

# IFWVG

Crypto Assets  
Regulatory  
Working Group

## POSITION PAPER ON CRYPTO ASSETS



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## **Foreword by the Intergovernmental Fintech Working Group Chairperson**

Since the release of the Bitcoin white paper more than 12 years ago, the crypto asset ecosystem has grown to include more than 10 000 unique crypto assets as at the time of publishing this paper. Global daily trading values have also increased significantly over the past few years, currently averaging in excess of \$200 billion, and on some days exceeding \$400 billion. While crypto assets' viability as a widely used means of payment remains untested and an open question, the market has demonstrated significant resilience over the last decade, with the use cases for crypto assets as an alternative – albeit highly speculative and risky – investment class and as a cross-border remittance instrument, appear to be gaining some traction among retail customers.

Policymakers, regulators and central banks have been clear that crypto assets are not 'money' in the legal tender sense of the word, although they perform some of the functions of money. The Intergovernmental Fintech Working Group (IFWG) shares and reiterates this stance. However, by being excluded from the legal definition of 'money' and the associated existing legislation, the challenge is how to achieve regulatory and legal certainty in the most appropriate and responsible manner possible. The IFWG aims to promote responsible innovation without unduly advantaging or disadvantaging either incumbent market participants or new entrants, thereby ensuring a level playing field for all participants.

At the current conjuncture, deep insight into the South African crypto asset ecosystem is limited and largely based on anecdotal evidence. Clear policy stances on the variety of emerging crypto asset use cases are therefore required to deepen legal and regulatory certainty. To this end, this position paper sets out 25 recommendations for a revised South African policy, legal and regulatory position on crypto assets and related activities, and essentially provides a roadmap to putting in place a framework for regulating crypto asset service providers in South Africa. The 25 recommendations contained in this document will never be able to do justice to the countless hours IFWG members spent debating each of the five identified crypto asset use cases and their various nuances. While the publication of this document was always seen as the end goal (with appreciation that it will remain a living document), the greatest insight the IFWG as a collective gained from the exercise is what the process of true collaborative policymaking contains in practice.

I would then also like to thank my predecessor and founding member of the IFWG, Dr Arif Ismail, for leaving the IFWG in such a strong position. His unwavering commitment to the IFWG as Chairperson since the establishment of the IFWG in 2017 and his relentless pursuit of collaboration in the interest of delivering on the IFWG's value proposition of collaborative policymaking are truly appreciated.

Finally, to the industry participants in the South African crypto asset ecosystem: a sincere 'thank you' for your continued patience and willingness to engage with the regulatory authorities to discuss complex pain points and ensure South Africa's position on crypto assets remains appropriate and fit for purpose. The IFWG's Crypto Assets Regulatory Working Group will continue to engage domestic industry participants on new and emerging use cases in the crypto asset ecosystem as the industry continues to evolve at a very rapid pace.

**Ms Olaotse Matshane**  
**IFWG Chairperson**


## Executive summary

The Crypto Assets Regulatory (CAR) Working Group (WG) of the Intergovernmental Fintech Working Group (IFWG) agrees that crypto assets cannot remain outside of the South African regulatory purview, and recommends that South Africa employs a staged approach to bring crypto assets within the regulatory remit through the regulation of crypto asset service providers (CASPs). The CAR WG evaluated the options in terms of both expediency (change can be effected by the regulator vs change effected via the parliamentary process) and comprehensiveness (use cases and token types identified for the purpose of this position paper). To this end, the CAR WG position paper makes various recommendations, some of which are already under way and in the process of being implemented, and some of which will take longer to implement, with the ultimate objective of bringing crypto assets and CASPs within the South African regulatory remit. The detailed recommendations are grouped into the following three overarching categories:

- 1. Implementation of AML/CFT framework:** The work of including CASPs as an accountable institution under Schedule 1 to the Financial Intelligence Centre Act 38 of 2001 (FIC Act) is already under way. Once CASPs are added to the list of accountable institutions, the full ambit of the FIC Act obligations will apply to them. This will mean that CASPs will be required to adhere to the legislative requirements aimed at anti-money laundering and combating the financing of terrorism (AML/CFT). This will include registering with the Financial Intelligence Centre (FIC), conducting customer identification and verification, conducting customer due diligence, keeping records of client and transactional information, monitoring for suspicious and unusual activity on an ongoing basis, reporting obligations to the FIC, including suspicious and unusual transactions, reporting cash transactions of R25 000.00 and above (or the applicable threshold at any given time), and reporting in respect of control of property that might be linked to terrorist activity or terrorist organisations. Other obligations will include developing, documenting, maintaining and implementing a Risk Management and Compliance Programme (RMCP)<sup>1</sup>, and training employees in relation to AML/CFT compliance. The FIC Act obligations on CASPs, as with all other businesses, irrespective of whether they are accountable institutions or not, is the reporting of suspicious and unusual transactions in terms of section 29 of the FIC Act and the prohibition in terms of section 26B to deal with United Nations Security Council sanctioned persons and entities.
- 2. Framework for monitoring cross-border financial flows:** From an exchange control perspective, the CAR WG recommends the following: The Financial Surveillance Department (FinSurv) of the South African Reserve Bank (SARB) should assume the supervisory and regulatory responsibility for the monitoring of cross-border financial flows in respect of crypto assets and CASPs. This would require the Minister of Finance to amend Exchange Control Regulation 10(4) to include crypto assets in the definition of 'capital' for the purposes of Exchange Control Regulation 10(1)(c). FinSurv should explicitly allow individuals, through an amendment of the Exchange Control Regulations,

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<sup>1</sup> The RMCP can be described as the foundation of an accountable institution's efforts to comply with its FIC Act obligations on a risk-sensitive basis. For more information, please refer to FIC Guidance Note 7, available at [https://www.fic.gov.za/Documents/171002\\_FIC%20Guidance%20Note%2007.pdf](https://www.fic.gov.za/Documents/171002_FIC%20Guidance%20Note%2007.pdf).




to purchase crypto assets within their single discretionary allowance (SDA) and the foreign capital allowance (FCA) framework. FinSurv should amend the Currency and Exchanges Manual for Authorised Dealers (AD Manual) to enable authorised dealers to facilitate and report transactions in respect of the transfer of foreign currency for the purchasing of crypto assets abroad (including the cross-border transfer of foreign currency for the purpose of sourcing crypto assets, for liquidity purposes, from abroad by crypto asset trading platforms (CATPs<sup>2</sup>). A specific balance of payments (BOP) category for the reporting of transactions for the purpose of purchasing crypto assets from abroad should be created, which would become a mandatory reporting responsibility. This would require the Authorised Dealer in foreign exchange with limited authority (ADLA) framework to be expanded to allow for the appointment of CATPs for cross-border crypto asset-related transactions. CATPs should be authorised and supervised in terms of requirements similar to the current ADLA requirements. It is further recommended that a new dispensation should be created under the exchange control framework to allow CATPs (licensed as above) to source or buy crypto assets offshore for the purpose of selling to the local market, subject to specified limits to be determined by FinSurv. CATPs should also be required to report crypto asset transactions to FinSurv. The trigger event of reporting should be specified by FinSurv.

- 3. Application of financial sector laws:** As an interim measure, the CAR WG recommends that crypto assets be declared a financial product through the provisions of the Financial Advisory and Intermediary Services Act 37 of 2002 (the FAIS Act). This would require CASPs to become licenced intermediaries and provide for the rendering of advice by such entities. This allows for regulatory oversight and will assist in addressing the immediate exploitation of consumers by unscrupulous entities. The declaration of crypto assets as a financial product under the FAIS Act would only allow the Financial Sector Conduct Authority (FSCA) to act against any service provider providing 'advice' and/or 'intermediary services' in respect of crypto assets without explicitly being authorised to do so. This is, however, a short-term solution as not all crypto asset use cases identified in this document would be covered by this framework and there would be no provision for business conduct requirements. As a follow-up action over the medium term, the CAR WG recommends that financial services provided in relation to crypto assets in due course be included in terms of the Financial Sector Regulation Act 9 of 2017 (the FSR Act), and that crypto asset-related activities as performed by CASPs be licensed activities and subject to the Conduct of Financial Institutions (CoFI) Bill, as deemed appropriate.

The FSR Act provides for the overarching legislation, and provides for recognising financial products, financial instruments and financial services that are subject to regulation and supervision, whilst the CoFI Bill focuses on fair customer treatment and specifies how a financial institution should conduct its business in performing regulated financial activities. The CoFI Bill will repeal

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<sup>2</sup> Please note that the terms 'crypto asset trading platforms' (CATPs) and 'crypto asset service providers' (CASPs) are not interchangeable – while all CATPs are deemed to be CASPs, the opposite is not necessarily true as not all CASPs facilitate crypto asset trading.



existing market conduct sectoral laws and replace such with this single conduct framework that is primarily made up of principle- and outcomes-based requirements. Inclusion of services related to crypto assets in the FSR Act allows for the development of a unique framework for crypto asset-related activities with specific business conduct requirements for CASPs to be included. All crypto asset use cases would be incorporated and a comprehensive framework will be developed. The financial activity implied by a use case will determine whether prudential requirements should also be imposed on the CASP.

The CAR WG policy document explicitly identifies two further priorities:

1. **Limiting the exposure of prudentially regulated financial institutions and financial market infrastructures to crypto assets as the risk could over time spill over and create financial stability risks.** This work is ongoing and currently being finalised by the Basel Committee on Banking Supervision (BCBS), and South Africa will take its lead from the BCBS in this regard when prescribing limits and determining the most appropriate regulatory treatment of prudentially regulated financial institutions' exposures to crypto asset from a prudential perspective.
2. **Implementing a monitoring programme for crypto assets.** This is important as it would firstly allow the CAR WG to monitor progress made with implementing the recommendations contained in the CAR WG policy document, and secondly it will provide a platform on which to build on going forward to formally monitor crypto asset-related developments, both globally and domestically.

## The South African policy position on crypto assets and the principles for regulating crypto asset service providers in South Africa

When considering crypto asset regulation, there are essentially three approaches available in theory to the South African regulators: (i) ban, (ii) regulate or (iii) do nothing (i.e. continue with the current stance of not having crypto asset-specific regulation).

In this regard, the Financial Action Task Force (FATF)<sup>3</sup> in 2015 cautioned against banning crypto asset-related activity as such action could drive activities underground, with little or no regulatory oversight:

According to [the FATF's] risk assessment, countries should decide to regulate exchanges platforms between convertible virtual currencies and fiat currencies (i.e., convertible virtual currency exchangers). Some countries may decide to prohibit VC activities, based on their own risk assessment (including, e.g., uptake trends) and national regulatory context in order to support other policy goals not addressed by this Guidance (e.g., consumer protection, safety and soundness, monetary policy). Where countries consider prohibiting VCPSPS [virtual currency payment products and services], they should take into account, among other things, the impact a prohibition would have on the local and global level of money laundering/terrorist financing risks, including whether prohibiting VC payments activities could drive them underground, where they will continue to operate without AML/CFT controls or oversight.<sup>4</sup>

Similar sentiments have been expressed by the Banque de France,<sup>5</sup> which highlights the Euro area's approach to regulating crypto assets by establishing appropriate regulations that make it possible to reconcile the two key policy imperatives of (a) addressing crypto asset-related risks around money laundering, terrorist financing and consumer protection, while (b) preserving the potential for technological innovation offered by crypto assets.<sup>6</sup>

South Africa similarly aims to mitigate the above-mentioned risks posed by crypto assets around money laundering, the financing of terrorism and consumer protection, while not shutting out the potential benefits such financial innovations can bring. The South African authorities thus aim to enable *responsible* innovation by regulating CASPs through an appropriate regulatory framework that proportionately balances the potential benefits against the risks that may be introduced into the financial system, while ensuring a level playing field is maintained by not unduly advantaging or disadvantaging either the incumbent role players or new fintech entrants.


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<sup>3</sup> The Financial Action Task Force (FATF) is an intergovernmental body that sets standards and promotes the effective implementation of legal, regulatory and operational measures for combating money laundering, terrorism financing and other related threats to the integrity of the international financial system. See <http://www.fatf-gafi.org/home/>.

<sup>4</sup> FATF. (2015). Guidance for a risk-based approach: Virtual currencies. June 2015. Available at <https://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-RBA-Virtual-Currencies.pdf>.


<sup>5</sup> Beau, D. (2019). The role of crypto assets in the payment system. Speech by Mr Denis Beau, First Deputy Governor of the Bank of France, at the Official Monetary and Financial Institutions Forum (OMFIF) Meeting, London, held on 15 October 2019. Available at <https://www.bis.org/review/r191015b.pdf>.

<sup>6</sup> Also see the FATF revision of the standards and the requirement for jurisdictions to regulate crypto asset service providers for AML/CFT, available at <http://www.fatf-gafi.org/publications/fatfrecommendations/documents/guidance-rba-virtual-assets.html>.



