



Revised Position on Virtual Assets and Virtual Asset Service Providers

August 2022

1. Purpose

- 1.1. The purpose of this paper is to provide the Bank of Namibia's (the Bank) updated position on the treatment of Virtual Assets (VAs) and Virtual Asset Service Providers (VASPs) given the prevalence of VA and VASP in Namibia, and for purposes of the FinTech Innovation Regulatory Framework.

2. Background

- 2.1. The Bank issued a position paper on distributed ledger technologies (DLT) and virtual currencies¹ (Also referred to as cryptocurrencies) in September 2017. In May 2018, the Bank amended its position and published a revised position paper. The position papers provided a formal opinion on DLTs and VCs as well as information to educate the public on these emerging financial technologies.
- 2.2. When the initial position papers were published, virtual currencies proliferated and brought with them the potential for abuse and illicit activity. This surge of events and the guidance from regulatory bodies predominately informed the use of the term "virtual currency" in the previous position papers. Given the broad spectrum of virtual assets available today, the Bank has opted to revise the phrase "virtual currency" to "virtual assets". Under the new term cryptocurrency is viewed as a form of virtual asset. Furthermore, the Bank also redirected its focus from virtual asset supporting infrastructure such as DLT, to the use cases of virtual assets and the associated risks.
- 2.3. According to Statista², the number of VAs has increased considerably over recent years, with more than 10, 000 instruments available on the market and over 83 million cryptocurrency wallets created in the world. Furthermore, global daily trading values have remained significantly high over the past few years, currently averaging more than USD140 billion. The general public's growing interest in the VA ecosystem poses

¹ At the time of the issuance of this position paper the term 'virtual currencies' was used to refer to virtual assets.

² Statista - <https://www.statista.com/statistics/1202468/global-cryptocurrency-ownership/>

distinctive and unprecedented challenges for financial authorities, capital markets regulators, consumer protection agencies, privacy bureaus, and tax authorities around the globe. Technological and economic characteristics of VAs and VASPs necessitate practical parameters that accommodate their features, application and use cases. Therefore, to maintain financial integrity in the financial system, the Bank is of the view that VAs and VASPs cannot remain outside of the Namibian regulatory realm and that collaborative engagements between policymakers, regulators, and the private sector should be encouraged to foster an inclusive and innovative financial system.

- 2.4. In 2018, the Financial Action Task Force (FATF) provided Guidelines for a Risk Based Approach to Virtual Assets and Virtual Asset Service Providers. As part of its ongoing efforts to monitor the VAs and the VASPs sector, FATF further updated its Guidelines in 2019 and 2021 to assist countries with assessing and mitigating risks associated with VAs and VASPs. Additionally, Recommendation 15 requires that VASPs be regulated for anti-money laundering and countering the financing of terrorism purposes and that they be licensed or registered and subject to effective systems for monitoring and supervision ³.
- 2.5. To address the risks posed by VAs and VASPs around money laundering and terrorist financing, the Financial Intelligence Centre (FIC) issued Directive 1 of 2021 – Requirements Relating to The Introduction of New Innovations, Products, Services or Expansions and Amendments to Pre-Existing Ones, and Directive 2 of 2021 - Financial Intelligence Act, 2012 (FIA) Compliance Requirements for Virtual Assets Service Providers.
- 2.6. In October 2021, the Bank introduced the Financial Technology (FinTech) Innovations Regulatory Framework (FinTech Framework) to provide guidance on how the Bank will treat innovations that are not already subjected to the Bank’s existing regulations. The FinTech Framework contains two (2) regulatory programmes i.e., the Allow-and-See Programme and the Regulatory Sandbox Programme. Innovations admitted to the Regulatory Framework are placed in a regulatory programme to understand, test, and evaluate the innovation before a regulatory outcome can be made. Given the exponential growth of VA and VASPs in Namibia, the Bank has resolved to allow VASPs to participate in the FinTech Framework to enable the Bank to oversee and understand VAs and VASPs as a way of increasing dialogue between the relevant parties and assess the potential risks that these entities might introduce into the financial system. The Bank as a trusted entity has a mandate to safeguard public funds and to provide some degree of security and assurance in volatile markets.

3. Defining Virtual Assets and Virtual Asset Service Providers

- 3.1. **Virtual Asset** - FATF describes a virtual asset as a “digital representation of value that can be digitally traded or transferred and can be used for payment or investment purposes.” Notwithstanding the various terminology used, most of these crypto technologies are generally founded on decentralised technology, such as DLT.

³ <https://www.fatf-gafi.org/media/fatf/documents/recommendations/Updated-Guidance-VA-VASP.pdf>

3.2. Virtual Asset Service Provider – VASP is a natural or legal person that conducts one or more of the following activities or operations for or on behalf of another natural or legal 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; and
- Participation in and provision of financial services related to an issuer's offer and/or sale of a virtual asset.

4. The Bank's Position of Virtual Assets and Virtual Asset Service Providers

4.1. Regulatory concerns relating to VA and VASPs have primarily been focused on consumer protection, contravention of banking regulations, anti-money laundering and terrorist financing, and the possible impact to financial stability. The ongoing interest, uptake and involvement in VAs from Namibians necessitates the need for the Bank and other regulators to relook their stance on VA and VASPs in the market to mitigate regulatory concerns and public perception. VASPs are increasingly involved in the VA market providing support services such as safe custody services, facilitating the buying, and selling of VAs, providing digital wallets and crypto asset mining, among others.

