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THE VALUE OF KNOWING

AFRICA GUIDE
TO CRYPTOCURRENCIES

CRYPTOCURRENCY ACCEPTANCE IN KEY AFRICAN JURISDICTIONS

FOREWORD

Although regulators around the world remain sceptical about recognising virtual currencies as legal tender, cryptocurrencies are already an established phenomenon and are here to stay. As with all things technology, the law appears to catch up with innovations after the fact. Regulatory vetting and the development of industry standards are necessary.

With the exception of El Salvador, most countries have taken a cautious approach in allowing the use of these currencies and require disclaimers warning the public of the risks.

In Africa, the acceptance of these currencies has varied from jurisdiction to jurisdiction, but there is a general trend towards supporting their use. Of recent, there have been positive signs in countries such as Kenya, Mauritius, South Africa, Tanzania, Uganda and Zambia. Mauritius, for example, has issued a number of regulatory statements that will likely accelerate the acceptance of cryptocurrencies as legal tender in the country. Most recently, South Africa has declared crypto assets as 'financial products' and made them subject to regulation.

As far as cryptocurrencies are concerned, the question now is not whether or not cryptocurrencies should be allowed to exist, but rather, what are the appropriate regulatory approaches that ought to be adopted to be effective? On that premise, we are expecting that there will be an increase in legislation and regulation of the sector.

This guide highlights developments in Kenya, Mauritius, South Africa, Tanzania, Uganda and Zambia.

KENYA

Regulatory position on cryptocurrencies

The adoption and use of cryptocurrencies has gained significant traction in Kenya with about 6 million people currently owning cryptocurrencies, as per the Triple A Crypto Ownership Data.

The Chainalysis Global Crypto Adoption Index 2021 ranked Kenya first globally for peer-to-peer cryptocurrency trading volume and fifth worldwide for total cryptocurrency activity.

This goes to show that there has been a substantial uptake of cryptocurrency in Kenya.

The financial sector regulators in Kenya – the Central Bank of Kenya (**CBK**) and the Capital Markets Authority (**CMA**) – have generally adopted a restrictive approach towards the use of virtual currencies. For instance, in 2015, the CBK issued a cautionary notice to financial institutions against dealing in virtual currencies or transacting with entities engaged in virtual currencies, stating that virtual currencies such as bitcoin are not legal tender in Kenya and therefore no protection exists in the event that bitcoin exchange platforms fail or go out of business.

The CBK issued a subsequent notice warning financial institutions against dealing with or transacting with institutions that deal with virtual currencies. In its 2020 Banking Supervisions Report, the CBK noted that 'there is no clear evidence that cryptocurrencies present material risks to financial stability and monetary policy at this stage. However, continuous monitoring of the size and growth of cryptocurrencies is prudent to ensure that their material risks are identified as well as their transmission channels to financial stability risk. The CBK, in tandem with other financial sector regulators, will continue to sensitize the public on the potential risks posed by cryptocurrencies.'

This statement indicates that the CBK may be softening its stance towards the regulation of cryptocurrencies.

However, the CMA issued a public notice on 21 February 2018 warning Kenyans against participating in initial coin offerings (**ICOs**) stating that it had not approved any ICOs, that they were unregulated and that speculative investments posed considerable risks to investors.

The CMA issued this notice in response to a complaint raised by a member of the public about an ICO that had been offered by Wiseman Talent Ventures Ltd, that sought to raise funds through an ICO using KeniCoin, a virtual currency.

In past comments, the CBK and the CMA have highlighted the risks of cryptocurrency trade, which include the facts that it is:

- unregulated and therefore no protection can be guaranteed if the platform falls;
- volatile – the price of Bitcoin and other cryptocurrencies tends to rise and fall quite frequently and unpredictably; and
- anonymous in nature and can therefore circumvent disclosure requirements such as Know Your Customer and anti-money laundering requirements.

Despite these cautionary warnings, there has been a steady rise in the number of peer-to-peer crypto exchanges in Kenya. Given the statistics on transactional volume, it is clear that Kenyans remain undeterred by the notices.

What does the future look like for cryptocurrencies in Kenya?

In general, the CMA and the CBK have demonstrated an active approach towards regulation. Kenyan laws and regulations are usually drafted in a broad manner to allow regulators, such as the CMA and CBK, to stretch their regulatory purview to cover any new advancements in a particular sector including technological advancements.

However, in February 2022, the CBK–recognising the growing interest in cryptocurrencies–issued its Discussion Paper on Central Bank Digital Currency (**CBDC Paper**) in which it proposes to issue a digital currency in Kenya and inviting comments from the public on its use case.

Furthermore, the Government, through the Ministry of Information Communication and Technology, Innovation and Youth Affairs (**Ministry of ICT**), has expressed interest in developing the fintech space in Kenya. This is evidenced by the establishment of a Distributed Ledgers and Artificial Intelligence Taskforce (**Taskforce**) in March 2018, tasked with developing a road map for emerging technologies such as blockchain and artificial intelligence.

