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National Treasury
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By email: Commentdraftlegislation@treasury.gov.za

**SAICA COMMENTS ON THE DRAFT CAPITAL FLOW MANAGEMENT REGULATIONS OF 2026**

The Exchange Control Committee, of the South African Institute of Chartered Accountants (SAICA) welcomes the opportunity to make a submission to the National Treasury on the draft Capital Flow Management Regulations of 2026.

SAICA supports the importance of a sound and effective exchange control legal framework. However, in SAICA's view, the Draft Regulations raise material legal, policy and administrative concerns.

In several respects, the proposed framework appears to extend beyond the current exchange control regime, while at the same time lacking sufficient clarity on its intended practical operation.

We once again thank National Treasury for the continued opportunity to provide constructive comments on these matters. SAICA remains of the view that a collaborative approach is best suited to addressing complex legal and policy issues.

Should you wish to clarify any of the above matters please do not hesitate to contact us.

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*The South African Institute of Chartered Accountants*

## GENERAL – THE PURPOSE OF THE PROPOSED REGULATIONS

1. In the Draft Regulations, the suggestion is that the current exchange control regulations will be replaced by the Draft Regulations.
2. In SAICA's view, however, a mere change in terminology does not alter the substantive effect of the regime, and the proposed regulations remain, in substance, a system of exchange controls.
3. Moreover, it is submitted that the proposed regulations impose more restrictive and punitive measures than the current regulations.
4. Government Notice 7375 further goes on to state that the Draft Regulations seek to align the exchange control framework with the OECD and FATF recommendations, which are aimed at combatting money laundering, terrorist financing and the proliferation of illicit flows.
5. It is common cause that the primary aim of exchange controls is – quoting from the SARB website, frequently asked questions -

   *"to restrict the buying and selling of a national currency or to preserve foreign currency reserves. Controls may include a ban on the conversion of the proceeds of certain assets or by certain categories of person, an obligation to surrender foreign exchange proceeds to the central or local bank, authorisation requirements, quantitative limits or indirect methods. Exchange controls are commonly imposed because of concerns about outward flows of currency but they can also be imposed to restrict inward flows, if for example an influx of funds risks damaging an economy."*

6. The purpose of exchange control is, arguably, unrelated to combatting money laundering, terrorist financing and the proliferation of illicit flows.
7. South Africa has a myriad of other legislation formulated to address such mischief, including the Financial Intelligence Centre Act, Prevention of Organised Crime Act, Prevention of Combating of Corrupt Activities Act.
8. There are many countries that do not operate a system of exchange controls, yet still manage to align themselves with best practice for policing and punishing combatting money laundering and terrorist financing .
9. We submit that it is inappropriate to use exchange control restrictions for such purposes, as these laws extend beyond just those with criminal intent. It is noteworthy that on the African continent, countries such as Botswana, Kenya (currently on the FATF grey list), Mauritius and Zambia do not operate such systems.
10. Further, FATF members such as UK, USA, Netherlands, Australia and many others also do not operate systems of exchange control controls, but still manage to avoid being grey-listed.
11. Per the FATF website, 27 April 2026, only Democratic People's Republic of Korea, Iran and Myanmar remain on the blacklist. All three of these countries operate draconian systems of exchange controls, which suggests that operating a system of exchange controls does not necessarily address money laundering, terrorist financing and the proliferation of illicit flows . In the case of Kenya, if you refer to the FATF website and their suggestions on how to remedy Kenya's grey-listing status, at no point does the FATF suggest a system of exchange controls.

12. It is worth noting that South Africa introduced exchange controls primarily to protect its foreign currency reserves from depletion during periods of critical capital outflows. It is however reported that as of early April 2026, South Africa's foreign currency reserves are significant , having recently been hovering near historic highs, providing a robust buffer against economic shocks.