To this end, the members of the IFWG agree on the following six principles that will guide the approach on regulating CASPs in South Africa:

1. **Principle 1: CASPs must be regulated, and regulated appropriately.** The 2014 South African national policy position – namely that crypto assets are largely unregulated in South Africa, and that parties engaging in crypto-related activities do so at their own risk and without any regulatory recourse – is hereby revised. From the date of publication of this document, the South African national policy position on crypto assets is that due to the market developments observed over the last few years and the revision of the FATF standards in October 2019, crypto assets can no longer remain outside of the regulatory remit. This document contains the recommendations of how to bring crypto assets into the South African regulatory remit in accordance with a phased and structured approach.
2. **Principle 2: An activities-based perspective must be maintained, and the principle of ‘same activity, same risk, same regulations’ must continue to apply and inform the regulatory approach.** The South African policy position on crypto assets is neither explicitly ‘hostile’ nor explicitly ‘friendly’. The South African regulatory authorities rather aim to remain neutral with the objective of enabling *responsible* innovation in the crypto asset ecosystem, while ensuring a level playing field between both incumbent and new role players.
3. **Principle 3: Proportionate regulations that are commensurate with the risks posed must apply (i.e. a risk-based approach to crypto asset regulation must apply).** Although the overarching South African stance would be to regulate CASPs, each use case based on the underlying activity should be reviewed from a risk perspective. Some risks may include risks to monetary policy, financial stability, undesirable disintermediation of monetary and payment systems, money laundering, the financing of terrorism, market integrity, conduct and consumer protection risks.
4. **Principle 4: A truly collaborative and joint approach to crypto asset regulation must be maintained.** There should be continued collaboration on policy stances and regulatory actions. Acting in unison and in a harmonised manner must therefore continue. The ongoing developments in the crypto asset market, including but not limited to interest offered on crypto holdings, associated lending and saving products, stablecoin-related developments and developments related to decentralised finance (DeFi), point to a dynamic industry, likely requiring an agile regulatory response. The South African regulatory framework for crypto assets will therefore be closely monitored on an ongoing basis and in line with market developments to ensure the framework remains appropriate and fit for purpose. This may potentially lead to the rescindment of previous policy positions taken.
5. **Principle 5: Continue to proactively monitor the dynamic development of the crypto assets market, including maintaining knowledge on emerging international best practices (through standard-setting bodies, etc).** It is acknowledged that given the fast-moving nature of the crypto asset ecosystem, devising an appropriate regulatory framework and ensuring that it remains



appropriate and fit for purpose must be approached through ongoing consultation with all stakeholders, including all regulatory stakeholders and industry participants.

6. **Principle 6: Digital literacy and digital financial literacy levels must be increased amongst consumers and potential consumers of crypto assets.** Low levels of digital literacy, digital financial literacy and financial literacy more broadly are some of the main reasons why consumers are vulnerable to unscrupulous providers and are scammed when trying to buy crypto assets (or indeed any financial asset) online. The increase in financial literacy and especially digital financial literacy levels of consumers will assist in a safer use and purchase of digital financial products and services, including in relation to crypto assets.



## IFWG consumer warning on crypto assets

### Box 1: IFWG consumer warning on crypto assets

The IFWG reiterates that by amending the collective South African regulatory stance on crypto assets (i.e. by agreeing that crypto assets and CASPs can no longer remain outside of the regulatory remit, and by making the 25 recommendations of how to bring crypto assets into the South African regulatory remit in a phased and structured manner), this should not be interpreted as any type of endorsement of crypto assets (whether tacit or explicit). Rather, the decision to formally bring CASPs within the domestic regulatory remit was driven by a combination of (i) market developments – including strong retail interest in crypto assets and the concomitant need to protect consumers to the extent possible; (ii) the growing challenge experienced by regulators to maintain line of sight of crypto asset-related activities in the absence of a regulatory framework and the associated compulsory reporting and information requirements; and (iii) relevant developments and amended requirements imposed by international standard-setting bodies such as the Financial Action Task Force and the Basel Committee on Banking Supervision.

The IFWG therefore reiterates the following:

- The decision to regulate the crypto assets environment does not signal or suggest endorsement of crypto assets by the IFWG members. Rather, the decision to regulate CASPs aims to promote responsible innovation and regulate the conduct of these providers.
- Crypto assets remain highly volatile and inherently risky given their decentralised and disintermediated value proposition (i.e. crypto assets offer direct, peer-to-peer transactional capability that does not require a financial intermediary, such as a bank).
- Crypto assets' use of distributed ledger technology means there is not a single, central entity or intermediary that directs or oversees activity. This decentralised nature leads to the challenge of decentralised responsibility in the event of something going wrong: because there is no central intermediary, issuer or ledger keeper, consumers essentially have no recourse to any authority or entity to address or resolve user errors (e.g. using the wrong crypto asset address, or sending e.g. Bitcoin to an Ethereum address).
- The already high inherent risks associated with crypto assets are further compounded by scam activity, with many Ponzi-type schemes using crypto assets as lure to justify the excessive promised returns.
- Crypto asset marketing material is often strongly biased towards highlighting only the potential upside of crypto assets, with little or no consideration of the massive potential downside associated with investing in crypto assets.
- The crypto asset ecosystem is evolving at a fairly rapid pace, and developments continue to challenge the applicability of existing legislation and regulations to emerging activities. Consumers are therefore strongly urged to ensure they fully understand the products and services they are gaining exposure to, as well as the associated risks.
- The intention is not to regulate the actual crypto assets *per se*, but rather the entities that provide services in respect of crypto assets.

# 1. Introduction

## 1.1 Background

- 1.1.1 The initial public statement on crypto assets<sup>7</sup> was issued by National Treasury (NT) in 2014 as a joint initiative with the SARB, the Financial Services Board (now FSCA)<sup>8</sup>, the South African Revenue Service (SARS) and the FIC<sup>9</sup> (hereinafter referred to as ‘regulatory authorities’). The public statement warned members of the public about the risks associated with the use of crypto assets for the purpose of transacting or investing, and advised users to apply caution in this regard. The cautionary tone was directly linked to the fact that no specific legislation or regulation existed for the use of crypto assets. Therefore, no legal protection or recourse was being offered to users of, or investors in, crypto assets.
- 1.1.2 Following the user alert, the SARB, through its National Payment System Department (NPSD), issued a position paper on crypto assets in 2014<sup>10</sup>. The position paper highlighted the risks surrounding crypto assets, such as money laundering and the financing of terrorism. It noted the lack of a legal and regulatory framework, the absence of consumer protection laws, and the inability to enforce the principle of finality and irrevocability as required in existing payment systems as well as the circumvention of the Exchange Control Regulations. The position paper stated that the SARB did not oversee, supervise or regulate the crypto assets landscape, systems or intermediaries. Therefore, all activities related to the acquisition, trading and/or use of crypto assets were done at the end users’ sole and independent risk, with no recourse to the SARB. The SARB stated that it would continue monitoring activities and developments in this area.
- 1.1.3 In 2016, the IFWG was established, comprising members from NT, SARB, FSCA and FIC. The National Credit Regulator (NCR) and SARS joined the IFWG in 2019, and the Competition Commission joined in 2020. The aim of the IFWG is to develop a common understanding among regulators and policymakers of financial technology (fintech)<sup>11</sup> developments as well as the regulatory and policy implications for the financial sector and the economy. Additionally, the IFWG aims to assist in developing and adopting a coordinated approach to policymaking in respect of financial services activities emanating from fintech. The overall objective of the IFWG is to foster responsible fintech innovation by supporting the creation of an enabling regulatory environment and reviewing both the risks and the benefits of emerging innovations, thus adopting a balanced and responsible approach to such innovation.

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<sup>7</sup> At the time this statement was issued, the term ‘virtual currencies’ was used to refer to crypto assets.

<sup>8</sup> On 1 April 2018, the Financial Services Board was replaced by the Financial Sector Conduct Authority (FSCA) as a result of the Twin Peaks reforms. The FSCA is responsible for market conduct supervision.

<sup>9</sup> See user alert: [http://www.treasury.gov.za/comm\\_media/press/2014/2014091801%20-%20User%20Alert%20Virtual%20currencies.pdf](http://www.treasury.gov.za/comm_media/press/2014/2014091801%20-%20User%20Alert%20Virtual%20currencies.pdf).

<sup>10</sup> See the Position Paper: [Position Paper Virtual Currencies 02of2014.pdf](#).

<sup>11</sup> For the purposes of this document, fintech is defined in line with the Financial Stability Board’s (FSB) definition as “technology applied to financial services, resulting in new business models, applications, processes, products and services with an associated disruptive effect on financial markets and institutions”. See <https://www.fsb.org/2019/02/fsb-report-assesses-fintech-developments-and-potential-financial-stability-implications/>.

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- 1.1.4 At the start of 2018, the CAR WG was formed under the auspices of the IFWG and comprised of IFWG members to specifically review the South African position on crypto assets. The objective of the CAR WG is to formulate a coherent and comprehensive policy stance on crypto assets and CASPs, while ensuring the continued integrity and efficient functioning of financial markets, maintaining financial stability, protecting the rights and interests of customers and investors, and combating illegitimate cross-border financial flows, and mitigating risks stemming from money laundering/terrorist financing activities.
- 1.1.5 The CAR WG released a consultation paper during January 2019, which provided an overview of the perceived risks and benefits associated with crypto assets, discussed some of the available regulatory approaches, and presented initial recommendations to industry participants and stakeholders. The consultation paper offered an opportunity for industry participants and stakeholders to provide input to the revised South African policy position on crypto assets. The regulatory authorities considered these comments carefully in the drafting of a revised position paper which was published for comments during April 2020. The revised position paper provided specific recommendations for the development of a regulatory framework to crypto assets, including suggestions on the required regulatory changes to be implemented. Comments to the revised position paper were considered by the CAR WG and incorporated in the latest version of the position paper.

## 1.2 Problem statements

- 1.2.1 The need to develop a regulatory and policy response to crypto asset activities in South Africa is driven by the following:
- 1.2.1.1 *Crypto assets are a form of fintech innovation that may impact on the financial sector of the country:* Given the wide range of innovations across financial services, the existing regulatory architecture should be assessed to determine its appropriateness and effectiveness, and if any enhancements or refinements are required to ensure the regulatory framework remains appropriate and fit for purpose. Crypto assets are regarded as an innovation that could materially affect financial services given their ability to perform some functions of money or currency (albeit privately issued), with a direct impact on economic activities such as payments, investments and capital raising.
- 1.2.1.2 *Given concerns over not unduly legitimising crypto assets by expressly indicating that they are regulated, crypto assets currently operate within a regulatory void in South Africa:* Regulators – both domestically and internationally – have not yet sufficiently addressed the phenomenon of crypto assets, and have not yet settled on a collective approach to this innovation. From conceptualisation to the definition and potential usage, it remains an area that requires further regulatory clarity. In searching for this regulatory clarity and articulating the most appropriate regulatory framework for crypto assets, various approaches have been adopted,<sup>12</sup> With actions ranging from the issuing of communications declaring restrictions on crypto asset-related activities or a downright ban on the use of crypto assets. Others have issued

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<sup>12</sup> Please refer to the following link for a useful overview of the regulation of crypto assets in selected jurisdictions: <https://www.loc.gov/law/help/cryptocurrency/regulation-of-cryptocurrency.pdf>.

statements indicating that crypto assets are not recognised forms of legal tender, without outright declaring them to be illegal. However, the FATF recently provided direction on the treatment of crypto assets and CASPs by amending FATF Recommendation 15 on New Technologies. Amended Recommendation 15 now requires jurisdictions to regulate crypto assets<sup>13</sup> and CASPs for AML/CFT. Jurisdictions must now also ensure CASPs are licensed or registered, and subject to effective AML/CFT systems for monitoring and supervision.<sup>14</sup> As a FATF member country, South Africa is obligated to regulate crypto assets and CASPs in line with the revised FATF standard.

- 1.2.1.3 *Crypto assets are not 'money' (i.e. legal tender), but they perform certain functions of money:* It is acknowledged that crypto assets may perform certain functions similar to those of fiat currencies, securities or financial products and commodities. Regulatory authorities globally and domestically have, however, consistently and clearly reiterated that crypto assets are not considered to be 'money' (i.e. legal tender). However, by retaining the stance that existing legislation does not acknowledge crypto assets as money (for fear of legitimising it), the concomitant risk is that crypto assets are generally excluded from legislation that applies to legal tender despite performing some of these functions, and it is in this sense that crypto assets currently operate in somewhat of a regulatory void in South Africa. Accordingly, without regulatory certainty the potential risk posed by crypto assets could be heightened should they gain widespread adoption. Similarly, by not bringing crypto assets into the South African regulatory remit, the very situation that regulators are trying to avoid – the creation of a parallel payment/banking/financial system – could in fact be enabled and even possibly accelerated.
- 1.2.1.4 *Crypto assets may create conditions for regulatory arbitrage while posing risks:* Building on the previous point, the South African financial sector and its participants operate in a highly regulated environment, which assists in ensuring a sound and safe financial system. However, crypto assets perform comparable financial service activities but operate without similar regulatory safety mechanisms. In the case of peer-to-peer trades, financial transactions are concluded without the need for third-party intermediaries. In other cases, newly created intermediaries (such as CATPs) are participating in financial transactions, but these entities operate outside of a dedicated regulatory framework. This leaves the crypto asset environment exposed to risks such as financial and consumer risks. Some of the perceived risks of crypto assets include an increase in undetected illegitimate cross-border financial flows, money laundering/terrorist financing, and consumer and investor protection concerns, including market manipulation and tax evasion. Other areas of risk include the circumvention of exchange controls and balance of payments reporting requirements, data- and cybersecurity risk, as well as potential financial stability risks over the medium to longer term.