The Taskforce issued a Report in July 2019 (**Report**). It stated, among other things, that the provisions of the National Payment Systems Act, that mandate the CBK to designate a payment system for purposes of the Act, may be relied on to license and regulate cryptocurrencies and other alternative payment systems. It also proposed the leveraging of the current CMA legal framework, which could be a game changer for small- and medium-sized players.

The Report also looked into enabling cryptocurrencies and other alternative currencies in Kenya. One of the key recommendations in the Report is the creation of a Central Bank Digital Currency (**CBDC**), which would allow for a costless medium of exchange, a secure store of value and a stable unit of account. The offering of the CBDC would be different from that of private entities offering virtual currencies whose prices tend to be more volatile.

The Report also noted that a passive approach to digital currency is not advisable given the current advancements in technology.

The Ministry of ICT is yet to action the recommendations in the Report.

Further, as part of its plan to leverage technology across the capital markets value chain, the CMA has established a Regulatory Sandbox and issued a Regulatory Sandbox Policy Guideline Note, which was approved in 2019. So far, the CMA has admitted over ten firms active in the fintech space. This is a critical and welcome move designed to foster and embrace the growth of fintech and innovation within the country's capital markets.

However, according to the CMA Milestones Report issued in April 2021, the CMA has been facing challenges when considering applications by entities providing cryptocurrency services to be admitted to the Regulatory Sandbox, including:

- novelty and complexity of the concept;
- insufficient information regarding the risk universe in this area;
- lack of internal capacity to review these types of applications;
- objections by banks to the issuing of cryptocurrencies; and
- fears around volatility affecting local currency.

Kenya has seen an increase in the trade in cryptocurrencies over the years and, while trading in cryptocurrencies is neither expressly regulated nor prohibited in Kenya, transactional volumes through peer-to-peer platforms continue to be on the rise.

The Government has recognised the significant role played by new technologies and has taken steps to embrace them and foster their development. This is evidenced by the establishment of the Taskforce and the CMA Regulatory Sandbox. We also understand that a Joint Financial Sector Regulators Forum established a working group aimed at promoting the adoption of technology and innovations in the financial services sector.

Ultimately, we hope to see some progress and a more tangible way forward in permitting the adoption and use of cryptocurrencies beyond the existent P2P model. We would encourage the introduction of the digital asset use cases within the CMA Regulatory Sandbox as this would enable all actual use cases and concerns to be tested within the safety of that environment and to allay fears that the regulators may have. Overall, we look forward to a potential increase in regulatory and sector coordination and cooperation.

MAURITIUS

Regulatory position on cryptocurrencies

The Government has emphasised its firm intention to develop Mauritius as a leading fintech hub for Africa. To this end, it tasked the integrated regulator for the non-bank financial services sector and global business, the Financial Services Commission (**FSC**), with developing guidance notes regulating fintech developments. Legislative amendments have also been made to cater for such developments. On 17 September 2018, via a guidance note (**GN1**), the FSC recognised digital assets as an asset class for investment by sophisticated and expert investors.

During the first quarter of 2019, the FSC published the Financial Services (Custodian services (digital asset)) Rules 2019 (**CDA Rules 2019**) to regulate the landscape for the safekeeping of digital assets. Following queries from stakeholders requesting clarification on the regulatory approach of the FSC in relation to security token offerings (**STOs**), on 8 April 2019, the FSC issued a guidance note on STOs (**GN2**).

In mid-2020, a third guidance note (**GN3**) was issued by the FSC to provide a common set of standards for STOs and the licensing of security token trading systems.

On 19 February 2021, the FSC issued a consultation paper on a proposed fintech service provider (**FSP**) licence with the

aim of establishing a supervisory regime to allow providers of technology services to establish a commercial presence and operate in or from Mauritius.

These developments culminated in Parliament passing the Virtual Asset and Initial Token Offering Services Act 2021 (**VA Act**), at the end of 2021. The VA Act was prepared in line with international standards to strengthen the development of key sectors and encourage innovation in fintech and regulatory technology.

The VA Act provides a comprehensive legislative framework for virtual asset service providers (**VASPs**) and issuers of initial token offerings (**ITOs**). It was passed by the Mauritius National Assembly on 10 December 2021, was gazetted on 16 December 2021 and came into force by proclamation on 7 February 2022.

The VA Act complies with the Financial Action Task Force's standards and includes provisions to mitigate the risks of money laundering, financing of terrorism and such related risks. It is also interesting to note that the VA Act provides for an 'inconsistency rule', whereby the VA Act will prevail if there is inconsistency between matters falling under it and any other applicable laws.

A brief outline of the provisions of the above-mentioned guidance notes and the VA Act follows.

What are virtual assets and virtual tokens?

'Virtual asset' is defined as a digital representation of value that can be digitally traded, or transferred, and can be used for payment or investment purposes but does

not include digital representations of fiat currencies, securities and other financial assets that are already covered in the Securities Act 2005.

