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Fintech Regulation in South Africa

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01

Introduction

Why this deck?

The Cambridge Centre for Alternative Finance and BFA Global have produced this deck to support fintech startups working in South Africa, and those seeking to enter the South African fintech market.

This deck provides **an overview of South Africa's regulatory environment** as it relates to the fintech verticals of:

- ☐ Banking
- ☐ Credit
- ☐ Insurance
- ☐ Payments
- ☐ Investment

The deck also offers recommendations on how startups can best engage with regulators and tools to help them do so.



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What is Catalyst Fund?

Catalyst Fund is an **inclusive fintech accelerator** that supports early-stage startups building solutions for underserved communities and develops ecosystems for innovation in emerging markets. Catalyst Fund is managed by BFA Global and supported by UK aid and JPMorgan Chase & Co.

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What is the Cambridge Centre for Alternative Finance?

The Cambridge Centre for Alternative Finance (CCAF) at the University of Cambridge Judge Business School is dedicated to the study of technology-enabled and innovative instruments, channels, and systems emerging outside of traditional finance. It is driven by its mission to “create and transfer knowledge addressing emergent gaps in the financial sector that supports evidence-based decision-making.”

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How to use this deck

This deck is organized into 4 main sections:

1. Country and regulatory environment
2. Tips on engaging with regulators
3. Specific regulations per fintech vertical
4. Resources for startups

The first two and final sections (#1, 2, 4) of this deck are of general interest to all fintech startups. The regulations section (#3) is segmented into different legal categories based on use cases, and not all categories may be relevant for all startups or business models.

Companies can map their business model(s) to the relevant legal categories on slide 10. They can use this map to focus on specific parts of the regulations section that are relevant to their business model(s).

In using this deck, please note the disclaimer on slide 2.
Note: the exchange rate applied is 1 ZAR/US\$0.067 -- current at 16 December 2020.



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02 Mapping Business Models to Relevant Regulation

Mapping business models to relevant legal categories



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Business Model	Legal Category										
	Banking	Payments	Credit	Insurance	Investment	Data	Consumer protection	AML / KYC	Cybersecurity	Competition	Taxation
Digital payments & remittance*		●				●	●	●	●	●	If cross border DFS
Digital lending			●			●	●	●	●	●	“
Digital savings	●					●	●	●	●	●	“
Digital investment					●	●	●	●	●	●	“
Digital insurance				●		●	●	●	●	●	“
Digital capital raising**			●		●	●	●	●	●	●	“
Personal financial management	●	●	●		●	●	●	●	●	●	“
E-commerce & DFS platforms	●	●	●	●		●	●	●	●	●	“

*includes mobile wallets/ e-money, payment initiation & mobile POS

Laundering, KYC= Know Your Customer

**includes P2P lending and equity crowdfunding

DFS= Digital Financial Services, AML = Anti Money

03

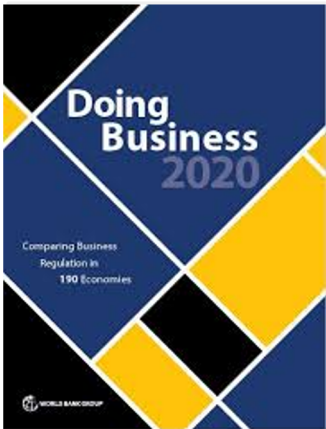
South Africa's Current Regulatory Environment

South Africa ranks 4th in sub-Saharan Africa for ease of doing business



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The World Bank's Doing Business rankings places South Africa at **84th worldwide**, making it **fourth in Sub-Saharan Africa** in terms of ease of doing business:

- South Africa ranks highly for protecting minority investors.
- It also ranks fairly high regarding the facilitation of the payment of tax.
- Areas of difficulty include access to electricity, cross-border trading, and starting a business.



The GSMA Regulatory Index gives South Africa an overall score of **76 out of 100**, amongst the lowest in SSA, meaning it is the least enabling in the region:

- South Africa scores highly on Infrastructure and Investment Environment (100) and Agent Network (90).
- The regulatory approach scores lower on Know Your Customer (60) and Transaction Limits (44).

South Africa's **enabling environment for financial inclusion** and corruption perceptions



The Economist Intelligence Unit Global Microscope 2019 ranked South Africa **13th out of 55 countries** for its financial inclusion environment.

- South Africa was above average for infrastructure, stability, government & policy support, and consumer protection; key strengths included ease of customer due diligence, financial service users, and inclusive insurance users.
- South Africa was below average for products and outlets; weakness included inclusive insurance, emerging services, and credit portfolios for middle- and low-income customers.



Transparency International ranked South Africa **69th out of 180** on their 2020 Corruption Perceptions Index.

South Africa's score of 44/100 has remained stable over previous years, and is better than the regional average of 32/100 for sub-Saharan Africa.

Sources: [The Economist Intelligence Unit Global Microscope 2019](#), [2020 Corruption Perceptions Index](#)

High bank account penetration coupled with low levels of formal savings and borrowing present opportunities for fintech



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According to the World Bank's 2017 Global Findex report:

- 19% of South Africans over the age of 15 have a mobile money account.
- Overall access to accounts is at 69% of all adults.
- 60% of South Africans over the age of 15 had sent or received digital payments in the past year.
- 59% reported having saved any money, with 22% making savings in a financial institution.
- While 53% have borrowed any money, only 14% have borrowed from a financial institution, suggesting a high frequency of informal borrowing.



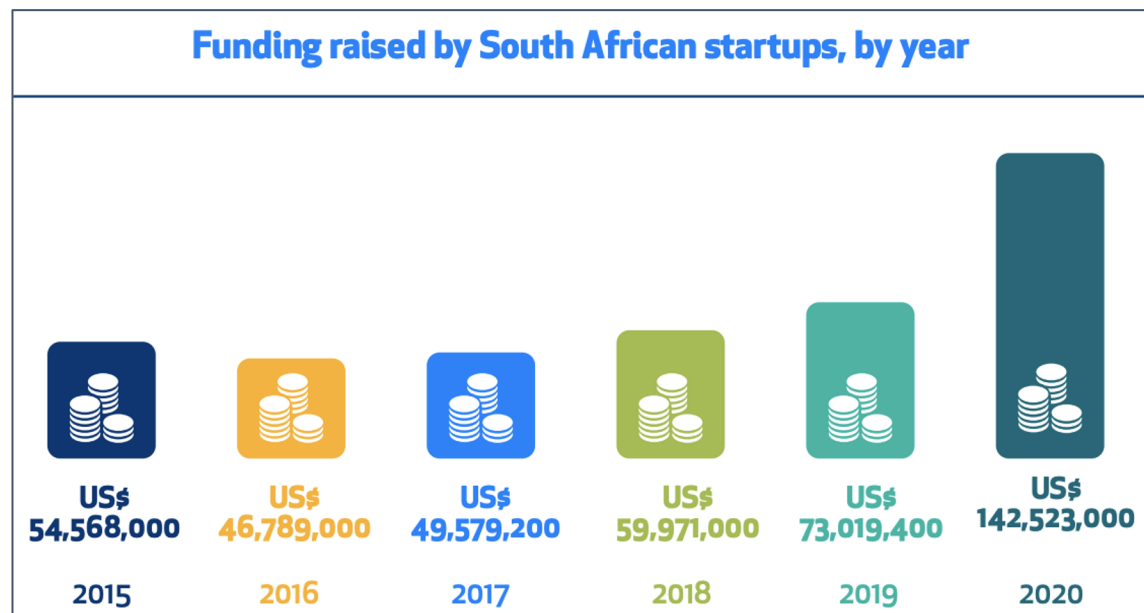
Insight2Impact (2019 study) found that:

