

File Ref. no.: 18/4/1_Crypto Assets

Joint Communication: Crypto assets for domestic payment purposes

1. Purpose

1.1 The purpose of this Joint Communication is to clarify that crypto assets:

1.1.1 used for payments in accordance with the Declaration of crypto asset as a financial product in terms of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002) (FAIS Act) are not considered payments in terms of the National Payment System Act, 1998 (Act No. 78 of 1998), as amended (NPS Act);

1.1.2 currently fall outside of the application of the NPS Act; and

1.1.3 are neither money as defined in the NPS Act nor funds and are therefore not legal tender.

1.2 In addition, the National Payment System Department (NPSD) of the South African Reserve Bank (SARB), together with other relevant regulators, is conducting analytical work to explore regulatory treatment of crypto assets for payment purposes, as the crypto market continues to evolve.

2. Background

2.1 Section 10(1)(c) of the South African Reserve Bank Act, 1989 (Act No. 90 of 1989), as amended (SARB Act), empowers the SARB to perform functions, implement rules and procedures and, in general, take necessary steps to

establish, operate, monitor, regulate and supervise payment, clearing and settlement systems. The NPS Act governs the management, administration, operation, regulation and supervision of payment, clearing and settlement systems in the Republic of South Africa, and for related matters.

- 2.2 The national payment system (NPS) encompasses the entire payment process – from payer to beneficiary – and includes settlement between banks. The process includes all the tools, systems, instruments, mechanisms, institutions, agreements, procedures, rules and laws applied or utilised to effect payment. The NPS is a primary component of the country’s monetary and financial system as it enables the circulation of money, assisting transacting parties to make payments and exchange value.
- 2.3 On 19 October 2022, the Financial Sector Conduct Authority (FSCA) published the Declaration of crypto assets as a financial product in terms of the FAIS Act (Declaration) in the *Government Gazette*. The Declaration defines a crypto asset as follows:

“Crypto asset” means a digital representation of value that –

- a) 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,¹*
- b) applies cryptographic techniques; and*
- c) uses distributed ledger technology.*

3. Scope of the Communication

- 3.1 The scope of this Communication is limited to crypto assets that are used for domestic payments, including payment of goods and services, and person-to-person, person-to-business or business-to-business payments within South Africa and does not extend to cross-border payments. For purposes of this Communication, crypto assets include stablecoins.

¹ For clarity, ‘for the purpose of payment’ refers to the use of crypto assets within the crypto ecosystem.

4. Clarification regarding crypto assets from a payment perspective

4.1 **Crypto assets fall outside of the application of the NPS Act.** The NPS Act defines a “payment system” as “a system that enables payments to be effected or facilitates the circulation of **money** (own emphasis) and includes any instruments and procedures that relate to the system”. Although the term ‘payment’ is not defined in the NPS Act, the SARB has interpreted and applied it to payments in the form of money or funds (monetary value) in line with the definition of a “payment system”. A crypto asset is neither money as defined in the NPS Act, nor funds and therefore does not meet the SARB’s interpretation of payment and thus the definition of a payment system.

4.2 **A crypto asset does not have legal tender status.** This is in line with international best practice and should support monetary stability.² Furthermore, unbacked crypto assets (e.g. Bitcoin) are not well-suited to perform the function of money (i.e. unit of account, means of exchange, store of value) and they are not recognised as legal tender in the SARB Act.

4.3 **Crypto assets pose risks to the NPS.** The SARB believes that the risks highlighted in the Intergovernmental Fintech Working Group’s (IFWG) [position paper](#) regarding payments using crypto assets remain valid and are aligned with risks highlighted by international standard-setting bodies. These risks include, but are not limited to, the following:

4.3.1 Volatility of crypto assets: The volatility of the crypto asset market (excluding the stablecoin market) has made it difficult to consider crypto assets as a safe store of value; instead, they are generally viewed as a speculative investment.