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<sup>13</sup> The FATF prefers the terms 'virtual assets' and 'virtual asset service providers', while the South African preference is for 'crypto assets' and 'crypto asset service providers'.

<sup>14</sup> See <http://www.fatf-gafi.org/publications/fatfrecommendations/documents/public-statement-virtual-assets.html>.

1.2.1.5 *Crypto assets may become systemically significant as interest, investment and participation in crypto assets and related activities continue to grow:* Financial institutions, new technology firms and big techs<sup>15</sup>, as well as individuals, have been showing an ever-growing interest in crypto assets and related activities, specifically in terms of distributed ledger technology (DLT), smart contracts and DeFi. As at the time of writing, there were more than 10 000 unique crypto assets in circulation.<sup>16</sup> This number keeps increasing as new schemes, often through initial coin offerings (ICOs), initial token offerings (ITOs) and initial exchange offerings (IEOs), are continually launched. Although measures to determine the exact size and level of maturation of the crypto asset market are limited, a rudimentary measure is the total global market capitalisation of the crypto asset industry as a whole, which was estimated at around US\$1.6 trillion as at the time of writing. It is, however, acknowledged that there are other non-price related metrics that suggest that the crypto asset industry is evolving and maturing, such as the consistent growth in the number of crypto wallets, steadily increasing daily trading volumes and values, the increasing popularity of stablecoins as preferred crypto asset pairing instrument and the growing DeFi market. In South Africa, there are approximately 12 different crypto asset trading platforms with a combined 24-hour trading value of roughly between R250 million and R2 billion.<sup>17</sup> Following the publication of this document, an exhaustive list of the CATPs operating in South Africa will be prioritised.

1.2.2 In summary, crypto assets and the various activities associated with this innovation can no longer remain outside of the regulatory perimeter. Clear policy stances on the variety of emerging use cases must be taken in order to deepen regulatory certainty and prevent the creation of parallel systems.

### 1.3 **Approach by the Crypto Assets Regulatory Working Group**

1.3.1 In drafting this document, the CAR WG followed a structured approach to developing the recommendations contained at the end of the document. Its approach can be illustrated in terms of three pillars:

- (i) *Pillar 1:* The descriptive characterisation of crypto assets and related activities. This was achieved through the issuance of a consultation paper to the industry at the start of 2019. However, due to the evolving nature of crypto assets, continuous analysis is required to identify and investigate other developing crypto asset-related activities.
- (ii) *Pillar 2:* The identification of key risk areas and the development of appropriate mitigating measures to address these through regulatory intervention. To this end, this document highlights the key risks posed by crypto assets and the concomitant recommendations that will contribute to an appropriate regulatory framework.

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<sup>15</sup> These are large technology firms such as Alibaba, Amazon, Facebook, Google and Tencent. For more information, please see <https://www.bis.org/publ/arpdf/ar2019e3.pdf>.

<sup>16</sup> See: <https://coinmarketcap.com/>.

<sup>17</sup> It should be noted that these values are reflective of traders that take advantage price discrepancies between different CATPs and therefore trade multiple times per day, thus potentially inflating the figure quoted.

- (iii) *Pillar 3*: The continuous monitoring of crypto assets and related activities, and the identification of the evolution of channels for the possible transmission of risks to the broader financial sector and the economy as a whole. A monitoring programme should be implemented by the regulatory authorities for crypto assets.

1.3.2 In order to develop appropriate regulatory and policy responses to crypto assets in South Africa, the CAR WG conducted a functional analysis of crypto assets by assessing the underlying economic function of crypto assets rather than the specific technology applied or the entity involved. The following five crypto asset-specific use cases were identified:

- (i) buying and/or selling of crypto assets by individual consumers and legal persons;
- (ii) payments using crypto assets;
- (iii) capital raising through ICOs<sup>18</sup>;
- (iv) crypto asset funds and derivatives; and
- (v) crypto assets market support.

1.3.3 It is acknowledged that new use cases may arise as the crypto asset market is a rapidly evolving market. Similarly, the underlying economic function and related activity will be assessed.

1.3.4 The functional or activity-based approach is consistent with the approach adopted across a number of jurisdictions, and the use cases should be read collectively. A number of the recommendations might therefore have broader application and cut across the different use cases.

1.3.5 The CAR WG conducted an in-depth analysis of the applicable use cases to determine the purpose, processes, relevant role players or participants, and the function that each role player fulfils. The consultation paper that was issued in 2019 focused on two of these use cases, namely (i) the buying and selling of crypto assets, and (ii) making payments using crypto assets. The revised 2020 position paper (issued in April 2020) included recommendations for all five use cases and takes into account applicable standards and guidance from international standard-setting bodies and approaches taken by various other jurisdictions.

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<sup>18</sup> Initial coin offerings (ICOs) are a means of raising capital using distributed ledger technology (DLT). On the side of the issuer, the collected funds are typically used to finance a project (e.g. the building of a software program). In exchange for the financing, the investor receives a token that may be connected with the right to receive, for example, a dividend, a voting right, a licence, a property right, or a right to participate in the future performance of the issuer.

## 1.4 Purpose and scope of the position paper on crypto assets

1.4.1 The purpose of this position paper is firstly to articulate the broader South African policy position on crypto assets and CASPs, and secondly to have the identified policy position inform the most appropriate regulatory framework for crypto assets and CASPs in the South African-specific context.

1.4.2 This position paper focuses exclusively on non-government, or non-central-bank-issued, crypto assets. It does not address central bank issued digital currencies<sup>19</sup>, including central bank crypto currencies<sup>20</sup>.

## 2. Defining and classifying crypto assets

### 2.1 Defining crypto assets

2.1.1 From a regulatory perspective, having clarity on the term ‘crypto assets’ is fundamental as it directly influences the term’s classification and concomitant regulatory treatment. Various naming conventions have been adopted in just a few years, from ‘digital tokens’ and ‘digital assets’ to, most recently, ‘crypto tokens’ and ‘crypto assets’ (CPMI, 2015; FSB, 2018; BIS, 2018; Carney, 2018a). Despite the various terminology used, the crypto phenomenon is commonly based on decentralised technology such as blockchain and DLT. The definitions used generally focus on its electronic nature, its potential role as a medium of exchange, and its perceived role as a representation of value. Some jurisdictions have classified it as a unit of account, while others have rejected it as a financial instrument such as a security or other financial product. Central banks in particular have intentionally refrained from referring to the phenomenon as ‘currency’ as it is not deemed to be a form of legal tender or fiat currency.

2.1.2 Consistent with the international preference, the term ‘crypto assets’ is preferred in the South African context as it encapsulates and extends to these functions. Furthermore, ‘crypto assets’ are seen as a broader, or ‘umbrella’, term for different crypto asset tokens which may be classified into three types:<sup>21</sup>

- (i) *Exchange or payment token*: These are tokens designed to be used as a means of exchange or payment for buying goods and services. Some users also utilise it for investment purposes.
- (ii) *Security token*: These tokens provide rights such as ownership, the repayment of a specific sum of money, or entitlement to a share in future profits.
- (iii) *Utility token*: These tokens can be redeemed for access to a specific product or service that is typically provided using a DLT platform.

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<sup>19</sup> The term ‘central bank digital currency’ refers to a central-bank liability, such as cash or deposits, issued in digital or electronic form, denominated in a sovereign currency and backed by the central bank’s assets (Panetta, 2018).

<sup>20</sup> In contrast, a ‘central bank crypto currency’ specifically refers to the use of cryptography and distributed ledger technology (DLT) in the underlying application (BIS, 2018).

<sup>21</sup> See <https://www.fca.org.uk/publication/consultation/cp19-03.pdf>.

### 2.1.3 The following definition of crypto assets is accordingly adopted by the CAR WG:

A crypto asset is a digital representation of value that is not issued by a central bank, but is capable of being traded, transferred or stored electronically by natural and legal persons for the purpose of payment, investment and other forms of utility; applies cryptographic techniques and uses distributed ledger technology.

- 2.1.3.1 The definition of crypto assets presupposes the inclusion of stablecoins and, by extension, emerging global stablecoins. The Financial Stability Board (FSB) defines a stablecoin as ‘as a crypto asset designed to maintain a stable value relative to another asset (typically a unit of currency or commodity) or a basket of assets’ (FSB, 2019). Global stablecoins are stablecoins ‘with a potential global reach and the ability to rapidly scale in terms of [the] users/holders of the crypto asset’ (FSB, 2019). The inclusion of stablecoins and global stablecoin arrangements is consistent with the latest FATF assessment that “the revised FATF Standards clearly apply to so-called stablecoins”.<sup>22</sup>
- 2.1.3.2 However, the CAR WG’s definition of crypto assets does not include digital representations of sovereign currencies, and is therefore not regarded as legal tender<sup>23</sup> or public money.

## 3. Description of use cases

### 3.1 The buying and/or selling of crypto assets by individual consumers and legal persons

- 3.1.1 Crypto assets are purchased for different reasons, such as speculative investing, as a medium of exchange in facilitating transactions for goods and/or services, or for accessing specific products, services and utilities. Crypto assets can also be purchased for the specific purpose of on-selling or trading.
- 3.1.2 Crypto assets can be purchased via three channels:
- (i) CATPs (whether domestic or international)<sup>24</sup>,
  - (ii) crypto asset vending machines<sup>25</sup>, or
  - (iii) bilaterally through agreements with other existing holders (i.e. peer-to-

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<sup>22</sup> FATF (2020). Available at <https://www.fatf-gafi.org/media/fatf/documents/recommendations/Virtual-Assets-FATF-Report-G20-So-Called-Stablecoins.pdf>.

<sup>23</sup> Legal tender refers to banknotes or coins that may be legally offered in payment of an obligation and that a creditor is obliged to accept. Refer to <https://www.resbank.co.za/BanknotesandCoin/CurrencyManagement/Pages/Currencymanagement-Home.aspx>.

<sup>24</sup> A variation of a crypto asset platform is a decentralised exchange. It uses an artificial intelligence (AI) system that is able to connect crypto asset traders electronically. These trades are done simultaneously through an atomic swap using a smart contract and without any intermediation from a third party.

<sup>25</sup> A crypto asset vending machine typically allows the user to make a physical or electronic fiat-denominated deposit that is credited to a digital wallet. The operator of these machines acts as the counterparty to all transactions.



peer transactions). The buyer may require a digital wallet<sup>26</sup> to acquire crypto assets, which can be obtained through software platforms or can be provided by a digital wallet service provider or a CATP.

3.1.3 This use case identifies CASPs that facilitate the trading of crypto assets. Therefore, it includes entities providing services including but not limited to:

- (i) the buying, selling or transferring of crypto assets, including the use of crypto asset vending machine facilities;
- (ii) the trading, conversion or exchange of fiat currency or other store of value into crypto assets;
- (iii) the trading, conversion or exchange of crypto assets into fiat currency or other store of value; and
- (iv) the trading, conversion or exchange of crypto assets into other crypto assets.

## 3.2 Payments using crypto assets

3.2.1 This use case identifies CASPs that facilitate payment for goods and services using crypto assets as a means of payment or a store of value being exchanged. It therefore includes all the entities providing payment intermediary services when using crypto assets as the medium of exchange.

3.2.2 The payments use case is broken down into domestic payments (i.e. person-to-person transfers in the form of domestic remittances or for payment of goods and services within South Africa's borders) and international remittances (i.e. person-to-person cross-border transfers). It should, however, be noted that the possibility for South African legal entities to make outgoing international transfers or payments using crypto assets is not currently being considered. It follows that the dispensation will only be applicable to South African resident individuals.

3.2.3 This use case was envisioned as the original purpose of crypto assets, namely providing users with an alternative to existing payment systems as described in the white paper on Bitcoin written by Satoshi Nakamoto.<sup>27</sup> The white paper describes a purely peer-to-peer, global means of payment that allows parties to transact without the need for intermediation by a financial institution to execute online or digital payments.

3.2.4 Crypto assets not only challenge how the movement of 'funds' gets processed or verified (through, for example, 'proof of work' or 'proof of stake' protocols), but also how the traditional underlying store of value is essentially displaced. The token is not government-decreed, not currency, not central bank money and not commercial bank money. Rather, it is an online network-created perceived store of value.

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<sup>26</sup> A crypto asset digital wallet is defined as a software program with the ability to store private and public keys that are used to interact with various blockchain protocols that enable the user to send and receive crypto assets with the ability to monitor balances.

<sup>27</sup> See <https://nakamotoinstitute.org/static/docs/bitcoin.pdf>.

3.2.5 In the absence of a legal or regulatory framework for South Africa, the acceptance of crypto assets for the payment of goods and services is currently at the discretion of willing merchants. Although not widespread as at the time of writing, crypto assets are accepted at certain physical and online stores across a variety of industries in South Africa. Where this is done for services provided (e.g. paying for website design services), everything can occur electronically. In such scenarios, no goods are exchanged, and physical border customs control for tax purposes and exchange controls could potentially be circumvented if the service provider is not resident in South Africa. Retailers often prefer to outsource the processing of crypto asset transactions to technical service providers in order to accept crypto assets as payment, where the technical service provider would take care of the back-end conversion processes to exchange the crypto assets accepted by the merchant into fiat currency. Some of these entities are referred to as ‘payment processors’ which are essentially contracted by merchants to provide acceptance, settlement and reconciliation services using crypto assets.