- South Africa had the second-highest number of platforms offering financial services in the region.
- Key strengths include an advanced financial sector, well-established payment infrastructure, and the highest levels of account ownership (67%) across focus countries.
- Internet usage across the population was 59%, with 56% of the population owning a smartphone, 45% a basic phone, and around 24% possessing a personal computer.

Sources: [The World Bank's 2017 Findex](#), [Insight2Impact 2019 Study](#)

South Africa's **fast growing tech sector** despite its complex financial regulatory environment

The tech sector enjoyed **95% year over year growth in total funding**, making up **20% of total tech funding in Africa** in 2020



\$143M in total funding

81 deals

26 companies raised \$1M+

The explosion of innovative fintech startups poses a challenge to regulators to keep regulations current.

Spotlight on South Africa's regulators

- The **South African Reserve Bank (SARB)** is the primary regulator governing banking and payment services.
- The **Prudential Authority (PA)** is responsible for overseeing the soundness of the financial institutions, including banks, insurers, co-operative financial institutions, financial conglomerates, securities, foreign exchanges, credit exchanges, and certain market infrastructures.
- The **Financial Sector Conduct Authority (FSCA)** is the market conduct authority responsible for maintaining the integrity of financial markets and protecting consumers.
- The **Financial Stability Oversight Committee (FSOC)** facilitates cooperation between the SARB and other regulators (including the PA & FSCA) in matters concerning financial stability
- The **Financial Sector Inter-Ministerial Council (FSIC)** promotes cooperation between cabinet ministers responsible for financial sector regulation (including the **Minister of Finance** and the **Minister of Economic Development**)



South African Reserve Bank

Regulatory approach to fintech in South Africa

Fragmented regulatory framework

The existing regulatory framework is fragmented. Various pieces of legislation operate alongside each other, sometimes in harmony and sometimes not. Regulators have begun to make progress on this fragmentation with the implementation of the Financial Sector Regulation Act, 2017 and its Twin Peak model of financial sector regulation that established both the Prudential Authority and the Financial Sector Conduct Authority.



The Innovation Hub

The Intergovernmental Fintech Working Group

The regulatory approach to fintech is primarily coordinated through the Intergovernmental Fintech Working Group (IFWG), which was established in 2016 and brings together seven regulatory and policymaking authorities who jurisdiction over fintech.

Approach to fintech

There are currently no specific fintech laws or regulations. Instead, the regulatory approach broadly seeks to encompass fintech within the existing legislative framework. Fintech firms are required to determine which regulation(s) apply to them based on their business activity. This may present an issue for fintech firms that do not naturally fit in the existing legal or regulatory structure.

South Africa's regulators in practice

IFWG as a “one stop” shop

Companies are often required to engage with multiple regulators simultaneously to determine whose jurisdiction they fall under and/or which licence(s) they require. This can cause a degree of regulatory uncertainty. To simplify this process, the IFWG initiative aims to provide a “one stop” shop solution for regulatory engagement through its **Regulatory Guidance Unit**.

The cost of compliance

The cost of compliance with wide-ranging regulations and legislations can be time consuming and expensive. New entrants are required to comply with a variety of legislation. This requires knowledge and expertise, often sought at significant cost from third parties. For start-ups with limited resources, the requirement to comply with specific and numerous regulatory requirements from the outset can be burdensome and costly.

Calling all foreign companies!

Foreign companies who wish to offer fintech services and products in South Africa should note that the Companies Act, 2008 requires foreign businesses to register as an external company within 20 business days of beginning trade. They may also be required to follow immigration laws if the foreign company wants to send employees to South Africa.

Strengths in South Africa's regulatory environment



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Strengths

- 1 South African regulators are generally supportive and encouraging of innovation and fintech. Their genuine desire to see the sector grow is reflected in the establishment of the IFWG, whose objective is to support the growing role of fintech and innovation in the South African financial sector. The IFWG has introduced initiatives such as the Regulatory Guidance Unit, a Regulatory Sandbox, and the Innovation Accelerator to explore how regulators can more proactively assess emerging risks and opportunities in the market.
- 2 There seems to be a genuine attempt at regulatory consolidation with the recent introduction of the Twin Peaks regulatory system establishing boundaries and clearly defining the responsibilities of the PA and FSCA. This is further highlighted by the proposed Conduct of Financial Institution Bill which seeks to repeal the numerous primary and subordinate legislations related to market conduct and introduce a single, comprehensive piece of legislation.
- 3 The establishment of the IFWG and the proposed cryptocurrency regulation indicate a forward-looking approach. Regulators are recognizing recent developments in the industry and engaging proactively with emerging fintech technologies and sectors.
- 4 South African regulators and the government have recognized the historical disenfranchising of the black community, specifically within the financial industry, and launched initiatives such as the Black Business Supplier Development Programme to rectify this. As a result, South Africa ranks very highly for protecting minority investors (13th of 190) according to the World Bank's Doing Business rankings.

Sources: [The Conduct of Financial Institution Bill](#), [Black Business Supplier Development Programme](#), [The Intergovernmental Fintech Working Group](#)

Challenges in South Africa's regulatory environment



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Challenges

1 Regulatory uncertainty for certain types of fintech. Existing laws apply to fintech services and products to the extent that such services and products are deemed to fall within the defined scope of the legislation. This can present an issue for fintech firms who do not naturally fit in the existing legal or regulatory structure, which could stifle innovation and growth. Fintech firms are often required to engage with multiple regulators simultaneously to determine whose jurisdiction they fall under and/or which licence(s) they require. This can cause a degree of regulatory uncertainty.

2 Access issues. Access to regulators or timely regulatory advice from relevant authorities has been an issue in the past, particularly when dealing with a large number of regulatory bodies. Hopefully, the formation of the IFWG has mitigated this issue

3 Limiting payments regulation. Current legislation does not allow non-banks to issue e-money nor integrate payment systems directly on their platform. This impacts fintech firms' ability to operate in the payments sphere and limits their ability to integrate payments within their other products.