'Virtual token' is defined as any cryptographically secured digital representation of a set of rights, including smart contracts, provided on a digital platform and issued or to be issued by an issuer of ITOs.

Who are virtual asset service providers?

The VA Act defines a 'virtual asset service provider' (**VASP**) as a person who, as a business, conducts one or more of the following activities or operations for, or on behalf of, another person:

- exchange between virtual assets and fiat currencies;
- exchange between one or more forms of virtual assets;
- transfer of virtual assets;
- safekeeping and/or administration of virtual assets or instruments enabling control over virtual assets; or
- participation in, and provision of, financial services related to an issuer's offer and/or sale of a virtual asset.

Which authority has the regulatory and supervisory function in relation to VASPs and ITOs?

The FSC is responsible for regulating and supervising VASPs and issuers of ITOs. The FSC will monitor and oversee their business activities. The FSC may also issue guidance on the detection of suspicious transactions and the application of anti-money laundering and the financing of terrorism measures.

Key obligations of VASPs and issuers of ITOs

VASPs and issuers of ITOs are required to maintain a high standard of professional conduct and confidentiality and carry out their business activities with honesty and due diligence in addition to maintaining adequate financial resources and solvency. The applicant for a VASP licence will need to satisfy certain prescribed requirements including:

- An application for a VASP licence can only be made by a company and must be addressed to the FSC under section 8 of the VA Act. However, wherea bank has obtained the written approval of the Bank of Mauritius (**BoM**),it can apply for a class 'R' or 'I' licence and can also, through a subsidiary, apply for a class 'M', 'O' or 'S' licence. A licensee, under the National Payment Systems Act 2018, may also, subject to obtaining the written approval of the BoM, apply through a subsidiary, for a licence to carry out the business activities of a VASP.
- Any VASP that conducts one or more of the prescribed business activities will need to apply for the corresponding class of licence.
- A VASP is required to have a physical office in Mauritius and the business activities of a VASP must be directed and managed from Mauritius.
- A foreign entity looking to provide virtual asset services in Mauritius will need to incorporate a company in Mauritius.
- An application for a variation of licence or to remove any limitation imposed may be made to the FSC.
- A VASP is required to ensure that each of its controllers, beneficial owners, associates and officers satisfy the 'fit and proper' criteria of the FSC.

- The prior approval of the FSC is required for an issue or transfer of shares or legal or beneficial interest in a VASP.
- VASPs are required to maintain a minimum stated unimpaired capital and keep their accounts in respect of virtual assets of clients that they hold separate from accounts kept in respect of any other business.

What type of licences can be issued by the FSC?

The VA Act introduces five classes of licence:

- Class M: Virtual Asset Broker-Dealer
- Class O: Virtual Asset Wallet Services
- Class R: Virtual Asset Custodian
- Class I: Virtual Asset Advisory Services
- Class S: Virtual Asset Market Place

Issuers of ITOs

Issuers of ITOs must be registered with the FSC if they carry on business in or from Mauritius. The VA Act stipulates that no person, other than a company, shall carry out the business activities of an issuer of ITOs.

Issuers of ITOs are required to disclose full and accurate information including, *inter alia*, matters specified in the VA Act and classes of virtual tokens, in their white papers to allow potential purchasers to make informed decisions.

What about those who previously carried out the business activities of a VASP or an issuer of ITOs?

It is now mandatory for those already carrying out the business activities of a VASP or an issuer of ITOs, to be duly licensed or registered within three months from the commencement of the VA Act.

A longer timeframe of 18 months is applicable to those already carrying out the business activities of a custodian (digital assets) as licensed by the FSC, to register for a VASP licence or an issuer of ITOs.

What are STOs?

GN2, clarifies that 'securities tokens' are 'securities' as defined in the Securities Act 2005, represented in digital format.

GN 2 further clarifies STOs as a method of raising funds from investors in exchange for the ownership or economic rights in relation to assets.

STOs conducted in or from Mauritius must be offered in the same way as would any offer of any 'security' under the Securities Act 2005 and any Regulations or FSC Rules issued, including the requirement for a prospectus, as may be applicable.

Offerings of securities tokens can be made without prior approval of the FSC only if they are made to sophisticated investors, expert investors, expert funds, professional collective investment schemes, and specialised collective investment schemes. Otherwise, the approval of the FSC is required.

Subject to specific exceptions provided by the Securities Act, STOs cannot be made to the public unless the offer is made in a duly registered prospectus, which necessitates the approval of the FSC.

What are securities token trading systems?

GN3 deals with securities token trading systems (**TSS**) and sets out that a TSS is a trading system for the trading of security tokens. A TSS can be accessed directly by clients without the requirement of a third-party intermediary to place orders on their behalf, will not require clearing and settlement facilities, and are usually pre-funded allowing transactions to be cleared automatically on the systems on a T+0 basis.

