



**REPUBLIC OF KENYA**

**THE NATIONAL TREASURY AND ECONOMIC PLANNING**

**DRAFT NATIONAL POLICY ON VIRTUAL ASSETS AND VIRTUAL ASSET  
SERVICE PROVIDERS**

**DECEMBER 2024**

## Table of Contents

DEFINITIONS OF TERMS .....	V
FOREWORD .....	VIII
PREFACE AND ACKNOWLEDGEMENT .....	X
1. CHAPTER ONE: INTRODUCTION.....	1
1.1 Background.....	1
1.2 Objectives of the Policy.....	2
1.3 Rationale of the Policy.....	2
1.4 Scope of the Policy .....	2
1.5 Structure of the Policy .....	3
2. CHAPTER TWO: SITUATIONAL AND GAP ANALYSIS.....	4
2.1 VA and VASP Activities in Kenya .....	4
2.2 Existing Guidance by International Standards Setting Bodies.....	7
2.2.1 Financial Action Task Force (FATF) .....	7
2.2.2 Financial Stability Board (FSB) .....	7
2.2.3 Basel Committee on Banking Supervision (BCBS).....	8
2.2.4 International Association of Insurance Supervisors (IAIS).....	8
2.2.5 International Organization of Securities Commissions (IOSCO) .....	9
2.2.6 International Monetary Fund (IMF) .....	9
2.3 Regulation of Virtual Assets in Select Jurisdictions.....	10
2.3.1 European Union .....	10
2.3.2 United Kingdom .....	11
2.3.3 France .....	11
2.3.4 United States of America.....	12
2.3.5 Singapore .....	12
2.3.6 Mauritius.....	13
2.3.7 Seychelles .....	13
2.3.8 South Africa.....	13
2.3.9 Bahamas.....	14
2.3.10 Japan .....	14

2.3.11	Cayman Islands.....	14
2.3.12	United Arab Emirates .....	15
2.3.13	India .....	15
2.3.14	Nigeria .....	16
2.4	Lessons Learnt from the Select Jurisdictions .....	16
2.5	Gaps and Challenges.....	17
3.	CHAPTER THREE: POLICY AND STRATEGIC INTERVENTIONS .....	18
3.1	A Coordinated Legal and Regulatory Framework.....	18
3.2	Ensure Sound Risk Management.....	19
3.3	To ensure Fair, Transparent and Efficient Market for VAs and VASPs .....	19
3.4	Promote Financial Innovation and Literacy on VAs and VASPs.....	19
4.	CHAPTER FOUR: FRAMEWORK FOR IMPLEMENTING THE POLICY .....	21
4.1	Coordination Framework and Administrative Mechanisms.....	21
4.2	Legal and Regulatory Framework .....	21
4.3	Funding Arrangements .....	21
5.	CHAPTER FIVE: MONITORING AND EVALUATION.....	21
6.	CHAPTER SIX: POLICY REVIEW.....	21
	ANNEXTURE 1: IMPLEMENTATION MATRIX .....	22
	REFERENCES .....	26

## Acronyms and Abbreviations

AML	Anti-Money Laundering
ARA	Assets Recovery Agency
BRS	Business Registration Service
CA	Communications Authority of Kenya
CAK	Competition Authority of Kenya
CBK	Central Bank of Kenya
CFT	Counter Financing of Terrorism
CMA	Capital Markets Authority
CPF	Counter Proliferation Financing
CTF	Counter Terrorist Financing
DCI	Directorate of Criminal Investigation
DeFi	Decentralised Finance
DLT	Distributed Ledger Technology
EACC	Ethics and Anti-Corruption Commission
ESAAMLG	Eastern and Southern Africa Anti-Money Laundering Group
FATF	Financial Action Task Force
FRC	Financial Reporting Centre
ICO	Initial Coin Offering
ICTA	Information and Communications Technology Authority
IRA	Insurance Regulatory Authority
Judiciary	Judiciary of Kenya
KDIC	Kenya Deposit Insurance Corporation
KRA	Kenya Revenue Authority
KYC	Know Your Customer
ML	Money Laundering
NA	National Assembly
NC4	National Computer and Cybercrime Coordination Committee
NCTC	National Counter Terrorism Centre
NFT	Non-Fungible Token
NIFCA	Nairobi International Finance Centre
NIS	National Intelligence Service
NPS	National Police Service
NRA	National Risk Assessment
ODPC	Office of the Data Protection Commissioner
ODPP	Office of the Director of Public Prosecutions
PCF	Policyholders Compensation Fund
RBA	Retirement Benefits Authority
SASRA	Sacco Societies Regulatory Authority

SDICT	State Department for Information and Communication Technology
TDS	Tax Deducted at Source
TF	Terrorist Financing
TNT	The National Treasury
UFAA	Unclaimed Financial Assets Authority
VA	Virtual Asset
VASP	Virtual Asset Service Provider

DRAFT

## DEFINITIONS OF TERMS

<b>Asset Tokenization</b>	This is the process of creating a digital representation of ownership in real-world assets.
<b>Blockchain</b>	Blockchain is a decentralized, transparent, immutable, distributed ledger that securely records transactions across a global network of computers and employs cryptographic algorithms to securely record and synchronize data.
<b>Broker</b>	A service provider that act as a link between a virtual asset exchange and persons, facilitating the buying and selling of virtual assets on behalf of clients, including offering advice.
<b>Centralized Exchange</b>	A centralized online business platform facilitating the trading, conversion, and transfer of virtual assets.
<b>Cryptocurrency</b>	Cryptocurrency is a digital representation of value that can be used as a medium of exchange and has no central issuing or regulating authority, but instead uses a decentralized system to record transactions and manage the issuance of new units and relies on cryptography to prevent counterfeiting and fraudulent transactions.
<b>Custodial Wallet</b>	A custodial wallet is an online digital facility that stores virtual assets on behalf of a virtual asset owner.
<b>Distributed Ledger Technology (DLT)</b>	It is a digital system for recording transactions where the data is simultaneously shared, replicated, and synchronized across multiple locations. Unlike traditional databases, DLT does not have a central administrator. Instead, it relies on a network of nodes (computers) to validate and record transactions.
<b>Fiat-To-Virtual (on-ramping)</b>	The conversion of government issued fiat currency to virtual assets.
<b>Miner</b>	This is a participant in the blockchain network that validates transactions and add a new block to the blockchain network by solving complex cryptographic puzzles.
<b>National Competent Authority (NCA)</b>	It is an entity designated by a Member State in the European Union having the necessary powers and allocated responsibilities for performing tasks related to certification, oversight and enforcement

<b>Non-Custodial Wallet</b>	A non-custodial wallet is a digital facility that stores virtual assets and enables virtual assets owners to have full control of their virtual assets. This wallet can be a program or a physical device.
<b>Non-Fungible Token (NFT)</b>	It is a unique digital representation of an asset that is recorded in a blockchain, and it is used to certify ownership and authenticity. It cannot be copied, substituted or subdivided.
<b>Peer-To-Peer (P2P)</b>	A form of virtual asset exchange that entails the transfer of virtual assets from one user to another.
<b>Proof of Stake</b>	This is a blockchain consensus mechanism that uses randomly selected validators who stake their VAs as collateral to confirm transactions for processing and creating new blocks.
<b>Proof of Work</b>	This is a blockchain consensus mechanism that requires significant computing effort from a network of devices and uses a competitive validation method to confirm transactions and add new blocks to the blockchain.
<b>Stablecoin</b>	A virtual asset that aims to maintain a stable value relative to a fiat currency, specified asset, or a pool or basket of assets.
<b>Staking</b>	This is the process of validators locking up a reasonable amount of virtual assets as collateral to show commitment, confidence, and compliance to the best practice for the blockchain network.
<b>Validator</b>	This is a participant on a blockchain network that is responsible for verifying new transactions and adding a new block to a proof of stake blockchain.
<b>Virtual Asset (VA)</b>	Virtual Asset is a digital representation of value that can be digitally traded, or transferred, and can be used for payment or investment purposes. Virtual assets do not include digital representations of fiat currencies.
<b>Virtual Asset Exchanges</b>	A type of virtual asset service provider that facilitates virtual asset transfers and exchange. Exchanges may occur between one or more forms of virtual assets, or between virtual assets and fiat currency.

<b>Virtual Asset Investment Providers</b>	A type of virtual asset service provider that provides investment vehicle to enable investment in virtual assets via a managed investment scheme.
<b>Virtual Asset Service Provider (VASP)</b>	Any natural or legal person that conducts the following activities or operations for or on behalf of another natural or legal person: i) Exchange between virtual assets and fiat currencies; ii) Exchange between one or more forms of virtual assets; iii) Transfer of virtual assets; iv) Safekeeping and/or administration of virtual assets or instruments enabling control over virtual assets; and, v) Participation in and provision of financial services related to an issuer’s offer and/or sale of a virtual asset.”
<b>Virtual Asset Wallet</b>	A software program or hardware device that securely stores, receives and sends virtual assets.
<b>Virtual-To-Fiat (off-ramping)</b>	Conversion of virtual assets to fiat currencies.
<b>Virtual-To-Virtual</b>	Conversion of one type of virtual asset to another.



