



Cryptocurrency and Exchange Control: One Division, Two Answers

Introduction

Two judges of the same division of the High Court have now given opposite answers to the same question: does South Africa's exchange control regime reach crypto assets? For a resident who has moved Bitcoin to an offshore wallet or exchange, and for the adviser who told that client the 1961 Regulations do not reach crypto, the answer determines whether the transfer was lawful, whether the money and assets behind it can be blocked and forfeited to the State, and whether a criminal offence has been committed. The Supreme Court of Appeal will settle the point, but not soon, and in the meantime National Treasury ('**Treasury**') is rewriting the regime from scratch.

The Exchange Control Regulations, 1961 ('**the Regulations**'), promulgated by Government Notice R.1111 in Government Gazette Extraordinary 123 of 1 December 1961 and made in terms of section 9 of the Currency and Exchanges Act, No. 9 of 1933, remain in force and have not been amended since June 2012. Their purpose, as the Supreme Court of Appeal described it in *South African Reserve Bank v Leathern NO and Others* [2021] ZASCA 102; 2021 (5) SA 543 (SCA) ('**Leathern**'), is at least three-fold: to prevent loss of foreign currency resources through the transfer abroad of financial capital assets held in South Africa, to ensure effective control of the movement of financial and real assets into and out of South Africa, and to avoid interference with the efficient operation of the commercial, industrial and financial system of the country.

The relevant prohibitions for this article are regulation 3(1) which applies subject to any exemption granted by the Treasury or a person authorised by the Treasury, and unless permission has been granted by the Treasury or such a person and regulation 10(1) which applies except with the permission of the Treasury, in each case in accordance with such conditions as may

be imposed. Regulation 3(1)(a) prohibits taking or sending out of the Republic any bank notes, gold, securities or foreign currency, or transferring any securities from the Republic elsewhere. Regulation 3(1)(c) prohibits making any payment to, in favour of, or on behalf of a person resident outside the Republic, or placing any sum to the credit of such a person. Regulation 10(1)(c) prohibits entering into any transaction whereby '*capital*' or any right to capital is directly or indirectly exported from the Republic. '*Capital*' is not defined, save that regulation 10(4) provides that, for the purposes of regulation 10(1)(c), it includes any intellectual property right, whether registered or unregistered, and that the cession of, the creation of security over, or the assignment or transfer of such a right to or in favour of a non-resident is an export from the Republic. '*Money*' is defined to include foreign currency or any bill of exchange or other negotiable instrument, and '*foreign currency*' in turn includes any instrument for the payment of currency payable in a currency unit which is not legal tender in the Republic. Contravention is a criminal offence carrying a fine of up to R250,000, or the value of the currency, securities, gold or goods involved if that is greater, or imprisonment of up to five years, or both. Money and goods may be attached, and accounts blocked, in terms of regulation 22A, declared forfeited to the State in terms of regulation 22B and any shortfall recovered in terms of regulation 22C, subject to review by a competent court in terms of regulation 22D.

Whether the exchange control regime reaches crypto assets is now the subject of two conflicting judgments of the Gauteng Division of the High Court. In *Standard Bank of South Africa v South African Reserve Bank and Others* [2025] ZAGPPHC 481; 2025 (5) SA 289 (GP) ('**Standard Bank**'), delivered in Pretoria on 15 May 2025, Motha J held that crypto assets are neither '*money*' for the purposes of regulation 3(1)(c) nor '*capital*' for the purposes of regulation 10(1)(c). In

Mangundhla and Another v South African Reserve Bank and Others (case no 2022/029979) [2026] ZAGPJHC 579 ('*Mangundhla*'), delivered in Johannesburg on 1 June 2026, Wilson J held that Bitcoin is both, and that *Standard Bank* is clearly wrong. This article sets out the reasoning in each judgment and then considers where the conflict leaves residents who hold or transfer crypto assets while the appeal is pending and a replacement regime is in draft.

