

June 2019

FA News

The first decentralised cryptocurrency was created in 2009 and many jurisdictions around the world are now starting to regulate cryptocurrency.

Participants in the payment systems have had the comfort of being protected in some way or another in our financial dealings.

Used for various activities

Some argue that although cryptocurrency was designed to remain out of the regulatory hands of our governments, our authorities have also recognised that cryptocurrency has branched out its means beyond simply being an innovative payment network and digital commodity.

Cryptocurrency has been used for various other activities that are, of course, not endorsed by our government.

Cryptocurrency has financed terrorism, been used for money laundering and evading tax. In addition, consumers have little to no protection in terms of law when utilising this form of currency.

Regulatory developments

The growing interest, investment and participation in cryptocurrency has caused the South African Reserve Bank to issue a consultation paper on policy proposals for crypto assets in January 2019. The purpose of the consultation paper is to:

- (a) provide an overview of the perceived risks and benefits associated with crypto assets;
- (b) discuss the available regulatory approaches; and
- (c) present policy proposals to industry participants and stakeholders.

The difficulty in the approaches to regulating cryptocurrencies is whether we should create a new regulatory framework for cryptocurrency in South Africa, or whether we can simply shift cryptocurrency within our existing regulatory framework.

South Africa has carefully considered and weighed these approaches, but many countries out there have simply adopted a lack of interest in bringing cryptocurrency within any kind of

regulatory framework. This, of course, also leaves room for certain risks associated with the broader potential uses of cryptocurrency.

South Africa has been progressive in the way it treats cryptocurrencies particularly from a tax perspective. The Financial Intelligence Centre (FIC) includes crypto asset service providers as accountable institutions, which means that the accountable institutions are under legal obligation to comply with anti-money laundering and combating the financing of terrorism requirements.

Currently there are no pieces of legislation that can adequately regulate the buying, selling and investing of cryptocurrency but for those participating in the market, the regulatory developments do appear to be on the move. The consultation paper reflects on an appropriate regulatory framework that is envisaged to be developed through three phases:

Phase 1: Registration process for crypto asset service providers.

Phase 2: Review of existing regulatory frameworks followed by new regulatory requirements or amendments to existing regulations.

Phase 3: Assessment of regulatory actions implemented.

A good stance to take

South Africa is still at an exploratory phase and is currently determining whether our existing regulations are sufficient to adequately regulate cryptocurrencies.

Considering the technological intricacies on which cryptocurrencies are founded, it may be prudent for new legislation to be drafted to ensure that the technological protocols are catered for in legislation and sufficient protection is built around it to curb all the risks that have crept in since the introduction of cryptocurrencies.

The reluctance of South Africa to ban the trade of cryptocurrency is also a good stance to take. People over the world are buying into this culture of cryptocurrency as opposed to the government-backed and issued currency.

The endeavours, however, from our law makers should remain channelled towards limiting the potential risks associated with cryptocurrency rather than stifling its innovation and the general innovation in our Fintech with too stringent regulatory landscapes, because it is clear that with or without regulation, cryptocurrencies will continue to remain on the rise.

Co-authored by Craig de Bruyn, Candidate Attorney

[> Read the full article online](#)