



MINISTRY JUSTICE AND CORRECTIONAL SERVICES
REPUBLIC OF SOUTH AFRICA

Address By Ronald Lamola, Minister of Justice and Correctional Services, at the Digital Currencies and Anti-money laundering Dialogue in partnership with World Economic Forum and Financial Action Task Force Delivered on 30 June 2021

Distinguished Guests;

Ladies and Gentlemen,

I would like to extend my gratitude to the organisers of this webinar.

Thank you for extending an invitation to me, it has enabled me to be amongst you to discuss what is arguably one the fastest emerging developments within the monetary policy regulatory framework and the law enforcement sphere.

Historically, we have also regarded the financial sector as a strategic part of our economy.

One the legacies of apartheid was that it distorted the South African financial system.

A handful of large financial institutions, all linked closely to the dominant conglomerates, centralised most of the country's financial assets.

During that era, they were unable to serve most of the black community, especially women.

As a result, the overriding legacy of that system is the struggle of black communities with financial capital, which is required in the development of new sectors of the economy.

Whilst small informal-sector institutions meet some of the needs of the black community and micro enterprise, they however lack the resources to bring about broad-scale development.

All of us on this platform today are critical role players.

Our day to day operations have a cumulative effect in keeping our financial systems afloat.

The financial system is in a sense, the nerve system of an economy.

Ensuring the financial system is inclusive is paramount in the process of creating a more equal and just society.

Simply put, the financial system can be a conduit for social justice.

As you would know, our financial system in South Africa is underpinned by a twin peaks model.

The twin peaks model implies two core pillars on which responsibility for regulation rests.

The model recognises that the two pillars may have contradictory goals, and creates separate, but equal mechanisms to achieve those goals.

One peak, referred to as the "system stability" regulator, is responsible for creating and enforcing administrative regulations, aimed at reducing the risk of a financial crisis.

The second peak is aimed at preventing misconduct and protecting consumers of financial products and services.

Cryptocurrency without a doubt presents a unique challenge to the twin peaks policy.

Cryptocurrencies do not fit neatly within the current regulatory framework.

Generally, the whole world continues to grapple with the phenomena.

From conceptualisation to issues on definition, it remains an area that requires further clarity for regulators.

The approaches are far from consistent, some jurisdictions explicitly allow its use and trade, others ban and restrict it. Most jurisdictions follow the monitoring approach and issue warnings, but are yet to declare it illegal.

One of the unique features of crypto-currency is its ability to operate without third-party intermediaries or similar safety mechanisms.

The consequence though is that the potential financial and consumer risks are quite pronounced.

Chief amongst those, is the risk of an increase in undetected illicit financial flows, money laundering and terrorist financing risk, and consumer and investor protection concerns, including market manipulation and tax evasion.

Other areas of risk include the circumvention of exchange controls, balance of payments reporting requirements, and financial stability risks.

In our jurisdiction, South Africa, the purchasing of crypto assets is not regulated.

Conceivably, this renders us as a country and our citizens, vulnerable to syndicates which purchase crypto assets, for purposes of :

- **Money laundering;**
- **Funding terrorist financing activities, and**
- **Attempts to circumvent exchange controls and mask illicit financial flows.**

Although some trading platforms and financial institutions have implemented the know your client protocol, this is not a general practice across the board.

Since, no specified rules exist to protect consumers or provide customer resolution mechanisms (e.g. for disputes), consumers of crypto assets are extremely vulnerable.

Very recently in South Africa, an incident has been reported of consumers losing their funds.

In light of these ever present risks, I think it is fair to believe that intergovernmental collaboration and creating of agile but effective regulatory framework is paramount.

Moreover, responses to developing trends should be well co-ordinated and somewhat be unitary across the globe.

If we are to learn anything from fragmented global policy positions, it is the fact that they lead to safe havens and become jurisdictions for massive illicit financial outflows.

In our case, funds lost in illicit financial outflows severely hampers the reconstruction and development of South Africa.

We are determined to tackle and arrest money laundering schemes.

To this end, our Anti-Money Laundering / Counter Terrorism Financing National Risk Assessment Inter-Departmental Working Group has had some strategic breakthroughs in recent times.

The Inter-Department Working Group includes the South African Police Service, the Hawks, the South African Revenue Service, the Financial Sector Conduct Authority, the Financial Intelligence Centre, the Special Investigating Unit, and the National Prosecuting Authority and the South African Reserve Bank. In the last financial year, it recovered in excess of R 400 million.

This structure continues to build its capacity and with the Financial Intelligence Centre as its spine, it will without a doubt, closely monitor the evolution of crypto currencies.

In order to aid the enforcement arm of the state insofar as crypto-currencies are concerned, our position will continue to evolve.

As result we are likely to see the Financial Intelligence Centre including crypto assets service providers as an accountable institution and, as such, the accountable institutions will be under legal obligation to comply with Anti-Money Laundering /Counter Financing Terrorism requirements in the Financial Intelligence Centre Act.

Moreover once the Cybercrimes Act has been operationalized, it will give our law enforcement agencies the arsenal to pursue criminals who may launder money in South Africa whilst sitting in other jurisdictions.

In the last financial year, a special focus was also placed on the prosecution of cybercrime cases to curb this growing international phenomenon.

The prosecutors and advocates of the Special Commercial Crimes Unit finalised 325 cases with a verdict, and obtained 320 convictions, representing a conviction rate of 98.5%.

The high conviction rates maintained show a clear commitment and dedication to curb this growing international phenomenon.

Whilst cryptocurrencies facilitate this type of criminality, our South African courts will have the power to adjudicate matters in which persons who are not South African citizens, as well as persons who commit cybercrimes in other countries, in which persons or business in South Africa are affected.

We are also pleased by the impending collaboration between the National Prosecuting Authority and the United States' Federal Bureau of Investigation to share and exchange expertise on digital crimes and the emergence of crypto-assets.

Earlier in the month, our Intergovernmental Fintech Working Group published the country's position on crypto assets:

Our position is explained as follows:

We are adopting a risk-based approach.

As a result, regulatory actions will be undertaken with intensity in a manner that commensurate with the level of risks posed while balancing potential benefits, also taking into account the developments and requirements of relevant standard-setting bodies.

The South African authorities do however, reiterate their responsibility for the efficiency, stability and integrity of the wider financial system given the societal benefits associated with ensuring efficiency and integrity of financial markets.

Secondly we are *adopting a unified regulatory approach*.

Our regulatory approach will be a joint effort by all the affected regulatory authorities which takes into cognisance of international methods.

We are also *adopting a phased approach*. We will also ensure that our approach is technology neutral and resilient whilst also being adaptive.

Given the rapid changes in this environment, legislation should be sufficiently adaptive to allow application to emerging technologies with limited amendment, if any.

These interventions in our context are a matter of necessity. It is often said that money laundering is not a victimless crime. This is particularly true for middle income country like South Africa.

In recent months, we have learnt of how the incestuous relationship between corruption and money laundering has robbed South Africa billions of Rands.

This incestuous relationship is aided by other jurisdictions. This without doubt calls into question the integrity of the global financial systems.

In pursuit of global social justice, one where the development of previously colonised societies like ours is paramount, the global community should not be idle whilst some jurisdictions flourish on the back of corrupt activities.

I thank you