The view in *Standard Bank*

Leo Cash and Carry (Pty) Ltd ('*LCC*'), a Rustenburg wholesaler, used rand in its local bank accounts to purchase Bitcoin through an account with the South African exchange VALR and credited the Bitcoin to wallets on foreign exchanges, sending c. 4,406 Bitcoin, worth c. R556 million, to Huobi Global in the 2019 calendar year alone, being some 76% of all the Bitcoin it ever sent to that exchange. The Financial Surveillance Department ('*FinSurv*') of the South African Reserve Bank ('*SARB*') instructed on 28 February 2020 that a hold be placed on *LCC*'s bank accounts, and in February 2023 the Deputy Governor of *SARB*, acting under powers delegated by the Treasury, declared forfeited to the State, amongst other amounts, in terms of regulation 22B, c. R16.4 million standing to *LCC*'s credit in a money market call account that had been pledged and ceded to The Standard Bank of South Africa Limited ('*SBSA*') as security for an overdraft facility. *SBSA* sought a review of that decision in terms of regulation 22D.

FinSurv had been investigating cryptocurrency transactions by a range of entities, including *LCC*, since July 2019 on the basis that rand paid into *LCC*'s wallet at the local exchange lost its character as rand, and that the Bitcoin credited to the foreign exchange enabled the holder to withdraw an equivalent value in foreign currency in that jurisdiction. On this reasoning the value had left the Republic, potentially engaging two prohibitions. The first is regulation 3(1)(c), on the basis that cryptocurrency falls within '*money*' as defined in the Regulations, which includes '*foreign currency*', and that definition in turn extends to any '*instrument for the payment of currency payable in a currency unit which is not legal tender in the Republic*'. The second is regulation 10(1)(c), on the basis that cryptocurrency constitutes '*capital*', that term carrying its financial sense of monetary resources made available to a person in a foreign jurisdiction, so that the crediting of the Bitcoin to the foreign exchange was a transaction whereby capital was indirectly exported from the Republic.

Motha J rejected both contentions. Cryptocurrency, although not legal tender in the Republic, is an asset that is bought and sold, and the construction that it is '*money*' by reason of the '*foreign currency*' definition was held to be strained and impractical. The court

tested that construction against its consequences, asking whether cryptocurrency can be deposited and whether it must be declared on entering or leaving the Republic, and observing that if cryptocurrency were '*money*' the crypto wallets would themselves have been attached rather than the rand standing in *LCC*'s bank accounts. The court held that, given the punitive character of the Regulations, there was no room for an unnatural and fictitious reading of them to cover cryptocurrency, and that regulation 3(1)(c) was accordingly not engaged.

As to regulation 10(1)(c), the court applied *Oilwell (Pty) Ltd v Protec International Ltd and Others* [2011] ZASCA 29; 2011 (4) SA 394 (SCA) ('*Oilwell*'), in which the Supreme Court of Appeal held that a trademark is not '*capital*' capable of being exported, and that legislation creating criminal and administrative penalties calls for restrictive interpretation. Motha J concluded that on any construction, and more so on a restrictive one, cryptocurrency falls outside '*capital*'. The court drew support from the events that followed *Oilwell* itself. When the Supreme Court of Appeal held that intellectual property was not '*capital*', the response was an amendment to the Regulations by the Treasury in 2012, in the form of regulation 10(4), rather than judicial extension. Widening '*capital*' to cover crypto assets was therefore a matter for the Treasury as the party responsible for exchange control policy and not the courts. The forfeiture of the money market funds was accordingly set aside. *SBSA*'s challenge to the forfeiture of a further R10 million held with another bank failed for want of standing, and each party was ordered to pay its own costs.

The view in *Mangundhla*

The first applicant, Mr Mangundhla, and the second applicant, Ms Dangaiso, each held an account with the cryptocurrency trading platform Luno. The first applicant traded in cryptocurrency lawfully between April 2015 and December 2017. Between January 2018 and March 2020 he used both accounts, the second applicant's account serving to circumvent the trading limit applicable to his own, to purchase just under 1,680 Bitcoin in South Africa, worth just under R182 million, and credited the Bitcoin to wallets accessible only through cryptocurrency exchanges registered outside South Africa. It was not disputed that he acted in concert with others. The Deputy Governor declared forfeited to the State, in terms of regulation 22B, just under R6 million in money and Bitcoin standing to the applicants' credit in their bank accounts and their Luno accounts. The applicants sought a review of those decisions.