## **FOREWORD**

Kenya's financial sector is a beacon of innovation and growth in Africa. From the groundbreaking mobile money revolution pioneered by the launch of mobile based financial services in 2007 to robust financial system, the country has consistently pushed the boundaries of financial inclusion through technological advancements. This dynamic sector has fostered economic growth and empowered individuals, solidifying Kenya's position as a regional financial hub. Despite facing occasional economic shocks, the sector has remained resilient due to strong regulatory frameworks and robust risk management practices within financial institutions.

The emergence and growth of Virtual Assets (VAs) and Virtual Asset Service Providers (VASPs) have given rise to innovations in the local and international financial system with dynamic opportunities and challenges. VAs have gained traction due to the desire for alternative investment avenues, the speed and cost-effectiveness of cross-border transactions and their pseudonymous nature. Conversely, the use of VAs has presented risks such as Money Laundering (ML), Terrorism Financing (TF), Proliferation Financing (PF), tax evasion, fraud, cybercrime, weak governance, and consumer protection issues. The cross-border nature of VAs and VASPs further compounds the risks, as noted in the VAs/VASPs ML/TF National Risk Assessment Report for Kenya, which was finalised in September 2023. These risks underscore the urgent need for a comprehensive legal and regulatory framework to govern VAs and VASPs to ensure the safety and integrity of Kenya's financial system.

The Government of Kenya is committed to creating the necessary legal and regulatory framework in order to leverage opportunities presented by VAs and VASPs while managing the resultant risks. This policy guides the establishment of a sound legal and regulatory framework providing the fundamental foundation of a fair, competitive, and stable market for VAs and VASPs with the aim of fostering innovation, enhancing financial literacy, and ensuring sound risk management. The principal goal of the policy is to cement Kenya as a major player in the global digital finance ecosystem.

The policy takes account of regulatory approaches from various jurisdictions and provides a framework that is adaptive and flexible for domestic and international cooperation, compliance, consumer protection, financial innovation and management of risks. Accordingly, adoption of this policy is a major step towards establishing a secure and well-regulated environment for VAs and VASPs in Kenya. In addition, it provides guidance for regulators, competent authorities and other industry stakeholders to navigate the complexities of the digital space so that the country harnesses opportunities offered by VAs in a responsible manner.

**HON. FCPA JOHN MBADI NG'ONGO, EGH**  
**CABINET SECRETARY/THE NATIONAL TREASURY & ECONOMIC PLANNING**

DRAFT

## **PREFACE AND ACKNOWLEDGEMENT**

The development of this policy signifies a key milestone in Kenya's commitment to ensuring that the adoption of Virtual Assets (VAs) and Virtual Asset Service Providers (VASPs) contributes positively to the Kenya's economic growth and financial stability. This policy was informed by the need to safeguard Kenya's financial sector from potential risks of VAs and VASPs, while providing an enabling environment for the innovation to benefit the citizens of Kenya. Accordingly, the policy seeks to close the gaps in the absence of a legal and regulatory framework for VAs and VASPs in the country, as well as consumer protection, governance, data privacy, and cybersecurity challenges in the VA ecosystem.

The National Treasury appreciates the team that conducted the inaugural VAs/VASPs Money Laundering/Terrorism Financing national risk assessment for Kenya in 2023. The report provided insights into the emerging risks and inherent vulnerabilities associated with the adoption of VAs and the findings provided the basis for the policy's development.

On behalf of the National Treasury, I wish to recognize the role of international partners, regulators of other jurisdictions, and experts, whose experiences have provided Kenya with useful lessons, insights and the understanding of international standards that are in alignment with best practices, such as those set by the Financial Action Task Force (FATF). The comparative analysis of various jurisdiction regulatory approaches was influential in refining Kenya's policy direction of fostering innovation and maintaining financial stability.

This policy is the result of a collaborative effort of various stakeholders led by the National Treasury. I would like to extend my sincere gratitude to all who contributed their expertise, time, and resources to the development of this policy document. The contributions of the members of the Multi-Agency Technical Working Group comprised of the State Law Office, State Department for ICT and the Digital Economy (SDICT&DE), Central Bank of Kenya (CBK), Capital Markets Authority (CMA), Retirement Benefits Authority (RBA), Insurance Regulatory Authority (IRA), Sacco Societies Regulatory Authority (SASRA), Financial Reporting Centre (FRC), Kenya Revenue Authority (KRA), National Intelligence Service (NIS), and the National Computer and Cybercrime Coordination Committee (NC4) were invaluable in influencing the legal and regulatory framework that will guide VAs and VASPs activities in Kenya.

The Government of Kenya is cognizant of the fast-evolving nature of the virtual assets ecosystem. Accordingly, this policy will be reviewed periodically to ensure that it remains relevant and effective. The National Treasury will continue with the collaborative efforts of all stakeholders to navigate the opportunities and challenges presented by VAs and VASPs, and ensure that innovation thrives, and risks are managed.

**DR. CHRIS K. KIPTOO, CBS**  
**PRINCIPAL SECRETARY/THE NATIONAL TREASURY**

DRAFT

## **1. CHAPTER ONE: INTRODUCTION**

### **1.1 Background**

Virtual assets (VAs), such as crypto currency and digital tokens, have rapidly evolved over the last decade, transforming how financial transactions are conducted and creating new opportunities for innovation. A VA is a digital representation of value that can be digitally traded, or transferred, and can be used for payment or investment purposes or for other purposes as could arise. However, the decentralized and often anonymous nature of these assets poses significant regulatory challenges. Jurisdictions around the world are grappling with how to balance the promotion of innovation with the need to protect consumers, maintain financial stability, and prevent illicit activities like Money Laundering (ML), Terrorism Financing (TF), Proliferation Financing (PF) and tax evasion.

For the last 20 years, Distributed Ledger Technology (DLT) such as blockchain technology have inspired the emergence of various types of cryptocurrencies. Bitcoin, the first and most widely used cryptocurrency, was launched in 2009. One of the major driver for the exploration and adoption of cryptocurrencies was the loss of confidence and trust that followed the 2007/2008 Global Financial Crisis which resulted in the collapse of major financial institutions and the loss of value of sovereign-backed fiat currencies.

The world has since seen significant proliferation of various types of virtual assets. There have also been attempts by private sector to launch their own versions of cryptocurrencies, such as the attempt by a consortium that included Facebook under the auspices of the Libra Association (later named Diem) to create a stablecoin backed by major world fiat currencies. Overall, the global crypto industry has witnessed rapid changes, volatility and risks, evidenced for example by the collapse of FTX Trading Ltd (the third largest crypto exchange at the time) in November 2022, underscoring the need for effective policy and regulation of VA and VASPs.

Adoption of VAs in Africa has grown exponentially in the recent past, as evidenced by the increasing number of countries with regulatory frameworks for VAs and VASPs. Kenyans are increasingly adopting VAs as an alternative form of investment and transfer of value, due to their fast speed, cost, cross border nature, convenience, and anonymity. The VAs and Virtual Asset Service Providers (VASPs) ML and TF National Risk Assessment (NRA) conducted in Kenya in 2023 revealed that the population aged between 18 and 40 years showed a greater interest in VAs.

The growing interest in VAs comes with challenges and risks associated with an unregulated market, including but not limited to uncontrolled capital flight, ML, TF, weak governance structures, cybercrime, fraud, and consumer protection issues. These risks have been compounded by the absence of a legal and regulatory framework for VAs and VASPs. Accordingly, this policy

has been developed to guide the establishment of a sound legal and regulatory framework to enable the country to harness the benefits while addressing the risks presented by VAs and VASPs.

## **1.2 Objectives of the Policy**

The main objective of this policy is to guide the development of a fair, competitive, and stable market for VAs and VASPs in Kenya.

Specifically, the policy seeks to:

- i. Guide the development of a legal framework governing VAs and VASPs.
- ii. Promote a fair and efficient market for VAs and VASPs.
- iii. Ensure sound risk management for VAs and VASPs; and
- iv. Promote financial literacy and innovation on VAs and VASPs.

## **1.3 Rationale of the Policy**

Kenya has witnessed increased adoption of VAs for use in payments, remittances, and investments over the years. VAs present opportunities to promote digital finance, boost e-commerce, facilitate international trade, and even create a new class of digital jobs. However, the benefits of VAs have been stemmed by cybersecurity risks, data privacy risks, and frauds and scams in the country. Further, the activities of the VASPs are not limited to Kenya and therefore some of the VASPs operating locally are not registered and/or licensed in Kenya, hence posing potential risks related to but not limited to ML/TF/PF. Despite Kenya having put in place an overarching Anti-Money Laundering and Counter Financing of Terrorism (AML/CFT) legislative framework that addresses broad ML/TF risks, there is no policy and legal framework that governs VAs activities and VASPs.

The regulation of VAs and VASPs has far-reaching implications, impacting not just the VAs market but the broader Kenyan economy. In view of this, there is need for a comprehensive policy to ensure the country leverages the benefits of VAs and VASPs while addressing the risks and challenges thereon.

## **1.4 Scope of the Policy**

The National Policy covers all aspects of regulation and development of the virtual asset's ecosystem in Kenya.

## **1.5 Structure of the Policy**

This policy document is organized into six chapters. Chapter One provides background information on VAs and VASPs, the policy objectives, rationale for developing the policy, and its scope. Chapter Two presents a situational and comparative analysis of developments and regulatory frameworks for VAs and VASPs from various jurisdictions highlighting challenges encountered and lessons for Kenya.

