

FSCA Press Release

20 November 2020

FSCA publishes a draft Declaration of crypto assets as a financial product under the Financial Advisory and Intermediary Services Act

Globally there is rapid growing interest by retail investors to purchase crypto assets. South Africa has also experienced an exponential increase in the provision and use of crypto assets.

The manner in which crypto assets can be regulated has been under consideration by the National Treasury (NT) and relevant authorities for a number of years. In 2020, the Crypto Assets Regulatory Working Group (CAR WG) which resorts under the Intergovernmental Fintech Working Group (IFWG) and comprises members of the National Treasury, South African Reserve Bank and Prudential Authority, FSCA, Financial Intelligence Centre, National Credit Regulator and South African Revenue Services, published a Position Paper which made a variety of recommendations pertaining to the regulation of crypto assets.

The draft Declaration is intended to give partial effect to some of the recommendations contained in the Position Paper by declaring crypto assets as a financial product under the FAIS Act. The Declaration would have the effect that any person furnishing advice or rendering intermediary services in relation to crypto assets must be authorised under the FAIS Act as a financial services provider, and must comply with the requirements of the FAIS Act. This will include crypto asset exchanges and platforms, as well as brokers and advisors.

It is envisaged that implementation of the draft Declaration will result in improved disclosures to customers that more effectively highlight the high risks involved in investing in crypto assets and should also ensure that a more robust advice process is adopted (including proper risk assessments) when intermediaries decide to advise customers to purchase crypto assets. Licensing of intermediaries is also necessary to improve the quality

of data for policymakers and regulators about the crypto asset environment, and to consider whether there is a need for further regulatory interventions.

The draft Declaration in no way impacts the status of crypto assets in the context of other laws such as exchange control regulations, requirements under the Pension Funds Act and Collective Investment Schemes Act and so forth, nor does it attempt to regulate, legitimise or give credence to crypto assets. The draft Declaration is merely intended to be an interim step in mitigating certain immediate risks in the crypto assets environment pending the outcome of broader developments currently taking place through the CAR WG which will inform future policy interventions to be implemented across a variety of regulators and laws.

Interested parties are invited to submit comments on the draft Declaration on or before 28 January 2021 to the FSCA at FSCA.RFDStandards@fsca.co.za, using the submission template available on the FSCA's website at www.fsca.co.za.

ENDS

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