# Technology & Communications

1 July 2026

## South Africa

Bitcoin is money and capital: Johannesburg High Court deepens the divide on crypto and exchange control

For more insight into our expertise and services

SOUTH AFRICA

# Bitcoin is money and capital: Johannesburg High Court deepens the divide on crypto and exchange control

On 1 June 2026, the Johannesburg High Court ruled in *Mangundhla and Another v South African Reserve Bank and Others* that Bitcoin is both "*money*" and "*capital*" under South Africa's exchange control laws. The court upheld forfeiture orders of nearly R6 million against two individuals who had transferred large amounts of Bitcoin (approximately 1 680 Bitcoin, worth around R182 million) to cryptocurrency exchanges outside South Africa without the required treasury approval. The South African Reserve Bank (SARB) treated this as an unlawful export of capital and issued a forfeiture order. The applicants argued that exchange control rules simply do not apply to cryptocurrency. The court disagreed.

This judgment stands in direct conflict with an earlier judgment in *Standard Bank of South Africa v South African Reserve Bank and Others* [2025] ZAGPPHC 481, in which the same court held that the regulations do not apply to cryptocurrency at all. Therefore, diametrically opposed conclusions on the same legal question create significant uncertainty for the crypto asset industry.

The uncertainty created by these conflicting judgments comes at the same time as National Treasury's draft Capital Flow Management Regulations, 2026 (Capital Flow Management Regulations), which were published for public comment on 17 April 2026. and are intended to replace the current Exchange Control Regulations. The Capital Flow Management Regulations expressly bring crypto assets within South Africa's capital flow regime for cross-border transactions. Regulators intend to take a more risk-based approach focused on monitoring and oversight.

SOUTH AFRICA

## The conflicting decisions

### The Standard Bank decision

In Standard Bank, Motha J held that cryptocurrency does not constitute *"money"* or *"capital"* under the Exchange Control Regulations, 1961 Regulations. The court placed emphasis on the intangible, decentralised, and technological character of crypto assets, and preferred a restrictive interpretation of the Regulations in light of the punitive nature of the SARB's forfeiture powers.

Motha J rejected the construction that cryptocurrency could fall within the definition of *"money"* (which includes *"foreign currency or any bill of exchange or other negotiable instrument"*) as *"strained and impractical"*. He pointed to practical challenges: whether one can deposit cryptocurrency, and whether one must declare it when entering or leaving the Republic. He also noted that cryptocurrencies *"are nothing more than codes on a digital ledger"* that *"exist anywhere and everywhere and have a global nature"*.

He endorsed the submission that if the scope of *"capital"* was to be extended to include new asset classes such as cryptocurrency, this had to be achieved through legislative amendment. Motha J also relied on the doctrine of separation of powers, warning that courts must not embark on an interpretive exercise which would in effect re-write the legislation under consideration.

The Standard Bank ruling was suspended pending appeal. For further detail on the decision, see our earlier alert on Implications for crypto asset service providers from High Court ruling on crypto and exchange control, here.

### The *Mangundhla* decision

Wilson J in *Mangundhla* expressly departed from the *Standard Bank* decision, finding it to be *"clearly wrong"*. He stated that the focus on the technological features of cryptocurrency overlooks the real-world consequences of its use.

He adopted a purposive interpretive approach. While acknowledging that the effect of a regulation must be determined by the ordinary grammatical meaning of the text, he emphasised that this must be read in context and with regard to the purpose of the provision. Wilson J identified the threefold purpose of the Regulations: to prevent the loss of foreign currency resources, to ensure effective control of the movement of financial and real assets, and to avoid interference with the efficient operation of the financial system. Wilson J held that, on any sensible interpretation, cryptocurrency is a *"financial capital asset"* whose unregulated export would frustrate each of the above purposes.

Whilst the court accepted that punitive statutes should generally be interpreted restrictively, Wilson J held that the overriding function of the court is to give the statute the appropriate meaning in light of the words it uses, the context in which they appear and the purpose for which the legislation is enacted. He emphasised that if cryptocurrency were excluded from the scope of the Regulations, South Africa's exchange controls would be rendered *"virtually worthless"*, as anyone wanting to move capital offshore could do so by simply converting it to cryptocurrency.

On the question of *"capital"*, he found that Bitcoin, which can be exchanged for fiat currency, held as a store of value, and used as a medium of exchange, plainly satisfies this definition. Wilson J rejected the suggestion that Bitcoin's intangible and technological features placed it beyond any sensible definition of capital, describing such submissions as involving *"a degree of magical thinking which misconstrues the nature of money, underplays the destructive effects of unregulated capital flows, and ignores the fundamental purpose of the Exchange Control Regulations"*.

Wilson J held that Bitcoin is clearly money. He reasoned that Bitcoin's qualities are *"plainly sufficient to bring it within the definition of a" negotiable instrument"* because it is *"no more than a right to be credited a specified sum of Bitcoin, which is itself exchangeable for fiat currency and other things of value"*. Even setting aside the negotiable instrument analysis, Wilson J held that Bitcoin's general characteristics bring it well within *"any sensible conception of money"*.

## Implications for the crypto sector

The Mangundhla judgment has significant implications for any person or entity that acquires cryptocurrency in South Africa and transfers it to a platform or wallet hosted outside South Africa's borders. If Wilson J's reasoning prevails, such transfers constitute the export of capital requiring National Treasury permission, and the cryptocurrency and its fiat currency proceeds are subject to forfeiture.