Chapter Three sets out the policy statements, outlining the commitments the government is making to create a conducive environment for the operation of VAs and VASPs. Chapter Four describes the coordination and administrative mechanisms necessary for effective policy implementation. Chapter Five outlines the monitoring and evaluation process. Finally, Chapter six highlights the review process of the Policy.

DRAFT

## **2. CHAPTER TWO: SITUATIONAL AND GAP ANALYSIS**

### **2.1 VA and VASP Activities in Kenya**

Kenya's VAs and VASPs ML/TF NRA Report, 2023, which included a survey on prevalence and usage of VAs, indicated that there is a presence of VAs and VASPs in the country. The survey showed that 86 per cent of the respondents were familiar with VAs and 33 per cent indicated ownership of VAs. Notably, the population aged 18 to 40 are the most interested in VAs. Further, Kenyan users of VAs and VASPs primarily used them for investment purposes. The use of peer-to-peer (P2P) transfers was prevalent, given that the CBK regulated institutions were prohibited from dealing with VAs and VASPs. In addition, the CMA and CBK have received enquiries and applications for approval for VA related services and VASPs.

The VAs and VASPs ML/TF NRA Report identified that majority of VASP activities were mainly offered through centralized exchanges. The activities included:

- i) Exchange services between virtual assets and fiat currencies.
- ii) Exchange services between different forms of virtual assets.
- iii) Safekeeping and administration of virtual assets or instruments enabling control over virtual assets and transfer of virtual assets.
- iv) Asset tokenization.
- v) Facilitating integration with payment gateways to offer on-ramping and off-ramping services.

In addition to the above activities, there was a strong indication of existence of crypto validation and mining services.

Taking into consideration the cross-border, internet-based and global reach of most of the virtual asset activities, the activities of the VASPs are not limited within Kenya and therefore some of these VASPs operating in country are registered and/or licensed in different jurisdictions. Kenya has an overarching AML/CFT legislative framework that addresses broad ML/TF risks. However, the country does not have a legal framework that governs VAs/VASPs activities.

#### **2.1.1 VA and VASP Regulatory Developments in Kenya**

Kenya's financial sector regulators, that is, the Central Bank of Kenya (CBK), the Capital Markets Authority (CMA), the Sacco Societies Regulatory Authority (SASRA), the Retirement Benefits Authority (RBA), and the Insurance Regulatory Authority (IRA), along with the Ministry responsible for Cooperatives, and Financial Reporting Centre (FRC), have been taking proactive measures and closely monitoring the growing interest and adoption of VAs in the Country. The country has generally taken a cautious approach to VAs, with regulators emphasizing the need



for consumer protection, AML/CFT compliance, and the prevention of illicit activities. Below are key regulatory developments on VAs and VASPs in the country.

- i) In December 2015, CBK issued a public notice cautioning the public on virtual currencies such as bitcoin. The caution was primarily due to the decentralized nature of virtual currencies and their inherent risks. Further, it informed the public that virtual currencies were not legal tender in Kenya and therefore no protection existed in the event that the virtual currency platforms failed.
- ii) CBK also issued a Banking Circular in December 2015 cautioning all banks against dealing in virtual currencies or transacting with entities that are engaged in virtual currencies.
- iii) In July 2018, the financial sector regulators (CBK, CMA, SASRA, RBA and IRA) and the Ministry responsible for Cooperatives issued a joint notice to the public on fraudulent financial services, products and applications warning the public against dealing in unlicensed and unregulated financial products and services.
- iv) The Courts have affirmed the need to regulate VASPs in the case of *Wiseman Talent Ventures Vs the Capital Markets Authority*. The High Court ruled that the Initial Coin Offering (ICO) by Wiseman Talent Ventures Civil Suit No.08 of 2019 was issued as a security under the Capital Markets Act for purposes of investor/consumer protection.
- v) In August 2020, due to the re-emergence of fraudulent financial schemes in the wake of the COVID-19 pandemic, the financial sector regulators and the Ministry responsible for Cooperatives through a joint public notice, reiterated their warning against the use of unlicensed financial products and services.
- vi) In September 2020, CBK also issued circulars to banks and Payment Service Providers (PSPs) warning them against dealing with unlicensed entities. The circulars cautioned the institutions against using, partnering with, and facilitation services from unregulated and unlicensed entities, reminding them of the joint Public Notice of August 2020.
- vii) In June 2023, CBK issued a Technical Paper on Crypto Assets as an annex to the report on Discussion Paper on *Central Bank Digital Currency: Comments from the Public*. The technical paper summarized key global developments on crypto assets. This was informed by recent instability in the global crypto assets market, which amplified concerns and the need for a careful review of the innovation and technology risks.
- viii) The Capital Markets (Amendment) Bill, 2023 was presented to the National Assembly by a Private Member. The Bill sought to add “digital currencies” to the definition of securities, designate the CMA as the regulator of “cryptocurrencies”, and introduce taxation of crypto exchanges and digital wallets.
- ix) Crypto Assets Bill, 2023, sponsored by a private member, was presented to the Senate. The Bill sought to provide a legislative framework for the regulation of crypto assets in the country with, the CMA being mandated to regulate the sector. It further sought to tax crypto trading, promote transparency in the crypto market and improve regulatory oversight.

- x) With regard to taxation, the Finance Act, 2023, which came into effect on 1<sup>st</sup> July 2023, introduced a 3 percent Digital Asset Tax with effect from 1<sup>st</sup> September 2023 payable by a person on income derived from the transfer or exchange of digital assets.
- xi) In July 2023, data privacy concerns were raised in Kenya when Worldcoin, an entity operating as a VASP, offered the Worldcoin token (a virtual asset) to Kenyans as an incentive in exchange for their biometric data. Consequently, in September 2023, the National Assembly ad-hoc Committee on the Inquiry into the Activities of Worldcoin in Kenya recommended, *inter alia*, for the development of a comprehensive oversight framework and policies on VAs/VASPs.
- xii) In September 2023, Kenya concluded its ML/TF risk assessment on VAs and VASPs, which identified and assessed the ML and TF threats and vulnerabilities associated with VAs and VASPs in response to the findings and recommendations of Kenya's Mutual Evaluation, whose report was adopted by ESAAMLG in September 2022. The assessment found that there was continued adoption of VAs in the country and, due to their inherent vulnerabilities, including the ability to transact rapidly, pseudonymously/anonymously, and the cross-border nature of such transactions, coupled with a lack of regulatory framework, the VA and VASP activities could be exploited by criminals for nefarious purposes. Consequently, it was recommended that Kenya regulate virtual asset activities to address such risks and strengthen the overall AML/CFT framework.
- xiii) The Mutual Evaluation Report had also recommended that Kenya takes a policy decision as to whether to prohibit or allow VA related activities in Kenya. Where a position was to be taken to allow VA activities, licensing/registration requirements and risk-based measures should be implemented to address any identified ML/TF risks in accordance with Recommendation 15 of the FATF. Additionally, the MER recommended the development of a Supervisory framework for VASPs for AML/CFT purposes if such activities are allowed. Consequently, in September 2023, Kenya made a policy decision to regulate VAs activities.
- xiv) Led by the Blockchain Association of Kenya (BAK), different stakeholders mainly from the private sector drafted the Virtual Assets Service Provider (VASP) Bill, 2024, which was presented to the National Assembly on March, 2024. It aimed to establish an office to regulate VASPs (with transition being managed by CMA), regulate the activities of VASPs, promote transparency, consumer protection and taxation of VA transactions, and establish a joint VA regulatory sandbox to test VA-related applications.
- xv) In March 2024, the National Treasury and Economic Planning, established a Multi-Agency Technical Working Group to develop a Policy and Regulatory Framework for Virtual Assets and Virtual Asset Service Providers. This was to comprehensively address the VA-related concerns of different stakeholders and to provide a coordinated approach towards developing an all-inclusive policy and regulatory framework.

## **2.2 Existing Guidance by International Standards Setting Bodies and Development Partners**

### **2.2.1 Financial Action Task Force (FATF)**

The Financial Action Task Force (FATF), a global standard setter for AML, CFT, and Countering Proliferation Financing (CPF), has established standards to prevent the misuse of virtual assets for money laundering and terrorist financing. The standards require countries to understand the risks associated with virtual assets; license or register VASPs, or prohibit the use of VAs; and supervise the implementation of AML/CFT/CPF requirements in a risk-based manner. VASPs are required to implement preventive measures similar to those of financial institutions, including customer due diligence, record keeping, and reporting of suspicious transactions, as well as targeted financial sanctions requirements. In addition, VASPs are required to obtain, hold, and securely transmit originator and beneficiary information when making transfers.

### **2.2.2 Financial Stability Board (FSB)**

The Financial Stability Board (FSB)'s work and pronouncements on crypto assets and markets are focused on their impact on financial stability. FSB released a statement on July 11, 2022, regarding the international regulation and supervision of crypto asset activities. The statement was issued in light of the turmoil in crypto asset markets in 2022, which highlighted their volatility, structural vulnerabilities, and increased interconnectedness with the financial system. FSB noted that crypto assets and markets must be subjected to effective regulation and oversight commensurate to the risks they pose domestically and internationally. Further, stablecoins should be captured by robust regulations and supervision of relevant authorities if they are to be adopted as a widely used means of payment.

