

# Yandraduth Googoolye: Cross-border regulation in relation to digital assets

Speech by Mr Yandraduth Googoolye, Governor of the Bank of Mauritius, at the ADC Global Blockchain Summit, Adelaide, 27 March 2019.

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The Honourable Steven Marshall, Premier of South Australia

Major General the Honourable Michael Jeffery, Forum Patron

Excellencies

Ladies and gentlemen

All protocol observed

## 1. Introductory Remarks

It is a great pleasure for me to be in the midst of such an august gathering today.

First of all, I would like to thank Honourable Steven Marshall MP, Premier of South Australia for the invitation to attend this Summit 2019 and share my thoughts, as a central bank governor and regulator of the banking sector in Mauritius, on *cross-border regulation of Digital Assets*.

I would also like to thank Loretta Joseph, Fintech Adviser to the OECD, for having facilitated my participation to this Summit.

## 2. Fintech and Digital assets and central bank digital currencies

Fintech and digital assets are areas that the Bank of Mauritius has been following closely.

The international community has also shown keen interest in this sector.

The Financial Stability Board (FSB), Financial Action Task Force (FATF), International Monetary Fund (IMF), Bank for International Settlement (BIS) and fellow foreign international standard setters and regulators have shared their thought, concerns and recommendations regarding fintech and digital assets.

We must obviously distinguish between digital assets and central bank digital currency. While the latter are usually created and issued by central bank and is legal tender, digital assets, on the other hand, are not *“legal tender, and are not backed by any government or public authority”* as the Basel Committee on Banking Supervision clearly puts it.

The FATF recommends countries to consider virtual assets as *“property,” “proceeds,” “funds,” “funds or other assets,” or other “corresponding value.”*

## 3. The need to regulate Digital Assets

History has shown that regulatory gaps or vacuum have contributed to perpetuate fraud, led to financial crisis and undermined confidence in the financial services sector, amongst others.

The BIS, in its September 2018 Quarterly Review, reported that news pointing to the establishment of legal frameworks tailored to cryptocurrencies and initial coin offerings coincide with strong market gains.

There is need, therefore, for Digital Assets to be regulated. Indeed, regulation brings legal certainty, legitimacy, trust and confidence in markets and will undeniably act as a catalyst in promoting acceptance of digital assets.

These regulations should, nonetheless, not be too intrusive, but rather, it must be optimal and enabling so as to promote innovation in this technology-driven sector.

#### **4. International Standards and recommendation regarding Digital Assets**

##### ***Prudential Norms***

The Basel Committee on Banking Supervision has, on 13 March 2019, issued a Statement on Crypto-Assets wherein the Basel Committee opines that *“the continued growth of crypto-assets trading platforms and new financial products related to crypto-assets has the potential to raise financial stability concerns and increase risks faced by banks.”*

The Basel Committee has accordingly set out its prudential expectations related to banks' exposures to crypto-assets and related services. The Basel Committee views that on account of their high degree of volatility, crypto-assets *present a number of risks for banks, including liquidity risk; credit risk; market risk; operational risk (including fraud and cyber risks); money laundering and terrorist financing risk; and legal and reputation risks.*

The Committee therefore expects that if a bank is authorised and decides to acquire crypto-asset exposures or provide related services, it should at a minimum:

*Firstly*, perform due diligence prior to acquiring exposures to crypto-assets or providing related services,

*Secondly*, have a clear and robust risk management framework that is appropriate for the risks of its crypto-asset exposures and related services;

*Thirdly*, publicly disclose any material crypto-asset exposures or related services as part of its regular financial disclosures and specify the accounting treatment for such exposures;

*Fourthly*, inform its supervisory authority of actual and planned crypto-asset exposure or activity in a timely manner and provide assurance that it has fully assessed the permissibility of the activity and the risks associated with the intended exposures and services, and how it has mitigated these risks.

As regulators, it is our responsibility to ensure that supervised institutions are operated safely and soundly and comply with applicable laws.

Within that framework, however, we also have a strong interest in permitting beneficial innovations to flourish, while ensuring that the risks are appropriately managed.

It is, therefore, of paramount importance to ensure that regulatory and supervisory structures are constantly adapted to changing technologies and business models for them to remain effective.

At the level of the Bank of Mauritius, our approach has been characterized by open minds and open door policy. We welcome change in banks so long as they are able to demonstrate that the risks are being appropriately and adequately managed.

Moreover, as all prudent central banks, the Bank of Mauritius will also pay special attention to the recommendations of the Basel Committee and require banks operating in Mauritius to ensure strict compliance thereto.

## ***Addressing the concerns regarding Money Laundering and Terrorist Financing risks***

Concerns have been expressed to the effect that digital assets offer some form of anonymity to its holders if not properly regulated and controlled and may be subject to heightened money laundering and terrorism financing (ML/TF) risks.

In an era where ML/TF risks are assuming increasing significance and may even result in international sanctions and loss of correspondent banking facilities, regulators need to be extremely vigilant.

International Standard Setting Bodies have also identified the potential ML/TF risks that could rise from digital assets and they have been prompt in providing necessary guidance. As far back as 2015, the FATF identified certain key risks associated with Crypto Assets, including ML/TF, cross border nature of operating systems and non-face to face client relationships which facilitates anonymity.