3.2.6 Given crypto assets’ intentional design to be exclusively digital, global and borderless, they are particularly attractive for cross-border, person-to-person transfers (i.e. international remittances) and payments. However, reconciling these inherent properties of crypto assets with exchange control regulations (such as those in force in South Africa) – which are founded on the notion of funds flowing across physical borders – requires careful reflection by the South African authorities. To this end, several recommendations made later in the document aim to reconcile crypto assets with South Africa’s existing exchange control framework.

### 3.3 Initial coin offerings

3.3.1 This use case identifies CASPs that offer tokens as a method to raise capital for their projects. Other intermediaries involved in this use case can be advisory firms or legal consultants assisting the entities in offering the tokens to raise capital or providing financial services related to an issuer’s offer and/or sale of crypto assets.

3.3.2 ICOs, also called ‘token launch’ or ‘token generation’, are a means of raising capital. They describe a process whereby a firm sells a predefined number of digital tokens to the public, typically in exchange for other crypto assets. The issuer typically uses the collected funds to finance a specific project, for example the development of software. In exchange for the financing, the investor receives a token which may be connected with the right to receive value in return. This value may take different forms, such as access to a network, distribution of the earnings generated by the project, or voting rights in the governance of the project, typically managed through smart contracts<sup>28</sup>.

3.3.3 In an ICO, a percentage of the crypto assets is typically sold to early backers of the project and a percentage is kept for the firm’s operational requirements.

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<sup>28</sup> A smart contract is a programmable distributed application that can trigger financial flows or changes of ownership if specific events occur. See, for example, the Financial Stability Board (FSB), June 2017, ‘Financial stability implications from fintech’ (available at <https://www.fsb.org/wp-content/uploads/R270617.pdf>).

This means of raising capital can be used as an alternative to the rigorous classic debt or capital funding processes provided by venture capitalists, private equity firms and banks.

- 3.3.4 A start-up firm that wants to raise money through an ICO typically develops a project plan, commonly referred to as a white paper<sup>29</sup>, which states what the project is about, what needs the project will fulfil upon completion, how much money is needed to undertake the venture, how many tokens the pioneers of the project will keep, what type of money (crypto assets or fiat currency) is accepted, and how long the ICO campaign will run for. The white paper is a foundational component of an ICO and is akin to the prospectus released prior to a company launching an initial public offering (IPO).
- 3.3.5 ICOs are usually announced on crypto asset forums, corporate websites and social media platforms. This allows potential investors and partners to assess what to expect from the start-up and what, if any, returns are to be expected once the project reaches its target market capitalisation. After the ICO, if the money raised does not meet the minimum funds required by the firm, it is returned to the initial investors backing the ICO, and the ICO is deemed to have been unsuccessful. However, if the funding requirements are met within the specified timeframe, the money raised is used to either initiate a new scheme or complete an existing one.
- 3.3.6 The tokens issued can have different functions, which prescribes how they could be treated from a legal perspective. This can include tokens with the following characteristics:
- (i) *Security token*: These are tokens with characteristics closely associated with security, e.g. debt, equity or derivatives, with an income-generating component and potential rights vis-à-vis the issuer, e.g. in performing governance duties, active participation and/or ownership.
  - (ii) *Digital asset or transactional instrument*: These are tokens with an attributed value for exchange or transactional purposes, with use as a store of value, an asset and/or a unit of account.
  - (iii) *Asset-backed token*: These tokens provide underlying exposure to assets, e.g. to gold, diamonds, securities, cash and real-estate.

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<sup>29</sup> A 'white paper' is prepared by a party prior to launching a new token. It details what the potential investor requires in order to make an informed decision to participate in the issuance. This includes the commercial, technological and financial details of the new token. Elements in an ICO white paper could include the following:

- a technical paper explaining the problems, solutions and notable features of the project, and prospects to the investors;
- a description of the decentralised system or blockchain technological platform on which the idea will be executed;
- a roadmap explaining the milestones to be accomplished by the organisation when the start-up commences;
- a presale date (pre-ICO), if needed;
- a project capitalisation (soft cap and hard cap);
- a detailed explanation of how the funds raised will be managed;
- a logical calculation of how investors' profits will be generated and rewards distributed;
- a timeline to track the processes during development;
- the team of experts in relevant fields;
- the team of advisors with professional, legal and financial expertise; and
- a program on how to effectively manage the project's publicity and crowd-funding management.

- (iv) *Utility token*: These tokens are used for supporting services or functionalities on a blockchain-based or DLT platform.

### 3.4 **Crypto asset funds and derivatives**

3.4.1 This use case identifies CASPs that offer investment fund or derivative product options with crypto assets as the underlying asset.

3.4.2 Although crypto assets can theoretically be used as the underlying reference asset in investment funds, including but not limited to hedge funds, private equity funds, collective investment schemes, exchange-traded funds and pension funds, in some instances the existing regulatory framework prevents or materially limits the holding of crypto assets by these vehicles, specifically in terms of the Collective Investment Schemes Control Act 45 of 2002 (Board Notice 90 of 2014 and Board Notice 52 of 2015), regulation 28 of the Pension Funds Act 24 of 1956, and the Financial Markets Act 19 of 2012 (FMA), which does not include crypto assets in the definition of ‘securities’. Whether or not investment funds such as hedge funds, private equity and the like will be able to hold crypto assets will require further specific consideration.

3.4.3 The FMA regulates derivative instruments. The definition of a ‘derivative instrument’ in the FMA is agnostic as to the nature of the underlying or referenced asset. It would therefore theoretically be possible to create a derivative instrument that references crypto assets as the underlying asset. However, given the well-recorded challenges around valuing crypto assets, their price volatility, their propensity for facilitating market abuse and financial crime, and inadequate understanding of crypto assets by retail consumers, the IFWG is currently not in support of the use of crypto assets in derivative products. Some jurisdictions – notably the United Kingdom through its Financial Conduct Authority (FCA) – banned the sale of derivatives and exchange traded notes that reference certain types of crypto assets specifically to retail consumers. Among the reasons cited by the FCA for the ban are the fact that such products cannot be reliably valued by retail consumers because of the (i) lack of a reliable basis for valuation; (ii) prevalence of market abuse and financial crime; (iii) extreme volatility in crypto asset prices; (iv) inadequate understanding of crypto assets by retail consumers; and (v) lack of a truly legitimate investment need for retail consumers to invest in these products.<sup>30</sup>


### 3.5 **Crypto asset market support services**

3.5.1 This use case identifies CASPs that provide any market support services for crypto asset-related activities. These activities may include services such as safe custody services for crypto assets, digital wallet provisioning for crypto assets and crypto asset mining.

3.5.2 Safe custody services for crypto assets can be performed by existing CATPs, stand-alone entities, or any other entity that intends to provide such services

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<sup>30</sup> Available at <https://www.fca.org.uk/news/press-releases/fca-bans-sale-crypto-derivatives-retail-consumers>.



to its customers within a legal arrangement. This is similar to ‘traditional’ custodial services, where customers’ assets or other items of value are stored on their behalf for safekeeping and the custodian takes responsibility for their safety. Currently, crypto asset custodial service offerings seem limited, but some firms are already investigating the possibility of offering such services and anticipate forthcoming regulatory requirements.

- 3.5.3 A digital wallet stores the public<sup>31</sup> and private keys<sup>32</sup> of crypto asset owners which can be used to receive and spend crypto assets. These digital wallets support different crypto assets. As crypto assets do not exist in any physical shape or form, private keys are used to access a public crypto asset address and ‘sign’ for transactions that need to be securely stored. It is a combination of the recipient’s public key and the transferor’s private key that makes a transaction possible. Digital wallets come in different forms, such as an application installed locally on a computer, cellphone or tablet. When using a web-based wallet, the private keys can be managed by a trusted third party, who can use two-factor authentication for additional security. CATPs link the users’ wallets to their centrally managed wallet, and trading between users is written on their private ledger, which is also referred to as an off-chain transaction. If a user wants to move his/her crypto assets either onto or off the exchange, the transaction is recorded on the public blockchain, which is also referred to as an on-chain transaction. In order to initiate or verify a transaction, the digital wallet connects to a node on the network to process the request.
- 3.5.4 An alternative to purchasing crypto assets is acquiring them through ‘mining’, which is essentially the process through which transactions are verified and added to a public ledger (i.e. the blockchain), with the ‘miners’ being rewarded for their efforts in newly minted (i.e. created) crypto assets. Although theoretically anyone with access to the Internet can run a node (i.e. process crypto asset transactions) and earn the crypto asset rewards, the significant computing power (also called ‘hash’ power) required to solve the computationally difficult puzzle securing the transaction generally makes it unprofitable for individuals to do so. Crypto asset mining is therefore mostly done via coordinated initiatives or mining pools<sup>33</sup> with specialised computing equipment.

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<sup>31</sup> A public key is a cryptographic code or number that allows a user to receive crypto assets into his/her account (inbound). This code is mathematically derived from the allocated private key.

<sup>32</sup> A private key is a secret number, usually a 256-bit encryption technique number, which the holder keeps securely to allow spending (outbound).

<sup>33</sup> ‘Mining pools’ refers to a network of computers required to achieve the necessary computer powers.

#### 4. The risks posed by crypto assets

##### 4.1 Generic risks posed by crypto assets

**Table 1: The generic risks posed by crypto assets**

<b>Risk</b>	<b>Description</b>
The risk of a parallel, fragmented, non-sovereign monetary system being created	The risk with potentially the widest-ranging implications is the threat to the existing financial system, in which central banks ensure an efficient monetary system through the execution of monetary policy and influence the supply of money or fiat currencies. The risk posed by crypto assets to the monetary policy transmission mechanism is that a significant increase in the demand for crypto assets would lead to the creation of a parallel and ultimately fragmented monetary system. The central bank's role in ensuring an efficient monetary system could become less effective, as the demand for fiat currency would decrease and crypto assets would effectively compete with fiat currencies. In essence, the monetary system would be executed by private entities with individual objectives. Given the current use of crypto assets observed, crypto assets are not seen as posing a systemic risk as yet, and this risk is not probable of materialising in the near future.
Consumer protection, market efficiency and market integrity risks	The risks related to crypto assets that are of immediate concern include the lack of consumer protection, threats to market efficiency and integrity, the possible misuse related to money laundering/ terrorist financing, circumvention of exchange controls, the increase of undetected illegitimate cross-border financial flows, inaccurate balance of payments data, illegitimate purchases (stemming from the anonymity or pseudonymity associated with crypto assets) and possible tax evasion.
The risk of an undefined or incomplete legal and regulatory framework that does not fully cater for the potential risks posed by crypto assets	The absence of an appropriate regulatory framework that is fit for purpose and commensurate oversight to address the risks posed, as well as the potential inability to have a holistic view of the actual inflow and outflow of the volume and monetary equivalent of such crypto assets within South Africa, holds regulatory risk.

## 4.2 The specific risks posed by crypto assets for each of the use cases identified

**Table 2: The specific risks posed by crypto assets for each use case identified**

Use case	Risk	Description
Buying and/or selling of crypto assets by individual consumers and legal persons	Money laundering and terrorism financing	In the case of purchasing/trading/conversion of crypto assets from CASPs, there are currently no regulatory requirements for customers to be identified. If such customers were involved in money laundering/terrorist financing and/or masking illegitimate cross-border financial flows, it would be extremely difficult to identify such customers and trace such transactions. Although some CASPs, such as CATPs, have voluntarily implemented customer identification and verification (due diligence) processes, this is not a standard process for all CASPs, and not yet a regulatory requirement. It is currently at the discretion of the CASPs to implement customer due diligence and other AML/CFT measures. The only obligations on CASPs in the FIC Act, as with all other businesses, are the reporting of suspicious and unusual transactions in terms of section 29 of the FIC Act and the prohibition in terms of section 26B to deal with United Nations Security Council sanctioned persons and entities.
	Exchange control circumvention risk	In certain cases, crypto assets have been used to circumvent existing exchange control rules for the movement of value out of South Africa without adhering to regulatory reporting requirements. Transparency in the financial system is thereby lost, and the tracking of the flow of funds by regulatory authorities becomes very difficult. On the aspect of CASPs' or crypto asset sellers' side, they may wish to buy crypto assets from international providers for the purpose of creating more liquidity in the South African market. For a company, the AD Manual does not allow cross-border or foreign currency transfers for the explicit purpose of purchasing crypto assets, since crypto assets are not officially recognised as legal tender in South Africa, nor have they officially been allocated to a specific asset class. These CASPs are left to find alternative measures to buy or obtain crypto assets. The underlying risk is that companies are forced to come up with inventive means to acquire crypto assets, which measures may not necessarily hold up to regulatory compliance. The South African authorities are thus exposed to incomplete information on the flow of funds or the movement of capital.
	Market conduct risk	Consumers are left vulnerable as CASPs are not regulated. Therefore, no specified rules exist to protect customers or provide customer resolution mechanisms in the case of disputes. Customers are seldom sufficiently informed of the risks of crypto assets and the losses that can be incurred as a result of investing and trading in crypto assets. There is no regulation or independent oversight to ensure that prices as well as the fees and charges involved in buying and selling crypto assets, are set fairly and transparently. Users with large holdings of crypto assets may potentially have exploited the market with market manipulation tactics whereby publicity and hype is created around specific crypto assets. This artificially increases prices, and the crypto assets are subsequently sold in masses after significant profits have been made by these users. Illegal Ponzi schemes have also emerged under the guise of investment opportunities in



