

Regulation of virtual assets

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Paris, France, 19 October 2018 - Virtual assets and related financial services have the potential to spur financial innovation and efficiency and improve financial inclusion, but they also create new opportunities for criminals and terrorists to launder their proceeds or finance their illicit activities. The FATF has therefore been actively monitoring risks in this area, and issued guidance on a risk-based approach to virtual currencies in 2015. There is an urgent need for all countries to take coordinated action to prevent the use of virtual assets for crime and terrorism.

The FATF Recommendations set out comprehensive requirements for combating money laundering and terrorist financing that apply to all forms of financial activity—including those that make use of virtual assets. However, governments and the private sector have asked for greater clarity about exactly which activities the FATF standards apply to in this context. The Risk-based Approach requires jurisdictions to identify money laundering and terrorist financing risks and take appropriate action to mitigate those risks. This includes identifying and mitigating illicit financing risks associated with new products or business practices, and other activities not explicitly referred to in the FATF Recommendations.

Given the urgent need for an effective global, risk-based response to the AML/CFT risks associated with virtual asset financial activities, the FATF has adopted changes to the FATF Recommendations and Glossary that clarify how the Recommendations apply in the case of financial activities involving virtual assets. These changes add to the Glossary new definitions of “virtual assets” and “virtual asset service providers” – such as exchanges, certain types of wallet providers, and providers of financial services for Initial Coin Offerings (ICOs). These changes make clear that jurisdictions should ensure that virtual asset service providers are subject to AML/CFT regulations, for example conducting customer due diligence including ongoing monitoring, record-keeping, and reporting of suspicious transactions. They should be licensed or registered and subject to monitoring to ensure compliance. The FATF will further elaborate on how these requirements should be applied in relation to virtual assets.

All jurisdictions should urgently take legal and practical steps to prevent the misuse of virtual assets. This includes assessing and understanding the risks associated with virtual assets in their jurisdictions, applying risk-based AML/CFT regulations to virtual asset service providers and identifying effective systems to conduct risk-based monitoring or supervision of virtual asset service providers. Some jurisdictions already regulate virtual asset activity in accordance with the 2015 guidance. Today’s clarifications to the FATF Standards are largely compatible with their existing regulatory requirements. The FATF emphasises that jurisdictions have flexibility to decide under which AML/CFT category of regulated activities virtual asset service providers should be regulated, e.g. as financial institutions, DNFBPs, or as another, distinctive category.

The FATF uses the term “virtual asset” to refer to digital representations of value that can be digitally traded or transferred and can be used for payment or investment purposes, including digital representations of value that function as a medium of exchange, a unit of account, and/or a store of value. The FATF emphasises that virtual assets are distinct from fiat currency (a.k.a. “real currency,” “real money,” or “national currency”), which is the money of a country that is designated as its legal tender.

The FATF Recommendations require monitoring or supervision only for the purposes of AML/CFT, and do not imply that virtual asset service providers are (or should be) subject to stability or consumer/investor protection safeguards, nor do they imply any consumer or investor protection safeguards. At this time, virtual asset service providers in most jurisdictions are not regulated for the purposes of financial stability or for investor and consumer protection. Some countries may decide to prohibit virtual assets based on their own assessment of risk.

The FATF Standards permit jurisdictions to prohibit certain activities based on risk and scope in that jurisdiction (e.g. casinos, in jurisdictions where gambling is illegal) and, provided the prohibition is enforced, does not require jurisdictions to have measures to regulate those prohibited activities. Jurisdictions wishing to prohibit virtual assets and their associated activities are therefore free to do so.

The FATF will provide clarification to jurisdictions in managing the ML and TF risks of virtual assets, while creating a sound AML/CFT regulatory environment in which companies are free to innovate. As part of a staged approach, the FATF will prepare updated guidance on a risk-based approach to regulating virtual asset service providers, including their supervision and monitoring; and guidance for operational and law enforcement authorities on identifying and investigating illicit activity involving virtual assets.

In light of the rapid development of the range of financial functions served by virtual assets, the FATF will also review the scope of activities and operations covered in the amended Recommendations and Glossary in the next 12 months and consider whether further updates are necessary to ensure the FATF Standards stay relevant.

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