4.3.2 Emergence of parallel, unregulated and fragmented payment systems: Should crypto assets gain widespread adoption, the NPS could be bypassed in favour of alternative payment system.

4.3.3 Decreased efficiency of the NPS: Many crypto assets do not offer interoperability and central clearing, meaning that users may need to register

² IMF 2023, [Elements of effective policies for crypto assets](#), IMF Policy Paper, February 2023.

with multiple crypto asset service providers (CASPs) to transact using these tokens and/or wallets.

4.3.4 **Operational and cybersecurity risks:** The technological integrity of crypto asset platforms is not guaranteed, meaning that fraudulent and opaque functionalities could facilitate payments. Under these circumstances, serious crimes such as fraud, cyberattacks and extortion (i.e. ransomware) may occur.

4.3.5 **Risk to financial stability:** The expanding use of crypto assets and large build-up of exposures or links to regulated financial institutions and the broader economy may pose risks to the stability of the financial system.

4.4 **Monitoring of crypto assets for payment purposes:** Monitoring crypto assets for payment purposes assists in assessing the market's size, its composition and user behaviour. In this context, the SARB continues to monitor crypto market developments and may conduct further targeted research and engagement to gather information and gain a deeper understanding of the use, adoption and business models that facilitate the use of crypto assets for payment-related activities.

4.5 **Future regulatory considerations for crypto assets in domestic payments:** The revision of the NPS Act will include provisions that would enable the SARB, at its discretion, to declare and regulate payment instruments other than money, such as crypto assets. Among other aspects, this will provide the SARB with the authority and discretion, should a compelling case arise, to designate crypto assets as payment instruments for domestic transactions. The following considerations may inform the decision to bring crypto assets under the regulatory framework:

4.5.1 **Unbacked crypto assets:** Unbacked crypto assets lack supporting assets, resulting in highly volatile prices. As a result, they are generally not well-suited to perform the main functions of money – namely, serving as a store of value, medium of exchange and unit of account. Instead, these crypto assets are mostly held by investors hoping prices will rise. Therefore, the SARB is unlikely to consider regulating unbacked crypto assets as payment instruments.

- 4.5.2 **Stablecoins:** Stablecoins are designed to maintain a stable value through reserve assets and can be pegged to a monetary unit of account, such as the US dollar or the rand. Many stablecoins offer redemption into fiat currency at face value. This gives stablecoins some characteristics of digital money and the potential to be adopted as a payment instrument. The IFWG is currently analysing the applicable use cases of rand-pegged stablecoins to inform an appropriate policy and regulatory response by relevant regulators. Unlike domestic currency-pegged stablecoins with a robust legal and regulatory framework, foreign currency-pegged stablecoins may result in the risk of currency substitution ('dollarisation'), which would weaken the monetary policy transmission. The SARB is thus unlikely to consider foreign currency-pegged stablecoins as payment instruments for domestic transactions.
- 4.5.3 **Testing stablecoins pegged to the rand in the sandbox:** The SARB is interested in testing domestic stablecoin payment use cases in the IFWG's Regulatory Sandbox. This will provide the SARB an opportunity to understand and assess payment applications over the medium term, which may assist in developing an appropriate regulatory, supervisory and oversight framework.

5. Clarification regarding FAIS Act Declaration

- 5.1 The FAIS Act regulates the provision of advice and rendering of intermediary services (collectively referred to as financial services) in respect of financial products. The requirements of the FAIS Act are designed to protect financial customers and professionalise the financial services industry. Activities defined in the NPS Act, which relate to payment, clearing and settlement systems, do not fall under the FAIS Act and are currently only regulated by the NPS Act.
- 5.2 The Declaration under the FAIS Act was an initial step by the FSCA to protect financial customers from urgent and increasing risks arising from the growing public interest in crypto assets, while also supporting responsible growth and innovation in the sector. The Declaration applied the existing requirements of the FAIS Act and its subordinate legislation to a narrow sub-set of crypto-related activities – namely advice and intermediary services – and was not

intended to legitimise crypto assets as “currency” or any other form of acceptable tender.