13. Submission: Before moving forward with the proposed changes to the regulations, government is urged to commission comprehensive studies examining the following key questions:

    a. Does South Africa still need protection of its foreign currency reserves through maintaining a system of exchange controls (or a system of capital flow management)?

    b. How are other countries able to police, combat and punish money laundering, terrorist financing and the proliferation of illicit flows without operating a system of exchange controls?

    c. Would removing all exchange control laws stem the anxiety that drives the need to externalise cash and assets from the economy, for fear of such wealth being trapped?

    d. Would international investors be more encouraged to acquire South African assets and retain these assets within the South African tax net as they would not fear being trapped in the South African exchange control net?

## SPECIFIC COMMENTS

14. Turning now to the regulations themselves, we set out below our comments thereto. We reiterate however, that until the abovementioned studies have been completed, the legislation should not be enacted, and certainly not in its current, far more draconian, form.

### Definitions

*Residence*

15. The absence of a definition of "resident", to provide a clear understanding of who these regulations apply to, is notable.

16. Submission: We suggest that a definition of "resident" be included in the Draft Regulations. The same is true of the concept "resident outside the Republic". Where no definition is provided, the law cannot be applied with any degree of certainty or consistency. There is also no definition of "non-resident", as defining a non-resident in relation to a term that is not defined provides no definition at all (Regulation 15's attempt to define a non-resident is consequently, arguably meaningless).

17. Moreover, it is common cause that the regulations currently are not applicable to non-residents. However, the proposed regulations would seemingly apply to all persons, regardless of their residence. This marks a significant shift in policy to cause foreign persons to be subject to these laws.

*Authorised crypto asset service provider*

18. The definition of "authorised crypto asset service provider" appears to be limited to a crypto asset service provider who is authorised by the National Treasury to facilitate transactions deemed as import and/or export of capital, directly or indirectly, *utilising crypto assets as a medium of exchange*.

19. It is worth noting, however, that there are crypto asset service providers who facilitate imports and/or exports of crypto (as capital) **not** as a medium of exchange (e.g. they facilitate the export of crypto for holding in an offshore wallet or for cash-out offshore).

20. Submission: It is unclear whether such providers may be regarded as "authorised crypto asset service providers". It is therefore submitted that this definition be amended to clarify this.

**Regulation 3 – Restriction on purchase, sale and loan of crypto assets**

21. Individuals are currently free to acquire, own and trade crypto assets.

22. This can be undertaken primarily through the action of trading such assets on South African exchanges, which could be classified as domestic transactions, or alternatively by externalising funds, through the use of annual allowances, and acquiring crypto assets from foreign sources.

23. The proposed legislation seemingly covers both local (domestic) and foreign trades of crypto assets, and arguably operates well beyond the mandate of exchange controls, *viz.*to protect South Africa's foreign currency reserves.

24. Submission: Regulating domestic trades of crypto assets (between residents) would certainly be beyond the scope of exchange controls and we suggest that regulation 3 be amended in this regard., We note that within the context of framing the new regulations as a move away from policing all transactions, but for a few remaining high impact or high risk transactions, the stance adopted seems extreme.

25. We wish to further point out that crypto assets are unique in that they do not reside in a single place.

26. They exist solely as ledger entries tied to a blockchain address. Whether one stores them in a South African wallet, a foreign wallet, on one's cell phone (i.e., privately) or on a public ledger, they technically do not reside in South Africa.

27. If the true concern here is to manage export of capital from South Africa, then it would be an impossible task to regulate such assets in the form of crypto held in a wallet, regardless of where that wallet is held.

28. Submission: We recommend, instead, that the focus should rather be on "sale" or "conversion" of the crypto into fiat currency and what is permissible in respect of the fiat.

**Regulations 4 & 5 – Restriction on the import and export of currency**

29. Regulation 4 (particularly in respect of crypto assets) lacks practical application and will likely encounter enforcement challenges (such as being challenged in courts of law).

30. By way of example, the law prescribes that a person may not take, send out crypto currency from the Republic. If a person is travelling for a holiday or conference outside of South Africa (i.e., they will be temporarily abroad), they maintain or control crypto codes/wallet on their cell phone (a 'cold wallet'), which cell phone accompanies them on their travels, they will arguably be in breach of these laws and their crypto assets may be seized.

