



## Frequently asked questions about crypto assets

### 1. What is a crypto asset?

Crypto assets cannot be narrowly or easily defined as they may perform different functions depending on their design and use. Although Bitcoin specifically was designed to function both as a payment instrument and a payment system, subsequent crypto assets vary greatly in terms of their design and proposed use cases: some intend to serve as a payment instrument (whether domestic or cross-border), a payment system, an international remittance instrument, an investment, a means to pool investments (similar to a collective investment scheme), a security, a means of capital raising (e.g. through an initial coin offering, or ICO), or a combination of these functions. When combining tax, exchange control, money laundering, terrorist financing, intermediary service, financial advice and consumer protection issues with the above-mentioned functions that may potentially be performed by crypto assets, it quickly becomes evident that crypto assets simply cannot be narrowly defined.

### 2. How many crypto assets are there?

Bitcoin was the first crypto asset. It was announced through the Bitcoin white paper at the end of 2008, and the first Bitcoin transaction was recorded in January 2009. Following the 'mining' (i.e. validation) of the Bitcoin genesis block

in 2009, the crypto asset ecosystem has grown to more than 10,000 'unique' crypto assets as at the time of writing, each with a relatively unique value proposition and design. The number of crypto assets in circulation continues to grow by around 10 crypto assets per day.

### **3. Are crypto assets money?**

In short, no. In terms of the South African Reserve Bank (SARB) Act 90 of 1989 (available [here](#)), money is defined as legal tender, which in turn is defined as:

- “A tender, including a tender by the [South African Reserve] Bank itself, of a note of the Bank or of an outstanding note of another bank for which the Bank has assumed liability in terms of section 15 (3) (c) of the Currency and Banking Act or in terms of any agreement entered into with another bank before or after the commencement of this Act, shall be a legal tender of payment of an amount equal to the amount specified on the note.”
- “A tender, including a tender by the Bank itself, of an undefaced and un mutilated coin which is lawfully in circulation in the Republic and of current mass, shall be a legal tender of payment of money”.

In the South African context, legal tender (i.e. money) is limited to banknotes and coin issued by the SARB. From a legal perspective, crypto assets are therefore not recognised or viewed as money. Questions around whether crypto assets constitute e-money in South Africa are addressed later.

**4. Does the decision to bring crypto assets within the South African regulatory remit signal endorsement – whether tacit or explicit – of crypto assets from the regulatory authorities?**

No. The decision to regulate crypto assets does not signal or suggest endorsement of crypto assets by the IFWG members. The decision to regulate crypto assets aims to promote responsible innovation. The IFWG reiterates that crypto assets remain highly volatile and inherently risky given their decentralised and disintermediated value proposition. However, given the current conjuncture (i.e. more than 12 years after the mining of the Bitcoin Genesis block and with almost 10,000 crypto assets in existence as at May 2021), there is growing consensus that crypto assets and related activities are unlikely to go away any time soon. Inaction by the South African financial regulators will therefore potentially accelerate the creation of unregulated parallel systems, and will essentially continue to prevent authorities from having ‘line of sight’ of crypto-related activities as the market evolves. It is emphasised that by gradually bringing crypto assets into the South African regulatory purview, risks identified will be addressed.

**5. What is the overall South African policy position on crypto assets?**

The South African policy position on crypto assets is neither explicitly ‘hostile’ nor explicitly ‘friendly’: through the IFWG CAR WG position paper, the South African financial sector regulators 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. In addition, in line with the revised standards of the FATF issued in October 2019, all jurisdictions are required to regulate crypto assets and crypto asset service

providers (referred to as ‘virtual assets’ and ‘virtual asset service providers’ by the FATF) for anti-money laundering and combating the financing of terrorism.

## **6. What are the main concerns from a South African regulatory perspective around crypto assets?**

In the domestic context, the main concerns around the use of crypto assets are around their well-documented use for illicit activities (including but not limited to tax evasion, money laundering and terrorism financing), the potential longer-term impact on the effectiveness of monetary policy tools, the potential longer-term impact on financial stability (through developments including but not limited to the creation of parallel payment systems), the flight of capital abroad through the evasion of South African exchange controls. There are then also consumer risks and consumer protection issues. Customers may invest in risky products or services that they do not fully understand and which are unsuitable to their needs, or may fall prey to fraudulent players running scams purporting to relate to crypto asset products.

## **7. What are the challenges around regulating crypto assets?**

Given that a crypto asset may be utilised to serve differing functions and purposes because of its multi-faceted nature, will have an impact multiple pertinent existing definitions and pieces of legislation and regulation crypto assets may perform different functions as described above (based on their design and use), different crypto assets may be subject to different definitions and, resultantly, different pieces of legislation and regulation. The fact that crypto assets also combine different functions (e.g. by being a payment instrument and payment system that functions across borders) means that the

activities they perform cut across different South African financial sector laws, which thus requires the involvement of various financial sector regulators. A holistic and coordinated approach to regulating crypto assets in South Africa is therefore crucial.

