dealings contravened:

- Regulation 3(1)(c) – which prohibits payments to non-residents unless an exemption or approval has been given by the Treasury, and
- Regulation 10(1)(c) – which prohibits the export of capital unless approved by the Treasury.

Essentially, the SARB alleged that LCC had violated the Exchange Control Regulations by acquiring bitcoins on cryptocurrency exchanges and transferring them to foreign cryptocurrency exchanges.

Standard Bank challenged the forfeiture, and the court ruled in its favour on the following key issues:

- The court examined whether cryptocurrency falls within the scope of "currency" under Regulation 3(1)(c). It found that cryptocurrency is not considered "money" or "capital" within the meaning of the Exchange Control Regulations.
- Relying on a precedent from the *Oilwell (Pty) Ltd v Protec International Ltd & others* [2011] JOL 27137 (SCA) case, the court said that Exchange Control Regulations must be interpreted restrictively, especially when legislation creates criminal and administrative penalties. On this interpretation, cryptocurrency falls outside the ambit of capital under Regulation 10(1)(c). Standard Bank also argued that the same legislative process used to include intellectual property under the definition of capital should have been followed for cryptocurrency.
- The court further noted that if cryptocurrency were money, "then crypto wallets would be attached in terms of Regulation 22B".
- The court acknowledged that crypto assets operate in a legal grey zone and that legislative reform is overdue. In the same way that intellectual property rights have a niche carved out in Exchange Control Regulations, cryptocurrencies need some legislative attention.

# Implications for crypto asset service providers from High Court ruling on crypto and exchange control

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- The court further noted that the SARB has been aware of cryptocurrencies for over 15 years and cited the SARB's own 2020 position paper highlighting cryptocurrency risks, including: lack of a proper regulatory framework; no protection to compensate for losses; cryptocurrencies being less susceptible to seizure by law enforce; and that exchange regulations do not govern the transfer of cryptocurrencies in and out of South Africa.

As a result, the court set aside the forfeiture of R16,400,000 in the Standard Bank Money Market account. However, it upheld the forfeiture of R10,000,000 in the Nedbank account, applying the principle of *commixtio*, where once the funds were deposited, they became the property of Nedbank, and Standard Bank lacked legal standing to challenge the forfeiture.

## Implications for the crypto sector

Although some respondents have applied for leave to appeal the decision, challenging both the conclusion that cryptocurrencies fall outside Exchange Control Regulations and the court's interpretive approach, the ruling may have some immediate implications:

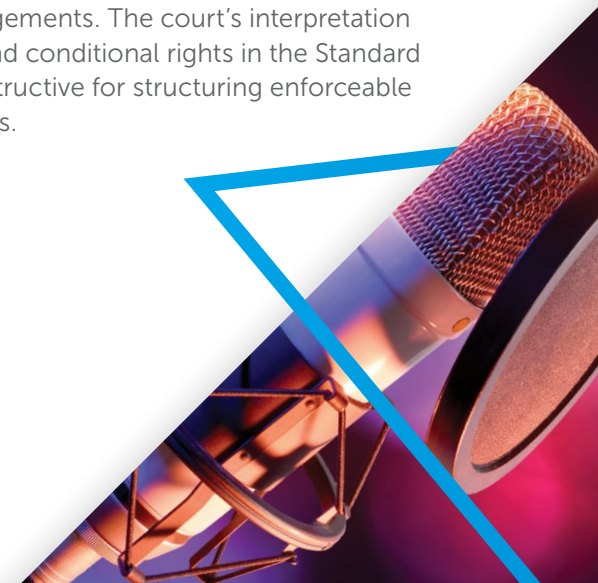
- The ruling constrains the SARB's ability to use the existing Exchange Control Regulations to regulate cryptocurrency flows across borders.
- The inability to regulate cryptocurrency under existing frameworks may create new avenues for capital outflows that bypass traditional controls.
- Crypto asset service providers face reduced immediate regulatory risk, but the lack of legal clarity increases long-term exposure.

- Banks and other financial institutions may need to reconsider their approach to customers involved in cryptocurrency trading, as the traditional exchange control framework does not provide clear guidance.
- The judgment underscores the urgent need for a bespoke regulatory framework for digital assets to address the current legal vacuum.

## Key considerations

Pending the outcome of the appeal or legislative reform, crypto asset service providers should exercise caution and adopt a proactive approach. They must:

- Continue to comply with existing legal frameworks such as the Financial Intelligence Centre Act 38 of 2001 and the Financial Advisory and Intermediary Services Act 37 of 2002, which still govern crypto-related activities.
- Maintain robust compliance protocols, including know your client, anti-money laundering, and transaction monitoring, especially for cross-border crypto flows.
- Reassess how crypto assets are pledged or ceded in financing arrangements. The court's interpretation of ownership and conditional rights in the Standard Bank case is instructive for structuring enforceable security interests.





# Implications for crypto asset service providers from High Court ruling on crypto and exchange control

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## Conclusion

The judgment provides temporary relief from exchange control enforcement for crypto asset service providers. However, the recognition of a regulatory gap creates both challenges and opportunities for South Africa's financial system. It highlights the urgent need for a comprehensive framework specifically designed for cryptocurrencies in South Africa. As the legal landscape continues to evolve, crypto market participants must remain agile, compliant and well-advised.

**Tayyibah Suliman, Sadia Rizvi and Pebetsi Letsoalo**



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**Simone Dickson** ranked by Chambers Global 2025 in  
**Band 3: IT & Telecoms.**

**Shem Otanga** ranked by Chambers Global 2024–2025 in  
**Band 2: Intellectual Property.**

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