4 Heavy compliance costs. The cost of compliance with wide-ranging legislation and regulation can be time consuming and expensive. Part of this is because new entrants are required to comply with a variety of legislation, which requires knowledge and expertise, often sought at significant cost from third parties. For start-ups with limited resources, the requirement to align with specific and numerous regulatory requirements from the outset can be burdensome and costly.



04

How to Engage with Regulators

How can startups **effectively engage with regulators?**



Do your research

Review requirements before approaching the relevant regulator(s) and arm yourself with specific questions. Consider which **laws and regulations** might apply to you. Note that these may be broader than just financial regulation and may include topics such as data protection, cyber security, company structure, labor laws, and taxation, among others. It is easier to build regulatory compliance into your product and procedures from the start rather than add them later. Also consider **future regulatory developments** that may impact your company as it grows and other pathways to taking products to market, such as through partnerships.



Engage with the regulator early

The financial regulators in South Africa are generally supportive and encouraging of innovation in financial services and want to support providers. There are a number of mechanisms and tools in place to facilitate a dialogue between regulators and fintech firms. For example, the IFWG provides a “one stop” shop for regulatory engagement, and its Regulatory Guidance Unit is particularly useful for start-ups seeking quick answers and/or clarifications on regulatory questions and issues

If you engage early, you have the best chance to familiarize regulators with your company and products/services. This will enable them to provide informal guidance and clarification regarding your regulatory requirements as your company grows and regulations change over time.



Think like a regulator

Consider the regulators' objectives and priorities. Meet their requirements by giving them all the information they need to answer your questions or grant you a license. Be mindful of regulators' timelines and build this into your business plan. They won't be able to speed up your application just because your investors want it. Remember, the more prepared you are the quicker you will get a license and the fewer hurdles you will encounter on your journey.

Thinking like a regulator also demands considering broader policy goals. In the South African financial market, financial inclusion is a key priority which influences the fintech initiatives regulators are willing to support.

Ask other founders about their experiences with regulators to understand how you can best prepare and align to their priorities.

Key messages to fintech firms from SARB & FSCA



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Innovation is beneficial to the economy and regulators are keen to encourage and promote its growth. Innovation not only improves the efficiency and efficacy of the financial sector but also enhances the financial literacy of South Africans, especially those in previously excluded financial segments.



Supporting the development of fintech firms provides an opportunity to resolve payment, credit, and remittance problems. These firms also provide accessible and appropriate financial products to South Africans, such as investments, savings, and insurance at scale.



Regulators are keen to continue to provide regulatory clarity and ease of access to relevant information for firms.



Regulators encourage firms to pursue innovation in a responsible and sustainable way.



Firms are advised to follow general competition provisions concerning restrictive practices, abuse of dominant position, and mergers.



Engaging with the IFWG

Non-traditional firms, such as fintech and innovative startups, should utilize the [IFWG](#). The IFWG was formulated in recognition of the cross-sectoral nature of fintech regulators, and as such, it has representation from most of the regulators.

- It operates a “First Responders Network” – once a query is submitted, the relevant regulator will deal with it and provide a response to the firm. Firms who need assistance to determine which laws apply to them are encouraged to submit queries to this network.
- Queries can be submitted through the [portal](#) on the IFWG website. Standard queries typically have a response time of 5 days, while non-standard queries which require further investigation can take up to 20 days. When submitting a query, firms are required to utilize the template provided on the website, which has specific questions which will help them to provide all required information in the correct format.
- The IFWG website also has a [Frequently Asked Questions \(FAQs\)](#) page, which is continuously updated and expanded. Firms are encouraged to review these FAQs as the answer they are seeking may already be available here.
- The IFWG also holds regular workshops on various fintech topics, which are good opportunities to engage with the regulators.

05

Relevant Regulations



5.1 Banking regulations



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Banking: General overview & licensing

Main regulator:

Per amendments to the Banks Act, 1990 by the Financial Sector Regulation Act, 2017 (FSR Act), the Prudential Authority (PA) has the responsibility for supervision of banks

Key regulation:

The Banks Act is a historical piece of legislation which provides for the regulation and supervision of deposit-taking institutions.

Scope:

The Banks Act defines a bank as a business that accepts monetary deposits from the general public as a regular feature of its business.

Licensing process:

Firms seeking to undertake banking must be registered under the Banks Act (Section 11). To register, firms are required to (i) apply to the PA for authorization to set up a bank and (ii) apply for registration (Chap. III of the Banks Act for detailed requirements).

Application requirements:

- Complete PA's authorization forms
- Provide copies of incorporation documents & details of the proposed business and how it will be conducted
- List names and addresses of key personnel and shareholders
- Pay application fees.

Capital requirements:

Revised capital requirements were introduced by SARB in 2013 to align with the Basel III framework. These are stipulated in the Banks Act and accompanying regulations. The roll-out of Basel III requirements is still underway. There has been some flexibility in implementing these requirements, and a phased approach has been adopted to allow for smooth transition by banks. A detailed timeline for compliance has been set out by the PA, running from October 1, 2020 to January 1, 2023.

Banking: Agent Banking & Digital Banks

Agents:

- The Banks Act permits the use of agents by banks for certain activities.
- Permitted activities that an agent can undertake on behalf of a bank include:
 - receiving client deposits and other money payable,
 - collection of applications for loans or advances, and
 - making payments due to clients.



Digital Banks:

- Digital banks are described as “deposit-taking institutions that are members of a deposit insurance scheme and deliver banking services primarily through electronic channels instead of physical branches”.
- In accordance with the 2009 e-money position paper issued by the SARB (the “E-Money Paper”), providers of digital wallets and e-money solutions may fall within the definition of deposit-taking and may be subject to the requirements of the Banks Act.
- The 2009 E-Money Paper states that only banks can issue e-money.
- Providers who consider themselves to be “digital banks” would therefore be required to have a banking licence and comply with obligations concerning capital and liquidity ratios and reserve requirements
- Fintech firms seeking to establish digital banks should refer to the application requirements in the previous slide applicable to banks.
- Additional provisions relating to e-money are considered in section 5.2 Payments.

Banking: Deposit insurance

- There are no stipulated requirements for deposit insurance.
- However, the government has previously compensated consumers for losses in the event of a bank's collapse on a case-by-case basis.
- To address the current gap, the SARB and National Treasury are seeking to create a regulatory framework that will introduce a deposit insurance scheme (DIS). See section 6 on the regulatory pipeline for further details.



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5.2 Payments

Payments: General overview

Main regulators:

SARB has a mandate to conduct, monitor, regulate, and supervise the payments sector in South Africa.

Payments Association of South Africa (PASA) is the governing body for payment systems. It is responsible for organizing, managing, and regulating its members' participation in the payment system.