Use case	Risk	Description
		crypto assets. These intentionally fraudulent operators need to be identified and such activity criminalised to dis-incentivise further development.
	Advice and/or mis-selling risk	Crypto asset marketing material is often strongly biased towards highlighting only the potential upside of crypto assets, with little or no consideration of the massive potential downside associated with investing in crypto assets. Also, numerous intermediaries provide crypto asset-related advice without being subject to any requirements aimed at mitigating advice and/or mis-selling risk. Lacking an appropriate risk analysis, suitability assessment and needs analysis, there is an increased likelihood that advice provided to a client to invest in crypto assets might lead to such client investing in a product that is unsuitable and/or inappropriate for the specific circumstances of the client.
	Operational risk, including cybersecurity risk	Crypto asset trading platforms are exposed to operational risk, as various incidents of platforms being attacked through cybercrime incidents and consumers losing their funds have been reported. <sup>34</sup> Fraud can also be committed through accounting practices on internal financial systems, as various transactions occur off the blockchain according to some of the CATPs' processes. CASPs such as CATPs may not have adequate mechanisms in place to guard against such fraud and hacking incidents.
Payments using crypto assets	The risk of parallel, unregulated and fragmented payment systems	The non-objection to crypto assets by regulators as a means of payment for the purchase of goods and services (with or without a defined regulatory regime) implies the acceptance of multiple new decentralised stores of value, different from fiat currencies. Although the shifts to such crypto assets are still negligible, larger shifts away from traditional deposits at banks to these decentralised stores of value may reduce a stable source of deposits for banks, which banks generally use to augment their balance sheets in the intermediation process. This intermediation process aids the financial system in achieving and maintaining financial stability. The creation of competing stores of value may thus have negative network effects. If these shifts occur, to CATPs that are not locally based, these impacts may be even greater. These crypto asset wallets and related stores of tokenised value would thus be different from commercial or central bank money, yet they would perform the same function as deposits reserved for payment purposes. Participants wanting to offer payment services could simply shift funds to crypto assets and then offer payment services, without the need to comply with any regulatory requirements applied to fiat stores of value for payment purposes. Consequently, the rules and requirements of the current payment systems are unjustifiably circumvented due to the alternative payment system being used.
	The risk of a reduction in the efficiency of the national	Alternate crypto asset payment systems imply the creation of parallel, closed-loop payment systems. These payment systems will conceptually result in closed 'three-party payment systems'. Merchants will have to be contracted for multiple crypto asset wallets, potentially under various schemes. Consumers will have to sign up for each of these schemes. These competing schemes will in all likelihood not be

<sup>34</sup> See <https://www.coindesk.com/2018-a-record-breaking-year-for-crypto-exchange-hacks>





Use case	Risk	Description
	payment system	interoperable. This could potentially prove inefficient for the system as a whole, and may result in the inefficient allocation of resources at the system or national level. Allowing these new competing crypto asset payment systems to operate may result in transactions moving away from current national payment system. If these shifts happen on a large scale, this may reduce the efficiency of the existing national payment system. This use case is different from the other use cases of crypto assets, as the negative consequences associated with this use case are higher, with minimum conceivable benefits, for the national payment system as a whole. Multiple closed-loop payment systems are created with no definitive clearing and settlement rules, leading to a fragmented and inefficient national payment system.
	The risk of perceived regulatory acceptance	Crypto assets are currently not widely accepted as a means of payment by merchants or retailers. They have equally battled to become accepted as a means of exchange among users. By allowing crypto assets into the regulatory ambit, their perceived value will increase. Crypto asset proponents potentially require this regulatory intervention in order for crypto assets to move beyond being instruments of speculative investments to their initial intended purpose: a medium of exchange. Regulators thus need to reflect carefully on the appropriateness of any regulatory intervention and review the unintended consequences. Accommodative regulatory intervention would create the potential market perception of regulatory acceptance and/or the endorsement of such instruments.
	Operational risk and a lack of consumer protection for crypto asset payments	No consumer protection exists for payments in crypto assets, and it is unclear whether payments can be reversed in cases of errors, overpayment or even fraud.
Capital raising through ICOs	AML/CFT	Participation in and provision of financial services related to an issuer's offer or sale of a crypto asset should be regulated for AML/CFT. From a FATF point of view, the expectation is not that the issuer of tokens in an ICO should be an obliged entity, but anybody who provides financial services relating to the issuance, offer or sale of a crypto asset in respect of an ICO should be.
	Highly speculative and limited exit opportunities	There are clear risks associated with ICOs as they are highly speculative investments in which investors' full invested capital is at risk. Investors must be prepared to face volatility and potential loss. An ICO white paper may state an impressive return target, but this is only a goal set and not a certainty. Investors can possibly mitigate some of the financial risks by consulting in-depth ICO research reports and only investing in start-ups with an experienced team and a cogent business model. Investors may also be unable to trade their coins or tokens, or to exchange them for fiat currencies. Not all the coins and tokens are traded on crypto asset trading platforms, and investors may be exposed to the lack of exit options or may be unable to redeem their coin or token for a prolonged period of time. In addition, the lack of fundamental valuation



Use case	Risk	Description
		analysis and a suitable due diligence process by regulators and potential investors may lead to extreme volatility of the ICO market.
	The high risk of failure and the concomitant risk to investors	The vast majority of ICOs are launched by businesses that are at a very early stage of development. These types of businesses have an inherently high risk of failure. Many of the coins and tokens that are being issued have no intrinsic value other than the possibility of using them to obtain or use a product or service that is yet to be developed by the issuer. There is no guarantee that the products or services will be successfully developed. Even assuming that the project is successful, any eventual benefit may be extremely low relative to the invested capital. Investors must therefore recognise that although ICOs provide start-ups with the opportunity to raise the capital they need to launch their projects, the majority of start-ups have a high probability of failure.
	The risk of unclear legal frameworks and ICOs being prone to fraudulent activity	As ICOs can have different functions and perform different economic activities, it is difficult to determine the specific legal classification. ICOs are not standardised, and their legal and regulatory status is likely to depend on the circumstances of the specific ICO issued. Depending on how they are structured, ICOs may not be captured by the existing rules, and may fall outside of the regulated space. Some ICOs may be used for fraudulent or illegitimate activities, with several ICOs having been identified as fraudulent and some as being used for money-laundering purposes. In a case where an ICO does not fall under existing regulations, investors cannot benefit from the protection that legal and regulatory frameworks provide. In addition, different countries have varying levels of regulatory strictness for ICOs, leaving vulnerabilities in the market. As a result, issuers who wilfully intend to conduct illegal activities move to jurisdictions where the regulators take a 'light touch' approach towards ICOs.
	The lack of a fiscal framework	When it comes to the nascent nature of ICOs and their legal classification, most tax authorities do not have specific regulations in place as yet. While many ICOs were initially positioned as a 'foundation' or a 'non-profit', fewer have been exploring such models recently, opting instead for a 'for profit' model.
	Cybersecurity risks	Many ICOs still lack proper cybersecurity controls, which poses a major threat for investors. As most ICOs raise capital in the form of crypto assets (e.g. Bitcoin or Ether), high-volume transactions become an attractive target for criminals. Cybersecurity hackers benefit from the hype, the irreversibility of blockchain-based transactions and basic coding errors that could have been avoided had the ICO been carefully reviewed by experienced developers and cybersecurity analysts. Thus, without clear regulatory guidelines being enforced or best practice, cybercriminals attempt to find opportunities to steal funds from investors.
	Risks related to incomplete and/or inaccurate disclosure	The information that is made available to investors in the white papers issued (if any) is, in most cases, unaudited, incomplete, unbalanced and even misleading. It typically places the emphasis on the potential benefits but not the risks. It is technical and not easily comprehensible. Investors may therefore not fully understand the risks that they are taking, and may make investments that are not appropriate for their needs.



Use case	Risk	Description
Crypto asset funds and derivatives	No defined legal framework for using crypto assets	South African legislation makes provision for the regulation of most investment vehicles, including pooled investment vehicles and most types of exchange-traded funds. Given that crypto assets have not been classified as a specific asset class yet, the existing regulatory provisions do not, in some instances, allow investment vehicles that use crypto assets as the underlying asset. However, in certain instances it might not be entirely clear whether or not crypto assets can be used as an underlying asset in a fund (e.g. in the case of qualified hedge funds), and the regulatory framework in this regard should be clarified to avoid any unintended consequences.
	The risk of volatility of crypto assets	The use of crypto asset funds for investment purposes is closely linked to their ability to be considered as a tool for capital appreciation over the long term. The volatility of the crypto asset market has made it difficult to consider crypto assets as a safe store of value; they are rather seen as a speculative investment.
	Unsystematic risk	Crypto asset investment funds are difficult to manage as an investment return, seeing as the crypto asset market has presented unsystematic risk with little correlation to the general market risk.
	Uncorrelated price movements	The price movements of crypto assets are perceived as highly uncorrelated to the general market, and crypto assets are thus perceived as exhibiting more unsystematic risk traits than systematic (market-correlated) risk traits. The advent of derivative products for crypto assets has prompted more market-related movements, although the correlation between price movements in equity markets and crypto assets has not been significant thus far.
	Liquidity risk	Due to its low levels of acceptability and trading, the crypto asset market is exposed to liquidity risk. Crypto assets are not easily convertible to other liquid assets, and ownership tends to be concentrated.
	Increased risk due to volatility	Crypto asset derivatives such as futures represent a volatile trading environment that becomes even more risky with leverage and margins that have characteristics of the traditional futures market. Derivative trading is more complex than other forms of investment in the sector, as it does not follow market trends. Derivative products have an opaque pricing mechanism and trade at large premiums over the value of the underlying asset, exerting negative pressure on the market.
	Difficulty in setting risk levels	It is difficult to adequately model the risk exposure based on historical data and liquidity assumptions, making it difficult to set risk levels and effective management measures.
Crypto assets market support	Cybersecurity risk	CASPs should ensure that they meet the international cybersecurity standards for the safeguarding of crypto assets. Crypto assets may be exposed to cybersecurity incidents that allow hackers to unlawfully access crypto assets held in safe custody. In the case of digital wallets, the security of information and access to wallets is of high concern and important to keep safe. Scams have arisen that divert crypto assets from users' mining rigs to malicious wallets, as victims' login credentials are compromised.
	Environmental risk	In crypto asset mining, environmental risk has emerged as one of the biggest concerns, as high electricity usage is required to conduct mining, which may have negative consequences on natural resources.

## **5. Developing a regulatory response to crypto assets in South Africa**

### **5.1 The challenges of regulating crypto assets**

5.1.1 The decentralised and disintermediated nature of crypto assets means that they offer direct, peer-to-peer transactional capability that does not require a traditional financial intermediary, such as a bank. This means that any regulatory approach should be sufficiently flexible to accommodate both incumbent and “new” providers. Moreover, the intention is not to regulate the actual crypto assets *per se*, but rather the activities of the entities that provide financial services in relation to such assets.

5.1.2 Another pertinent reason why crypto assets are challenging to regulate is because they operate at a global level and could potentially be classified under various economic functions. As a result, responsibility for regulation often cuts across various different regulators and national jurisdictions.<sup>35</sup>

5.1.3 The danger of a fragmented international regulatory approach and national authorities reacting with varying degrees of regulatory stringency is that crypto asset-related activities might potentially migrate towards jurisdictions that are regulated less stringently in a ‘race to the bottom’ as crypto assets are borderless. A coordinated global approach is therefore vital.<sup>36</sup>

5.1.4 Similarly, if there is no coherent regulatory approach at a national level, regulatory arbitrage could challenge the effectiveness of regulatory actions. Crypto assets are borderless, and their anonymous and pseudonymous nature increases the difficulty of implementing the correct regulatory and monitoring tools.

5.1.5 A further complicating factor is that as already mentioned, crypto assets are not ‘money’ in the legal tender sense of the word, although they perform some of the functions of money. However, by being excluded from the legal definition of ‘money’, the concomitant challenge being created is how to achieve regulatory certainty around their treatment in law. From the outset, the IFWG agrees that crypto assets and the various activities associated with this innovation can no longer remain outside of the regulatory perimeter. Clear policy stances on the variety of emerging use cases must be taken in order to deepen regulatory certainty and prevent the creation of parallel systems.

### **5.2 Objectives of regulating crypto assets and crypto asset service providers**


5.2.1 The objectives of regulating CASPs in South Africa are as follows:

- (i) ensure the efficiency and integrity of financial markets;
- (ii) ensure consumer and investor protection, which includes digital and financial consumer education;

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<sup>35</sup> He *et al* (2016). Available at <https://www.imf.org/external/pubs/ft/sdn/2016/sdn1603.pdf>.

<sup>36</sup> Lagarde (2018). Available at <https://www.imf.org/en/News/Articles/2018/11/13/sp111418-winds-of-change-the-case-for-new-digital-currency>.