5.3 As a result of the Declaration, any person who, as a regular feature of their business, renders financial services (as defined in section 1 of the FAIS Act) in relation to crypto assets, as defined in the Declaration, must:

- either be authorised under section 8 of the FAIS Act as a financial services provider (FSP) or be appointed as a representative of an authorised FSP under section 13 of the FAIS Act; and
- comply with the requirements of the FAIS Act and its subordinate legislation.

5.4 The Declaration was made in terms of paragraph (h) of the definition of financial product in the FAIS Act, which allows the FSCA to declare a product as a financial product for the purposes of the FAIS Act if it is similar in nature to any other financial product defined in the Act. The requirements of the FAIS Act address activities including intermediation and advice in respect of crypto assets, such as administration, safe custody, trading on behalf of a client, providing trading platforms, sales, marketing and advice. Financial services governed by the FAIS Act may also be deemed to occur when a customer transfers crypto assets to a merchant in exchange for goods or services, an activity resembling a payment transaction, specifically when this process is facilitated by an intermediary. This would always be the case, meaning there is always one or more intermediaries needed to facilitate a payment-type transaction between the crypto asset payer and payee, unless the transaction is done in a decentralised environment (known as decentralised finance or DeFi) through the use of decentralised protocols.

5.5 Therefore, services that qualify as "intermediary services" or "advice" under the FAIS Act, will fall within the scope of regulated financial services. Intermediaries performing these services must be licensed by the FSCA in terms of the FAIS Act. However, peer-to-peer transactions (direct exchanges of crypto assets between individuals) that rely only on decentralised protocols imply that no intermediation or advice is provided. As a result, there is currently

no obligation for any party involved in that decentralised transaction to be authorised as an FSP. In effect, from a FAIS Act perspective, this is equivalent to a payer and payee transacting in cash, where no third party is needed to facilitate payment.

- 5.6 Owing to their distributed nature, crypto assets can change utility in the hands of a financial customer; for example, crypto assets may initially serve as an investment vehicle and later be used to purchase items in retail stores. In other words, crypto assets can function as investments, provide access to services, or be used as payments. Where “intermediary services” are provided as defined in the FAIS Act, regardless of the purpose for which the crypto assets are used (e.g. facilitation of an investment purchase), the person providing the intermediary services (facilitation) must be licensed under the FAIS Act.
- 5.7 In summary, financial services (such as advice and intermediation) provided in respect of crypto assets, following the Declaration of crypto assets as a financial product, require licensing under section 7(1) of the FAIS Act. Therefore, any activity resembling a payment activity involving crypto assets that meets the definition of intermediary services falls under the FAIS Act. This does not detract from the SARB’s powers to regulate, supervise and oversee payment activities involving crypto assets under the NPS Act, should the SARB choose to exercise those powers in the future.
- 5.8 As a result, the FSCA will continue to process licensing applications under the FAIS Act related to crypto assets, including for payment-type activities, provided that these activities fall within the definition of “advice” or “intermediary service” as outlined in the Act. However, a licence granted by the FSCA under the FAIS Act does not include the regulation, supervision and oversight of crypto assets used for payments as contemplated under the NPS Act, which remains subject to further policy and regulatory framework development by the SARB.

6. Conclusion

Intermediaries facilitating crypto asset payment-type activities and persons giving advice related to crypto assets must be authorised by the FSCA as FSPs under the FAIS Act. However, these activities are not considered as payments in terms of the NPS Act, so providers currently do not need to be authorised under that Act. It remains incumbent on CASPs licensed by the FSCA to adhere to all the applicable requirements of the FAIS Act and its subordinate legislation. Licensed CASPs must also communicate clearly and unambiguously with financial customers regarding the limited scope and nature of the activities for which they are licensed by the FSCA (noting that these activities do not constitute legal tender). Anyone involved in crypto asset activities who is uncertain about this communication should contact the SARB and the FSCA directly at the following email addresses:

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