SARB's case was that the transactions amounted to the export of the Bitcoin and of its rand value in contravention of regulation 10(1)(c), and that the amounts forfeited were either the proceeds of that

contravention or were themselves in the process of being exported. The forfeiture orders relied in addition on regulation 3(1)(a), concerning the removal of securities or foreign currency from the Republic, and on regulation 3(1)(c). It was common cause that the transactions took place, that the first applicant was behind them and that the Treasury's permission had not been obtained. The applicants' principal ground was that the Regulations do not apply to cryptocurrency at all, cryptocurrency being neither '*capital*' nor '*currency*' nor a '*security*', and the crediting of a foreign-hosted wallet not amounting to a '*payment*'. In the alternative they contended that there was no evidence of '*export*', that the investigation preceding the forfeiture orders was procedurally unfair, and that cryptocurrency is neither '*money*' nor '*goods*' for the purposes of regulations 22A and 22B, so that the Bitcoin in the Luno accounts was not susceptible to forfeiture.

Wilson J held that cryptocurrency, at least in the form of Bitcoin, is both '*money*' and '*capital*' for the purposes of the Regulations. Applying the text, context and purpose approach in *Natal Joint Municipal Pension Fund v Endumeni Municipality* [2012] ZASCA 13; 2012 (4) SA 593 (SCA), the court accepted that the Regulations deploy '*capital*' in its financial sense, but held that *Oilwell* is not authority for treating '*capital*' as synonymous with money or cash in the sense of fiat currency, since '*capital*' and '*currency*' are deployed in the Regulations to mean different things. '*Capital*' was held to mean any financial asset capable of holding value or being used as a medium of exchange, which takes in fiat currency, any negotiable instrument and any other document or token bearing a fixed or ascertainable exchange value. Bitcoin satisfies that description, being purchasable with rand, capable of being held in the expectation that its rand price will rise and then sold at a profit and accepted by merchants in some markets. On purpose, the court reasoned that if crypto assets fell outside regulation 10(1)(c) the capital controls would be virtually worthless, as anyone could externalise wealth simply by converting rand into cryptocurrency and transferring it to a foreign exchange, a result at odds with the purposes of the regime recorded in *Leathern* and in *South African Reserve Bank and Another v Shuttleworth and Another* [2015] ZACC 17; 2015 (5) SA 146 (CC).

On '*export*', the court held that export takes place when the thing exported leaves the country, so that crediting the Bitcoin to wallets on foreign exchanges was sufficient. It was not necessary to identify the holders of those wallets as resident abroad, or to establish that the Bitcoin had been converted into foreign currency in a foreign jurisdiction, and the starting point is the location of the account rather than the location of the account holder. The court gave little

weight to reports prepared for government and associated bodies which treated cryptocurrency as a phenomenon that might not be adequately covered by the existing framework, holding that the views of such authors bear marginally at best on the interpretive exercise. It likewise rejected the contention that the Regulations cannot reach an asset class the drafters of 1933 and 1961 did not foresee, on the basis that those drafters were familiar with financial assets, negotiable instruments and fiat currency.

The court concluded that *Standard Bank* is clearly wrong. The question turns less on the inherent nature of cryptocurrency than on the purposes to which it can be put, and the emphasis in *Standard Bank* on the intangible and technological characteristics of cryptocurrency overlooks the real-world consequences of its use. While accepting that punitive statutes should generally be interpreted restrictively, the court held that where the only reasonable interpretation of a statute is that it attaches harsh consequences to defined conduct, the statute must be applied as it is found, absent a challenge to its validity. Bitcoin was held to be '*money*' for the purposes of regulations 22A and 22B, falling within the definition of '*money*' as including any bill of exchange or other negotiable instrument, a Bitcoin being no more than a right to be credited a specified sum which is itself exchangeable for fiat currency, so that the Luno balances were themselves susceptible to forfeiture. The complaint of procedural unfairness was rejected, the court noting that the applicants had known of the investigation since 2019 and had five weeks' notice of the proposed forfeiture. The review was dismissed with costs, including the costs of two counsel on scale C, although the court recorded some hesitation about the forfeiture of the funds in the second applicant's bank account, which it left undisturbed only because no case of disproportionality had been made out. Having decided the matter on regulation 10(1)(c), the court expressed no view on regulation 3(1)(a) or (c).