A specific licence granted by the FSC is required to operate a TSS. Although no specific legislation has been passed in respect of TSSs, the regulatory framework generally governing a TSS is the Securities Act.

Sandbox licence

To cater for innovative projects in the fintech field that do not currently fall within a specific regulatory framework, the authorities introduced the option of applying for a sandbox licence. A sandbox licence sets temporary parameters to allow start-ups to conduct trials, operate and test their products within a controlled environment, before the adoption of permanent regulations, applicable to those types of activities.

Tax incentives for digital technology and innovation

If they meet the eligibility criteria, enterprises in the digital technology and innovation sectors are granted certain tax incentives provided they have an investment certificate issued by the Economic Development Board.

Newly set up enterprises, if eligible, may benefit from an eight-year tax holiday and be exempted from the payment of registration duty and land transfer tax for the purchase of immovable property for business purposes.

What does the future look like for cryptocurrencies in Mauritius?

The Bank of Mauritius Act 2004 was amended in 2021 to cater for a framework to be established under which digital currencies may be issued by the BoM and may be held or used by the public. The BoM may now, for the purposes of issuing digital currency, accept deposits from and open accounts for such persons. With the speeding up of the adoption of digital payments, it is likely that the BoM will be issuing rules to provide further clarity concerning the mechanism regarding the use of digital currency in Mauritius.

Further, the introduction of a CBDC is anticipated. The CBDC aims to support the operation of faster payment systems as well as to complement and bridge existing gaps that the traditional monetary system may struggle to fulfil.

SOUTH AFRICA

Regulatory position on cryptocurrencies

Following the publication of a draft declaration in November 2020, the Financial Sector Conduct Authority (**FSCA**) has finally declared crypto assets as 'financial products' in terms of the Financial Advisory and Intermediary Services Act 2002 (**FAIS**), which became effective from 19 October 2022 (**Crypto Asset Declaration**).

According to the Crypto Asset Declaration, 'crypto asset' means '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.'

The effect of the Crypto Asset Declaration is that any person providing financial services (comprising the furnishing of 'advice' and/or the rendering of 'intermediary services', each as defined in FAIS) in relation to crypto assets is required to be appropriately licensed as a financial services provider (**FSP**) under FAIS.

The only provisions that require immediate compliance, as of 19 October 2022, are as follows:

- Chapter 2 of the Determination of Fit and Proper Requirements for Financial Services Providers, 2017 published under FAIS Board Notice 194 of 2017 (**Determination of Fit and**

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Proper Requirements), which sets out the honesty, integrity and good-standing requirements that apply to all FSPs, key individuals and representatives; and

- Section 2 of the General Code of Conduct for Authorised FSPs and Representatives, 2003 (**General Code**) as if it is a licenced FSP. Section 2 of the General Code provides that an FSP must, at all times, render financial services honestly, fairly, with due skill, care and diligence, and in the interests of clients and the integrity of the financial services industry.

To ensure a smooth compliance transition, the FSCA has published, together with the Crypto Asset Declaration, an exemption in terms of which providers of financial services related to crypto assets are currently exempt from the FAIS licensing requirement (and, by default, from all FAIS-related requirements applicable to FSPs other than those specified above) as long as those providers submit FSP licence applications to the FSCA between 1 June 2023 and 30 November 2023 (**Crypto Asset FSP Exemption**). In respect of such a provider, the Crypto Asset FSP Exemption will apply until such time as the FSCA has made a final determination on the relevant FSP licence application.

The Crypto Asset FSP Exemption indefinitely and unconditionally exempts crypto asset miners, node operators and persons rendering financial services in relation to non-fungible tokens from the FAIS licensing requirement (and, by default, from all FAIS-related requirements other than those specified above). For the avoidance of doubt, such persons are not required to submit an FSP licence application to the FSCA between 1 June 2023 and 30 November 2023.

The FSCA also appears to be alive to the fact that it may not be necessary nor practicable to subject providers of financial services in relation to crypto assets to certain FAIS-related requirements. In this regard, the FSCA has published, together with the Crypto Asset Declaration, a *Draft Exemption of Persons rendering Financial Services in relation to Crypto Assets from Certain Requirements*, which proposes to exempt licensed Crypto Asset FSPs as well as their key individuals and representatives from certain requirements of, amongst others, the General Code of Conduct for Authorised Financial Services Providers and their Representatives and the Determination of Fit and Proper Requirements, 2017 (**Draft Exemption from Certain Requirements**).

The Draft Exemption from Certain Requirements is currently open for public comment until 1 December 2022.

What does the future hold for cryptocurrencies?

The Crypto Assets Regulatory Working Group (**CAR WG**) of the Intergovernmental Fintech Working Group (**IFWG**) recommended in June 2021 that South Africa employs a staged approach to regulate crypto assets within the regulatory remit through the regulation of Crypto Asset Service Providers (**CASPs**).

