

**INTERNATIONAL REGULATION OF CRYPTO-ASSET ACTIVITIES |  
SUBMISSION OF COMMENTS TO THE FINANCIAL STABILITY  
BOARD**

<b>To:</b> Financial Stability Board	<b>From:</b> Vidhi Centre for Legal Policy, India
<b>Subject:</b> Response to Public Consultation on International Regulation of Crypto-asset Activities	<b>Date:</b> 14 December 2022

**Background**

On 11 October 2022, the Financial Stability Board (FSB) published a document with specific questions for public consultation (Consultation Document)<sup>1</sup> on the Regulation, Supervision and Oversight of Crypto-Asset Activities and Markets (CA Recommendations)<sup>2</sup> and Review of the FSB High-level Recommendations of the Regulation, Supervision and Oversight of Global Stablecoin Arrangements (GSC Recommendations).<sup>3</sup>

This document sets out submissions of the Vidhi Centre for Legal Policy (Vidhi) to the aforesaid FSB public consultation. In addition to the responses to the specific questions in the Consultation Document, this document also sets out the broad issues for consideration of FSB while designing regulatory standards for crypto-assets and global stablecoins (GSCs).

**About Vidhi**

Vidhi is a not-for-profit independent think-tank based out of New Delhi, India doing legal research to make better laws and improve governance for the public good. Vidhi un-

<sup>1</sup>FSB, 'International Regulation of Crypto-asset Activities: A Proposed Framework- Questions for Consultation' (October 2022) < <https://www.fsb.org/wp-content/uploads/P111022-2.pdf> > accessed 13 December 2022.

<sup>2</sup>FSB, 'Regulation, Supervision and Oversight of Crypto-Asset Activities and Markets: Consultative Document' (October 2022) < <https://www.fsb.org/wp-content/uploads/P111022-3.pdf> > accessed 13 December 2022.

<sup>3</sup>FSB, 'Review of the FSB High-level Recommendations of the Regulation, Supervision and Oversight of "Global Stablecoin" Arrangements: Consultative Report' (October 2022) < <https://www.fsb.org/wp-content/uploads/P111022-4.pdf> > accessed 13 December 2022.

undertakes original research on important law and policy issues to positively impact governance. Vidhi also engages with different Ministries, regulators of the Government of India, and public institutions in India to effectively convert policy into law.

## General Submissions

Based on a review of the CA Recommendations and the GSC Recommendations, we have identified the following broad issues which are either not covered or not adequately addressed in these recommendations and require further consideration.

### 1. When should jurisdictions consider a bespoke/standalone regulatory framework for crypto-asset regulation?

The CA Recommendations and GSC Recommendations recommend that national authorities should have “comprehensive regulatory, supervisory and oversight requirements” for regulating crypto-assets and GSCs. While certain features may be common for all types of crypto-assets, given the varying use cases (payment tokens, security tokens, utility tokens), economic incentives and the players involved, it is often challenging for authorities in many jurisdictions to pigeonhole all crypto-assets under a single asset class or as a singular type of financial instrument. This is particularly true for jurisdictions with a twin-peak model of governance or where there are multiple financial sector regulators regulating different types of financial instruments (such as securities, payment instruments, credit products, insurance). This is subject to the exception of jurisdictions which empowers a specific regulator to regulate “financial instruments” that is given a broad interpretation, enabling such regulators to bring most crypto-assets under its regulatory ambit. The CA Recommendations report which sets out the findings of a 2022 FSB stock-take survey (FSB Survey) on the regulatory and supervisory approaches across various jurisdictions also indicates the divergence in regulatory approaches adopted by jurisdictions depending on its regulatory architecture.<sup>4</sup> In a 2021 research report released by Vidhi on crypto-assets (Vidhi Report),<sup>5</sup> it undertook a review of the regulatory responses to crypto-assets across 15 jurisdictions<sup>6</sup>. Based on this review, Vidhi’s Report categorises regulatory responses of such jurisdictions under three broad categories: (a) reliance on existing laws by regulators to clarify how such laws apply to crypto-assets (such as securities law (the United States of America and Australia)); (b) amending existing laws to regulate crypto-assets (such as

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<sup>4</sup> CA Recommendations, Para 2.2.1.

<sup>5</sup> Shehnaz Ahmed, Swarna Sengupta, ‘Blueprint of a Law Regulating Cryptoassets’ (January 2021) <[https://vidhilegalpolicy.in/wp-content/uploads/2022/01/220127\\_Blueprint-of-a-Law-for-Regulating-Cryptoassets-1.pdf](https://vidhilegalpolicy.in/wp-content/uploads/2022/01/220127_Blueprint-of-a-Law-for-Regulating-Cryptoassets-1.pdf)> accessed 13 December 2022.