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- (iii) minimise opportunities for regulatory arbitrage;
  - (iv) combat the circumvention of exchange control policy and regulations;
  - (v) combat illegitimate cross-border financial flows, money laundering/terrorist financing;
  - (vi) combat tax evasion and impermissible tax avoidance arrangements; and
  - (vii) support financial inclusion efforts and the advancement of technological innovation in a responsible and balanced manner.

## **6. Principles for regulating crypto assets and crypto asset service providers**

6.1 The South African regulatory response to crypto assets and CASPs is underpinned by the following principles:

6.1.1 *Adopting a risk-based approach:* Regulatory actions will be undertaken in a manner and intensity that are commensurate with the level of risks posed while balancing potential benefits, also taking into account the developments and requirements of relevant standard-setting bodies. The South African authorities do, however, reiterate their responsibility for the efficiency, stability and integrity of the wider financial system given the societal benefits associated with ensuring efficiency and integrity of financial markets.

6.1.2 *Adopting a unified regulatory approach:* The regulatory approach adopted should be a joint effort by all the affected regulatory authorities. This paper aims to ensure clear and consistent regulatory treatment by relevant regulatory authorities, taking cognisance of international approaches.

6.1.3 *Adopting a phased approach:* A phased approach, where possible, will be followed, where the regulatory treatment is timeously assessed before increased stringent regulatory requirements are imposed.

6.1.4 *Being technology-neutral to the extent possible and primarily principles-based:* Principles-based regulation essentially means relying more on broader, high-level principles than detailed, prescriptive rules. Principles can be supported by more detailed regulatory requirements and standards, where appropriate. The regulatory framework should also be based on the specific activity or function performed, rather than the specific entity or the type of technology used. The principle imperative is applied to the activity or function with the support of regulatory rules and standards. It is, however, acknowledged that the underlying technology cannot wholly be separated from the activity being performed.

6.1.5 *Being resilient and adaptive:* All new legislation and future amendments or guidance should provide for rapid changes in this environment that can be applied to existing technologies and should be sufficiently adaptive to allow application to emerging technologies with no or limited amendment.

## 7. Overall policy position for crypto assets and crypto asset service providers in South Africa and general recommendations

7.1 The South African regulatory authorities represented on the IFWG acknowledge crypto assets as a new financial innovation and agree on accommodating it within the regulatory framework, where appropriate and where sufficient regulatory safeguards can be implemented. The policy recommendations are based on the existing landscape and current levels of adoption, acceptance and use. The regulatory authorities therefore reserve the right to amend their policy stance should crypto assets pose a material risk to their respective regulatory mandates in future.

7.2 Both general and specific risks have been highlighted that are pertinent in the crypto assets environment. In line with the objectives and principles set out, specific requirements are highlighted per crypto asset use case. The policy position will set out the regulatory approach which will be implemented by the appropriate and relevant regulatory authorities.

7.3 The policy position considered existing legal and regulatory frameworks as well as regulatory developments under consideration, such as the CoFI Bill and the 2020 Financial Markets Review.<sup>37</sup>

### 7.4 Overall recommendations

7.4.1 *Recommendation 1:* Entities providing crypto asset services as defined in this document as per Table 3 of section 7.4.1.1 below to be regarded as CASPs.

7.4.1.1 The list of CASPs is based on the specific activity performed or service provided, and not the underlying technology used. The second column defines the activities that are classified within the CASP functions, and the last column identifies the regulatory authority(ies) with whom the CASP would likely have to be licensed by – or registered with – under the proposed framework articulated in this document. It should be noted that the actual licensing and/or registration frameworks, in terms of which the CASPs providing the services specified below would have to apply, will be developed and engaged upon in due course.

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<sup>37</sup> Also refer to the discussion paper on 'Building competitive financial markets for innovation and growth – a work programme for structural reforms to South Africa's financial markets' released by National Treasury on 28 February 2020.

**Table 3: Activities of CASPs and regulatory authority responsible for licensing/registration**

CASP	Services offered	With which regulatory authority(ies) would the CASP likely have to register?
CATP (or any other entity facilitating or providing the mentioned services)	<p>These are CASPs providing the following:</p> <ul style="list-style-type: none"> <li>intermediary services for the buying and selling of crypto assets;</li> <li>the trading, conversion or exchange of fiat currency or other value into crypto assets;</li> <li>the trading, conversion or exchange of crypto assets into fiat currency or other value;</li> <li>the trading, conversion or exchange of crypto assets into other crypto assets;</li> <li>remittance services using crypto assets as a means of facilitating credit transfers (remitter or value transfer provider); and</li> <li>providing advice in relation to crypto assets.</li> </ul>	<ul style="list-style-type: none"> <li>SARB FinSurv: CASP to register as a CATP and/or money remitter in terms of the Exchange Control Regulations.</li> <li>FIC: CASP to register as an Accountable Institution in terms of the FIC Act.</li> <li>FSCA: CASP to be licensed as a crypto asset intermediary and/or adviser, subject to CoFI Bill developments.</li> </ul>
Crypto asset vending machine operator	<ul style="list-style-type: none"> <li>These entities provide intermediary services for the buying and selling of crypto assets (including any of the above-mentioned services).</li> </ul>	<ul style="list-style-type: none"> <li>SARB FinSurv: CASP to register as a CATP and/or money remitter in terms of the Exchange Control Regulations.</li> <li>FIC: CASP to register as an Accountable Institution in terms of the FIC Act.</li> <li>FSCA: CASP to be licensed as a crypto asset intermediary, subject to CoFI Bill developments.</li> </ul>
Crypto asset token issuer	<p>These are CASPs conducting token issuances, including:</p> <ul style="list-style-type: none"> <li>ICOs;<sup>38</sup></li> <li>the issuance of stablecoins;</li> <li>the issuance of global stablecoins; and</li> <li>the participation in, and provision of, financial services related to an issuer's offer or sale of crypto assets.</li> </ul>	<ul style="list-style-type: none"> <li>SARB FinSurv: CASP to register as a CATP and/or money remitter in terms of the Exchange Control Regulations.</li> <li>FIC: CASP to register as an Accountable Institution in terms of the FIC Act (in so far as the CASP activity is in respect of the participation in, and provision of, financial services related to an issuer's offer or sale of crypto assets).</li> <li>FSCA: CASP to be licensed as a crypto asset intermediary, subject to CoFI Bill developments.</li> </ul>
Crypto asset fund or derivative service provider	<p>These entities offer investment funds or derivative products with crypto assets as the underlying asset.</p>	<ul style="list-style-type: none"> <li>CASP to be licensed by the FSCA, subject to developments regarding the COFI Bill and the review of the Financial Markets Act.</li> <li>CASP to approach FinSurv for product offerings with crypto assets as the underlying.</li> </ul>
Crypto asset digital wallet provider (custodial wallet providers only <sup>39</sup> )	<p>These entities offer a software program with the ability to store private and public keys that are used to interact with various digital protocols which enable the user to send and receive crypto assets, with the additional ability to monitor balances and execute control over the customers' crypto assets.</p>	<ul style="list-style-type: none"> <li>SARB FinSurv: CASP to register as a CATP and/or money remitter in terms of the Exchange Control Regulations.</li> <li>FIC: CASP to register as an Accountable Institution in terms of the FIC Act.</li> <li>FSCA: CASP to be licensed as a crypto asset intermediary,</li> </ul>

<sup>38</sup> From a FATF point of view, the expectation is not that the issuer of tokens in an ICO should be an obliged entity, but anybody who provides financial services in respect of an ICO should be. The analogy to this is where a company is formed and has an initial public share offer. The company issuing the shares is not an obliged entity, but the bank that underwrites the offering or offers credit for people who take up the public offer, is an obliged entity. However, all other requirements imposed on CASPs as detailed in this document will apply to crypto asset token issuers.

<sup>39</sup> Non-custodial wallets are excluded as these type of wallets lack the ability to execute control over crypto assets.



CASP	Services offered	With which regulatory authority(ies) would the CASP likely have to register?
Crypto asset safe custody service provider (custodial service)	These entities safeguard, store, hold or maintain custody of crypto assets belonging to another party.	subject to CoFI Bill developments. <ul style="list-style-type: none"><li>• SARB FinSurv: CASP to register as a money remitter in terms of the Exchange Control Regulations.</li><li>• FIC: CASP to register as an Accountable Institution in terms of the FIC Act.</li><li>• FSCA: CASP to be licensed as a crypto asset intermediary, subject to CoFI Bill and FMA Review developments.</li></ul>



7.4.2 *Recommendation 2:* Schedule 1 to the FIC Act to be amended by adding CASPs to the list of accountable institutions. Once CASPs are added to the list of accountable institutions, the full ambit of the FIC Act obligations will apply to them. This will mean that CASPs will be required to adhere to the legislative requirements aimed at AML/CFT. This will include registering with the FIC, conducting customer identification and verification, conducting customer due diligence, keeping records of client and transactional information, monitoring for suspicious and unusual activity on an ongoing basis, reporting to the FIC any suspicious and unusual transactions, reporting cash transactions of R25 000.00 and above (or the applicable threshold at any given time), and reporting in respect of control of property that might be linked to terrorist activity or terrorist organisations. Other obligations include developing, documenting, maintaining and implementing a Risk Management and Compliance Programme (RMCP)<sup>40</sup>, and training employees in relation to AML/CFT compliance. (As mentioned above, the FIC Act obligations on CASPs, as with all other businesses, irrespective of whether they are accountable institutions or not, is the reporting of suspicious and unusual transactions in terms of section 29 of the FIC Act and the prohibition in terms of section 26B to deal with United Nations Security Council sanctioned persons and entities.)


7.4.2.1 Entities that are subject to the requirements of the FIC Act are required to apply a risk-based approach to customer identification and verification, and are required to conduct a money laundering/terrorist financing risk assessment in respect of their institution/business. This includes the ability to distinguish between different categories of risk, and to apply enhanced customer due diligence where business with customers is deemed as higher risk and simplified customer due diligence where business with customers is deemed as lower risk. The result of this risk assessment must be linked to the degree of measures and controls adopted by the institution in addressing the degree of the risk posed, i.e. the higher the risk associated with a client, the greater the degree of due diligence required, and more frequent and enhanced monitoring must be conducted to mitigate the degree of the risk posed.

7.4.2.2 CASPs (or other obliged entity that engage in crypto asset transfers such as a financial institution) will be required to implement Recommendation 16 ('the travel rule') of the FATF Recommendations. The originating CASP should obtain, and hold, required and accurate originator information as well as required beneficiary information of the crypto asset transaction,<sup>41</sup> submit this information to the beneficiary CASP or another obliged entity immediately and

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<sup>40</sup> The RMCP can be described as the foundation of an accountable institution's efforts to comply with its FIC Act obligations on a risk-sensitive basis. For more information, please refer to FIC Guidance Note 7, available at [https://www.fic.gov.za/Documents/171002\\_FIC%20Guidance%20Note%2007.pdf](https://www.fic.gov.za/Documents/171002_FIC%20Guidance%20Note%2007.pdf).

<sup>41</sup> The required information includes the (i) originator's name (i.e., the sending customer); (ii) originator's account number where such an account is used to process the transaction (e.g., the VA wallet); (iii) originator's physical (geographical) address, or national identity number, or customer identification number (i.e., not a transaction number) that uniquely identifies the originator to the ordering institution, or date and place of birth; (iv) beneficiary's name; and (v) beneficiary account number where such an account is used to process the transaction (e.g., the VA wallet). The information can be submitted either directly or indirectly. It is not necessary for this information to be attached directly to crypto asset transactions. For more information, please refer to the FATF "Guidance on virtual assets and virtual asset service providers" issued in June 2019, available at <http://www.fatf-gafi.org/publications/fatfrecommendations/documents/guidance-rba-virtual-assets.html>. The updated guidance will be finalised at the FATF June 2021 Plenary.



securely, and make this information available on request to the appropriate regulatory and/or law enforcement authorities. The beneficiary CASP should obtain, and hold, required and accurate beneficiary information as well as required (but not necessarily accurate) originator information of the crypto asset transaction, and make this information available to the appropriate regulatory and/or law enforcement authorities if and when requested to do so.

7.4.3 *Recommendation 3:* The FIC to assume the supervisory role and duties to ensure compliance by those CASPs that would become accountable institutions with the requirements of the FIC Act. The FIC may impose administrative penalties where there is non-compliance. This supervisory role and duties may be reviewed at a later stage to determine the appropriate authority in line with Recommendation 9. Compliance by such business entities with obligations pursuant to the FIC Act will be monitored, and remedial actions will be required of those that fail to meet these requirements. In egregious cases of non-compliance with these requirements, or in cases where remedial actions do not have the desired effect of improving compliance with the relevant requirements, criminal sanctions may be imposed.

7.4.4 *Recommendation 4:* The CAR WG to continue monitoring the crypto asset ecosystem,<sup>42</sup> and define and implement a monitoring programme to track progress with implementing the recommendations, including the following aspects:

- (i) monitoring the overall market capitalisation of crypto assets in order to proactively assess the market's growth and its systemic significance on a continuous basis;
- (ii) monitoring global and domestic daily trading volumes and values;
- (iii) monitoring the number and client base of CATPs domiciled in South Africa to build a profile of each CATP (this could extend to the functions performed, the services offered, crypto assets trading volume, the variety in crypto assets traded, insurance obtained and the governance mechanism);
- (iv) monitoring the crypto asset payment service providers and the number of merchants or retailers accepting crypto assets as payment within South Africa, regionally and internationally;
- (v) monitoring the volume of crypto assets bought and sold via crypto asset vending machines; and
- (vi) monitoring the cross-border flows of crypto asset transactions.