Where this leaves crypto assets

The result is two conflicting decisions of co-ordinate courts, neither binding on the other. A judge in one division will ordinarily follow a decision of another division unless persuaded that it is clearly wrong, which is the mechanism through which Wilson J departed from *Standard Bank*. The dispute centres on whether a 1961 instrument carrying criminal and forfeiture consequences may be construed purposively to reach an asset class its drafters could not have foreseen, or whether the principle of legality requires that the gap be closed by the Treasury as the party responsible for exchange control policy, as occurred with intellectual property after *Oilwell*.

On 17 April 2026, National Treasury published the draft Capital Flow Management Regulations, 2026 for public

comment, made under section 9(1) of the same 1933 Act. The comment period was later extended to 30 June 2026. The draft proposes to repeal the 1961 Regulations, subject to savings for pending investigations and proceedings and for existing permissions and directives, and, among other things, defines 'capital' expressly to include crypto assets and prohibits taking, sending out or removing crypto assets from the Republic without permission. Once promulgated in final form, the new framework should place cross-border crypto transfers squarely within the capital flow management net. As at the end of August 2026 the draft had not been promulgated.

That reform will not, however, settle the present debate. New legislation is presumed to operate prospectively, and National Treasury has confirmed that the draft is not intended to apply retrospectively. Conduct predating the commencement of the new framework, including the transactions in *Standard Bank* and *Mangundhla* and every pending blocking and forfeiture, falls to be judged in terms of the 1961 Regulations as the courts have interpreted them. The appeal accordingly retains its full significance. Leave to appeal against the *Standard Bank* decision was granted in September 2025 for an appeal directly to

the Supreme Court of Appeal, and the order setting aside the forfeiture is suspended in the interim. The appeal had not been enrolled on any Supreme Court of Appeal roll published to the end of August 2026, including the November 2026 term, so a judgment before 2027 is unlikely. No appeal against *Mangundhla* has been reported.

FinSurv has not waited for that outcome. In *Kastelo Proprietary Limited v South African Reserve Bank and Others* (case no 2025/247149) [2026] ZAGPJHC 881, delivered in Johannesburg on 28 July 2026, the court declined to set aside a blocking order made in an investigation into some R4 billion said to have been externalised through crypto arbitrage, holding that a blocking order is temporary and preservatory and may be made without prior notice, the right to be heard arising only at the forfeiture stage. The court found it unnecessary to decide whether crypto assets are 'capital' or 'money'. Until the Supreme Court of Appeal rules, a resident transferring crypto assets to a foreign-hosted wallet or exchange without approval faces a real risk of blocking, attachment, forfeiture and criminal exposure should the *Mangundhla* approach prevail, and the prudent course would be to treat such transfers as falling within the exchange control net.

Disclaimer

The above information is intended to provide general guidance with respect to the subject matter. This general guidance should not be relied on as a basis for undertaking any transaction or business decision, but rather the advice of a qualified tax consultant should be obtained based on a taxpayer's individual circumstances. Although our articles are carefully reviewed, we accept no responsibility in the event of any inaccuracy or omission. For further information please refer to the author.

Authors



Arno van Wyk

avanwyk@renmere.co.za | T +27 76 333 4866



Dr Hendri Herbst

hherbst@renmere.co.za | T +27 83 784 8040

About WTS Renmere

Renmere is an independent tax and transaction advisory firm specializing in corporate and international tax structuring advice, solutions and support. Its diverse team has extensive experience, including as internal and independent external financial, legal and tax counsel.

Renmere provides services across all industries and undertakes assignments throughout South Africa, Namibia and the rest of Africa. The team is led from its head office in Stellenbosch, supported by satellite offices in Cape Town, Johannesburg, and Windhoek.

For more information contact us at:

T +27 (10) 900 3159 | renmere.co.za

About WTS Global

With representation in over 100 countries, WTS Global has already grown to a leadership position as a global tax practice offering the full range of tax services and aspires to become the preeminent non-audit tax practice worldwide.

For more information please see: wts-global.com