These changes, if implemented, would officially mean that, in addition to the FSCA requirements, the Financial Services Department (**Finsurv**) would require registrations of a CASP as a Crypto Asset Service Provider (**CASP**) and/or money remitter; and the Financial Intelligence Centre (**FIC**) would require certain CASPs to register as accountable institutions

with specified 'know your customer' and anti-money laundering requirements applicable (which have, at the time of publication of this guide, been legislated in draft form).

The table below depicts the activities of CASPs that may have potential further requirements applicable in the near future.

CASP	With which regulatory authority(ies) would the CASP likely have to register?
Crypto Asset Trading Platform (**CATP**) (or any other entity facilitating or providing the mentioned services) and crypto asset vending machine operator	• Finsurv: CASP to register as a CATP and/or money remitter in terms of the Exchange Control Regulations (**ECR**). • FIC: CASP to register as an Accountable Institution in terms of the FIC Act.
Crypto asset token issuer	• SARB Finsurv: CASP to register as a CATP and/or money remitter in terms of the ECR. • FIC: CASP to register as an Accountable Institution in terms of the FIC Act.
Crypto asset fund or derivative service provider	• CASP to approach Finsurv for product offerings with crypto assets as the underlying asset.
Crypto asset digital wallet provider (custodial wallet providers only) Crypto asset safe custody service provider (custodial service).	• SARB Finsurv: CASP to register as a CATP and/or money remitter in terms of the ECR. • FIC: CASP to register as an Accountable Institution in terms of the FIC Act. • SARB Finsurv: CASP to register as a money remitter in terms of the ECR. • FIC: CASP to register as an Accountable Institution in terms of the FIC Act.

TANZANIA

Regulatory position on cryptocurrencies

In recent years, the Government has taken significant steps towards embracing the digital era as well as digital and electronic transactions. Various interesting reforms have been made to this end, although there has been a reluctance to legalise cryptocurrencies.

A substantial basic legal framework to form the foundation for the operation of cryptocurrencies is already in place. For example, important key legislation has been enacted including: the National Payment Systems Act, 2015; the National Payment Systems (Electronic Money) Regulations, 2015, and its supporting regulations; the National Payment Systems (Licensing and Approval) Regulations, 2015; the Electronic Transactions Act, 2015; and the E-Government Act, 2019.

National Payment Systems Act, 2015

The National Payment Systems Act, which is administered by the Bank of Tanzania (**BOT**), was enacted principally to regulate mobile money transactions. The NPSA and its supporting regulations have established the framework for the registration and operation of payment systems and the dealing in electronic money transactions, within certain limitations.

A payment system is required to be licensed and may be a bank or a non-bank entity. The instruments that execute instructions for ordering the transmission or payment of money must also be licensed.

The Act and its regulations require that the value of the electronic money in circulation is backed by a corresponding amount in bank notes or coins that are deposited in a special account at the inception of a transaction.

Electronic Transactions Act, 2015

The Electronic Transactions Act was enacted to provide legal recognition and enforcement for electronic transactions of all kinds.

Such transactions may be entered into or executed by the Government or private individuals and entities. As such, all the important concepts that would be fundamental to the operation of, and the dealing with, virtual currencies are covered under this law.

Matters related to cryptography, electronic signature, data messages, computer systems, electronic contracts, recognition and admission of electronic evidence in court, etc. are also adequately provided for.

This law also formally gives legal recognition to electronic interactions and dealings with the Government in all aspects (see more below).

E-Government Act, 2019

The E-Government Act provides for e-Government services as well as the establishment of an e-Government Authority and its administration, management and operation of e-Government services. The e-Government Authority coordinates, oversees and promotes e-Government-related policies, laws, regulations, standards and guidelines in public institutions.

What does the future look like for cryptocurrencies in Tanzania?

In spite of all these laws the BOT, in its 2019 Public Notice on Cryptocurrencies, declared them to be illegal and in contravention of foreign exchange regulations. The BOT noted that there was a growing trend for Tanzanians to use virtual currencies and highlighted its concern that the said currencies were being marketed and used as though they were legal tender.