In 2023, the FSB Global Regulatory Framework for Crypto-asset Activities was published to promote the comprehensiveness and international consistency of regulatory and supervisory approaches. The framework addresses risks to financial stability. The framework is based on the principle of 'same activity, same risk, same regulation' and provides a strong basis for ensuring that crypto asset activities and stablecoins are subject to consistent and comprehensive regulation, commensurate to the risks they pose, while supporting responsible innovations potentially brought by the technological change. The framework comprises two distinct sets of recommendations: -

- i) High-level recommendations for the regulation, supervision and oversight of crypto-asset activities and markets.
- ii) High-level recommendations for the regulation, supervision, and oversight of "global stablecoin" arrangements.

The framework was to be implemented by the end of 2024, and monitoring of implementation of the recommendations by end of 2025. In 2024, FSB published a report on The Financial Stability Implications of Tokenization, noting their limited use, and exploring the potential uses of DLT-based tokenised assets, their interaction with the traditional financial system, and financial stability vulnerabilities associated with DLT-based tokenisation, which relate to liquidity and maturity mismatch; leverage; asset price and quality; interconnectedness; and operational fragilities.

### **2.2.3 Basel Committee on Banking Supervision (BCBS)**

The Basel Committee on Banking Supervision (BCBS) is of the view that the growth of crypto assets and related services has the potential to raise financial stability concerns and increase risks faced by banks. Certain crypto assets have exhibited a high degree of volatility, and could present risks for banks as exposures increase, including liquidity risk; credit risk; market risk; operational risk; money laundering/terrorist financing risk; and legal and reputation risks.

Accordingly, in December 2022, BCBS issued a standard on the Prudential Treatment of Crypto asset Exposures. The standard provides a global regulatory framework for internationally active banks' exposures to crypto assets in order to promote responsible innovation while preserving financial stability. The standard outlines the prudential treatment of banks' exposures to crypto assets, including tokenised traditional assets, stablecoins and unbacked crypto assets. It provides for classification of crypto assets based on a set risk criteria. The standard requires banks that are exposed to crypto asset activities to apply the Basel Framework as outlined in relation to crypto asset exposures. The framework covers seven Core Principles to address Crypto asset exposures: capital adequacy, credit risk, market risk, liquidity risk, operational risk, internal control and audit, and disclosure and transparency. The standard forms part of the consolidated Basel Framework and is to be implemented by January 1, 2025.

Given the rapid pace of developments in the crypto space, BCBS reviewed its work in 2023, leading to the publication of the Crypto asset Standard Amendments in 2024. The paper proposes amendments to the crypto asset standard, with regard to the requirements that determine changes to the composition of the reserve assets of stablecoins and the use of statistical test by banks to assess the stability of the market value of stablecoins. The standard is to be implemented by January 1, 2026.

### **2.2.4 International Association of Insurance Supervisors (IAIS)**

International Association of Insurance Supervisors (IAIS) is the global standard-setting body responsible for developing and assisting in the implementation of principles, standards and

guidance as well as supporting material for the supervision of the insurance sector. There are 25 Insurance Core Principles (ICP) that form the globally accepted framework for insurance supervision. ICP 22 on AML/CFT requires insurance supervisors to ensure that insurers and intermediaries take effective measures to combat ML/TF. The principle refers to the vulnerability of a product to ML/TF based on its design including virtual assets vulnerabilities.

### **2.2.5 International Organization of Securities Commissions (IOSCO)**

The International Organization of Securities Commissions (IOSCO) issued a set of policy recommendations in November 2023, covering the following broad regulatory themes; conflicts of interest arising from virtual assets activities and functions, market manipulation, insider trading and fraud, cross-border risks and regulatory co-operation, custody and client asset protection, operational and technological risk, retail access, suitability, and distribution.

Earlier, in July 2022, Committee on Payments and Market Infrastructures and the International Organization of Securities Commissions (CPMI-IOSCO) published guidance on the application of the Principles for Financial Market Infrastructures (PFMI) to stablecoin arrangements (SAs). The guidance provides further clarifications on how systemically important SAs should observe certain aspects of the PFMI.

### **2.2.6 International Monetary Fund (IMF)**

In 2023, the International Monetary Fund (IMF) published a paper on Elements for Effective Policies for Crypto assets, to address IMF members' questions on how to respond to the rise of crypto-assets and the associated risks. The paper defines and classifies crypto assets based on their underlying features and describes their perceived benefits and potential risks. The paper presents a policy framework for crypto assets that aims to achieve key policy objectives such as macroeconomic stability, financial stability, consumer protection, and market and financial integrity. To address the risks of crypto assets, and harness benefits from underpinning innovative technologies, the paper puts forward nine core elements of an effective policy framework, to safeguard monetary sovereignty, guard against excessive capital flow volatility, analyse and disclose fiscal risks, establish legal certainty, and enhance monitoring and cooperation.

IMF and FSB published a paper on "Policies for Crypto-Assets" in 2023, to synthesise their policy recommendations and standards. The collective recommendations provide comprehensive guidance to help authorities address the macroeconomic and financial stability risks posed by crypto-asset activities and markets, including those associated with stablecoins and those conducted through decentralised finance (DeFi).

In 2023, IMF delivered a G20 Note on the Macro-financial Implications of Crypto assets. The paper on the macro-financial implications of crypto-assets focuses on unbacked crypto-assets as well as stablecoins, which may affect macro-financial stability if widely adopted. It considers three types of implications, to (1) domestic stability, (2) external stability, and (3) the structure of financial systems. The paper argues that perceived benefits of crypto-assets include cheaper and faster cross-border payments, more integrated financial markets, and increased financial inclusion, but these were yet to be realised.

## **2.3 Regulation of Virtual Assets in Select Jurisdictions**

Globally, there have been several developments with regard to regulation of VAs, motivated by the level of adoption in different jurisdictions, and the need to address emerging ML/TF/PF risks, cybersecurity risks, and data privacy and consumer protection risks.

Nations worldwide are at different levels of implementing regulatory frameworks on VAs and VASPs with varying degrees of success. These international experiences offer valuable lessons for Kenya as it seeks to chart its own course in the VAs and VASPs ecosystem.

The review of the selected jurisdictions was informed by their innovation context, regulatory approaches, number of registered VASPs, regulated activities, compliance under FATF standards on VAs and evidence of enforcement actions against non-compliance. The review covered the adoption and usage of VAs within the identified jurisdictions, such as VA as a financial asset, mining, Non-Fungible Token (NFT), P2P VA transactions, and decentralized finance.

Below is a summary of select jurisdictions.

### **2.3.1 European Union**

The European Union's Markets in Crypto-Assets (MiCA) Regulation is a comprehensive regulatory framework for crypto assets in Europe. MiCA aims to establish a unified legal framework for crypto assets within the European Union. The National Competent Authority (NCA) is the regulatory authority in a European Union Member State that is responsible for implementing the Markets in Crypto-Assets (MiCA) regulation.

The regulations cover VAs in three categories. The first category is Electronic Money Tokens (EMTs), which are tokens tied to a single fiat currency. The second category is Asset-Referenced Tokens (ARTs). These tokens are backed by a basket of different assets. The third category encompasses other Crypto Assets—all crypto assets that do not fall under the EMT or ART classifications. Crypto-Asset Issuers, Crypto-Asset Service Providers (CASPs) fall under the regulatory scope of MiCA.

The regulation exempts the following activities and virtual assets from its scope; Crypto-assets that qualify as financial instruments, other products such as deposits, structured deposits, funds, securitisation positions, insurance, life insurance and reinsurance products, or certain pension products, falling within the scope of existing European regulations, the borrowing or lending of crypto-assets, Non-Fungible Tokens (NFTs) and Decentralised finance projects.

### **2.3.2 United Kingdom**

The Financial Conduct Authority (FCA) serves as the main regulatory body for licensing and registering crypto assets in the UK and had 48 registered VASPs as of October 2024. The Financial Services Markets Act, 2023 recognizes crypto assets allowing for further Regulation under Section 69. The Activities regulated include VASP Investment and Trading and payments. Mining, staking and Decentralized Finance (DeFi) are not regulated since there is no justification to regulate the activity. However, the income derived from mining is taxable. Tax obligations related to VAs are set out in the Crypto-assets Guide.

In the UK, the Proceeds of Crime Act, 2002 (POCA) is the primary legislation supporting the recovery of VAs that are linked with criminal activity. FCA enforces existing AML/CFT rules under POCA, which provides mechanisms for law enforcement agencies to seize and recover assets, including crypto currencies and other virtual assets, suspected to be proceeds of crime. The country was *Largely Compliant* with FATF Recommendation 15 as of June 2022.

### **2.3.3 France**

France has an established legal framework for Digital-Assets Service Providers (DASPs) and on-site inspection of VASPs. The France Prudential Supervision and Resolution Authority (ACPR) is the financial regulatory authority within Banque De France, which exercises prudential supervision of regulated French financial firms such as banks and insurance companies. ACPR has a formal process of registering and supervising crypto assets services providers. France has 100 registered entities which are allowed to carry out only two activities namely custody and trading of digital assets, and has 2 licensed DASPs that are allowed to undertake wide range of activities which include trading custody lending and advisory services as at November 2024.