31. The laws are arguably therefore, not practical and simply too draconian to abide by.

32. In the absence of practical solutions to apply these laws, we anticipate that any attempt to enforce same would simply be rejected by the courts. Moreover, in the day and age of technology, which has moved beyond such laws, the ability to police the movement of items such as crypto currency is unlikely to be practical.

33. Submission: Rather, we reiterate that a key focus should be on use of the crypto with conversion into fiat currency (or other assets) and the regulation of how such items should be addressed.

34. We would further urge Government to commission a study on the impact that Regulation 3 will have on the price of crypto assets for South Africans wanting to acquire, trade or hold these assets locally.

35. The quasi-regulation of crypto under the current exchange control regime has given rise to an arbitrage between the price paid for crypto assets globally and the price paid for assets on South African exchanges, with the extent of arbitration fluctuating over time.

36. This effectively punishes residents that simply want to acquire and hold crypto assets on South African exchanges.

37. It has also created a market of opportunists that have sought to take advantage of people's discretionary allowances to acquire crypto assets in the open market, introduce these onto South African exchanges and sell them at the higher rate.

38. It is submitted that the proposed legislation is likely to drive this arbitrage higher, encourage greater risk taking in the arbitration space. Again, you are urged to undertake studies to assess the likely negative impact in this space before proceeding with the introduction of these regulations.

39. Specifically, regulation 4(1)(c) is likely to be rejected by courts as impractical and vague.

40. We reiterate that crypto assets by their very nature do not reside in South Africa. Rather they exist in a decentralised digital ledger, known as a blockchain. Whether you hold your crypto assets through custodial wallets, private keys, non-custodial wallets, and whether you elect to use an exchange in or out of South Africa, your crypto assets ultimately do not reside in a single country.

41. Submission: The legislator is urged to focus more on conversion of these assets into fiat currency or other assets, regulating the consequent dealing in same.

42. Regulation 4(2) is also arguably vague and impractical. Where a person holds crypto-asset keys, bank account details, or proof of ownership of any other assets on their cell phone, it is unclear whether such items must be declared and how that person would practically comply with regulation 4(2)(c) in respect of those items.

43. Regulation 5, without further guidance, is also arguably impractical. Where an international tourist is to visit South Africa, it is unclear what document they should produce in terms of regulation 5(1)(b)(iii) to prove that they have exemption to import same into the country. This is true especially for foreign parties taking up temporary residence or foreign persons electing to become residents.

**Regulation 6 – Controlled accounts**

44. The extent of regulation 6 is concerning. It seems to imply that any and all currency transfers out of South Africa would be processed through the "controlled account" or "as directed by National Treasury" given that the law seemingly dictates that no amounts may be transferred, i.e., all amounts are *"precluded from payment or transfer as a result of restrictions impose by the regulations"*.

45. Regulation 6(3) further has the effect of extending exchange controls to non-residents.

46. This is an expansion of the current regulations, which is most disappointing given the liberalisation of this position historically. It is not clear how a party that is currently not subject to exchange controls could act to contravene these regulations.

47. We further anticipate Regulation 6(4) to have shortcomings where the contractual arrangements are governed by foreign laws.

48. These laws are unlikely to recognise the payment to NT as settlement of the obligation by the SA resident. It would only be fitting that NT enacts legislation making it compulsory for NT to support the resident and fund any and all legal costs to defend such a claim to the satisfaction of the resident. NT must be sensitive to the fact that most South African businesses do not always have cash reserves available to litigate foreign parties.

49. In essence, under regulation 6, it makes no sense why non-residents would be punished for residents' non-compliance with the regulations that should not apply to the non-residents. Regulation 6 would certainly be unfair to foreign creditors who have no obligation to comply with the regulations.