Key regulation:

The South African Reserve Bank Act, 1989, the National Payment System Act, 1998, the Financial Services Laws General Amendment Act 22, 2008, and the Banks Act, 1990

Main provisions:

- Providers of Payment Services must register as a System Operator (SO) or third-party payment provider (TPPP) with PASA.
 - SOs provide the electronic means for parties to receive or send funds.
 - TPPPs accept money or the proceeds of payment instructions from two or more payers for payment to third persons to whom the money is due.
- Providers of Payment Services cannot issue e-money; only registered South African banks can.
- For members of PASA to clear payment instructions, there must be an understanding of the business rules, requirements, and technical agreements that make clearing possible.

Payments: Registering as a provider of payment services

Who:

SOs are non-bank providers of services in relation to payment instructions.

TPPPs are non-bank providers and can either be a Beneficiary Service Provider (BSP) and Payer Service Provider (PSP).

How much:

PASA's Constitution provides a formula for the calculation of fees in Clause 33.

Permitted activities:

- An SO **provides** the electronic means (including the delivery to and/or receipt of payment instructions) to two or more persons to allow such persons to make payments and/or to receive the proceeds of payment instructions.
- A TPPP accepts money or proceeds of payment instructions from two or more payers for on-payment to third persons to whom the money is due.
- A TPPP is generally enabled by an SO, and may hold funds for payment due in its own bank account for a short time. An SO only provides the technology but does not accept the funds into its own bank account for on-payment to another party.

How:

SO entry and participation criteria are prescribed by PASA. The application is required to be made in prescribed form, which is accessible via the PASA website, alongside supporting documentation. Applicants are required to different types of criteria as detailed in Section 3 of the PASA document. This includes:

- Be a registered company.
- Financial criteria including providing a certified copy of the report of the external auditors in respect of the latest financial year end; on request, providing to the SARB certified copies of its audited annual financial statements.
- Operational criteria including having tested its systems to ensure it is operationally and technically capable of providing the service.
- Legal and contractual requirements requiring the SO to enter into a written service level agreement with each person to whom services are provided, that obliges the parties to comply with all the appropriate requirements and rules for providing a service as contemplated in the authorization criteria, the NPS Act and any other applicable law.
- Applicants are required to pay "a non-refundable application fee, determined by PASA from time to time".
- PASA is empowered to exempt persons from authorization after consultation with SARB and the applicant.

All TPPP's are required to be registered by a clearing participant who may be banks or designated clearing system participants (who may be non-banks)

Payments: Legislative reform & fintech firms

Legislative reform:

SARB has launched an evaluation of current payment systems legislation, which could have implications for payment systems and fintech providers in years to come.

SARB's Policy Paper on the Review of the National Payment System (NPS) Act highlights several reasons to examine the robustness and resilience of the NPS legislative and regulatory framework in the rapidly evolving, technologically advanced, and highly innovative payments landscape. The target date for legislative reform is 2022.

Fintech firms in payments:

A potential barrier for fintech firms is that all businesses must have prior approval and authorization from PASA to engage in any payment activity. These authorizations may be very difficult to obtain.

Due to the restrictive licensing process, a number of fintech firms have partnered with 'traditional' financial services providers, such as banks. However, the Banks Act requires SARB approval for contractual engagements between a bank and a non-bank entity where the parties undertake an economic activity that is subject to their joint control.

Payments: E-money

Although the SARB investigated the feasibility of allowing non-banks to issue e-money in its 2009 E-Money Paper, it decided to only allow registered South African banks to issue e-money to reduce risk in the national payment system. Thus fintech firms interested in issuing e-money must partner with a bank or earn authorized as a bank pursuant to the Banks Act.

Due to this decision, the use of mobile money and related services, including remittance and mobile payments, are quite limited in South Africa, especially compared to other sub-Saharan Africa countries.



Payments: Remittances & Exchange Control

Regulator:

SARB controls and oversees all capital inflows and outflows, designating power to authorized dealers (banks) who oversee and regulate the market on their behalf.

Key regulation:

Currency and Exchanges Act No. 9, 1933 and Regulations (Exchange Control Regulations, 1961)

Currency and Exchanges Manuals for Authorized Dealers in foreign exchange with limited authority

Scope:

- Authorized Dealer - a legal person authorized by the Financial Surveillance Department (FSD) of the SARB to deal in gold and/or foreign exchange.
- Authorized Dealer in foreign exchange with limited authority (ADLA) includes bureaux de change, independent money transfer operators, and value transfer service providers, who are authorized by the FSD to deal in foreign exchange transactions.

How:

- The exchange control system, subject to exemptions, requires anyone undertaking cross-border money remittance, i.e. ADLAs, to apply for prior permission from SARB or authorized dealers in foreign exchange (typically banks)
- The Currency and Exchanges Manual for ADLAs contains the permissions and conditions applicable to transactions in foreign exchange that may be undertaken by ADLAs and/or on behalf of their customers.
- SARB's E-Money Paper is silent on whether electronic money customers can send and/or receive international money transfers.
- The Exchange Control Department of the SARB issues Exchange Control Rulings, which lay out administrative measures, permissions, transaction limits, and conditions for Authorized Dealers.

5.3 Credit



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Credit: Licensing & application process

Key legislation & regulator:

National Credit Act, 2005 (NCA) applies to the regulation of consumer credit and establishes the National Credit Regulator (NCR) with jurisdiction over this sector.

Who:

All lending entities - including banks, micro lenders, online lenders, peer-to-peer (P2P) lending platforms and their participants*, and other credit providers - are required to register with the NCR as credit providers regardless of the value or volume of funds lent.

The NCA also outlines the regulation of stokvel, savings, and investment societies. Transactions between stokvels and their members are not considered credit arrangements under the Act.

How:

Detailed registration requirements are stipulated in Chapter 3A of the NCA. The application is to be made to the NCR in the prescribed manner and form (Section 45). In particular credit providers are required to complete Form 2.

How much:

The application fees for various entities are set out in the "Determination of Application, Registration and Renewal Fees Regulations of 2016". For credit providers specifically, the initial registration fees vary between R1,000- R330,000 (see Table A of these Regulations).

Price caps & consumer protection:

- The NCA outlines maximum interest rates, fees, and charges chargeable by different categories of credit providers (Section 105).
- The National Credit Amendment Act, 2019 was introduced to provide for debt interventions. Additionally, it sets out offences related to debt intervention, prohibited credit practices, selling or collecting prescribed debt, and the offence of failure to register as required by the Act. This Act has not yet come into commencement as it awaits publication in the Government Gazette.

Credit: Credit Bureaus & Intermediary Services

Credit Bureaus:

- Registration requirements for credit bureaus are found under Section 43 of the NCA.
- Credit information must be reported by credit providers to credit bureaus.
- Credit bureaus are required to accept the filing of consumer credit information from any credit providers, subject to payment of filing fees (Section 70).
- Consumer credit information is defined in Section 70(1) of the NCA and includes both negative and positive information concerning the customer.
- Customers have a right to (a) be advised by a credit provider within the prescribed time before any adverse information about them is reported to a credit bureau and to (b) receive a copy of that information upon request (Section 72 (1)).