ACPR identifies ML/TF risks associated with crypto assets, mitigating the risks through the AML/CFT legal framework, and harmonizing across EU's forthcoming legal framework on VASPs. The country was *Largely Compliant* with FATF Recommendation 15 as of May 2022, with certain shortcomings concerning due diligence measures in the case of relationships

conducted remotely. Since then, this recommendation has been significantly amended to include measures relating to VASPs.

#### **2.3.4 United States of America**

Virtual assets regulation in the United States is multifaceted and there is no single federal regulator regulating VASPs. A VASP's specific services would determine which laws and regulations apply to it. Multiple federal regulators and different state have adopted diverse strategies to regulate VAs within their existing regulatory frameworks. The Internal Revenue Service (IRS) treats digital assets as property for tax purposes.

The VA regulatory framework in the USA comprises the following:

- i) Financial Crimes Enforcement Network (FinCEN) requires cryptocurrency exchanges dealing with conversion activities to register as Money Services Businesses (MSBs) and comply with AML requirements.
- ii) VASPs involved in securities transactions, issuance of securities or investment advice fall under Securities and Exchange Commission (SEC) regulation.
- iii) VASPs considered as broker dealers are subject to oversight Financial Industry Regulatory Authority (FINRA) a self-regulatory organization that works alongside the SEC to ensure investor protection.
- iv) Commodity Futures Trading Commission (CFTC) registers Cryptocurrency exchanges offering spot and derivatives of VAs.
- v) National Futures Association (NFA) regulates members dealing with digital assets in the future markets

The United States was *Largely Compliant* with FATF Recommendation 15 as of March 2024.

#### **2.3.5 Singapore**

Singapore's VASP regime is characterized by a balanced approach that fosters innovation while ensuring consumer protection and compliance with financial regulations. This has positioned Singapore as a leading hub for virtual assets in Asia. In Singapore, virtual asset service providers are mandated to obtain a license from Monetary Authority of Singapore (MAS) to operate lawfully. The licensing regime is structured to ensure that service providers comply with stringent regulatory obligations, including AML and CFT measures.

In Singapore, VAs is not automatically considered securities or other regulated financial instruments. Instead, their classification depends on their specific characteristics and features.



Finally, the taxation regime for virtual assets (VAs) is clear and well-defined, reflecting the country's approach to fostering innovation while ensuring compliance with tax regulations.

### **2.3.6 Mauritius**

The Virtual Asset and Initial Token Offering Services Act (VAITOS Act) 2021 provides a comprehensive legislative framework for the regulation of VASPs and issuers of initial token offerings (IITO), in line with the international standards of FATF. Regulated Activities under the VAITOS Act include conversion, transfer, safekeeping and administration of VAs as well as VA-related financial services, and types of NFTs and Stable coins. The Financial Services Commission (FSC) had licensed 9 entities as at October 2024. With respect to taxation, general National Tax Law principles apply to VAs. The country was *Largely Compliant* with FATF Recommendation 15 as of January 2023.

### **2.3.7 Seychelles**

The Seychelles Mutual Evaluation Report (MER) published in 2018 by ESAAMLG rated the country non-compliant with regards to FATF Recommendation 15. Due to the high level of prevalence of the use of International Business Companies (IBCs) undertaking activities in the field of crypto-currency or other block-chain technology-based services in recent years, the Financial Services Authority (FSA) conducted an ML/TF risk assessment of VAs and VASPs in July 2022. The assessment showed that VAs and VASPs presented very high ML/TF risks due to the significant number of VASPs and VAs operating in the country. Seychelles conducted a follow up risk assessment in July 2024 to obtain more data and clarity on VA activities and operations of VASPs in the country. The risk assessment disclosed that VA/VASP activity was predominantly related to exchange platforms and payment providers and investment trading or broker services.

Consequently, the country established the Virtual Assets Service Providers Act 2024 and subsequent Regulations to provide for a licensing regime for VASPs and the registration of initial coin offerings and non-fungible tokens. Consequential amendments were made to the AML/CFT Act and Regulations, September 2024 to include VASPs as reporting entities in order to apply control measures to mitigate ML/TF and other financial crimes risks. The FSA is designated as the competent authority to implement the VASP Act, and the supervisory authority for VASPs under the AML/CFT Act. Seychelles had not been re-rated on FATF Recommendation 15 as of April 2024. However, the country has taken steps to mitigate the ML/TF risks of VAs and VASPs after the last review.

### **2.3.8 South Africa**

South Africa has a supportive regulation approach that has been in place since 2023. The country focuses on Entity-Based Regulation, where Crypto Asset Service Providers (CASPs) are regulated by Financial Sector Conduct Authority (FSCA) under the Financial Advisory and Intermediary Services Act 37 of 2002 (FAIS Act). They are also required to register as accountable institutions with the Financial Intelligence Centre (FIC) under the Financial Intelligence Centre Act, 38 of 2001 (FICA). Crypto asset advertisements are regulated under South African Advertising Regulatory Board's Code of Advertising Practice. Crypto is covered under Income Tax Act and Capital Gains. Further, South Africa's Prudential Authority (PA) issued a guidance note for banks in 2022 on AML/CFT controls in relation to CASPs.

The country had approved 248 CASPs as of December 2024. The CASP activities covered under FAIS are VA Trading and investment activities, comprising crypto assets advice, intermediary and investment. NFTs and Miners are exempted from licensing and not considered under the FAIS Act. However, for purposes of AML/CFT compliance and reporting, stablecoins and NFTs are considered crypto assets under FICA. The country was *Largely Compliant* with FATF Recommendation 15 as of November 2024.

### **2.3.9 Bahamas**

The Bahamas Digital Assets and Registered Exchanges Act, 2024, defines and regulates Digital Assets and Digital Asset Businesses (DABs). The Securities Commission of the Bahamas (SCB) licenses and regulates digital assets and DABs. Mining is prohibited unless it is ancillary to a registered DAB or conducted on one's own behalf. Taxation of DABs is under the Business License Act, 2023. The country was *Compliant* with FATF Recommendation 15 as of December 2022.

### **2.3.10 Japan**

Japan's regulatory framework for cryptocurrencies is overseen by the Financial Services Agency (FSA), which sets licensing requirements for virtual asset service providers and enforces AML regulations. The Japan Virtual Currency Exchange Association (JVCEA) and the Japan Security Token Offering Association (JSTOA) collaborate with the FSA to establish rules and promote self-regulation among exchanges. The country's tax policies treat cryptocurrency as property, with profits taxed under personal income brackets, while strong consumer protection measures mandate the segregation of customer assets. The country was *Largely Compliant* with FATF Recommendation 15 as of October 2024.

### **2.3.11 Cayman Islands**

The Cayman Islands Virtual Asset (Service Providers) Act 2020 provides for the regulation of VASPs through registration, licensing and a sandbox. The Act mandates the Cayman Islands Monetary Authority (CIMA) to regulate VASPs in all aspects. VASP-generating utility tokens are exempt from licensing. The country was *Largely Compliant* with FATF Recommendation 15 as of October 2021.

### **2.3.12 United Arab Emirates**

The United Arab Emirates (UAE) has embraced virtual assets with a mix of cautious optimism and strategic foresight. The Country has a robust legal and regulatory framework that has largely focused on balancing innovation with consumer protection and financial stability. The adoption and use of virtual assets is largely focused in trading, investment and payments

The country has distinct VA regulatory regimes at the federal, emirate and the two financial free zones; the Abu Dhabi Global Market (ADGM) and the Dubai International Financial Centre (DIFC). The UAE Securities and Commodities Authority (SCA), Virtual Assets Regulatory Authority (VARA), as well as the Dubai Financial Services Authority (DFSA) regulate and control virtual assets in the UAE.

The focus of the regulators in UAE has been to adapt the existing financial services regulatory frameworks to financial activities involving digital assets. Notably, in the last decade the UAE and individual emirates have bolstered their regulatory efforts with respect to digital assets to attract a global set of businesses and investors that are focused on this asset class, with Abu Dhabi and Dubai driving most of the change. However, other Emirates are showing growing interest in digital assets, potentially creating the situation where each will specialize in a particular branch; Sharjah is exploring block chain applications, and Ras-Al Khaimah is looking to attract block chain business with its first Web 3-focused free zone. The UAE has put efforts in tackling the ML and financial crime after being grey listed by FATF in 2022. The country was *Partially Compliant* with FATF Recommendation 15 as of July 2023.

### **2.3.13 India**

India's approach to crypto assets has been marked by a series of shifts. Initially unregulated, the RBI banned banks from servicing crypto businesses in 2018. The Supreme Court overturned this in 2020, paving the way for a more nuanced approach. As of December 2024, India didn't have a specific crypto law or regulatory body solely dedicated to overseeing crypto-assets. However, crypto exchanges are now considered reporting entities under AML regulations. This requires them to implement Know Your Customer (KYC) procedures and monitor transactions for suspicious activity. Taxation on crypto gains is subject to capital gains tax of 30 percent corporate, 10 percent on individual and 1 percent on transactions. The government is still formulating a

comprehensive framework. A 2021 bill proposing a ban on private cryptocurrencies is yet to be passed. The government is taking steps against offshore exchanges, indicating a focus on consumer protection and preventing illicit activities. They issued show-cause notices to major offshore exchanges in 2023 and continue to explore potential regulations. The country was *Largely Compliant* with FATF Recommendation 15 as of September 2024.

