

# And so it begins: Steps towards crypto asset regulation in South Africa

By [Caryn Leclercq](#)

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The release in the past few weeks by National Treasury of proposed amendments to the schedules to the Financial Intelligence Centre Act, 2001 (FIC Act), seems to have passed largely unnoticed by the general public. This, however, marks the first real step taken by government in achieving its stated aim of implementing a proportionate and appropriate regulatory approach to crypto assets.



Caryn Leclercq

"Crypto assets are digital representations of perceived value that are de-centralised, peer-to-peer traded or transferred electronically, within a community of users who consider it as a medium of exchange, unit of account or store of value, in an environment where software maintains the rules and regulations on a mathematical basis, and without regulation by a central authority," says Caryn Leclercq, commercial law specialist at Caveat Legal.



## IFWG releases position paper on crypto assets

16 Apr 2020



The amendments, published over a year after the issue of a position paper on crypto assets by the Intergovernmental Fintech Working Group (a group of financial sector regulators) and the Crypto Assets Regulatory Working Group, seek to include certain crypto businesses and crypto service providers into the ambit of the definition of "accountable institutions" under the FIC Act. The list of these institutions includes attorneys, CISCA managers, long-term insurers and so on.

Since crypto assets don't fall within the ambit of the definition of financial products contemplated in the Financial Advisory and Intermediary Services Act, 2002, and because crypto assets aren't considered by South African regulators to be money or legal tender, the widely held view is that crypto asset businesses are not "accountable institutions" under the FIC Act. However, an amendment to include them as such has been in the working groups' line of sight for some time now, as crypto currency business methods could certainly be used to enable money-laundering and terrorist funding, some of criminal activities sought to be controlled by the FIC Act. The amendments are also in line with the government's international obligations to improve its money-laundering and terrorist funding framework and enforcement.

The proposed amendments will include as “accountable institutions” persons who carry on on behalf of a client, the businesses of (i) exchanging a crypto asset for a fiat currency or vice versa, (ii) exchanging one form of crypto asset for another, (iii) conducting a transaction that moves a crypto asset from one crypto asset address or account to another, (iv) safekeeping or administration of a crypto asset or an instrument enabling crypto control over a crypto asset, and (v) participation in and provision of financial services related to an issuer's offer of sale of a crypto asset.

## **Well-placed transparency**

Should the proposed amendments be implemented, crypto currency businesses will become obliged to register with the FIC, conduct extensive customer due diligences, keep records in the prescribed manner and form, maintain detailed risk management compliance programmes, and comply with reporting obligations, in addition to already existing obligations such as the reporting of suspicious transactions.

“In other words, some well-placed transparency is going to be injected into an industry that is often shrouded in anonymity. It remains to be seen what crypto market participants will think about this substantive step to regulation and whether this will affect South Africa as a viable jurisdiction for crypto assets,” says Leclercq.

“While timing of implementation is not clear, crypto businesses with a proactive and forward-thinking approach should start to consider what this means for their businesses and perhaps to even voluntarily start to implement customer identification and verification processes, along the lines required by the FIC Act. This could avert substantial disruption to a crypto business’ operations once the legislation is finally amended,” she says, adding that “this approach is in line with good corporate governance and compliance practices.”

At present, crypto assets still sometimes suffer from an unfortunate reputation due to non-regulation – FIC Act compliance may be just the way to help build the reputation of a crypto business as a trustworthy crypto assets platform or service provider.

## **ABOUT THE AUTHOR**

Caryn Leclercq is a commercial law specialist at Caveat Legal.

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