The judgment also expands the reach of the forfeiture provisions by holding that Bitcoin itself, not merely the fiat currency used to purchase it, constitutes *"money"* that may be forfeited.

- The practical challenges confronting market participants in this sector are considerable. The conflicting judgments create a situation in which individuals and businesses transacting in cryptocurrency cannot determine with certainty whether the transfer of Bitcoin to a foreign exchange constitutes the export of capital requiring National Treasury permission, or whether it falls outside the Regulations altogether.
- There are unresolved practical questions: can cryptocurrency be *"deposited"* in the traditional sense, and must it be declared when entering or leaving the Republic? The decentralised and borderless nature of blockchain technology, with wallets capable of being *"hot"* (connected to the internet) or *"cold"* (stored on USB sticks or similar devices), makes it inherently difficult to determine when cryptocurrency is located *"within"* or *"outside"* the Republic, a question that is fundamental to the application of the exchange control regime.

## Key considerations for businesses

There is currently no definitive answer as to whether exchange control obligations apply to cryptocurrency transactions, and businesses cannot rely on either judgment as settled law until the Supreme Court of Appeal (SCA) rules on the matter or the Exchange Control Regulations issued under the Currency and Exchanges Act 9 of 1933 are amended.

The risk of a forfeiture order should inform how businesses structure and document crypto asset transactions in the interim.

Crypto Asset Service Providers should carefully consider the purpose for which crypto assets are acquired and transferred when assessing their exchange control exposure. Businesses should review whether their existing compliance and transaction documentation frameworks adequately account for the risk of regulatory scrutiny under the current uncertain legal environment.

Until the conflict between these two decisions is authoritatively resolved, whether by a full bench, the SCA, or legislative intervention, the prudent course for market participants is to treat cryptocurrency transfers to foreign platforms as potentially subject to exchange control regulation. The SARB has consistently taken the position that such transfers require its approval, and the Mangundhla judgment now provides judicial support for that stance. Legislative clarity, however, remains the most desirable resolution, a point on which, notably, both Motha J and Wilson J appear to agree, albeit for very different reasons. Some clarity is likely to arise once the Capital Flow Management Regulations have been finalised and published.

**Tayyibah Suliman, Sadia Rizvi, Izabella Balkovic and Shanley Webb**

# OUR TEAM

For more information about our Technology & Communications sector and services in South Africa and Kenya, please contact:


**Tayyibah Suliman**
Sector Head:
Technology & Communications
Director: Corporate & Commercial
T +27 (0)11 562 1667
E tayyibah.suliman@cdhlegal.com

**Patrick Kauta**
Managing Partner | Namibia
T +264 833 730 100
M +264 811 447 777
E patrick.kauta@cdhlegal.com

**Shem Otanga**
Partner | Kenya
T +254 731 086 649
+254 204 409 918
+254 710 560 114
E shem.otanga@cdhlegal.com

**Njeri Wagacha**
Partner | Kenya
T +254 731 086 649
+254 204 409 918
+254 710 560 114
E njeri.wagacha@cdhlegal.com

**Jerome Brink**
Director:
Tax & Exchange Control
T +27 (0)11 562 1484
E jerome.brink@cdhlegal.com

**Simone Dickson**
Consultant
T +27 (0)11 562 1752
E simone.dickson@cdhlegal.com

**Emma Kingdom**
Consultant
Corporate & Commercial
T +27 (0)21 481 6330
E emma.kingdom@cdhlegal.com

**Sadia Rizvi**
Senior Associate:
Corporate & Commercial
T +27 (0)11 562 1727
E sadia.rizvi@cdhlegal.com

**Izabella Balkovic**
Associate:
Corporate & Commercial
T +27 (0)11 562 1199
E izabella.balkovic@cdhlegal.com

**BBBEE STATUS:** LEVEL ONE CONTRIBUTOR
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.

**PLEASE NOTE**
This information is published for general information purposes and is not intended to constitute legal advice. Specialist legal advice should always be sought in relation to any particular situation. Cliffe Dekker Hofmeyr will accept no responsibility for any actions taken or not taken on the basis of this publication.


**JOHANNESBURG**
1 Protea Place, Sandton, Johannesburg, 2196. Private Bag X40, Benmore, 2010, South Africa.
Dx 154 Randburg and Dx 42 Johannesburg.
T +27 (0)11 562 1000 F +27 (0)11 562 1111 E jhb@cdhlegal.com

**CAPE TOWN**
11 Buitengracht Street, Cape Town, 8001. PO Box 695, Cape Town, 8000, South Africa. Dx 5 Cape Town.
T +27 (0)21 481 6300 F +27 (0)21 481 6388 E ctn@cdhlegal.com

**NAIROBI**
Merchant Square, 3rd floor, Block D, Riverside Drive, Nairobi, Kenya. P.O. Box 22602-00505, Nairobi, Kenya.
T +254 731 086 649 | +254 204 409 918 | +254 710 560 114
E cdhkenya@cdhlegal.com

**ONGWEDIVA**
Shop No. 94, Oshana Mall, Ongwediva, Namibia
T +264 (0) 81 287 8330 E cdhnamibia@cdhlegal.com

**STELLENBOSCH**
14 Louw Street, Stellenbosch Central, Stellenbosch, 7600.
T +27 (0)21 481 6400 E cdhstellenbosch@cdhlegal.com

**WINDHOEK**
2nd Floor, 4@Steps - East Tower, Hilltop Estate, Kleine Kuppe, Windhoek.
PO Box 97115, Maerua Mall, Windhoek, Namibia, 10020
T +264 833 730 100 E cdhnamibia@cdhlegal.com