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<sup>42</sup> Regulatory authorities are mindful of the possible implications for financial stability as a result of the risks posed by crypto assets and possible future linkages to the wider financial sector and economy. If issues of financial stability are identified, it could potentially trigger increased or more stringent regulatory actions. The specific information required from industry participants should be defined by the relevant regulatory authorities.

7.4.5 *Recommendation 5:* Crypto assets to remain without legal tender status and not be recognised as electronic money.

7.4.6 *Recommendation 6:* Crypto assets not be allowed for settlement obligations in financial market infrastructures such as the South African Multiple Option Settlement (SAMOS) system, which is the real-time gross settlement system of South Africa. It is further recommended that all existing financial market infrastructures<sup>43</sup> (regardless of whether the financial market infrastructure is systemically important or not) not interface with crypto assets in the absence of a regulatory framework that sets out how crypto assets can interface with market infrastructures. The NT as the policymaker, as well as the NPSD of the SARB, the Prudential Authority and the FSCA should consider the appropriate policy stance on the interaction of financial market infrastructures with crypto assets. This is flagged as an area for further analysis and research by the relevant regulatory authorities, and this position paper will be updated in due course to reflect any amended and/or more detailed position once available.

7.4.7 *Recommendation 7:* The Prudential Authority should consider the appropriate supervisory and regulatory approach for the treatment of prudentially regulated financial institutions' exposures to crypto assets, including reporting of their direct exposures to crypto assets and the treatment of the prudential and accounting practices for crypto assets in line with the ongoing work by the BCBS.

*Recommendation 8:* The FSCA and all other relevant stakeholders to significantly increase campaigns on digital financial literacy, including crypto assets. This can be done through singular events on existing digital and media platforms or in collaboration with national and international stakeholders.

## **8. Policy position and recommendations per crypto asset use case**

8.1 The buying and/or selling of crypto assets by consumers and legal persons

8.1.1 Policy position

8.1.1.1 The buying and selling of crypto assets, including the provision of advice in relation to crypto assets, are to be provided for in the regulatory framework under Twin Peaks. Specified services, set out in Recommendation 1, which are rendered in respect of crypto assets, should be classified as financial services, and should be supervised and regulated from a conduct-of-business perspective.

8.1.2 Recommendations

8.1.2.1 *Recommendation 9.1:* As an interim but urgent measure, crypto assets should be declared by the FSCA to be a 'financial product' for the purposes of the

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<sup>43</sup> A financial market infrastructure (FMI) is defined by the Bank for International Settlements (BIS) as a multilateral system among participating financial institutions, including the operator of the system, used for the purposes of recording, clearing or settling payments, securities, derivatives or other financial transactions. See <https://www.bis.org/cpmi/publ/d101a.pdf>.

FAIS Act in terms of paragraph (h) of the definition of 'financial product' in section 1(1) of the FAIS Act. The declaration in terms of the FAIS Act will empower the FSCA to regulate the advisory and intermediary component of crypto assets, as significant abuse has been noted over the last 24 months. This amendment is an interim measure to provide the FSCA with the requisite legal powers to clamp down on consumers being abused by financial advisors and intermediaries offering financial advice on crypto assets. Once the CoFI Bill has been enacted and has been brought into operation, the FAIS Act will be repealed and the issue of crypto asset-related financial advice and intermediary services will be dealt with under the CoFI Bill (or CoFI Act once enacted). Declaration of crypto assets as a financial product for the purposes of the FAIS Act would not impose any additional requirements on the CASPs identified under paragraph 7.4.

8.1.2.2 *Recommendation 9.2:* The specified services related to crypto assets should be included in the relevant licensing activities under the CoFI Bill.

8.1.2.3 *Recommendation 9.3:* The specified services rendered in respect of crypto-assets referred to in Table 3 of paragraph 7.4.1.1 to should be included in the definition of 'financial services' in section 3(1)(a) of the FSR Act.

8.1.2.4 *Recommendation 10:* FSCA, upon commencement of the CoFI Bill and the associated consequential amendments to the FSR Act contained in the CoFI Bill, to become the responsible authority for the licensing of the specified services related to crypto assets as defined in Table 1 of paragraph 7.4.1.1. Specific conduct standards should be developed for these services. Recommendation 10 is contingent upon accurate and appropriate inclusion of crypto assets within financial sector laws as per recommendations 9.2 (under the CoFI Bill) and 9.3 (under the FSR Act), with the explicit understanding that the full scope of FATF Recommendations in respect of virtual assets and virtual asset service providers are to be covered via the implementation of recommendations 9.2 and 9.3.


8.2 Payments using crypto assets (domestic and cross-border)

8.2.1 Policy position

8.2.1.1 The ability to make payments using crypto assets is currently not provided for under the existing regulatory frameworks. The National Payment System Act 78 of 1998 (NPS Act) does not contain any requirements relating to the use of crypto assets. However, Recommendation 15 of the NPS Act Review policy paper<sup>44</sup> provides that the SARB should be required to monitor and respond to emerging risk, and that the NPS Act should have an enabling provision for the SARB to intervene by incorporating a new or unregulated activity into the regulatory framework. The use of crypto assets for payment purposes may therefore be considered, and may be tentatively allowed at users' own risk, by the NPSD of the SARB on a case-by-case basis.

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<sup>44</sup> More specifically, this was a policy paper on the *Review of the National Payment System Act 78 of 1998*, published by the SARB in September 2018.

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- 8.2.2 Recommendations
- 8.2.2.1 *Recommendation 11:* The Financial Surveillance Department of the SARB should assume the supervisory and regulatory responsibility for the monitoring of cross-border financial flows in respect of crypto asset services.
- 8.2.2.2 *Recommendation 12:* The Financial Surveillance Department of the SARB should request the Minister of Finance to amend the Exchange Control Regulations to, inter alia, include crypto assets in the definition of 'capital' for the purposes of Exchange Control Regulation 10(1)(c).
- 8.2.2.3 *Recommendation 13:* The Financial Surveillance Department of the SARB explicitly allow individuals to purchase crypto assets within their single discretionary allowance (SDA) and the foreign capital allowance (FCA) framework.
- 8.2.2.4 *Recommendation 14:* The Financial Surveillance Department of the SARB should amend the AD Manual to enable authorised dealers to accurately report cross-border foreign currency transactions for the purpose of purchasing crypto assets abroad (including the cross-border transfer of foreign currency for the purpose of buying crypto assets by CATPs). A specific balance of payments category for the reporting of crypto asset transactions should be created, which would become a mandatory reporting responsibility.
- 8.2.2.5 *Recommendation 15:* The Financial Surveillance Department of the SARB should expand the Authorised Dealer in foreign exchange with limited authority (ADLA) framework to allow the appointment of CATPs for cross-border crypto asset-related transactions and/or the purchase/selling of crypto assets in South Africa for Rand. CATPs should be authorised and supervised in terms of requirements similar to the current ADLA requirements.
- 8.2.2.6 *Recommendation 16:* A new dispensation should be created under the exchange control framework to allow CATPs (licensed as above) to source or buy crypto assets offshore for the purpose of selling to the local market.
- 8.2.2.7 *Recommendation 17:* CATPs should be required to report crypto asset transactions to the Financial Surveillance Department of the SARB. The trigger event of reporting should be specified by the Financial Surveillance Department of the SARB.
- 8.2.2.8 *Recommendation 18:* Exemption should be provided for under Section G of the AD Manual for a market maker or arbitrageur of crypto assets, as appointed in Recommendation 15 above.
- 8.2.2.9 *Recommendation 19:* The NPS Act is in the process of being reviewed. It is therefore recommended that consideration be given to the inclusion of an enabling provision in the draft NPS Bill to accommodate for the regulation of other payment instruments that do not constitute legal tender, such as crypto assets.

## 8.3 Initial coin offerings

### 8.3.1 Policy position

8.3.1.1 The use of ICOs<sup>45</sup> as a means of raising capital is accommodated within the regulatory framework for start-up firms to raise capital. A regulatory framework would ensure that this alternative means of raising capital takes place within a defined framework.

### 8.3.2 Recommendations

8.3.2.1 *Recommendation 20:* Consideration should be given by the NT and the FSCA to aligning, to the extent possible, regulation of ICO issuers to the regulation of issuers of securities or 'over-the-counter' financial instruments. It is therefore recommended that consideration be given to subjecting security token offering to regulation under the FMA.

8.3.2.2 *Recommendation 21:* As part of the implementation of recommendations 9 and 10 above, ICO issuances for payment or exchange and utility token offerings should be appropriately accommodated in the licensing activities under the CoFI Bill, and as a financial service as contemplated under section 3(1) of the FSR Act. CoFI Bill licensing requirements and the specific conduct standards should be developed. These standards should provide that ICO issuers (for payment or exchange and utility token offerings) are required to prepare a detailed prospectus, which is the equivalent of a white paper. The document should set out specific requirements and details on disclosures about the company, a governance plan, any agreement(s) between the customers and ICO issuers, comprehensive independent audits, and specific reports (to be confirmed) to regulators.

## 8.4 Crypto asset funds and derivatives


### 8.4.1 Policy position

8.4.2 The current approach to regulation is to specify the asset classes into which collective investment schemes and pension funds may invest, with crypto assets currently not being one such designated asset class. Given the complexity of the topic, including the extent to which other investment vehicles (such as hedge funds) may or may not include crypto assets as an underlying asset in a portfolio, this area is flagged for further research by the CAR WG, and it is recommended that the current stance of not allowing collective investment schemes and pension funds to have exposure to crypto assets be maintained until further notice.

8.4.2.1 The FMA regulates derivative instruments. The definition of a 'derivative instrument' in the FMA is agnostic as to the nature of the underlying or referenced asset. It would therefore theoretically be possible to create a derivative instrument that references crypto assets as the underlying asset.

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<sup>45</sup> A coin split or fork is not interpreted as an inclusion in the issuance of an ICO.



However, given the well-recorded challenges around valuing crypto assets, their price volatility, their propensity for facilitating market abuse and financial crime, and inadequate understanding of crypto assets by retail consumers, derivative instruments that reference crypto assets or other securities as the underlying asset will not be permitted until further notice. This is accordingly flagged as an area for further in-depth analysis and research by the relevant regulatory authorities, and this position paper will be updated in due course to reflect any amended and/or more detailed position once available.

### 8.4.3 Recommendations

8.4.3.1 *Recommendation 22:* The pooling of crypto assets for onward distribution to the public should be regarded as constituting an alternative investment fund, which would be incorporated appropriately within the relevant licensing activity in terms of the CoFI Bill. However, a collective investment scheme should not be allowed to include crypto assets in its portfolios.

8.4.3.2 *Recommendation 23:* The issuing and listing of derivative instruments or other securities that reference crypto assets as the underlying asset should not be permitted until further notice. Consideration should, however, be given by NT and the FSCA of the merits of requiring institutions that issue over-the-counter instruments with crypto assets as the underlying asset class in future being licensed by the FSCA. To this end, NT and the FSCA should consider and review the current financial markets regulatory framework with regard to the advisability of accommodating (and the potential requirements that would be appropriate for the regulation of) over-the-counter derivative instruments with crypto assets as the underlying asset.


## 8.5 Crypto asset market support services

### 8.5.1 Policy position

8.5.1.1 A CASP that provides specific services, such as safe custody services or digital wallet provisioning services, is included within the scope of regulatory obligations specified below. The extent to which it is possible to accommodate all these support activities in the regulatory framework must, however, still be considered by the regulatory authorities. The mining of crypto assets is not considered a material risk. Therefore, no specific regulatory obligations are required for entities participating in such activities at this stage. However, where additional financial services or investment vehicles are derived from crypto asset mining, such financial services or investment vehicles must be considered within the scope of crypto asset services declared as a financial service.

### 8.5.2 Recommendations

8.5.2.1 *Recommendation 24:* CASPs offering custodial services and/or digital wallet provisioning should be accommodated within the appropriate licensing activity under the CoFI Bill, and as a financial service as contemplated under section 3(1) of the FSR Act. The specific conduct standards to be made applicable to



the provision of such activities should include requirements relating to operational risk, auditing, the segregation of roles, and any other relevant requirements.

8.5.2.2 *Recommendation 25:* The current stance that collective investment schemes and pension funds should not be allowed to have exposure to crypto assets should be maintained. The FSCA and NT should, however, continue to conduct further research and analysis on the appropriateness of this position going forward.





## 9. Roadmap for implementing the recommendations

9.1 The below Table 4 summarises the activities, the responsible regulatory authorities and the regulatory instruments or tools used to implement the proposed recommendations of this position paper.