### 2.3.14 Nigeria

Regulation of Virtual Assets and Virtual Asset Service Providers (VASPs) in Nigeria is overseen by The Central Bank of Nigeria (CBN) and the Securities and Exchange Commission (SEC) with an aim to prevent illicit activities and protect investors. Initially, CBN prohibited banks from dealing with cryptocurrencies in February 2021 but rescinded the decision by issuing guidelines for managing relationships with VASPs in December 2023. In the same year in October 2021, CBN issued a Central Bank Digital Currency christened as e-naira which is a digital version of the naira. The introduction of the e-naira was aimed at fostering financial inclusion and enhancing transaction efficiency.

In May 2022, the Securities and Exchange Commission established rules for digital asset issuance and mandated that VASPs set up offices in Nigeria by June 2024 to offer services like exchanges, wallet provision, and custodial services. The rules were later amended, in December 2024, to enhance the scope by introducing new virtual asset activities and business models like cross-chain transfer services, on/off-chain transmission of orders, placing and distribution of virtual assets, advisory on virtual assets investment, and financial portfolio management.

The regulatory model used in Nigeria for virtual assets and VASPs is the Accelerated Regulatory Incubation Program (ARIP). This framework facilitates the onboarding of VASPs by providing preliminary authorization and guidance on regulatory requirements before full registration. This model helps ensure that VASPs operate within a legal framework that promotes market integrity, investor protection, and compliance with anti-money laundering regulations

## 2.4 Lessons Learnt from the Select Jurisdictions

- i) **Regulatory Framework:** Most countries have continued to utilize their existing frameworks, such as, self-regulation, twin peaks, and integrated and functional models to oversight VASPs. Where a regulatory framework has been provided for regional economic block, such as the EU, Member States have transposed the framework and implemented through the NCAs.
- ii) **Regulatory Scope:** In some jurisdictions, different regulatory agencies regulate different aspects of VASPs, either from a prudential or market conduct perspective.
- iii) **Global Cooperation:** Cryptocurrencies operate on a global scale, making international cooperation essential.

- iv) **Regulatory Sandbox:** The establishment of a regulatory sandbox has allowed for experimentation and innovation within the cryptocurrency space, while also providing a controlled environment for testing new products and service. It is crucial to strike a balance between encouraging technological innovation and ensuring consumer protection.
- v) **Taxation:** Some countries have imposed taxation on VAs and related activities.
- vi) **Consumer Protection:** Majority of the countries have implemented measures to protect consumers, such as requiring the segregation of customer assets and enforcing AML/CFT regulations.
- vii) **International Compliance:** Due to the cross-border nature of the VAs and VASPs, Countries have put in measures to ensure they comply with recommendation 15 of the FATF guidance.
- viii) **Collaboration and Coordination:** The collaboration between different agencies in countries demonstrates the importance of cooperation among regulators and industry stakeholders. This helps in addressing different aspects of cryptocurrency, from securities to AML/CFT measures.

## 2.5 Gaps and Challenges

In view of the foregoing, this policy seeks to address the following gaps and challenges:

- i) Lack of a legal and regulatory regime for VAs and VASPs;
- ii) Inadequate risk management for VAs and VASPs;
- iii) Absence of a fair and efficient market for VAs and VASPs;
- iv) Inadequate frameworks to promote financial innovation;
- v) Low literacy in VAs and VASPs; and
- vi) Inadequate capacity and institutional arrangements for awareness, effective supervision and regulation of VAs and VASPs.

### **3. CHAPTER THREE: POLICY AND STRATEGIC INTERVENTIONS**

This chapter addresses policy issues, interventions and implementation strategies geared towards addressing identified gaps and challenges within the VASPs ecosystem following the situational analysis as expounded in Chapter two. The overarching objective of this policy is to provide coordination framework that will ensure sustainable growth and development, regulation, and better governance of VAs and VASPs.

#### **3.1 A Coordinated Legal and Regulatory Framework**

##### **3.1.1 Policy Issue**

A comprehensive legal and regulatory framework governing VA activities and VASPs is not in place, which poses risks to the country.

##### **3.1.2 Policy Interventions**

- a) Provide a comprehensive legal and regulatory framework governing VA activities and VASPs.
- b) Provide a coordination mechanism for effective implementation of the legal and regulatory framework governing VA activities and VASPs.

##### **3.1.3 Policy Strategy**

The Government will undertake the following:

#### **I. Provide a comprehensive legal and regulatory framework governing VA activities and VASPs.**

- a) Develop a comprehensive and progressive law drawing from international standards, AML/CFT/CPF requirements, and global best practice.
- b) Formulate standards and procedures to establish and govern VA activities and VASPs.
- c) Establish a framework for consumer protection and market conduct for VA activities and VASPs.
- d) Develop a crisis management and resolution framework for VASPs.

#### **II. Provide a coordination mechanism for effective implementation of the legal and regulatory framework governing VA activities and VASPs.**

- a) Develop information sharing and judicial cooperation framework on VAs and VASPs matters at the national and transnational level;

### **3.2 Ensure Sound Risk Management**

#### **3.2.1 Policy Issue**

There is inadequate risk management for VAs and VASPs.

#### **3.2.2 Policy Interventions**

Strengthen risk management for VAs and VASPs.

#### **3.2.3 Policy Strategy**

Establish a framework to guide risk management for VAs and VASPs.

### **3.3 To ensure Fair, Transparent and Efficient Market for VAs and VASPs**

#### **3.3.1 Policy Issue**

Inadequate mechanisms to promote fairness, transparency and market efficiency in the VAs ecosystem.

#### **3.3.2 Policy Interventions**

Promote fairness, transparency and market efficiency in VAs ecosystem.

#### **3.3.3 Policy Strategy**

The government will develop mechanisms to enhance consumer protection, market conduct and operations of the VASPs ecosystem.

### **3.4 Promote Financial Innovation and Literacy on VAs and VASPs**

#### **3.4.1 Policy Issue**

- a) Lack of supportive framework for innovation.
- b) Low literacy levels on VAs and the related activities.

### **3.4.2 Policy Interventions**

- a) Promote and nurture innovations relating to VAs activities.
- b) Promote awareness and capacity building for VAs and related activities.

### **3.4.3 Policy Strategy**

The government will undertake the following:

- a) Develop a framework to promote innovation and research in the VAs ecosystem.
- b) Develop a framework for awareness creation and capacity building for VAs and related activities.

DRAFT



#### **4. CHAPTER FOUR: FRAMEWORK FOR IMPLEMENTING THE POLICY**

Chapter 3 of this policy provides a number of policy interventions and strategies intended to address the gaps and challenges identified in the Virtual Assets ecosystem. The strategies will be implemented in the manner prescribed in the implementation matrix annexed as annexure I of the policy. The implementation of this policy has legal, institutional and financial implications.

##### **4.1 Coordination Framework and Administrative Mechanisms**

The implementation of the National Policy on Virtual Assets and Virtual Asset Service Providers will be spearheaded by the National Treasury and Economic Planning in collaboration with the financial sector regulators and other relevant government agencies.

##### **4.2 Legal and Regulatory Framework**

This policy provides for enactment of VAs and VASPs legislation, drawing from relevant international standards and global best practices.

##### **4.3 Funding Arrangements**

The implementation of this policy will be funded by the National Government. Various MDACs will mainstream the implementation into their annual workplans and budgets.

#### **5. CHAPTER FIVE: MONITORING AND EVALUATION**

The monitoring and evaluation framework will be developed to evaluate the progress made in implementation of this policy. The National Treasury and Economic Planning in collaboration with agencies implementing this policy will prepare annual monitoring and evaluation plans to monitor and evaluate the implementation and prepare reports. The reports will be shared with all the stakeholders.

#### **6. CHAPTER SIX: POLICY REVIEW**

This policy will be reviewed after every ten (10) years or earlier in the event of emerging situations such as need to align the policy to regional and international frameworks.

## ANNEXTURE 1: IMPLEMENTATION MATRIX

Objective	Expected Output	Policy Issue	Policy Intervention	Strategy	Implementing Institution	Budget (KSh. 'million)
1. Guide the development of a legal framework governing VAs and VASPs.	A legal and regulatory framework for VA activities and VASPs.	A comprehensive legal framework governing VA activity and VASPs is not in place which poses risks to the country.	Develop a comprehensive legal and regulatory framework governing VA activities and VASPs.	i) Develop a comprehensive and progressive law aligned with international standards, AML/CFT/CPF requirements, and best practice.	NA, TNT, CBK, CMA, RBA, IRA, SASRA, KDIC, FRC, ODPC, KRA, SDICT, CA, CAK, NIS, NC4, State Law Office, ODPP, UFAA, ARA, DCI, NCTC, Judiciary, NIFCA, EACC, BRS, Commissioner for Cooperative Development.	800
				ii) Formulate standards and procedures to establish and govern VA activities and VASPs.		
				iii) Establish a framework for consumer protection and market conduct for VA activities and VASPs.		