Intermediary Services:

The Financial Advisory and Intermediary Services Act, 2002 (FAIS) regulates the activities of financial service providers who give advice or provider intermediary services to consumers, including credit services such as debt rehabilitation. See Section 5.6.8 for further details.



5.4 Insurance



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Insurance: Licensing overview and requirements

Key regulation:

The Insurance Act 2017 (IA), the Long-term Insurance Act, 1998, and the Short-term Insurance Act, 1998

Main regulators:

Prudential Authority is responsible for insurers and the Financial Sector Conduct Authority has responsibility for insurer's market conduct.

Scope:

There are three categories of insurance license:*

- (i) a microinsurance license for both life and non-life insurance, with policy benefits falling within a stipulated maximum;
- (ii) a license for all other categories of life and non-life insurance business; and
- (iii) a reinsurer business license

Licensing process:

- Licensing requirements are specified under Chapter 4 of the IA.
- Firms who are eligible to apply for a microinsurance license are:
 - For-profit and not-for-profit firms registered under the Companies Act, and
 - Cooperatives registered under the Co-operatives Act.
- Those applying for licenses for life, non-life and reinsurance business must be:
 - A public company,
 - A state-owned company registered under the Companies Act,
 - A cooperative registered under the Co-operatives Act, or
 - A branch of a foreign reinsurer.
- Applicants must fulfil several requirements including:
 - proof that their primary business is insurance,
 - a sound business plan, and
 - their key persons and significant owners must satisfy the fit and proper requirements provided (see Chapter 3 for detailed requirements).
- Insurers are also required to adopt and implement an effective governance framework, as described in Chapter 5 of the IA.
- The required forms for the licensing process are available on the FSCA's website.



5.5 Investment



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Investment: Licensing process

Key regulation:

The Financial Markets Act, 2012 (FMA) provides for the licensing and regulation of capital markets activities and institutions

Main regulators:

Prudential Authority is responsible for securities and the Financial Sector Conduct Authority has responsibility for their market conduct.

Licensing process:

- Chapter III and IV of the FMA set out requirements to apply for an exchange license and central securities depository license, respectively.
- Applicants are required to meet several requirements, including:
 - providing founding documents,
 - paying an application fee (currently R 260,000/US\$17,461)
 - fulfilling the fit and proper requirements,
 - meeting clear and transparent governance requirements, and
 - establishing structures to ensure effective surveillance and compliance with relevant rules.
- Platforms linking buyers and sellers of equity (P2P equity crowdfunding) may be construed as an “exchange” and therefore require FSCA licencing under the FMA.
- The required forms for the licensing process are available on the FSCA's website.

Investment: P2P lending & equity crowdfunding

- There are currently no regulations specific to P2P or equity crowdfunding in South Africa.
- A whole array of different rules may apply to the crowdfunding activities, depending on their mode of operation. These include:
 - The Banks Act because crowdfunding involves deposit-taking,
 - The Companies Act related to companies and disclosure requirements,
 - The Collective Investment Schemes Control Act if investments are pooled and channelled into securities,
 - The Financial Advisory and Intermediary Services Act as it pertains to intermediary services or advice,
 - The Financial Markets Act when online platforms match investors with issuers and securities are traded on an over-the-counter basis (see previous slide on investment licensing process),
 - The National Credit Regulation Act if the platform matches lenders with borrowers to provide unsecured loans (i.e. P2P crowdfunding), also see section 5.3.
- It is unclear whether a more streamlined approach to crowdfunding regulation will be developed in the future.

Investment: Virtual and crypto assets

Legal Position:

- Cryptocurrencies are not prohibited in South Africa and are unregulated.
- However, they are not a legal tender nor are they permitted for the conduct of money settlements in financial market infrastructures. They are also not permitted for the conduct of money settlements in financial market infrastructures.

Discussions on crypto assets have been ongoing since 2018, but no definitive action has been taken:

- In 2018, the Crypto Assets Regulatory Working Group was established to review the position of crypto assets and consider consumer protection concerns as well as informing any potential regulation moving forward.
- In 2019, the Consultation Paper on Policy Proposals for Crypto Assets was issued, followed by the IFWG 2020 Position Paper on Crypto Assets.
- The 2020 Position Paper on Crypto Assets proposes 30 specific recommendations on the development of a regulatory framework for crypto assets, cryptocurrency, and related service providers.
 - Included regulations aim to align with the cryptocurrency standards set by the Financial Action Task Force.
 - Proposes the Financial Intelligence Centre as the supervisory authority of crypto service providers, while the FSCA would be the responsible authority for the licensing of 'services related to the buying and selling of crypto assets.'



5.6 Other policy and regulatory considerations



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5.6.1 — Data protection



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Data protection: National provisions

Key laws: Constitution of the Republic of South Africa & The Protection of Personal Information Act, 2013 (POPIA)

Main provisions:

- **The Constitution of the Republic of South Africa** guarantees the right to privacy for every citizen. This right includes the right not to have the privacy of their communications infringed.
- **The Protection of Personal Information Act, 2013** promotes the protection of personal information processed by public and private bodies. It stipulates minimum requirements, creates the role of Information Regulator, and codifies the way organizations can source and use individuals' and entities' personal information, including digital information. Any direct marketing to customers in South Africa is regulated by POPIA.

On cross-border transfers:

- POPIA sets out provisions regarding cross-border information transfers under Chapter 9.
- The transfer of personal information about a data subject by a responsible party to a third party in a foreign country is contingent on meeting certain conditions:
 - The data subject has consented.
 - The third party is subject to laws or binding corporate rules or agreement that provides similar protection to POPIA.
 - The transfer is necessary for the performance of a contract between the data subject and responsible party.