In October 2018, the FATF, recognising the need to adequately mitigate the money laundering and terrorism financing (ML/TF) risks associated with virtual asset activities, adopted, changes to the FATF Recommendations to clarify how the Recommendations apply in the case of financial activities involving virtual assets.

The FATF recommended countries to ensure that virtual asset service providers are regulated for AML/CFT purposes, and licensed or registered and subject to effective systems for monitoring and ensuring compliance with the relevant measures called for in the FATF Recommendations.

More recently, in February 2019, the FATF announced that it is setting out more detailed implementation requirements for effective regulation and supervision/monitoring of virtual asset services providers which are expected to be adopted at the June 2019 Plenary of the FATF.

As the FATF Recommendations are globally accepted standards, it is very likely that, when establishing the regulatory framework for digital assets, countries will adhere to these standards.

### **5. The experience of Mauritius in regulating Digital Assets – Development of regulatory frameworks in line with international standards**

Allow me to share the experience of Mauritius in regulating Digital Assets.

Last year, the Government of Mauritius took the initiative of setting up a Regulatory Committee on FinTech and Innovation-Driven Financial Services chaired by Lord Desai and comprising amongst others Loretta Joseph, Rajesh Ramloll S.C., Deputy Solicitor General at the Attorney General's Office, Mauritius, the Chief Executive of the Financial Services Commission, other eminent experts from in fintech regulation, blockchain as well as artificial intelligence industry and myself. The Regulatory Committee was tasked to advise on the development of a regulatory framework for fintech in Mauritius.

The Regulatory Committee identified priority areas in the fintech space to be considered for regulation in Mauritius and recommended the approach to be adopted in regulating this emerging sector of activities.

Further to the report of the Regulatory Committee, the Financial Services Commission, Mauritius, which is the integrated regulator for the non-bank financial services sector and global business in Mauritius, was identified as the most appropriate authority in Mauritius to promote the regulatory framework for digital assets in Mauritius.

In September 2018, the Financial Services Commission issued Guidance Note on the

recognition of digital assets as an asset-class for investment by sophisticated and expert investors.

Subsequently, on 05 November 2018, the Financial Services Commission issued a Consultation Paper seeking feedback from stakeholders and the public on the proposed regulatory framework for the Custodian Services (Digital Asset) Licence, which allows its holder to provide custody services for Digital Assets.

The Consultation Paper has now been translated in a set of Rules which became effective as from 01 March 2019, thereby positioning the Mauritius IFC as the first jurisdiction globally to offer a regulated landscape for the custody of Digital Assets.

The Financial Services Commission has ensured that the distinct regulatory frameworks are in line with international standards set by institutions like the Organisation for Economic Co-operation and Development and the FATF.

Mauritius has participated fully in discussions at the level of the OECD on the governance and regulation of Digital Financial Assets and the regulatory framework for this activity segment has been developed in reference to these international consultations and the FATF Recommendations have been fully considered in the regulatory approach taken by Mauritius to regulate the custody of digital assets as a business activity.

As technology is a constantly evolving affair, we need to be at the forefront of the latest development. This requires specialized skillsets which might not be available in all regulatory bodies, thereby heightening the need for continued upskilling and capacity building.

## **6. Cross-border regulation**

With the globalisation of financial services, collaboration has always been a requirement for financial services regulators across the globe. The need for cross border cooperation between financial services regulators is becoming even more crucial in relation to fintech.

Adherence to a common set of standards will foster standardization of the regulation across countries and facilitate cross-border regulation of digital assets.

Obviously, cross border regulation implies cooperation and collaboration between regulators.

It is common practice for financial services regulators to sign Memorandum of Understanding (MoU) with their counterparts for cooperation and exchange of information in the field of conventional financial services.

These MoU may now have to be extended to collaboration in Fintech and financial innovation.

It may be foreseen that such collaboration will improve the cross-border regulation of fintech and digital assets through:

- a. Harmonised/Equivalent fintech regulatory frameworks across jurisdictions which is an effective tool against regulatory arbitrage and will enable licensed fintech business to have access to other markets;
- b. Bridging the expertise gap between jurisdictions for efficient framework development; and
- c. Capacity building and knowledge sharing in the field of fintech supervision for financial services regulators.

## **Concluding remarks**

The launch, in January 2019, of the Global Financial Innovation Network<sup>1</sup> aims at acting as a *network of regulators* to promote information and knowledge sharing on emerging innovation trends as well as promoting *joint policy work and regulatory trials* by enhancing collaboration between regulators on key policy questions with the view to support the work of standard setting bodies, amongst others.

All of us in this room who have a keen interest in promoting financial innovation should collaborate and support this initiative in the hope that a standardized and agreed sets of principles and practices for fintech and digital assets may unfold soon for the benefit of the market participants and regulators alike.

Summits, similar to this one, acts as incubators for sharing our thoughts and vision for this innovative sector. I am confident that this Summit will foster cooperation and collaboration between regulators, investors and international organisations. I wish us all success in this area.

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<sup>1</sup> *GFIN has been established by an international group of financial regulators and related organizations is an indication of the willingness of the global community to promote financial innovation in an efficient and orderly manner*