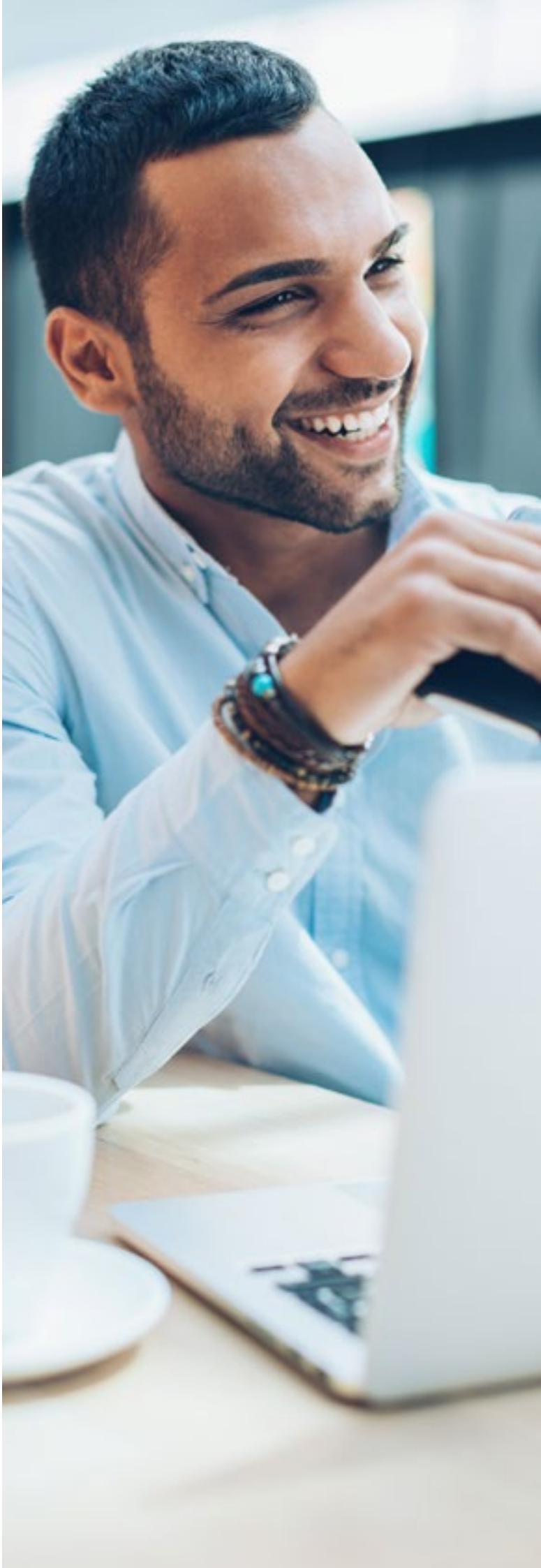
An encouraging move of late is a statement by the President, her excellency Hon. Samia Suluhu Hassan. In a speech she gave in June of 2021, she made a comment to the effect that cryptocurrency was the future of finance and urged the BOT to take the necessary steps to prepare for it rather than be caught unprepared. Despite this, there is no evidence that the BOT has taken any steps following the President's comments.

UGANDA

Regulatory position on cryptocurrencies

In Uganda, cryptocurrencies are not recognised as a payment instrument or payment service by the Government or central bank. Cryptocurrencies are not backed by assets or government guarantees, and issuers are not required to exchange them for legal currency or other value. Market participants trade and invest entirely at their own risk.

This hard stance is evidenced in the firm aversion expressed in the public statements issued by the central bank's current



leadership. In a communiqué, the central bank stated that the Government, 'does not recognize any crypto-currency as legal tender'.

As such, unlike other owners of financial assets who are protected by Government regulation, holders of cryptocurrencies in Uganda do not enjoy any consumer protection if they lose the value assigned to their holdings of cryptocurrencies, or if an organisation facilitating the use, holding or trading of cryptocurrencies fails to deliver the services or value it has promised.

A curious effect of the approach taken by the central bank is that cryptocurrencies, although not backed by it, are not illegal.

As a result, the Ugandan market has seen a proliferation of cryptocurrency-related activity and innovation by people with an insatiable risk appetite.

Several crypto-to-fiat currency exchanges have been launched (e.g.: BitPesa, CoinPesa and Binance Uganda). These are all operational, with Ugandans consuming their services and products in the absence of any consumer regulation or laws. A proliferation of web and app-based multicurrency wallets has also been developed (e.g.: Eversend and Yellowcard). These have brought cryptocurrency trading closer to the masses with options of multiple payment methods like mobile money or bank-to-wallet transfers that have enabled the trading of Bitcoin, Ethereum and Tether amongst other currencies. These wallets also enable trading against the Uganda Shilling.

The rollout of mobile money services that depend on digital wallets has made digital currencies somewhat acceptable to Ugandans. However, this has recently changed with the central bank instructing all licensed players under the National Payment Systems Act to refrain from facilitating cryptocurrency transactions. As a result of the increased activity, the Financial Intelligence Authority (**FIA**) amended the Anti-Money Laundering Act (**AML Act**) to include virtual asset service providers (**VASPs**) among the list of 'accountable persons' subject to supervision and monitoring by the FIA.

As accountable persons, VSATs (who in our view include cryptocurrency service providers) have obligations under the AML Act, including, registration with the FIA, conducting customer due diligence and reporting suspicious transactions among other things.

A recent report by the FIA states that 'only a few VASPs had been registered' and it was noted that 'the low uptake exposes market participants to greater risks of money laundering, terrorism financing and investment scams'.

Consequently, the FIA is seeking assistance from the country's finance ministry to establish more extensive cryptocurrency regulations, particularly with regards to cryptocurrency service providers.

What does the future look like for cryptocurrencies in Uganda?