<sup>6</sup> United Kingdom, United States of America, European Union, Brazil, South Korea, Canada, Malta, Singapore, South Africa, Israel, Thailand, Hong Kong, Abu Dhabi, Russia, and Australia.

amendment of anti-money laundering (AML) laws (South Korea)); and (c) designing a bespoke regulatory framework for regulating crypto-assets (Malta (Malta Virtual Financial Assets Act, 2018), Thailand (Emergency Decree on Digital Asset Businesses, 2018) and the European Union (Market in Crypto-Assets Regulation)). Given the evolving nature of crypto-assets and the differentiated financial regulatory architecture in different jurisdictions, it may not be possible for all jurisdictions to adopt a common regulatory approach or accommodate them under existing laws. Reliance on existing laws to regulate crypto-assets in certain cases will lead to under-regulation of the sector. Therefore, it may be useful for FSB to set out guidance on how authorities can design their regulatory approaches and instances where there maybe merit for authorities to adopt a bespoke and comprehensive regulatory framework for regulating crypto-assets. While FSB has highlighted the need for cross-sectoral regulatory coordination mechanisms in jurisdictions where different regulators may be responsible for regulating different aspects of crypto-asset activities, it is also necessary to highlight the need for jurisdictions to consider enacting a bespoke regulatory framework if existing laws are not well-equipped to respond to developments in the crypto-economy.

## 2. Need for standardisation in the definition of important terms

The GSC Recommendations seek to provide some guidance on the definition of GSCs. The CA Recommendations also try to provide a possible classification of activities undertaken by crypto-asset service providers and issuers which may be brought within the regulatory ambit. However, the CA Recommendations do not provide much guidance on how jurisdictions may approach defining “crypto-assets” to which the FSB standards will apply. Regulatory clarity on the definition of crypto-assets is important since it will impact its regulatory treatment. The Financial Action Task Force (FATF) that has released AML standards for virtual assets and virtual asset providers have defined these terms. It may be useful for FSB to provide some guidance on how jurisdictions should approach defining “crypto-assets” for the purposes of adopting the FSB standards. For instance, based on an analysis of the definition of crypto-assets across several jurisdictions and standard-setting bodies, the Vidhi Report identifies common features of such crypto-asset definitions: (a) digital representation of value or rights; (b) it is issued by a private entity and is not guaranteed by a central bank; (c) it can be transferred, stored and traded electronically; and (d) it utilises cryptography, distributed ledger technologies or similar technologies. The CA Recommendations may also highlight common features which may be considered by jurisdictions for defining crypto-assets. Similar guidance should also be provided for the definition of stablecoins.

### 3. Standards on Investor / Consumer Protection, Market Integrity, and Data Governance

The CA Recommendations and the GSC Recommendations clarify that it does not comprehensively address issues relating to investor/consumer protection, market integrity and data governance. We understand that these issues have been kept out of the ambit of these recommendations in line with FSB's mandate. To a certain extent, some of these issues have been addressed in recommendations relating to risk management, disclosures and data storage and access in both the CA Recommendations and GSC Recommendations. These issues are critical for an evolving market like crypto-assets which have witnessed several instances of data breaches, market integrity issues, and failure to protect consumer interests. Guidance on these issues is important to ensure protection of consumer trust in these markets, which may impact the soundness of these markets. Therefore, it may be useful to have specific recommendations on consumer/investor protection standards that may be considered by jurisdictions. Alternatively, it may also be useful to refer to specific standards being designed by other standard-setting bodies which may be considered by authorities (as has been done by referring to FATF standards for AML compliance). This will require guidance on the protection of consumer funds, a framework for grievance redressal, mandatory audit of systems and accounts of issuers and service providers, a framework for attribution of liabilities in case of unauthorised transactions, and prohibition on misuse of insider information and adoption of manipulative and unfair market practices.

### 4. Power of Authorities to Regulate use-cases of Crypto-assets

In many jurisdictions, authorities remain concerned about the specific use cases of crypto-assets. Considering that crypto-assets may be used for various economic functions that keep on evolving, it is important for authorities to assess such evolving use cases to identify risks to users and the financial system. While the CA Recommendations and GSC Recommendations require authorities to have adequate powers to regulate crypto-assets, it does not specifically refer to the power of authorities to either regulate or prohibit certain use cases and types of crypto-assets. For instance, in the United Kingdom (UK), the Financial Conduct Authority (FCA)<sup>7</sup> has banned the sale, marketing and distribution to all retail consumers of any derivatives and exchange-traded notes that reference unregulated transferable