**8. Will the actual crypto assets be regulated or the service providers that provide crypto asset-related services be regulated?**

The intention is not to regulate the actual crypto assets and associated products per se, but rather the entities that provide services in relation to such products. The South African regulators therefore intend to regulate crypto assets by regulating the crypto asset service providers, or CASPs.

**9. From where do crypto assets derive their value (i.e. do crypto assets have intrinsic value), and how are crypto assets valued?**

Without delving into the highly philosophical discussion around what is intrinsic value and what has intrinsic value, suffice it to say that crypto assets fundamentally derive their value from pure market forces, that is, the price of crypto assets is determined by supply relative to demand, and vice versa. In other words, crypto assets' market value is determined by the price a potential buyer is willing to pay for a crypto asset (or 'piece' thereof), relative to the price the seller is willing to accept for the crypto asset (or piece thereof). The value underlying crypto assets is – as well recorded – not based on any tangible reference asset, but rather (potentially imperfectly) a reflection of the network supporting a particular crypto asset. The value is therefore in the scale of the network using and supporting a particular crypto asset through support activities (e.g. mining, running a node etc.). These factors, coupled with the

global lack of regulatory and legal certainty around crypto assets, as well as the significant role investor sentiment plays in crypto asset trading behaviour, combine to make crypto assets extremely difficult to value.

#### **10. Why are crypto asset prices so volatile?**

As explained above, crypto assets do not have tried and tested valuation methods like traditional, physical assets have. Prices are therefore essentially subject to pure economic forces in the form of supply and demand or, phrased differently, the price is determined relative to what a buyer is willing to pay and the seller is willing to accept. Given the strong retail interest in crypto assets, investor sentiment plays a significant role in determining the price of crypto assets, and accordingly contributes to the volatility.

#### **11. Are crypto assets viewed as or considered to be e-money in South Africa?**

No. In terms of the National Payment Systems Act 78 of 1998 (available [here](#)), only registered South African banks are allowed to issue e-money, thus wholly excluding crypto assets.

#### **12. If crypto assets are not money, e-money or legal tender, can they still be used to pay for goods and services?**

Yes. Legal tender obliges and/or assumes acceptance when offered as means of payment. However, if something is not legal tender – such as crypto assets – it does not mean merchants and individuals are expressly prohibited from accepting it when offered as a means of payment. Merchants and individuals may therefore choose to accept ‘payment’ offered in crypto assets of their own free will, with the understanding and acceptance of the risk that they will not have regulatory recourse from a payment perspective should something go

wrong. In this instance, crypto assets function as a type of barter instrument, with the price being determined in accordance with the 'willing-buyer-willing-seller' principle. Although crypto assets are not money, they can nevertheless perform certain money-like functions.

**13. If I deposit crypto assets with a South African crypto asset trading platform (CATP) or buy crypto assets from a domestic CATP, does my crypto asset holdings with the CATP constitute a 'deposit' with the CATP in terms of the Banks Act 94 of 1990?**

No. The Banks Act 94 of 1990 (available [here](#)) defines a deposit as necessarily being 'money', which refers to legal tender as defined in the SARB Act, and which then excludes crypto assets as explained above.

**14. Are crypto assets viewed as foreign currency in terms of the Exchange Control Regulations of 1961?**

No. In terms of the Exchange Control Regulations of 1961 (available [here](#)), foreign currency is defined as any currency that is not legal tender in South Africa, with the implication that such foreign currency is legal tender in another country. Given that crypto assets are consistently not regarded as legal tender globally, crypto assets are therefore excluded from the definition of foreign currency for the purposes of the Exchange Control Regulations of 1961.

**15. May I buy crypto assets on a South African crypto asset trading platform with Rand and send the crypto assets to a foreign or offshore-based crypto asset exchange?**

No. Exchange Control Regulation 10(1)(c) prohibits transactions where capital or the right to capital is, without permission from National Treasury, directly or

indirectly exported from South Africa. This includes transactions where an individual purchases crypto assets in South Africa and uses them to externalise 'any right to capital'. Contravening these regulations is a criminal offence. For any further exchange control related queries in relation to crypto assets, please refer to the Financial Surveillance Department's webpage on the South African Reserve Bank's website at [www.resbank.co.za](http://www.resbank.co.za) by following the path: What we do > Financial Surveillance > Frequently asked questions and clicking on 'Crypto assets'.

**16. Is crypto asset mining allowed in South Africa?**

Yes. The proceeds of such activity are, however, subject to relevant tax and exchange control regulations and legislation.

**17. What are the implications of 'staking' my crypto assets (i.e. using my crypto assets to secure a crypto asset network through proof-of-stake validation models for a return paid in crypto assets)?**

There are both tax and exchange control implications of staking crypto assets. These implications are exacerbated if an individual's crypto assets are staked via an offshore third party.

**18. Do consumers have any recourse for losses suffered as a result of investing in crypto assets?**

No. As explained above, crypto assets remain highly volatile and investing in crypto assets remains inherently risky. As with any investment, the ultimate responsibility to ascertain whether the risk associated with an investment lies with the consumer. As always, returns are not guaranteed, and past performance is not an indicator of future performance.