Objective	Expected Output	Policy Issue	Policy Intervention	Strategy	Implementing Institution	Budget (KSh. 'million)
				iv) Establish a capacity building framework for stakeholders on regulation, supervision, and market development on VAs and VASPs.		
			Outline the methodology and coordination mechanisms for effective implementation of the legal and regulatory framework governing VA activities and VASPs.	Establish a framework for national and transnational cooperation and information sharing on VA activities and VASPs.	NA, TNT, CBK, CMA, RBA, IRA, SASRA, KDIC, FRC, ODPC, KRA, SDICT, CA, CAK, NIS, NC4, State Law Office, ODPP, UFAA, ARA, DCI, NCTC, Judiciary, NIFCA, EACC, BRS,	200

Objective	Expected Output	Policy Issue	Policy Intervention	Strategy	Implementing Institution	Budget (KSh. 'million)
					Commissioner for Cooperative Development.	
2. To ensure fair and efficient market for VAs and VASPs.	Fair and efficient VA markets.	Inadequate mechanisms to promote fairness and market efficiency in the VAs ecosystem.	Promote fairness and market efficiency in VAs ecosystem.	Develop mechanisms to guide consumer protection, market conduct and operations.	TNT, CBK, CMA, IRA, RBA, CAK, UFAA, SASRA, ARA, KDIC, PCF, ODPC, NC4, NIS, Commissioner for Cooperative Development.	120
3. Ensure sound risk management for VAS and VASPs.	Sound risk management.	Inadequate risk management for VAs and VASPs.	Strengthen risk management systems for VAs and VASPs.	Establish a framework to guide risk management for VAs and VASPs.	TNT, FRC, NC4, CBK, CMA, IRA, RBA, CAK, UFAA, SASRA, ARA, KDIC, PCF, ODPC, NPS, Commissioner for Cooperative Development.	300

<b>Objective</b>	<b>Expected Output</b>	<b>Policy Issue</b>	<b>Policy Intervention</b>	<b>Strategy</b>	<b>Implementing Institution</b>	<b>Budget (KSh. 'million)</b>
4. Promote financial innovation and literacy through VAs and VASPs.	Sustained growth of the VAs ecosystem.	Lack of supportive framework for innovation.	Promote and nurture innovations relating to VAs activities.	Develop a framework to promote innovation and research in the VAs ecosystem.	TNT, State law office, SDICT, SDCCMA, CBK, RBA, IRA, KRA, FRC, NIS, DCI, SASRA.	200
	Enhanced knowledge of VAs and their associated risks and benefits.	Low literacy levels on VAs and the related activities.	Promote awareness and capacity building for VAs and related activities.	Develop a framework for Awareness and capacity building for VAs and related activities.	TNT, State law office, SDICT, CMA, CBK, RBA, IRA, KRA, FRC, NIS, DCI, Commissioner for Cooperative Development.	200

## REFERENCES

1. Bank for International Settlements and International Organization of Securities Commissions. (2022). Application of the Principles for Financial Market Infrastructures to Stablecoin Arrangements. Retrieved from <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD707.pdf>
2. Basel Committee on Banking Supervision. (2022). Prudential Treatment of Cryptoasset Exposures. Retrieved from <https://www.bis.org/bcbs/publ/d545.pdf>
3. Basel Committee on Banking Supervision. (2023). Consultative Document: Cryptoasset Standard Amendments. Retrieved from <https://www.bis.org/bcbs/publ/d567.pdf>
4. Central Bank of Kenya. (2015). Banking Circular No. 14 of 2015: Virtual Currencies – Bitcoin. Retrieved from [https://www.centralbank.go.ke/uploads/banking\\_circulars/2075994161\\_Banking%20Circular%20No%2014%20of%202015%20-%20Virtual%20Currencies%20-%20Bitcoin.pdf](https://www.centralbank.go.ke/uploads/banking_circulars/2075994161_Banking%20Circular%20No%2014%20of%202015%20-%20Virtual%20Currencies%20-%20Bitcoin.pdf)
5. Central Bank of Kenya. (2018). Public Notice: Fraudulent Financial Services Products and Applications. Retrieved from [https://www.centralbank.go.ke/uploads/press\\_releases/130503108\\_Public%20Notice%20-%20Fraudulent%20Financial%20Services%20Products%20and%20Applications.pdf](https://www.centralbank.go.ke/uploads/press_releases/130503108_Public%20Notice%20-%20Fraudulent%20Financial%20Services%20Products%20and%20Applications.pdf)
6. Central Bank of Kenya. (2020). Public Notice on Fraudulent and Unlicensed Financial Schemes. Retrieved from [https://www.centralbank.go.ke/uploads/press\\_releases/1843446732\\_Joint%20Press%20Release%20-%20Public%20Notice%20on%20Fraudulent%20and%20Unlicensed%20Financial%20Schemes.pdf](https://www.centralbank.go.ke/uploads/press_releases/1843446732_Joint%20Press%20Release%20-%20Public%20Notice%20on%20Fraudulent%20and%20Unlicensed%20Financial%20Schemes.pdf)
7. Central Bank of Kenya. (2022). Communique on the 13<sup>th</sup> Joint Financial Sector Regulators' Board Meeting. Retrieved from [https://www.centralbank.go.ke/uploads/press\\_releases/834999694\\_Communique%20on%20the%2013th%20Joint%20Financial%20Sector%20Regulators%27%20Board%20Meeting.pdf](https://www.centralbank.go.ke/uploads/press_releases/834999694_Communique%20on%20the%2013th%20Joint%20Financial%20Sector%20Regulators%27%20Board%20Meeting.pdf)
8. Central Bank of Kenya. (2023). Discussion Paper on Central Bank Digital Currency: Comments from the Public. Retrieved from <https://www.centralbank.go.ke/wp-content/uploads/2023/06/Discussion-Paper-on-Central-Bank-Digital-Currency-Comments-from-the-Public.pdf>
9. Central Bank of Nigeria. (2023). Guidelines on Operations of Bank Accounts for Virtual Asset Providers (VASPs). Retrieved from <https://www.cbn.gov.ng/Out/2024/FPRD/GUIDELINES%20ON%20OPERATIONS%20OF%20BANK%20ACCOUNTS%20FOR%20VIRTUAL%20Asset%20Providers.pdf>
10. Central Bank of Nigeria. (2024). Exposure Draft of the Risk-Based Cybersecurity Framework and Guidelines for Deposit Money Banks and Payment Service Banks. Retrieved from <https://www.cbn.gov.ng/Out/2024/BSR/EXPOSURE%20DRAFT%20OF%20THE%20RISK>

=

[BASED%20CYBERSECURITY%20FRAMEWORK%20AND%20GUIDELINES%20FOR%20DEPOSIT%20MONEY%20BANKS%20AND%20PAYMENT%20SERVICE%20BAN KS.pdf](#)

11. ESAAMLG. (2022). Mutual Evaluation Report of Republic of Kenya, September 2022. Retrieved from [https://www.esaamlg.org/index.php/Mutual\\_Evaluations/readmore\\_me/451](https://www.esaamlg.org/index.php/Mutual_Evaluations/readmore_me/451)
12. Financial Accounting Standards Board. (2023). Accounting for and Disclosure of Crypto Assets. Retrieved from <https://www.fasb.org/page/PageContent?pageId=/projects/recentlycompleted/accounting-for-and-disclosure-of-crypto-assets.html>
13. Financial Action Task Force. (2018, October). Outcomes FATF Plenary, October 2018. Retrieved from <https://www.fatf-gafi.org/en/publications/Fatfgeneral/Outcomes-plenary-october-2018.html>
14. Financial Action Task Force. (2021). Updated Guidance for a Risk-Based Approach on Virtual Assets and Virtual Asset Service Providers. Retrieved from <https://www.fatf-gafi.org/content/dam/fatf-gafi/guidance/Updated-Guidance-VA-VASP.pdf.coredownload.inline.pdf>
15. Financial Action Task Force. (2023). Targeted Update on Virtual Assets and VASPs. Retrieved from <https://www.fatf-gafi.org/en/publications/Fatfrecommendations/targeted-update-virtual-assets-vasps-2023.html>
16. Financial Action Task Force. (2024). Status of implementation of Recommendation 15 by FATF Members and Jurisdictions with Materially Important VASP Activity Retrieved from <https://www.fatf-gafi.org/content/dam/fatf-gafi/publications/VACG-Table-Jurisdictions-2024.pdf.coredownload.pdf>
17. Financial Conduct Authority. (2019). Guidance on Cryptoassets. Retrieved from <https://www.fca.org.uk/publication/policy/ps19-22.pdf>
18. Financial Conduct Authority. (2023). Financial Promotion Rules for Cryptoassets. Retrieved from <https://www.fca.org.uk/publications/policy-statements/ps23-6-financial-promotion-rules-cryptoassets>
19. Financial Intelligence Centre. (2022). Minister Amends the Schedules to the Financial Intelligence Centre Act. Retrieved from <https://www.fic.gov.za/wp-content/uploads/2023/09/2022.11-MR-Schedule-amendments.pdf>
20. Financial Reporting Centre. (2023). Virtual Assets and Virtual Asset Service Providers Money Laundering and Terrorism Financing National Risk Assessment Report. Retrieved from [https://www.frc.go.ke/wp-content/uploads/2024/02/VAs-and-VASPs-ML\\_TF-Risk-Assessment-Report-1.pdf](https://www.frc.go.ke/wp-content/uploads/2024/02/VAs-and-VASPs-ML_TF-Risk-Assessment-Report-1.pdf)
21. Financial Sector Conduct Authority. (2022). Declaration of Crypto Assets as a Financial Product. Retrieved from [https://www.fsca.co.za/News%20Documents/FSCA%20Press%20Release\\_Declaration%20of%20Crypto%20Assets%20As%20A%20Financial%20Product\\_20%20October%202022.pdf](https://www.fsca.co.za/News%20Documents/FSCA%20Press%20Release_Declaration%20of%20Crypto%20Assets%20As%20A%20Financial%20Product_20%20October%202022.pdf)

