

Digital finance regulations - trends and developments

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Webber Wentzel attended the Digital Finance Africa Conference in Johannesburg, which highlighted several trends and developments concerning fintech and crypto assets.



Image source: David McBee from [Pexels](#)

The explosion of new products in the fintech industry is enabling financial institutions to reach a wider customer base, helping to achieve the objective of financial inclusion in South Africa, where an estimated 20% of the population is excluded from the formal banking system. More so, of the 80% that do have a bank account, many still do not have access to life-simplifying and economic activity-enhancing payment products and services and remain underserved.

The main issue around these burgeoning technologies – and the new participants introduced into the national payment and financial system as a result - is the need for a regulatory regime that is fit for the digital age and one that stimulates wider participation.

Regulation of crypto assets

Crypto assets are an area of wide interest where there have been several regulatory developments in the last year. Regulators have responded speedily to the risks of investors losing all their money. The Financial Sector Conduct Authority (FSCA) declared crypto assets to be a financial product in terms of section 1(h) of the Financial Advisory and Intermediary Services Act (FAIS Act) with effect from 19 October 2022.

This development means that businesses providing advice or rendering intermediary services relating to crypto assets must be licensed by 1 November 2023. Crypto asset providers that are now subject to licensing requirements will be required to comply with certain AML/CFT obligations under the Financial Intelligence Centre Act, which has been strengthened as a result of South Africa's grey-listing.

Webber Wentzel continues to engage with crypto asset providers to explore whether they fall within the ambit of these regulatory requirements ahead of the licensing deadline.



Watchdog proposes first set of global rules for crypto sector

Huw Jones 23 May 2023



Proposed Open Finance and Activity-Based regulatory regime

Laws to regulate the fast-evolving world of Open Finance are still at a relatively early stage. There is no clearly defined Open Finance legal regime because the regulators are still trying to understand industry use cases and developments. In June 2023, the FSCA published a Draft Position Paper on Open Finance, outlining all the regulatory approaches it is currently considering.

Amongst these proposals is the proposed imposition of licensing requirements on fintechs that utilise Application Programming Interface (APIs) to access customer data to provide tailored financial products. Currently, these fintechs are not licensed and there is no oversight on their activities, and the proposed regime intends to bring them into the regulatory net.

Open finance is a very new, fast-developing area and conference attendees noted the need for a proactive and balanced regulatory approach that ensures a financial regulatory regime that is fit for a digital world whilst allowing regulators to understand financial innovations and examine their implications before they can make appropriate legislation.

The FSCA acknowledges that certain legislation that would regulate Open Finance activities already exists. For example, the Protection of Personal Information Act (PoPIA) governs the processing, collection, and retention of personal information. PoPIA prescribes the consent requirements that must be adhered to by Open Finance participants that require the use of customer data, including that consent must be obtained from customers (who are the owners of the data) in a voluntary, specific, and informed manner.

Where no legislation exists to regulate aspects of Open Finance activities, the FSCA intends to adapt existing legislation to address Open Finance-specific risks. There will be collaboration between the various regulators to understand the industry's risks arising from Open Finance.

The draft position paper was circulated for public comment, and we await the regulator's response.

Another notable development includes the launch of South Africa's first rapid payments programme, PayShap, and with it the renewed focus on the South African Reserve Bank's Vision 2025 strategy to reform the country's national payment

system and enhance financial inclusion.

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