The advent of the National Payment Systems Act, (**NPS Act**) and Regulations in 2020 and 2021 respectively, has brought the regulation of electronic money, payment systems and payment service providers under the central bank.

One could argue that the definitions attributed to payment services and payment instruments in the NPS Act could capture cryptocurrencies. For example, under the NPS Act, a payment instrument is defined to mean 'any device or set of procedures by which a payment instruction is issued for purposes of making payments or transferring money and includes cheques, bills of exchange, promissory notes, electronic money, credit transfers, direct debits, credit cards and debit cards or any other instrument through which a person may make payments with the exception of bank notes and coins'.

It could easily be argued that cryptocurrencies in their current form could amount to an instrument under this definition. However, this has not been recognised by the Bank of Uganda.

Further, under the definition of securities under the Capital Markets Authorities Act, Cap 84, a security could be any other instrument prescribed by the Capital Markets Authority (**CMA**). However, the CMA has not prescribed cryptocurrency as an instrument.

Be that as it may, it is expected that the Finance Ministry and central bank are leaning towards regulating the payment space, and cryptocurrencies are likely to be regulated soon.

According to George Wilson Sonko, a performance analyst at the Central Bank of Uganda, the bank is currently studying the idea of a Central Bank Digital Currency with the aid of case studies developed by peer central banks in Ghana, Jamaica, Kenya and Nigeria.

Clearly, the central bank is exploring the amendments in financial laws that will facilitate the circulation of digital currency denominations in addition to the already existing framework governing the issuance of electronic money.

ZAMBIA

Regulatory position on cryptocurrencies

Cryptocurrency is a new and emerging virtual digital currency in Zambia. There is fast-increasing public interest in cryptocurrency, with a growing number of Zambians investing in, or considering investing in, cryptocurrency.

Cryptocurrency is, however, largely unregulated in Zambia. In 2018, the Bank of Zambia (**BOZ**), which exclusively regulates the issue of notes and coins, cautioned the public that it does not oversee, supervise nor regulate the cryptocurrency landscape, and consequently any and all activities related to the buying, trading or usage of cryptocurrencies are performed at the owner's risk and highlighting some of the risks associated with the use of unregulated cryptocurrency. As such, BOZ has stated that cryptocurrencies are not recognised as a legal tender in Zambia. Despite this, BOZ's position is that 'regulation should not constrain but enable innovation', and BOZ continues to actively monitor and explore digital avenues.

In 2018, the Securities and Exchange Commission (**SEC**), which is responsible for protecting investors and promoting capital markets development in Zambia, recognised that the emerging technology on which cryptocurrencies and other related digital assets exist have the

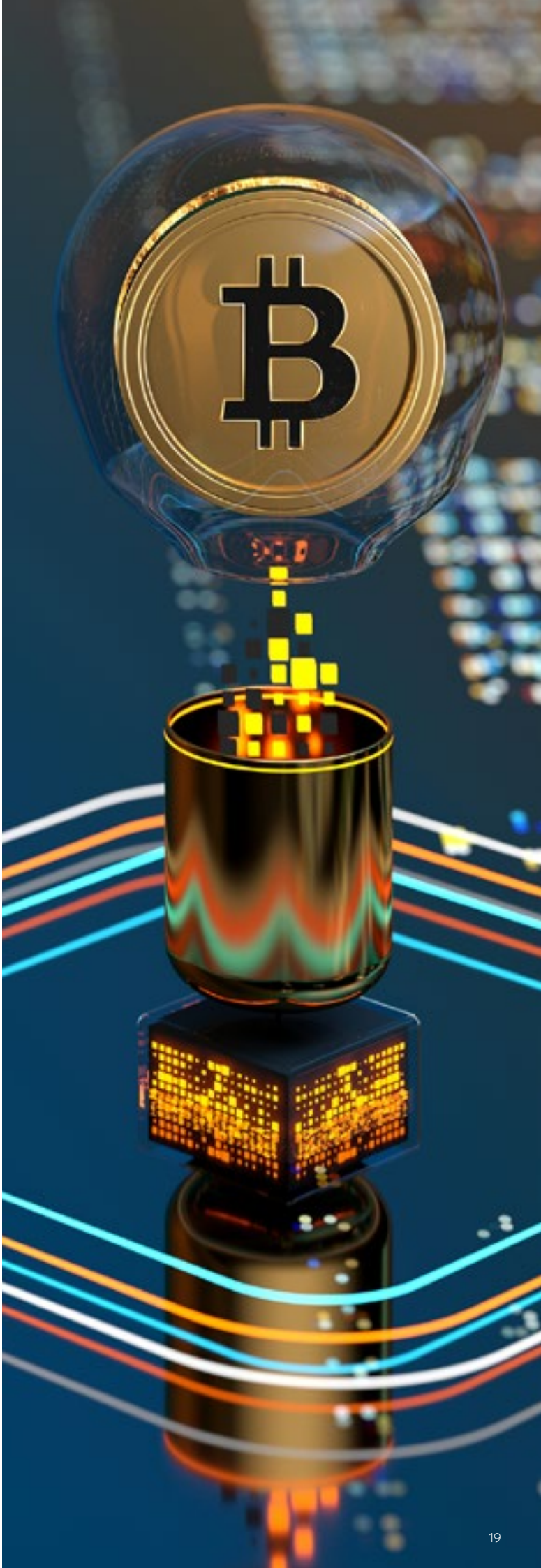
potential to be transformative and efficiency enhancing in the investment process.

