

Tax & Exchange Control

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South Africa

Unpacking South Africa's change from exchange control to capital flow



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Unpacking South Africa's change from exchange control to capital flow

65 years. That is how long South Africa has had exchange control. If you evaluate its formation and craft, it becomes clear why reform is inevitable.

Our regulations were built for a different economy; one where capital was tightly controlled, labour was relatively inexpensive and cross-border activity was subject to scrutiny and assessment by the South African Reserve Bank (SARB) and Financial Intelligence Centre. At the heart of this system is a crippling theme of no movement of capital without approval. This is evident throughout the Exchange Control Regulations, 1961 (Current Regulations).

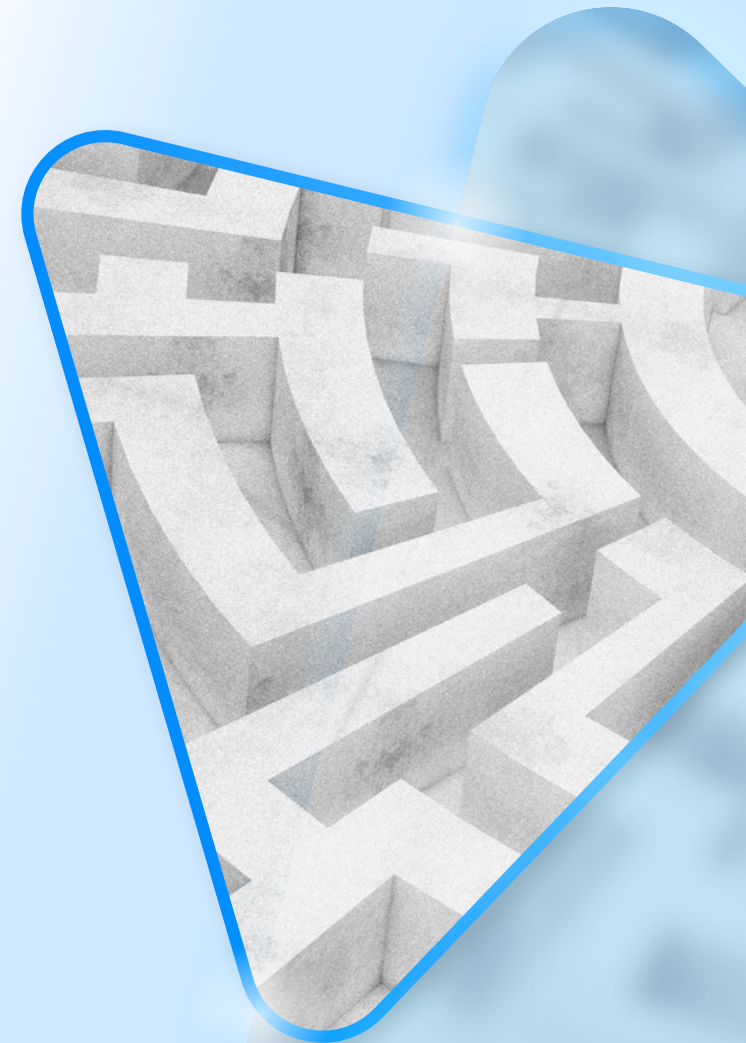
To explain, a South African resident company (or individual) that wishes to invest offshore must first obtain approval from an authorised dealer before they may transfer funds. The transaction must be justified and fall within the relevant approvals or allowances. These serve the mandates of the Currency and Exchanges Act 9 of 1933 (Act) and the Current Regulations, most recently amended in 2012.

Luckily, after several World Cups, a global pandemic and more than a few rounds of load-shedding, the legislature has finally tabled draft regulations to the Act which seek to repeal the Current Regulations through the proposed Capital Flow Management Regulations, 2026 (Proposed Regulations).

From control to management

When assessing the Proposed Regulations, one can easily identify a shift in regulatory philosophy regarding the movement of financial capital beyond our borders. Our current framework mimics a "*blanket prohibition*", where transactions are restricted unless specifically permitted. Instead, the Proposed Regulations introduce a more nuanced, risk-based approach supported by the concept of a "*determined threshold*".