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<sup>7</sup> FCA, 'FCA Bans the Sale of Crypto-Derivatives to Retail Consumers' (October 2020) <<https://www.fca.org.uk/news/press-releases/fca-bans-sale-crypto-derivatives-retail-consumers>> accessed 13 December 2022.

crypto-assets by firms acting in, or from, the UK. This will include crypto-assets that are not “specified investments” regulated under existing laws or e-money that is specifically regulated by FCA. This includes well-known tokens like Bitcoin, and Ether. The FCA notes that such products are not suitable for retail consumers for various reasons, including no reliable basis for valuation for the underlying assets, the prevalence of market abuse and financial crime in the secondary market; extreme volatility in crypto-asset price movements; inadequate understanding by retail consumers; and lack of legitimate investment need for retail consumers to invest in these products. It may be useful to recognise the need for such a power by authorities to effectively regulate the evolving crypto-asset market keeping in mind financial stability and investor interest concerns.

## 5. Power of Authorities to Prohibit Trading of certain Crypto-assets

While crypto-assets may be issued with adequate safeguards, the possibility of bad actors designing crypto-assets for illegal purposes with design features that make it impossible for authorities and enforcement agencies to regulate or track such crypto-asset transactions, its issuers and users cannot be ruled out. Similarly, jurisdictions may want to remain cautious of crypto-assets or transactions emanating from high-risk jurisdictions that are on the FATF watchlist. To respond to such situations, it may be useful for authorities to have powers to prohibit service providers (such as exchanges and custodial services) in dealing in such crypto-assets as may be notified by authorities. The FSB may consider specifically including the reference to such a power in its recommendations.

## 6. Physical Presence Requirement

The CA Recommendations and the GSC Recommendations recommend that authorities should have and use appropriate powers and tools, along with adequate resources to “regulate, supervise and oversee” crypto-assets and GSC activities and entities. However, the cross-border reach of crypto-assets and GSCs and their ability to remain pseudo-anonymous, severely hinders the ability of authorities to exercise effective oversight or enforcement over crypto-assets and GSC activities and their service providers and issuers. The inability of authorities to enforce actions across borders puts investors and consumers at risk when the issuer or service provider is in some other jurisdiction. Therefore, it may be useful to consider providing for physical presence requirements for crypto-asset and GSC service providers and issuers to ensure that authorities are able to effectively exercise jurisdictions over such entities, including carrying out enforcement actions in case of

non-compliance with national laws. For instance, there could be regulatory stipulations which require that authorisation or license to operate will only be given to an entity who is registered in such jurisdiction. Alternatively, this could also be in the form of a local or branch office requirement of such issuer or service provider in the jurisdiction where it seeks to issue or offer its services. For instance, the European Union’s Markets in Crypto-Assets (EU MiCA), require issuers of asset-referenced tokens to be legal entities established in the Union in order to obtain authorisation for the issuance of tokens.<sup>8</sup> Similarly, in Malta Virtual Financial Assets Act, 2018 (MVFA Act), an applicant can obtain a license to provide services related to virtual financial assets if such applicant is a resident of Malta (in case of an individual) or is incorporated under the laws of Malta and comply with prescribed local presence requirements (in case of a legal person).<sup>9</sup> Establishing a physical presence requirement will not only enable authorities and users to pursue legal recourse against such service providers and issuers, but it will also enable the authorities to get knowledge of the operations of different entities conducting different activities related to crypto-assets and GSCs in their jurisdictions. This knowledge will be beneficial in facilitating effective monitoring over and assessment of risks and vulnerabilities of such entities. This knowledge will also be beneficial for providing information to other jurisdictions and within authorities to ensure effective enforcement and oversight across borders.

## 7. Enforcement Powers of Authorities

The CA Recommendations and the GSC Recommendations recommend that “authorities should have the powers and capabilities to enforce applicable regulatory, supervisory and oversight requirements” which also includes taking corrective enforcement measures. However, it may be useful to specifically lay down certain minimum enforcement powers that all national authorities should exercise to ensure effective oversight over crypto-assets and GSC activities and entities. It is necessary to have such minimum enforcement standards across jurisdictions to ensure that there is no regulatory arbitrage which may arise from different jurisdictions exercising different enforcement powers. The proposed FSB recommendations in this regard can include specifying that all authorities should have the power to call for information, issue cease and desist orders upon crypto-assets or GSC service providers and issuers, power to carry out inquiry, investigation, and inspection into the affairs of such service-providers and issuers. Additionally, it can also include powers of search and seizure of property, imposing fines or penalties

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<sup>8</sup> EU MiCA, Article 15.