Data protection: Sectoral provisions

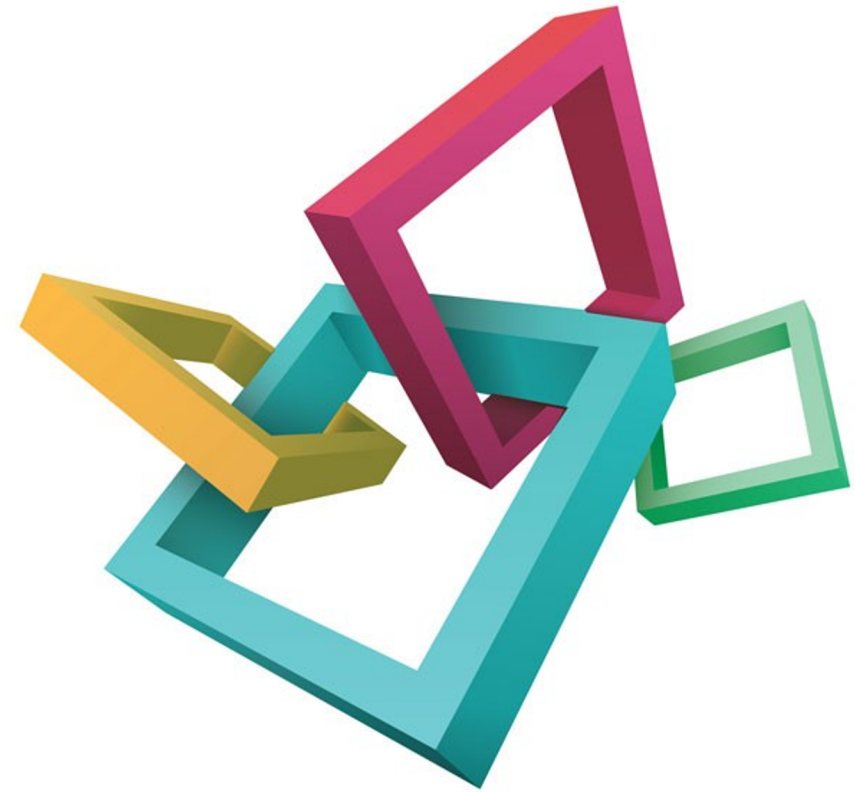
There are also data protection provisions in sector-specific legislation and regulation:

- The South African Reserve Bank Act provides for the preservation of secrecy (Section 33).
- The Code of Banking Practice is a non-binding code that all banks agree to follow. In the code, banks agree to treat all customer personal information as private and confidential (Section 6.1)
- The National Credit Act sets out requirements related to confidentiality, personal information, and consumer credit records (Chapter 4, part B). Persons who receive, compile, retain, or report confidential customer information are obligated to keep this confidential (Section 68).



Data sharing: Open banking

- There are currently no prescribed requirements for open banking.
- The SARB released a Consultation Paper on “Open-banking activities in the national payment system” in November 2020 for stakeholder comment (not public).
- The IFWG also recently released a paper on “Non Traditional Data Research.”
- Firms interested in introducing initiatives in this area should check with SARB, IFWG, and other relevant regulators.



5.6.2 — Consumer protection



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Consumer protection: **National provisions**

Key Laws: Constitution of the Republic of South Africa, the Consumer Protection Act, 2008

Main provisions:

- Schedule 4, Part A of the **Constitution of South Africa** provides that consumer protection is an area of concurrent legislative jurisdiction, which means both the national and provincial governments in South Africa are permitted to pass legislation on consumer protection.
- The **Consumer Protection Act** sets out consumer rights and the responsibilities of product and service providers to protect these rights (see Chapter 2). This includes:
 - the right to privacy, disclosure, and information; and
 - rights related to marketing, fair and reasonable terms and conditions.

The Act also prescribes how these rights can be enforced and mechanisms for dispute resolution (Chapter 3A and Chapter 6).

Consumer protection: Sectoral provisions

There are some piecemeal consumer protection regulations that apply to specific financial service providers including:

- The FSCA introduced the Conduct Standard for Banks (the Standard) on 3 July 2020 to supervise the banking sector's conduct. The Standard sets out high-level requirements for the banking sector aimed at ensuring the fair treatment of financial customers.
- The National Credit Act also sets out consumer protection provisions related to credit marketing practices (Chapter 4 Part C), forms of disclosure in credit agreements (chapter 5 Part B), and on dispute settlement (Chapter 7), among others.

5.6.3 — Anti-money laundering (AML)/know your customer (KYC)



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AML/KYC: Key laws & main provisions

Key Laws:

The Financial Intelligence Centre Act, 2001 (FICA) and Amendment Act, 2017 regulate money laundering in South Africa

Main provisions:

- Accountable Institutions include banks, financial instrument traders, long-term insurance providers, dealers in foreign exchange, lenders, and investment advisers, as set out in Schedule 1 of the FICA. Not all fintech firms are in scope.
- Accountable Institutions are subject to compliance requirements when accepting new customers, which vary depending on the entity. Each decision-making member of the customer is required to be compliant and the business entity verified by the accountable institution.
- Accountable Institutions must report any unusual or suspicious transactions, include those that have no apparent business or lawful purpose as well as those that appear to be an evasion or attempted evasion of paying a tax, duty, or levy.
- The Amendment Act introduced a risk-based approach to customer due diligence. Accountable Institutions are required to document, maintain and implement a Risk Management and Compliance Programme (RMCP) with respect to anti-money laundering/ combatting the financing of terrorism (AFL/CFT). A copy of this document must be made available to the Financial Intelligence Centre. The Amendment Act changes replace previous prescriptive onboarding requirements and allow entities to choose how to establish and verify customer identity. The documented approach must take into account AML/CFT risks connected with customer onboarding, and the occasional nature of one-off/ single transactions (see Chapter 3 of the Act for detailed provisions on CDD).

AML/KYC: Customer due diligence requirements

- The Financial Intelligence Centre (FIC), in collaboration with the National Treasury, the South African Reserve Bank, and the Financial Services Board, published Guidance Note 7 on the implementation of a risk-based approach to Customer Due Diligence (CDD). Guidance on CDD measures for various types of customers are set out in Chapter 2 e.g., for natural persons, legal persons, trusts and partnerships.
- For natural persons, identity can be determined by reference to a number of attributes. At a minimum these attributes are the person's full names, date of birth and, in most cases, a unique identifying number issued by a government source (e.g. in the case of a South African citizen or resident, his/her identity number or, in the case of other natural persons, a passport number or numbers contained in asylum seeker or refugee permits, work permits, visitors' visas etc.)
- Previously, banks verified customer identity on the basis of a visual inspection of the barcoded green ID book and visual comparison of the photo in it to the appearance of the (prospective) customer.
- The 'manual' method of identity verification had flaws. To address them, the South African Banking Risk Information Centre (SABRIC) and the Department of Home Affairs (DHA) collaborated to enable the verification of customers' identities by matching their fingerprints directly against the DHA's biometric HANIS database, which sends back a 'verified' or 'not verified' response.

AML/KYC: Other related requirements

- **The Prevention and Combating of Corrupt Activities Act, 2004** was introduced to strengthen measures to prevent and combat corruption and corrupt activities, to provide for the offence of corruption and related offences, to create measures to investigate corruption, and to establish and endorse a Register that places certain restrictions on persons and enterprises convicted of corrupt activities relating to tenders and contracts.
- **The Protection of Constitutional Democracy Against Terrorist and Related Activities Act 2004** includes measures to prevent and combat the financing of terrorism and related activities.