22. Financial Services Commission Mauritius. (2022). FSC Rules issued under the Virtual Asset and Initial Token Offerings Services Act 2021. Retrieved from <https://www.fscmauritius.org/media/131206/fsc-communique%C3%A9-new-rules-issued-under-the-vaitos-act.pdf>
23. Financial Services Commission Mauritius. (2022). Guide on VAITOS Act. Retrieved from <https://www.fscmauritius.org/media/130455/fsc-guide-on-vaitos-act.pdf>
24. Financial Stability Board. (2020). Regulation, Supervision and Oversight of “Global Stablecoin” Arrangements. Retrieved from <https://www.fsb.org/wp-content/uploads/P131020-3.pdf>
25. Financial Stability Board. (2022). FSB Statement on International Regulation and Supervision of Crypto-asset Activities. Retrieved from <https://www.fsb.org/wp-content/uploads/P110722.pdf>
26. Financial Stability Board. (2023). Global Regulatory Framework for Crypto-Asset Activities. Retrieved from <https://www.fsb.org/2023/07/fsb-global-regulatory-framework-for-crypto-asset-activities/>
27. Financial Stability Board. (2023). IMF-FSB Synthesis Paper: Policies for Crypto-Assets. Retrieved from [www.fsb.org/wp-content/uploads/R070923-1.pdf](http://www.fsb.org/wp-content/uploads/R070923-1.pdf)
28. Intergovernmental Fintech Working Group, South Africa. (2021). Position Paper on Crypto Assets. Retrieved from [https://www.treasury.gov.za/comm\\_media/press/2021/IFWG\\_CAR%20WG\\_Position%20paper%20on%20crypto%20assets\\_Final.pdf](https://www.treasury.gov.za/comm_media/press/2021/IFWG_CAR%20WG_Position%20paper%20on%20crypto%20assets_Final.pdf)
29. Internal Revenue Service. (2024). Taxpayers Need to Report Crypto, Other Digital Asset Transactions on Their Tax Return. Retrieved from <https://www.irs.gov/newsroom/taxpayers-need-to-report-crypto-other-digital-asset-transactions-on-their-tax-return>
30. International Banker. (2023). What the Collapses of Signature Bank and Silvergate Capital Mean for Crypto. Retrieved from <https://internationalbanker.com/technology/what-the-collapses-of-signature-bank-and-silvergate-capital-mean-for-crypto/>
31. International Monetary Fund. (2022). Regulating the Crypto Ecosystem: The Case of Unbacked Crypto Assets. Retrieved from <https://www.imf.org/en/Publications/fintech-notes/Issues/2022/09/26/Regulating-the-Crypto-Ecosystem-The-Case-of-Unbacked-Crypto-Assets-523715>
32. International Monetary Fund. (2023). Elements of Effective Policies for Crypto Assets. Retrieved from <https://www.imf.org/en/Publications/Policy-Papers/Issues/2023/02/23/Elements-of-Effective-Policies-for-Crypto-Assets-530092>
33. International Monetary Fund. (2023). G20 Note on the Macroeconomic Implications of Crypto Assets. Retrieved from <https://www.imf.org/-/media/Files/Research/imf-and-g20/2023/g20-report-macroeconomic-implications-crypto-assets-february23>
34. International Organization of Securities Commissions. (2023). Policy Recommendations for Crypto and Digital Asset Markets. Retrieved from <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD747.pdf>



35. Kenya Revenue Authority. (2023). The Finance Act, 2023, No. 4 of 2023. Date of Assent: June 26, 2023. Retrieved from <https://kra.go.ke/images/publications/The-Finance-Act--2023.pdf>
36. Monetary Authority of Singapore. (2019). Payment Services Act 2019. Retrieved from <https://www.mas.gov.sg/regulation/acts/payment-services-act>
37. Monetary Authority of Singapore. (2022). Financial Services and Markets Act 2022. Retrieved from <https://www.mas.gov.sg/regulation/acts/financial-services-and-markets-act-2022>
38. Monetary Authority of Singapore. (2023). MAS Publishes Investor Protection Measures for Digital Payment Token Services. Retrieved from <https://www.mas.gov.sg/news/media-releases/2023/mas-publishes-investor-protection-measures-for-digital-payment-token-services>
39. Monetary Authority of Singapore. (2024). Regulations and Guidance. Retrieved from [https://www.mas.gov.sg/regulation/payments/regulations-and-guidance#\\_regulations-and-guidance](https://www.mas.gov.sg/regulation/payments/regulations-and-guidance#_regulations-and-guidance)
40. Nakamoto, S. (2008). Bitcoin: A Peer-to-Peer Electronic Cash System. Retrieved from <https://bitcoin.org/bitcoin.pdf>
41. Office of the Comptroller of the Currency. (2023). Crypto-Assets: Joint Statement on Crypto-Asset Risks to Banking Organizations. Retrieved from <https://www.occ.treas.gov/news-issuances/bulletins/2023/bulletin-2023-1.html#ftn1>
42. Securities and Exchange Commission. (2022). New Rules on Issuance, Offering Platforms and Custody of Digital Assets. Retrieved from <https://sec.gov.ng/wp-content/uploads/2022/05/Rules-on-Issuance-Offering-and-Custody-of-Digital-Assets.pdf>
43. Securities and Exchange Commission. (2024). Proposed Major Amendment to the Commission's Rules on Issuance, Offering Platforms, and Custody of Digital Assets. Retrieved from [https://sec.gov.ng/wp-content/uploads/2024/03/PROPOSED-MAJOR-AMENDMENT-TO-THE-COMMISSIONS-RULES-ON-ISSUANCE-OFFERING-PLATFORMS-AND-CUSTODY-OF-DIGITAL-ASSETS\\_14324.pdf](https://sec.gov.ng/wp-content/uploads/2024/03/PROPOSED-MAJOR-AMENDMENT-TO-THE-COMMISSIONS-RULES-ON-ISSUANCE-OFFERING-PLATFORMS-AND-CUSTODY-OF-DIGITAL-ASSETS_14324.pdf)
44. Securities Commission of The Bahamas. (2024). The Bahamas Introduces Transformative Digital Asset Legislation: The DARE Act 2024. Retrieved from <https://www.scb.gov.bs/wp-content/uploads/2024/07/Media-Release-The-Bahamas-Introduces-Transformative-Digital-Asset-Legislation-The-DARE-Act-2024.pdf>
45. South African Reserve Bank. (2022). Supervisory Guidelines for Matters Related to the Prevention of Banks or Controlling Companies being used for any Money Laundering, Terrorist Financing or Other Unlawful Activity. Retrieved from <https://www.resbank.co.za/content/dam/sarb/publications/prudential-authority/pa-deposit-takers/banks-guidance-notes/2022/G10-2022%20-%20Supervisory%20guidelines%20for%20matters%20related%20to%20the%20prevention%20of%20unlawful%20activities.pdf>

46. The White House. (2022, March 9). Executive Order on Ensuring Responsible Development of Digital Assets. Retrieved from <https://www.whitehouse.gov/briefing-room/presidential-actions/2022/03/09/executive-order-on-ensuring-responsible-development-of-digital-assets/>
47. The White House. (2022, September 16). Fact Sheet: White House Releases First-Ever Comprehensive Framework for Responsible Development of Digital Assets. Retrieved from <https://www.whitehouse.gov/briefing-room/statements-releases/2022/09/16/fact-sheet-white-house-releases-first-ever-comprehensive-framework-for-responsible-development-of-digital-assets/>
48. U.S. Congress. (2022). H.R.4741 - Digital Asset Market Structure and Investor Protection Act. Retrieved from <https://www.congress.gov/bill/117th-congress/house-bill/4741>
49. U.S. Congress. (2023). H.R.4763 - Financial Innovation and Technology for the 21st Century Act. Retrieved from <https://www.congress.gov/bill/118th-congress/house-bill/4763>
50. U.S. Congress. (2023). H.R.4766 - Clarity for Payment Stablecoins Act of 2023. Retrieved from <https://www.congress.gov/bill/118th-congress/house-bill/4766>
51. U.S. House Committee on Financial Services. (2024). House to Consider Financial Innovation and Technology for the 21st Century Act. Retrieved from <https://financialservices.house.gov/news/documentsingle.aspx?DocumentID=409251>
52. World Bank. (2021). National Money Laundering, Terrorist Financing Risk Assessment Toolkit: Virtual Assets and Virtual Asset Service Providers Risk Assessment Tool. Retrieved from <http://documents.worldbank.org/curated/en/099710107122245889/P172355056d3cd0e0a5d20c71be3b37e2c>