**Table 4: Roadmap for implementing the recommendations (key: **green** = already ongoing or process to be started immediately following approval of this document by the IFWG and publication on the IFWG’s website (i.e. short-term objective within the next 12 months); **yellow** = medium-term objective to be achieved in the next 12-24 months; **red** = longer-term objective unlikely to be achieved in the next 24 months)**

No.	Recommendation	Actions required to give effect to recommendation	Responsible entity	Instrument
1.	Entities providing crypto asset services as defined in this document to be regarded as CASPs	<ul style="list-style-type: none"> <li>• Final approval of this document by the IFWG and publication on the IFWG’s website.</li> <li>• Articulating and agreeing on the definition of CASPs as defined in this document for the unique and nuanced purposes of the various different South African financial sector laws.</li> </ul>	IFWG	This document and the respective financial sector laws
2.	Schedule 1 to the FIC Act be amended by adding CASPs to the list of accountable institutions	<ul style="list-style-type: none"> <li>• Aligning to the revised FATF Recommendation 15.</li> <li>• Proposed amended Schedule 1 of the FIC Act to include CASPs as an Accountable Institution.</li> <li>• Draft amendments were published by National Treasury for public consultation on 19 June 2020 for a period of 60 days (deadline for comments was 18 August 2020).</li> <li>• After consideration of comments received, review and redraft of proposed amendments to be submitted to National Treasury.</li> <li>• Final approval required from the Minister of Finance.</li> <li>• Process to obtain Parliamentary approval.</li> <li>• Publication by Minister of Finance through Government Gazette.</li> <li>• CASPs to implement FIC Act requirements.</li> </ul>	FIC / NT	Schedule 1 of the FIC Act
3.	The FIC to assume the supervisory role and duties to ensure compliance	As per Recommendation 2.	FIC	FIC Act



No.	Recommendation	Actions required to give effect to recommendation	Responsible entity	Instrument
	by those CASPs that would become accountable institutions with the requirements of the FIC Act			
4.	CAR WG to continue monitoring the crypto asset ecosystem, and define and implement a monitoring programme to track progress with implementing the recommendations	<ul style="list-style-type: none"> <li>• CAR WG to devise programme for monitoring the crypto asset ecosystem (both globally and locally).</li> <li>• CAR WG to devise monitoring programme for tracking progress with implementing the recommendations contained in this document.</li> </ul>	CAR WG	N/A
5.	Crypto assets to remain without legal tender status and not be recognised as electronic money in South Africa	Continuation of current stance.	All IFWG members	N/A
6.	Crypto assets not be allowed for settlement obligations in financial market infrastructures such as the SAMOS system	Continuation of current stance.	National Payment System Department of the SARB	NPS Act
7.	The Prudential Authority to consider the appropriate supervisory and regulatory approach for the treatment of prudentially regulated financial institutions' exposures to crypto assets, including reporting on their direct exposures to crypto assets and the treatment of the prudential and accounting practices for crypto assets in line with the ongoing work by the BCBS <sup>46</sup>	Close monitoring of developments related to the prudential treatment of regulated institutions' holdings of and exposure to crypto assets	Prudential Authority	N/A
8.	The FSCA to significantly increase consumer educational initiatives on crypto assets.	FSCA to determine how best to give effect to this recommendation	FSCA	N/A

<sup>46</sup> Should an application from an existing regulated entity be received for the proposed licence under the FAIS Act, such applications will be considered on a case-by-case basis without such an entity's registration status advantaging or disadvantaging it in terms of the application.



No.	Recommendation	Actions required to give effect to recommendation	Responsible entity	Instrument
9.	<ul style="list-style-type: none"> <li>• 9.1: Crypto assets to be declared by the FSCA to be a ‘financial product’ for the purposes of the FAIS Act in terms of paragraph (h) of the definition of ‘financial product’ in section 1(1) of the FAIS Act</li> <li>• 9.2: The specified services related to crypto assets should be included in the relevant licensing activities under the CoFI Bill</li> <li>• 9.3: The specified services rendered in respect of crypto-assets referred to in Table 1 of paragraph 7.4.1.1 to should be included in the definition of ‘financial services’ in section 3(1)(a) of the FSR Act</li> </ul>	<ul style="list-style-type: none"> <li>• 9.1: Declare crypto assets a financial product in terms of paragraph (h) of the definition of “financial product” in Section 1 of the FAIS Act using the similarity reference.</li> <li>• 9.2: FSCA, in close collaboration with NT, to incorporate the proposals in the version of the CoFI Bill that will be submitted to the Minister of Finance to obtain the Minister’s approval to submit to Cabinet for approval to table the CoFI Bill in Parliament.</li> <li>• 9.3: FSCA, in close collaboration with NT, to incorporate the proposals in the version of the CoFI Bill that will be submitted to the Minister of Finance to obtain the Minister’s approval to submit to Cabinet for approval to table the CoFI Bill in Parliament.</li> </ul>	FSCA and NT	FSR Act, CoFI Bill and FAIS Act
10.	<ul style="list-style-type: none"> <li>• FSCA, upon commencement of the CoFI Bill and the associated consequential amendments to the FSR Act contained in the CoFI Bill, to become the responsible authority for the licensing of the specified services related to crypto assets as defined in Table 1 of paragraph 7.4.1.1.</li> <li>• Specific conduct standards should be developed for these services.</li> <li>• Recommendation 10 is contingent upon accurate and appropriate inclusion of crypto assets within financial sector laws as per recommendations 9.2 (under the CoFI Bill) and 9.3 (under the FSR</li> </ul>	The processes set out in 9.2 and 9.3 above will be implemented.	FSCA and NT	FSR Act, CoFI Bill



No.	Recommendation	Actions required to give effect to recommendation	Responsible entity	Instrument
	Act), with the explicit understanding that the full scope of FATF Recommendations are to be covered via the implementation of recommendations 9.2 and 9.3.			
11.	The Financial Surveillance Department of the SARB to assume the supervisory and regulatory responsibility for the monitoring of cross-border financial flows in respect of crypto asset services	Amendment of the Exchange Control Regulations	Financial Surveillance Department of the SARB and NT	Exchange Control Regulations
12.	The Financial Surveillance Department of the SARB to request the Minister of Finance to amend Exchange Control Regulation 10(4) to include crypto assets in the definition of 'capital' for the purposes of Exchange Control Regulation 10(1)(c)	Amendment of the Exchange Control Regulations	Financial Surveillance Department of the SARB and NT	Exchange Control Regulations
13.	The Financial Surveillance Department of the SARB to explicitly allow individuals, through an amendment of the Exchange Control Regulations, to purchase crypto assets within their SDA and FCA	Amendment of the Exchange Control Regulations	Financial Surveillance Department of the SARB and NT	Exchange Control Regulations
14.	<ul style="list-style-type: none"> <li>The Financial Surveillance Department of the SARB to amend the AD Manual to enable authorised dealers to accurately report cross-border foreign currency transactions for the purpose of purchasing crypto assets abroad (including the cross-border transfer of foreign currency</li> </ul>	Amendment of the AD Manual	Financial Surveillance Department of the SARB	AD Manual




No.	Recommendation	Actions required to give effect to recommendation	Responsible entity	Instrument
	for the purpose of buying crypto assets by CATPs) <ul style="list-style-type: none"> <li>A specific balance of payments category for the reporting of crypto asset transactions should be created, which would become a mandatory reporting responsibility</li> </ul>			
15.	<ul style="list-style-type: none"> <li>The Financial Surveillance Department of the SARB to expand the ADLA framework to allow the appointment of CATPs for cross-border crypto transactions and/or the purchase/selling of crypto assets in South Africa for Rand</li> <li>CATPs should be authorised and supervised in terms of requirements similar to the current ADLA requirements</li> </ul>	Expansion of the ADLA framework	Financial Surveillance Department of the SARB	ADLA framework
16.	A new dispensation to be created under the exchange control framework to allow licenced CATPs to source or buy crypto assets offshore for the purpose of selling to the local market	Amendment of the Exchange Control Regulations	Financial Surveillance Department of the SARB and NT	Exchange Control Regulations
17.	CATPs to be required to report crypto asset transactions to the Financial Surveillance Department of the SARB. The trigger event of reporting to be specified by the Financial Surveillance Department of the SARB	Amendment of the Exchange Control Regulations	Financial Surveillance Department of the SARB and NT	Exchange Control Regulations
18.	Exemption to be provided for under Section G of the AD Manual as a	Amendment of the AD Manual	Financial Surveillance	AD Manual



No.	Recommendation	Actions required to give effect to recommendation	Responsible entity	Instrument
	market maker or arbitrageur for crypto assets		Department of the SARB	
19.	Consideration be given to the inclusion of an enabling provision in the draft NPS Bill to accommodate for the regulation of other payment instruments that do not constitute legal tender, such as crypto assets.	National Payment System Department of the SARB to consider whether amendment of the draft NPS Bill is required	National Payment System Department of the SARB	NPS Bill
20.	Consideration be given by the NT and the FSCA to aligning, to the extent possible, regulation of ICO issuers, to the regulation of issuers of securities or 'over-the-counter' financial instruments. It is therefore recommended that consideration be given to subjecting security token offerings to regulation under the FMA, subject to consultation with the Companies and Intellectual Property Commission and alignment with the Companies Act 71 of 2008 to the fullest extent possible and appropriate.	NT and FSCA to consider the appropriateness of the FMA for giving effect to the recommendation	FSCA	FMA
21.	ICO issuances for payment or exchange and utility token offerings to be appropriately accommodated in the licensing activities under the CoFI Bill, and as a financial service as contemplated under section 3(1) of the FSRA. CoFI Bill licensing requirements and specific conduct standards should be developed.	This would be accommodated in the processes in respect of recommendations 9 and 10 above.	FSCA and NT	FSR Act, CoFI Bill
22.	The pooling of crypto assets for	This would be accommodated in the processes in	FSCA and NT	FSR Act, CoFI Bill



No.	Recommendation	Actions required to give effect to recommendation	Responsible entity	Instrument
	onward distribution to the public should be regarded as constituting an alternative investment fund, which should be incorporated within the relevant licensing activity in terms of the CoFI Bill and as a financial service as contemplated under section 3(1) of the FSR Act.	respect of recommendations 9 and 10 above.		
23.	<ul style="list-style-type: none"> <li>The issuing of derivative instruments that reference crypto assets as the underlying asset should not be permitted until further notice.</li> <li></li> </ul>	<ul style="list-style-type: none"> <li>NT and FSCA to consider the appropriateness of this stance going forward.</li> <li></li> </ul>	FSCA and NT	FMA
24.	CASPs offering custodial services and/or digital wallet provisioning should be accommodated within the appropriate licensing activity under the CoFI Bill, and as a financial service as contemplated under section 3(1) of the FSR Act.	This would be accommodated via the processes as per recommendations 9 and 10 above.	FSCA and NT	FSR Act, CoFI Bill
25.	<ul style="list-style-type: none"> <li>Maintain the current stance that collective investment schemes and pension funds should not be allowed to have exposure to crypto assets.</li> <li>FSCA and NT to consider the appropriateness of this position going forward and, if deemed necessary to amend, consider the most appropriate instrument for amending this stance.</li> </ul>	NT and FSCA to reflect on the appropriateness of amending the current stance.	FSCA and NT	FSR Act, CoFI Bill



## **10. Conclusion and the way forward**

- 10.1 This position paper sets out the recommendations for a revised South African policy and regulatory position on crypto assets and related activities, and essentially provides a roadmap to putting in place a framework for regulating crypto assets through the regulation of CASPs in South Africa.
- 10.2 The position paper is a joint initiative by the IFWG and the CAR WG.
- 10.3 This position paper is endorsed by all the regulatory authorities that are members of the IFWG, which includes NT in its role as policymaker.
- 10.4 This paper represents a policy position that is based on the identification and definition of use cases at the time of drafting the position paper. The need for continuous refinements, amendments and additions is expected within the context of the evolutionary nature of the subject matter and the broader ecosystem.
- 10.5 Once finalised and published, this paper will serve as a mandate to the individual financial sector regulators and other relevant regulators to implement the recommendations contained herein.



## 11. Abbreviations

ADLA	Authorised Dealer in foreign exchange with limited authority
AD Manual	Currency and Exchanges Manual for Authorised Dealers
AML/CFT	Anti-money laundering/combating the financing of terrorism
BIS	Bank for International Settlements
BCBS	Basel Committee on Banking Supervision
CAR WG	Crypto Assets Regulatory Working Group
CASP	Crypto asset service provider
CATP	Crypto asset trading platform
CoFI Bill	Conduct of Financial Institutions Bill
CPMI	Committee on Payments and Market Infrastructures
DLT	Distributed ledger technology
FAIS Act	Financial Advisory and Intermediary Services Act 37 of 2002
FATF	Financial Action Task Force
FIC	Financial Intelligence Centre
FIC Act	Financial Intelligence Centre Act 38 of 2001
Fintech	Financial technology
FCA	Foreign Capital Allowance
FMA	Financial Markets Act 19 of 2012
FMI	Financial Market Infrastructure
FSB	Financial Stability Board
FSCA	Financial Sector Conduct Authority
FSR Act	Financial Sector Regulation Act 9 of 2017
ICO	Initial coin offering
IFWG	Intergovernmental Fintech Working Group
Income Tax Act	Income Tax Act 58 of 1962
ML/TF	Money laundering/terrorist financing
NCR	National Credit Regulator
NPS Act	National Payment System Act 78 of 1998
NPSD	National Payment System Department
NT	National Treasury
RMCP	Risk Management and Compliance Programme
SAMOS system	South African Multiple Option Settlement system
SARB	South African Reserve Bank
SARS	South African Revenue Service
SDA	Single discretionary allowance
VAT Act	Value-Added Tax Act 89 of 1991