5.6.4 — Cybersecurity



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Cybersecurity: Relevant legislation

- A National Cybersecurity Policy Framework (NCPF) was adopted by the Government in 2012, with the objective of providing a coherent approach to and strategies for coordination across government on cybersecurity.
- A CyberSecurity Hub was established under NCPF as a decision-making body responsible for identifying and combating cybersecurity threats.
- The Cybercrime Act was passed on May 27, 2021 as a single, overarching legal and regulatory framework governing cybersecurity, which was previously dealt with in various pieces of legislation. Provisions include:
 - Creation of cybercrime offences, including unlawful access, unlawful interception of data, unlawful acts respecting software/hardware, unlawful interference with data/computer program, cyber fraud, and cyber extortion.
 - Criminalization of the disclosure of harmful data messages.
 - Obligation of service providers and financial institutions to report cybercrime offences to the police within 72 hours, and to retain evidence connected to the offence.



5.6.5 — Competition



Competition: Relevant legislation & issues

Relevant legislation:

- The Competition Act, 1998 established the Competition Commission (Chapter 4) which is responsible investigating anti-competitive activity, such as abuse of a dominant position (Chapter 2 Part B).
- The Act bars dominant firms from charging excessive prices and denying competitors access to an essential facility, where economically feasible (Section 8).

Competition issues in mobile financial services:

- Include issues with channel access, transparency, interoperability, regulatory coordination, and data sharing — these may also be present across other fintech sectors
- The Competition Commission has recently published a report on competition in the digital economy, which highlights specific competition issues that affect digital markets, including platforms and digital financial services.

5.6.6 — Taxation of financial services



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Taxation: Financial services

Relevant taxes:

- In June 2014, South Africa expanded the scope of its VAT rules by include cross-border digital financial services. The VAT rate is 15%. The provisions require registration for foreign suppliers which exceed the R50,000 (\$3,434) limit.

Application to fintech:

- These taxes may impact fintech businesses involved in cross-border payments or other cross-border financial services. Fintech firms are encouraged to consult the South African Revenue Services regarding the implications of the VAT and other requirements that may be relevant for their business.

5.6.7 — Other regulatory requirements



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Other Regulatory Requirements: **Financial advisory/ intermediaries & company registration**

Advisory & intermediaries:

- Financial Advisory and Intermediary Services Act, 2002 (FAIS) relates to financial advisory and intermediary services, including debt rehabilitation.
- Financial services providers that provide any of the following services are regulated by FAIS: furnishing of advice; buying, selling, or otherwise dealing, managing, administering or servicing a financial product; collecting or accounting of premiums or other monies payable by a client to a product supplier; and the receiving, submitting, or processing of claims.

Company registration:

- The Companies Act, 2008 requires all businesses to register as an external company within 20 business days after they first begin conducting business within South Africa.

06

What regulations are coming out soon?

Regulatory pipeline



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New licensing framework for financial institutions:

- The Conduct of Financial Institution Bill (COFI) is a forthcoming Bill yet to be promulgated. All primary and subordinate legislation that deals with market conduct regulation will be repealed replaced by the COFI Bill.
- A key development under this will be a new licensing framework for financial institutions instead of the current system requiring registration with different authorities. Firms will be required to apply for a single market conduct licence from the FSCA with different categories based on the type of activity.
- It is also envisaged that a 'principles and outcomes-based' approach will be enacted. For example, Section 30(1) of COFI states that a financial institution must conduct its business at all times in a manner that prioritizes fair outcomes for financial customers
- The Bill's intended implementation date of implementation has not been determined.
- As part of this process, it is anticipated that there will be a transitional regime to convert existing registrations into a license under the new framework. Additionally, to reduce regulatory barriers to entry and support development and transformation, the licensing approach will allow the regulator to set licensing requirements on new entrants, in support of developmental, inclusion, innovation, and transformation objectives, to permit gradual compliance over time with regulatory requirements.

Regulatory pipeline (cont.)

New regulatory framework that will introduce a deposit insurance scheme (DIS)

- On 25 September 2018, National Treasury published the Financial Sector Laws Amendment Bill (FSLAB), which contains the high-level enabling framework for the establishment of Corporation for Deposit Insurance (CoDI). Subsequently, the Cabinet tabled a Financial Sector Laws Amendment Bill in 2020 in Parliament.
- In 2020, the SARB started publishing a series of discussion documents on the key aspects that will affect and facilitate the operationalisation of CoDI. SARB published a discussion paper in May 2021 that describes the funding model for the proposed deposit insurance scheme and addresses the implications for banks in terms of the contributions they would be required to make to the deposit insurance fund. Comments were requested until 30 June 2021
- These documents will be converted to secondary legislation after the promulgation of the FSLAB.

Regulatory pipeline (cont.)

Crypto Assets:

- A new regulatory framework is being developed to govern crypto asset activity in South Africa, led by the Crypto Assets Regulatory Working Group of the IFWG. This will introduce business and conduct standards as well as include crypto within capital reporting and exchange control regulations. The licensing and supervision will be undertaken by FSCA.

Payments System:

- SARB has launched an evaluation of the current payment systems legislation.
- SARB's Policy Paper on the Review of the National Payments System Act highlights several factors that justify the examination of the robustness and resilience of the National Payment System legislative and regulatory framework in the rapidly evolving, technologically advanced and highly innovative payments landscape.
- The planned target date for the legislation reform is 2022.



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07 Additional Resources for Fintech Companies

Additional resources available

Resource	Who provides it?	What is it?	Where can I find out more?
Intergovernmental Fintech Working Group (IFWG)	The National Treasury, the FIC, the FSCA, the NCR, SARB and the South African Revenue Service	A collaborative effort and resultant body of several South African financial sector regulators, including the National Treasury, FIC, FSCA, NCR, SARB and South African Revenue Service (SARS). It was established in 2016 to understand the growing role of fintech and innovation in the South African financial sector and explore how regulators can more proactively assess emerging risks and opportunities in the market.	SARB Website
Innovation Hub	IFWG	Launched on 7 April 2020 to respond to changes in the financial sector driven by fintech and to promote responsible innovation in the sector. Provides assistance to all financial sector innovators, whether a start-up, an established fintech firm, an incumbent financial service provider, or an adjacent industry entering the financial services market.	IFWG Press Release
The Regulatory Guidance Unit	IFWG	Exists to help market innovators resolve specific questions regarding the policy landscape and regulatory requirements. Financial sector innovators with questions on fintech or innovation-related financial sector regulation are encouraged to visit to submit an enquiry. This is not a free legal service and does not replace independent legal and compliance advice, which firms are still encouraged to seek. However, it can provide comprehensive advice from sector experts in a user-friendly method.	IFWG Website

Additional resources available (cont.)

Resource	Who provides it?	What is it?	Where can I find out more?
The Regulatory Sandbox	IFWG	Provides financial sector innovators with an opportunity to test new products and services that push the boundaries of existing regulation, all under the responsible supervision of relevant regulators. Applications are accepted on a cohort basis. The Sandbox is deliberately designed to be open and is not theme-specific, encouraging a variety of firms to apply. This aligns with the competition mandate of the regulators and can potentially help to drive policy change in the future.	IFWG Website
Innovation Accelerator	IFWG	Provides a collaborative, exploratory environment for financial sector regulators to learn from and work with each other on emerging innovations in the industry. It offers initiatives like workshops to explore specific fintech activity, hackathons for industry participation, the development of guidance, and policy-driven initiatives including for RegTech, SupTech and crypto assets. It also produces videos and graphics on relevant topics. The accelerator's work also supports policy development. Outcomes of these coordinated efforts will be shared on the IFWG Innovation Hub website and the latest reports can be accessed online.	IFWG Website

Additional resources available (cont.)