4.2. Given the growing interest in VAs and the operating nature of VASPs, the Bank has resolved to revise its position to allow VASPs and entities interested in dealing in VAs to participate in the Bank's FinTech Innovation Regulatory Framework for a period of time. This approach supports the Bank's strategy to better understand innovations relating to VAs and the adaption of innovations within the market, while addressing the risks to protect the reputational integrity and value of the financial system. Additionally, this approach will allow the Bank and other regulators to gain a better understanding of how VAs and VASPs operate, gather information on their use cases, evaluate their risks and benefits as well as to ensure that they are appropriately classified and regulated in the Namibian market.

4.3. Amending the regulatory stance of the Bank does not relinquish the fact that virtual assets are under-regulated, highly unpredictable, and risky. Hence, this change in approach should not be interpreted as an endorsement of VAs or VASPs. Public members who own, utilize and / or trade virtual assets continue to do so at own risk and any misfortune or losses incurred will have no recourse to the Bank.

5. Legal Implication of the Bank's position on Virtual Assets and Virtual Asset Service Providers

The revised approach of the Bank allowing VASPs to participate in the FinTech Framework does not change the legal application of VAs with respect to their impact on

the Bank's existing laws and regulations. To this effect, the following remain the Bank's stance on VAs:

5.1. Virtual Assets as Legal Tender

Section 37 and 38 of the Bank of Namibia Act, 2020 (the BoN Act) gives the Bank the sole mandate to issue fiat current (i.e., banknotes and coins) and only such notes by the Bank are legal tender in Namibia. The BoN Act, under section 45, further recognises the South African Rand as the only additional form of legal tender in Namibia until such a date to be determined by the Namibian Minister of Finance.

Virtual assets remain distinct from e-money, which is a digital representation of fiat currency used to electronically transfer value denominated in fiat currency. In Namibia, institutions that issue e-money are regulated by the Bank and are bound to regulatory and operational conditions while this is not the case for virtual assets.

Virtual assets remain without legal tender status - the Bank does not recognise the use and acceptance of virtual assets as legal tender or as electronic money in Namibia.

5.2. Utilising Virtual Assets for Payments

The definition of payment instruments in the Payment System Management Act, 2003 (Act No.18 of 2003), as amended (the PSM Act) does not extend to virtual assets. Therefore, virtual assets cannot be authorised as payment instruments as per the PSM Act. However, the acceptance of virtual assets as a means to pay for goods and services may be at the discretion of willing merchants where merchants and buyers agree.

The bank recognises the potential benefit of virtual assets as a digital payment, however, the risks relating to consumer protection and the legality of transactions cannot be left disregarded. Consequently, the Bank strongly cautions "users" against the use of virtual assets as a method or a means of payment due to the risks associated with the application of the principle of finality and irrevocability in the payment system.

5.3. Virtual Asset Exchanges

The Currency and Exchanges Act 9 of 1933 read in conjunction with the Exchange Control Regulations 1961 does not make provision for the establishment of virtual asset exchanges or bureaus in Namibia.

Many exchange platforms allow the conversion of one type of virtual currency for another or into fiat currency and may have a shortage of critical system safeguards and customer protection guidelines, which may lead to the loss of capital. To mitigate such risks all virtual asset exchanges or bureaus intending to operate in Namibia are required to engage the bank and confirm whether they should apply to the FinTech innovation Regulatory Programme.

5.4. Virtual Asset and Banking Business

Section 5 of the Banking Institutions Act, (Act No. 2 of 1998), as amended, prohibits the conducting of banking business without due authorization. Furthermore, Section 55(A) prohibits business models with specific activities which may be viewed as conducting banking business and/or solicit deposits from the public.

VASPs operating in Namibia should ensure compliance with the BIA and regulations. Furthermore, the Bank strongly encourages the public to exercise extreme caution and verify the legality and status of the involved parties before engaging in any VA activity or VASP.

5.5. FIC Requirements

Any member of the public or entity in Namibia that engages in virtual asset mining, online trading (buying and selling) and exchanging of cryptocurrencies are subject to the applicable provisions of the Financial Intelligence Act, 2012. Additionally, the public is advised to have regard to the following FIC directives:

- a) Directive 1 of 2021 – Requirements Relating to The Introduction of New Innovations, Products, Services or Expansions and Amendments to Pre-Existing Ones, and
- b) Directive 2 of 2021 - Financial Intelligence Act, 2012 (FIA) Compliance Requirements for Virtual Assets Service Providers.

6. THE WAY FORWARD

- 6.1.** The Bank will continue with its in-depth research on new and emerging use cases in the virtual asset ecosystem and may amend and / or supplement its regulatory stance as the market evolves.
- 6.2.** The Bank is hereby strongly advising members of the public, prospective VASPs and FinTech's that intend to offer or deal in VAs to approach the Bank and submit applications to the FinTech Innovation Regulatory Framework. Entities that are successfully admitted to a regulatory programme in the FinTech Framework will be subjected to regulatory conditions that will allow them to provide VASP related services in a safe and responsible manner. The Bank intends to collaborate with other regulators domestically and internationally to effectively oversee and monitor VASPs that are participating in a regulatory programme under the FinTech Framework.
- 6.3.** More information on how to apply to participate in the FinTech Framework can be found here:

[Financial Technology Innovation Regulatory Framework](#)

Any queries related to applications, or the type of services allowed under the Framework can be forwarded to the following email address: fintechinnovations@bon.com.na.