By way of example, consider Regulation 12 of the Proposed Regulations, which provides that goods may not be exported above the determined threshold where no corresponding payment is received in the Republic. By contrast, the Current Regulations (Regulation 10(1)(a)) adopt a more rigid approach, setting a fixed monetary limit (R20) above which exports are prohibited (unless permission is granted, of course).



Importantly, the threshold itself is not fixed within the draft regulations. As per Regulation 31, these thresholds will be set by the Minister of Finance (Minister), and may be amended at any time. There is a clear intention from the legislature to move from outdated, arbitrary limits and toward something more practical. But it's not without issues. Leaving the thresholds to be determined (and changed) by the Minister introduces a level of uncertainty that businesses will have to live with. You do not quite know where the line is until it is drawn, and it can move. While the shift is directionally sensible, it comes at the cost of predictability, which is something the current, more rigid system offered.

Introduction of municipal-specific controls

For the first time, a targeted regulatory framework for municipalities and municipal entities has been introduced to the exchange control system. Presently, while the Current Regulations briefly require National Treasury's consent for offshore borrowing, the new regime introduces a far more integrated and structured process.

The Proposed Regulations introduce a formal role for National Treasury in the process. A municipality may only apply for authorisation to raise a loan offshore if it includes written comments from National Treasury, and authorised dealers are required to take those comments into account before making a decision. This effectively embeds National Treasury oversight into the approval process, ensuring that municipal borrowing aligns with broader fiscal and macroeconomic policy considerations.

This is particularly relevant in light of well-documented failures in municipal financial management, such as VBS Mutual Bank, and persistent governance issues in the eThekweni and City of Johannesburg municipalities.

Administrative relief

Regulation 24 of the Current Regulations provides a relatively structured voluntary disclosure process whereby a person may "*regularise*" a contravention by making a full disclosure, typically before any investigation has commenced. This position has been slightly reconsidered by the Proposed Regulations, per Regulation 30.



If one looks closely, the proposed Regulation 30 is not as radical a departure from the current Regulation 24. Both provisions follow the same basic idea that if you have contravened a rule, you can come forward, make a full disclosure and ask the regulator to regularise your position.

Where the real difference comes in, and where the Proposed Regulations are noticeably stricter, is what happens after the fact. If it later emerges that your disclosure was incomplete or inaccurate in any material respect, the approval can be withdrawn. The regulator is then entitled to rely on the very information you disclosed in pursuing further action against you. Regulation 24 expressly prohibits the authorised dealer or SARB from using such information against you. This introduces a much sharper risk element to the process.

Practically speaking, this will likely make businesses more cautious about when and how they approach disclosure. There has to be a greater emphasis on internal investigations before any approach is made to the regulator.

Voluntary disclosure still remains useful, but it is no longer low risk. It becomes a more strategic call where you are not just asking *"Should we disclose?"*, but *"Are we confident enough in what we are disclosing to live with the consequences if it is later challenged?"*

Crypto assets

One of the more meaningful (and overdue) developments is the formal treatment of crypto assets within the exchange control framework. Crypto has sat in an awkward space as everyone knew it could be used to move value across borders. The Proposed Regulations deal with that directly by defining crypto assets and bringing them within scope.

This development also lines up with what we're seeing more broadly from a regulatory perspective in South Africa, such as General Notice 1350 of 2022 issued by the Financial Sector Conduct Authority, which declared crypto assets as *"financial products"*.

In the context of exchange control, the inclusion of crypto does not create a separate or lighter regime for crypto. Instead, it applies the same core exchange control rules to a new asset class. Crypto is not being liberalised; it is being absorbed into the existing system.

Unfortunately, crypto can no longer be viewed as a workaround to traditional exchange control. If anything, its inclusion signals that the regulator is catching up to how capital actually moves today and closing off one of the more obvious gaps in the system.

Conclusion

If there is one takeaway from the Proposed Regulations, it is that we are currently living in an evolving system, which is possibly becoming a bit stricter where it matters. The shift to thresholds, broader definitions, and plugging obvious gaps like crypto point to a legislature that is trying to keep up with the financial times.

For corporate South Africa, this means less box-ticking and more thinking. There is a bit more flexibility, sure, but also a lot less certainty. That said, it is still early days. These are draft regulations and are open for public comment until 10 June 2026.

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Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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