Resource	Who provides it?	What is it?	Where can I find out more?
The Black Business Supplier Development Programme	Small Business Development Department	The Black Business Supplier Development Programme provides grant funding that encourages black businesses to grow by acquiring assets and operational capacity and provides a maximum investment of R1 million to 51% black-owned entities with 50% black management.	DSBD Website
The Technology and Human Resources for Industry Programme	Department of Trade and Industry, National Research Foundation	The Technology and Human Resources for Industry Programme was implemented to improve South Africa's technical skills and competitive edge through the development of technology. This grant, with a fund capacity of R150 million, is primarily aimed at engineering graduates and developing SMEs into large companies.	THRIP Website
The CEO Initiative	Ministry of Finance	The CEO Initiative, introduced to foster inclusive economic growth, is a R1.5 billion private sector fund to stimulate entrepreneurship and support the growth of SMEs.	SA SME Fund Website

Additional resources available (cont.)

Resource	Who provides it?	What is it?	Where can I find out more?
The Incubation Support Programme	Department of Trade and Industry	The Incubation Support Programme is a grant aimed at assisting entities in developing incubator programs and thereby creating employment within the communities, in turn strengthening the economy. The program is aimed at encouraging partnerships between the private sector, SMEs, and the Government to create sustainable growth in the economy.	Government Investment Incentives Website
The Employment Creation Fund	Department of Trade and Industry	The Employment Creation Fund supports projects and programs that have a positive impact on employment creation, skills development, and capacity building; developing technology diffusion and commercialisation; public employment creation; rural development; and the business environment.	Government Investment Incentives Website
The Co-operative Incentive Scheme	Department of Trade and Industry	The Co-operative Incentive Scheme promotes the formation of co-operatives that support broad-based black economic empowerment and improves their viability and competitiveness.	Government Investment Incentives Website

Additional resources available (cont.)

Resource	Who provides it?	What is it?	Where can I find out more?
The Support Programme for Industrial Innovation	The Industrial Development Corporation	The Support Programme for Industrial Innovation provides financial assistance for the development of commercially viable, innovative products and/or processes and facilitates the commercialization of such technologies.	Government Investment Incentives Website
Spoon Money (non-regulatory)	Spoon Money	Spoon Money is a group-based micro-working capital finance platform for female informal traders. This platform helps them access credit to support their businesses and create more sustainable and predictable income.	Spoon Money Website

South African authorities and their mandates

Authority	Objective/ Mandate	Year Formed	Authorizing legislation	Business Models - Mandate Applies							
				Digital payments & remittance*	Digital lending	Digital savings	Digital investment	Digital insurance	Digital capital raising**	Personal financial management	Ecommerce & DFS platforms
South African Reserve Bank (SARB)	SARB is the primary banking and payment services regulator in South Africa. It is tasked with "protecting the value of the currency in the interest of balanced and sustainable economic growth". In addition, SARB has a mandate to "enhance and protect financial stability in South Africa"	1958	South African Reserve Bank Act, 1989	Yes	Yes	Yes			Yes	Yes	Yes
Prudential Authority (PA)	The PA is responsible for licensing, supervising, and regulating banks, insurers, co-operative financial institutions, financial conglomerates, securities, foreign exchanges, credit exchanges, and certain market infrastructure	2017	Financial Sector Regulation Act, 2017	Yes	Yes	Yes		Yes	Yes	Yes	Yes
Financial Sector Conduct Authority (FSCA)	The FSCA is the market conduct regulator of financial institutions including those that provide products and services and those that are licensed and market infrastructures. It is tasked with conduct regulation and supervision of the financial market. It further aims to enhance and uphold the integrity and efficiency of financial markets while protecting customers by promoting their fair treatment.	2017	Financial Sector Regulation Act, 2017	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

*includes mobile wallets/ e-money, payment initiation & mobile POS **includes P2P lending and equity crowdfunding

South African authorities and their mandates (cont.)

Authority	Objective/ Mandate	Year Formed	Authorizing legislation	Business Models - Mandate Applies							
				Digital payments & remittance*	Digital lending	Digital savings	Digital investment	Digital insurance	Digital capital raising**	Personal financial management	Ecommerce & DFS platforms
National Credit Regulator (NCR)	The NCR is responsible for carrying out education, research, policy development, registration of industry participants, investigation of complaints, and ensuring enforcement of the National Credit Act. The NCR is also tasked with the registration of credit providers, credit bureaus, and debt counsellors. It is active in promoting financial inclusion policy and is a member of the Alliance for Financial Inclusion	2005	National Credit Act, 2005		Yes		Yes		If there is a lending component	If there is a lending component	If there is a lending component
Financial Intelligence Centre (FIC)	The FIC is South Africa's national centre for the receipt of financial data and analysis and dissemination of financial intelligence to the competent authorities. It has the mandate to identify the proceeds of crime, combat money laundering and terror financing.	2001	Financial Intelligence Centre Act, 2001	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Payment Association of South Africa (PASA)	PASA was appointed by the South African Reserve Bank as the payment system management body which organizes, manages, oversees, and regulates all matters affecting payment instruction	1998	National Payment System Act, 1998	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

*includes mobile wallets/e-money, payment initiation & mobile POS **includes P2P lending and equity crowdfunding

South African authorities and their mandates (cont.)

Authority	Objective/ Mandate	Year Formed	Authorizing legislation	Business Models - Mandate Applies							
				Digital payments & remittance*	Digital lending	Digital savings	Digital investment	Digital insurance	Digital capital raising**	Personal financial management	Ecommerce & DFS platforms
Financial Stability Oversight Committee (FSOC)	FSOC facilitates cooperation between SARB and the regulators (PA, FSCA, NCR and FIC) concerning financial stability. It also advises SARB and the Finance Minister on the designation of Systematically Important Financial Institutions and matters relating to crisis prevention and management.	2017	Financial Sector Regulation Act, 2017	Yes	Yes	Yes	Yes	Yes	If there is a lending component	Yes	Yes
Financial Sector Inter-Ministerial Council (FSIC)	FSIC promotes cooperation between cabinet ministers responsible for financial sector regulation, namely the Minister of Finance, the Cabinet member responsible for consumer credit matters, and the Minister of Economic Development.	2017	Financial Sector Regulation Act, 2017	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

*includes mobile wallets/e-money, payment initiation & mobile POS **includes P2P lending and equity crowdfunding

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