However, the SEC has equally publicly cautioned individuals and entities that invest in cryptocurrencies and related products or assets to exercise restraint and caution because the assets are largely unregulated and not subject to its jurisdiction. The SEC has stated that while cryptocurrencies possess features of financial securities, they are currently not regulated by the SEC unless they meet the definition of securities as defined by the Securities Act 14 of 2016 , which will be assessed on a case-by-case basis.

The Financial Intelligence Centre and the Financial Intelligence Centre Act 46 of 2010

The Financial Intelligence Centre (**FIC**) is a unit of the Government of the Republic of Zambia established in 2010. The FIC is responsible for receiving, requesting, analysing, disseminating and disclosing information concerning suspicious transaction reports related to money laundering, terrorist financing and related transactions, for the purpose of assisting authorities in combating these offences.

The FIC recognises and addresses the use of cryptocurrency as a virtual asset (**VA**). Virtual assets are defined as cryptocurrency or other digital means of exchange where the VAs is accepted by a person as a means of payment for goods or services, a unit of account, a store of value or a commodity. A virtual asset service provider **(VASP**) is defined as a person who, as a



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business, conducts one or more of the following activities or operations for or on behalf of another person:

- exchange between virtual assets and fiat currencies;
- exchange between one or more forms of virtual assets;
- transfer of virtual assets;
- safekeeping and administration of virtual asset instruments enabling control over virtual assets;
- participation in and provision of financial services related to an issuer's offer and sale of a virtual asset; and
- provision of intermediary services for the buying and selling of virtual assets, including through the use of virtual asset vending machine facilities.

The Financial Intelligence Centre Act 46 of 2010 (**FIC Act**) does not provide much further insight beyond defining VAs and VASPs. However, the FIC has keenly observed the developments relating to VAs and interacts with a vast number of potential VASPs in order to manage the risks that VA activities pose in Zambia.

The FIC recognises that virtual assets are 'enabling us to reimagine the financial system and to upgrade the world to something better'. And that 'on the other hand, cases that involve the abuse of virtual assets for money laundering purposes or other criminal activities are already being seen around the world'. The FIC published some recommendations to authorities in Zambia to prepare for these developments:

- the Government should develop a framework to ensure VASPs are registered or licensed and are subject

to effective systems for monitoring or supervision by a designated competent authority;

- policy response to virtual asset operations should strike an appropriate balance between forcefully addressing risks and abuses while avoiding overregulation that could stifle innovation;
- effective policy coordination will be required at national and international levels to allow local law enforcement agencies and the FIC to work closely with foreign counterparts in conducting investigations and inquiries, making arrests, and seizing criminal assets in cases involving digital asset activity. These partnerships should be encouraged to support multi-jurisdictional investigations and prosecutions, particularly those involving foreign-located persons, digital asset providers, and transnational criminal organisations;
- while mutual legal assistance requests remain a key mechanism for enhancing cooperation, authorities should develop policies for obtaining evidence and restraining assets located abroad through technological means, recognising that digital assets and the associated transactional data and evidence may be stored or located via technological means and processes not contemplated by current legal methods and treaties;
- VASPs should identify and assess the money-laundering or terrorist-financing risks relating to VA activities; and
- information exchange between the public and private sectors should form an integral part of the country's strategy for combating money laundering and terrorist financing in the context of cryptocurrency activities.

What does the future look like for cryptocurrencies in Zambia?

The use of cryptocurrency and other related emerging technologies is growing rapidly, and Zambian citizens continue to utilise foreign cryptocurrency purses/accounts to trade cryptocurrency, with Bitcoin being the most popular cryptocurrency in Zambia and Ethereum and Tether also being on the market.

While the use of cryptocurrency in Zambia continues to grow, it remains unregulated and without an established statutory framework. However, this can be attributed largely to the decentralised nature of cryptocurrencies, as they give individuals the freedom to trade without the need for an intermediary such as a bank – which is seen as one of the greatest advantages of cryptocurrency. And while there is a growing avenue for the public to trade in cryptocurrencies, there is also exposure to the risks of trading in such an unregulated and developing environment.

Considering the views expressed by the FIC and the pro-innovation stance of BOZ and the SEC, there are likely avenues for the future of cryptocurrency in Zambia. BOZ is reportedly conducting research on its own digital currency. The results of this research will form part of the input in the policy considerations on whether to introduce a central bank digital currency in Zambia.

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