

Can crypto regulation help SA shake off FATF greylisting?

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The greylisting of South Africa by the Financial Action Task Force (FATF) has not only called into question the country's ability in combating financial crimes, but also caused reputational damage and highlighted its failure to regulate flows of money through both traditional financial institutions and alternative financial forms such as cryptocurrencies.



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Cryptocurrencies have long ignited intense debate and discussion within the financial sphere, including in South Africa, where the realm of crypto regulation remains a work in progress. This intricate issue necessitates a closer look, especially in the context of the greylisting.

The FATF greylisting serves as a stark reminder that the nation must implement more robust measures to combat money laundering and various financial crimes, including those associated with cryptocurrencies, with President Cyril Ramaphosa saying it has caused “much concern about the state of our financial institutions, law enforcement agencies and investment environment”.

The greylisting by the FATF carries significant implications. When a country finds itself on the FATF greylist, it signals the need for increased scrutiny of financial transactions involving that country. This can deter foreign investment, adversely affect the economy, and tarnish the country's reputation.

What is greylisting?

Greylisting typically occurs when a country is addressing inadequate anti-money laundering and counter-terrorism financing policies. It's crucial to differentiate between greylisting and blacklisting, the latter being a consequence of non-compliance with FATF recommendations. The FATF has set clear standards to mitigate risks in dealing with virtual assets (including cryptocurrencies), such as requiring licensing and registration of virtual asset service providers (VASPs).

Additionally, FATF Recommendation 15 addresses risk mitigation, licensing, record-keeping, and reporting of suspicious transactions related to virtual assets and VASPs. These regulations aim to enhance transparency and accountability within the crypto industry.



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Despite the greylisting, the less regulated world of cryptocurrencies presents a series of opportunities and advantages to the financial sector. The decentralised nature of cryptocurrencies and global accessibility offer unprecedented convenience and efficiency for financial transactions. Yet, these very attributes also present inherent risks.

Anonymous, but not

The potential for anonymity and the vast scale of cryptocurrencies render them attractive to bad actors, creating opportunities for money laundering and terrorist financing. This is particularly concerning in the context of South Africa, where crypto transactions often occur peer-to-peer without the parties revealing their identities.

However, it's crucial to recognise that cryptocurrencies aren't entirely anonymous. Blockchain, the underlying technology of most cryptocurrencies, operates on a ledger system that records all transactions. While user identities are pseudonymous, the transaction details are stored on the blockchain, providing a potential trail for investigation in case of suspicious activities.

Despite these risks, cryptocurrencies have gained traction in countries grappling with economic instability and soaring inflation rates. Their flexibility and convenience make them a popular choice for larger financial transactions. Nevertheless, the absence of comprehensive regulation and oversight in the crypto industry can lead to misuse and exploitation of these digital assets.

Following the greylisting of South Africa by the FATF, President Ramaphosa announced a series of steps the country's financial institutions will take to strengthen its fight against financial crimes. South Africa has also begun taking steps to regulate cryptocurrencies, making important progress towards regulation and oversight of the industry.



Watchdog proposes first set of global rules for crypto sector

Huw Jones 23 May 2023



Not yet legal tender

While the position of the South African Reserve Bank (SARB), in line with other regulatory authorities globally, remains that crypto assets, while performing certain functions of money, are not legal tender and will not be recognised as electronic money, it must be pointed out that the slow progress in the regulation of crypto assets has hampered cross-border transactions.

These significant steps, including the declaration of crypto assets as financial products under the Financial and Intermediary Services Act (FAIS) in October 2022 and of course the amendments to the Financial Intelligence Centre Act (Fica), make for promising steps toward regulating the industry more effectively.

Collaborative effort required

Yet, introducing regulations alone may not suffice to combat money laundering and financial crimes associated with cryptocurrencies. Addressing these issues demands a collaborative effort involving various institutions and stakeholders, including banks, financial institutions, and government agencies.

Initiatives like the Rapid Payments Programme, now known as PayShap, launched by the South African Reserve Bank in 2023, exemplify such cooperation, aiming to modernise payment systems and reduce the number of unbanked individuals in the country.

The Financial Sector Conduct Authority (FSCA) has also sounded alarms about the risks associated with unregulated high-return assets, emphasising the need for stronger regulations to safeguard investors. The FSCA's declaration of crypto assets as financial products under FAIS, necessitating licensing for those providing advice and intermediary services in this sector, seeks to enhance consumer protection and ensure that crypto asset service providers adhere to the necessary regulations.



Crypto assets now officially considered 'financial products' in South Africa

Ashlin Perumall 20 Oct 2022



The amendments to Fica to include certain crypto asset service providers as accountable institutions, requiring them to conduct thorough Know Your Client (KYC) checks and report suspicious transactions to the Financial Intelligence Centre, is an additional layer of oversight and security.

Impact on exchange control regulations

Crypto assets have the potential to circumvent existing exchange control regulations, posing challenges to authorities. Currently, the Currency and Exchanges Manual for Authorised Dealers (AD Manual) does not permit cross-border transactions for the acquisition of crypto assets due to their non-recognition as legal tender. This is an area that requires further development in terms of regulation.

The Crypto Assets Regulatory Working Group (CARWG), part of the Intergovernmental Fintech Working Group (IFWG), published a Position Paper on Crypto Assets in June 2021. This paper recommended amendments to the Exchange Control Regulations and AD Manual to facilitate offshore purchases and local sales of crypto assets by VASPs, as well as the reporting of crypto asset transactions and exemptions for market-making activities.

The SARB has also issued guidance on how banks should handle crypto assets. Banks are advised to adopt policies that effectively manage the risks associated with these assets while remaining adaptable to technological advancements. Regular risk assessments are essential to stay current with evolving crypto technology.

Furthermore, the SARB mandates that banks report any crypto assets suspected of involvement in terrorist activities or

money laundering to the Financial Intelligence Centre, complying with section 28A of Fica. These and the other interventions have the potential to contribute positively towards getting the country removed from the FATF greylist.

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