**Regulation 10 –Declaration of foreign assets or crypto assets**

50. In respect of regulation 10, we draw your attention to our comments above about the lack of clarity with regards to foreign individuals that hold foreign assets and the need to report same.

51. Furthermore, regulation 10(2) would seek to prevent South African individuals from freely trading their foreign owned assets.

52. This imposes a far greater burden on South African individuals relative to the status quo. We have no doubt that if enacted, this will promote the creation of foreign trusts, the movement of assets owned by South African individuals into these trusts and a significant reduction in the tax collections from such holdings.

53. Submission: We suggest that a study is needed, in conjunction with the SARS, to understand the extent of foreign income currently declared by SA resident individuals to estimate the likely loss of revenue to the fiscus.

54. It is submitted that Regulation 10(4) is absurd. If, for example, a tourist is on holiday in South Africa at the time of the legislation being promulgated, would they too have to prove themselves non-resident? Moreover, given the absence of a definition of resident, there is no standard against which to prove the position.

**Regulation 23 – Exemptions and permissions**

55. With regards to Regulation 23(4)(c), it does not appear appropriate for authorised dealers to be entitled to levy a fee for providing information that is likely to be publicly accessible; especially in the current digital environment, where information can readily be made available to the public through the websites of National Treasury, SARB or other relevant institutions.

56. Submission: It would be more appropriate for authorised dealers to charge fees only in respect of processing applications or providing services that are specific to their customers.

**Regulation 24 – Attachment of certain money, crypto assets, property and blocking of certain accounts**

57. The current regulations allow for SARB to attach cash and assets in the case of a suspected transgression for a period of up to 36 months, with no rules in place to force the matter to be resolved earlier.

58. The proposed laws do not improve on this position, which is extremely prejudicial to the party whose cash or asset is held and is, furthermore, in contravention of Paragraph 33 of the South African Constitution.

59. The Constitution of South Africa, being the supreme law of the land, at paragraph 33, provides that everyone has the right to administrative action that is lawful, reasonable and procedurally fair.

60. A framework that allows the cash or assets of a South African person, whether an individual or corporate entity, to be placed on hold for up to 36 months during an investigation, without any prescribed procedural safeguards or timelines, cannot reasonably be regarded as procedurally fair.

61. Where the authority responsible for implementing or enforcing the law is not subject to any express duty to act with due care, efficiency or expedition in resolving the matter, an affected party under investigation cannot be assured of fair and timely treatment.

62. As the law currently stands, the authority responsible for investigating a suspected breach may delay action until only weeks or days before the expiry of the 36-month period, without consequence and without due regard to the prejudice such delay may cause to the affected party under investigation.

63. Submission: The Draft Regulations, as currently proposed, should not be enacted unless and until appropriate safeguards, in the form of clear administrative processes and procedures, are introduced to protect the rights of all affected parties, and not only those of National Treasury. A framework similar to the clearly delineated rights and obligations contained in the Tax Administration Act is required to govern the administration of investigations under these laws and to ensure procedural fairness for all affected parties.

**Penalties and administrative fairness**

64. We draw your attention to **this submission** previously made by SAICA to the South African Reserve Bank on the need to administrative fairness in respect of application of the rules governing exchange control contraventions.

65. We remain of the view that the proposed legislation, which effectively preserves the status quo, infringes the rights of ordinary South Africans who enter into cross-border transactions.

66. This is most certainly the case where such transactions inadvertently (and through no fault of the South African party) results in a technical breach of the law.

67. The South African party stands to be fined even where that party seeks to regularise the position with the regulator. Moreover, given the extent of wide powers granted to the National Treasury (and its proxies), there will continue to be a complete lack of clarity and certainty in the market when it comes to voluntary disclosures.

68. This is because we find some matters are resolved with no financial penalties while others attract penalties and the basis for the different treatment is not explainable.

69. We urge the legislator to introduce clearer processes (similar to what we find in sections 221 to 223 of the Tax Administration Act, dealing with understatement penalties). Including a table that clearly sets out the extent of penalties that will be applied would bring certainty to the business community.

END.