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# Digital Investments South Africa

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# How to use this deck

## Relevant regulations

1. Investment
2. Data protection
3. Consumer protection
4. AML / KYC
5. Cybersecurity
6. Competition
7. Taxation
8. Other regulations

This deck provides **an overview of South Africa's regulation of digital investments**.

Each slide in this deck provides high-level facts about each of the relevant regulations as well as a link to the original source. Not all regulations included in the deck may be relevant based on the nuances of your particular business model.

The Cambridge Centre for Alternative Finance (CCAF) and BFA Global's Catalyst Fund have developed this deck to help fintech startups working in South Africa and those seeking to enter the South African fintech market navigate the regulatory environment.



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01



# 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.'

## 02 — 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:

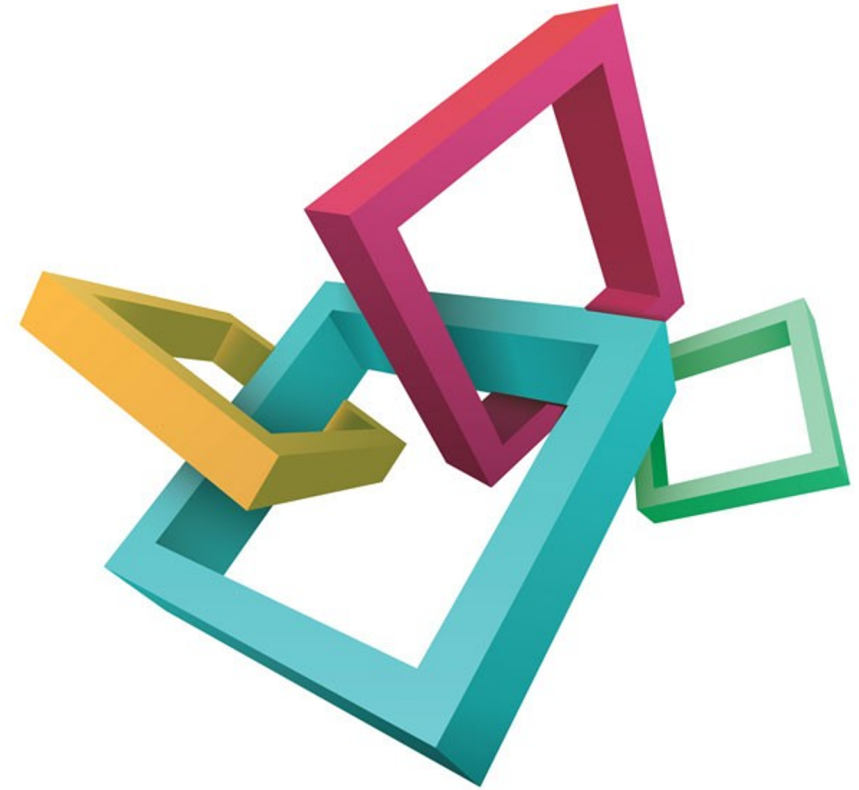
- The South African Reserve Bank Act provides for the preservation of secrecy (Section 33).
- The Code of Banking Practice is a non-binding code that all banks agree to follow. In the code, banks agree to treat all customer personal information as private and confidential (Section 6.1)
- The National 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.



# 03 — 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.



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# 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.





# 05 — 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.



# 06 — Competition



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# 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.

# 07 — 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.

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## 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.

For more information and further guidance on engaging with regulators see [Fintech Regulation in South Africa](#)

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