<sup>9</sup> MVFA Act, Article 15(2).



and cancelling or revoking the registration/authorisation of the service provider and issuers in a particular jurisdiction. A review of EU MiCA, MVFA Act, and Thailand's Emergency Decree on Digital Asset Businesses, 2018 (Thailand Decree) also highlight similar enforcement powers being granted to authorities therein. The FSB recommendations can also recommend exploration of regulatory or supervisory technologies by authorities as possible enforcement mechanisms within their domestic laws, given the highly technical nature of the underlying technology of crypto-assets and GSCs. As previously discussed in General Submission 6, the imposition of a requirement to have a local physical presence of the service providers or issuer in a jurisdiction will also enable effective enforcement to be carried out under domestic laws. Moreover, in designing the enforcement mechanism for crypto-assets and GSCs, it may be useful to have provisions for cross-border cooperation on such enforcement actions keeping in mind the transnational and pseudo-anonymous nature of crypto-assets and GSCs. For a more detailed discussion on cross-border enforcement measures please see the discussion below under General Submission 8.

## 8. Cross-border Cooperation

Both the CA Recommendations and GSC Recommendations specifically recommend that authorities should cooperate and coordinate with each other both internationally and domestically to facilitate effective communication and information exchange regarding crypto-assets and GSCs. Given the cross-border nature of crypto-assets and GSCs and the varied regulatory regimes across jurisdictions, this recommendation is sentinel in ensuring that there is effective oversight, and the risk of regulatory arbitrage is low. It may be useful to have specific guidance on the various possible areas of cross-border cooperation. First, as also recognised by the FSB in both CA Recommendations and GSC Recommendations, information exchange would be the primary area where cross-border cooperation agreements can be effectuated. For instance, in MiCA there are specific provisions enabling the European Banking Authority and competent authorities of different Member States to enter into administrative agreements or cooperation arrangements for exchanging information with other foreign authorities.<sup>10</sup> Such enabling power in national laws to enter into information sharing arrangements with authorities from other jurisdictions is necessary. Second, cooperation can also be specified for developing common standards relating to cross-border data transfer and data storage, technical standards, permissible use cases and assets, and defi-

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<sup>10</sup> EU MiCA, Articles 108 and 90.

nitional standards. Authorities can also collaborate to develop a common reporting database for crypto-assets and GSCs to ensure that information is readily available regarding all service providers and issuers as available to each of such authorities.

Significantly, another important area of cross-border cooperation will be in relation to pursuing and cooperating on enforcement actions. Crypto-assets and GSC issuers and service providers can be based anywhere across the world and offer services to users in various jurisdictions. As technologies evolve, miscreants may also attempt to anonymise transactions and the identity of parties to avoid being caught. The cross-border reach of crypto-assets severely impedes the effective application of domestic laws and administration of enforcement orders given by national authorities. While some national authorities can take their enforcement actions across borders not every authority has such a mandate or the resources.<sup>11</sup> The lack of apposite enforcement actions can leave users without any recourse and exposed to wide scale losses. Therefore, it may be useful to have specific guidance on cross-border enforcement mechanisms. FSB recommendations in this regard can include recommending authorities to assess their domestic laws to ensure that their mandate permits undertaking measures to enable co-operation with other foreign enforcement authorities and provides for recognition of foreign awards and judgments. This could entail ensuring that existing domestic civil laws has a provision for such recognition or enacting a new provision in their respective laws/regulations for crypto-assets/stablecoins to include a similar provision. Recognition will also include equipping the national authority of a jurisdiction with the power to enforce the directions provided in a foreign judgment or order which could include seizing of property of such service provider or issuers or imposing fines or enforcing a moratorium on the assets. Further, cooperating on enforcement actions could also include entering into memorandums of understanding with other authorities to outline how cross-border enforcement actions will be carried out. These cooperation arrangements can also provide for obligations to share evidence with or participate in judicial proceedings concerning such service-providers or issuers that are being carried out in such partners jurisdictions. For instance, the Thailand Decree provides for sharing of evidence between authorities.<sup>12</sup>

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<sup>11</sup> Parma Bains and other, 'Regulating the Crypto Ecosystem: The Case of Unbacked Crypto Assets' (2022) International Monetary Fund Fintech Notes < <https://www.imf.org/-/media/Files/Publications/FTN063/2022/English/FTNEA2022007.ash> > accessed 13 December 2022.

<sup>12</sup> Thailand Decree, S.52.



Additionally, both the GSC Recommendations and the CA Recommendations specify cooperation agreements as one of the dominant instruments to enter into international cooperation arrangements. However, it may be useful to also recommend other structures of cooperation that authorities may consider to facilitate capacity building. This can include recommending conducting workshops and knowledge sharing sessions regarding regulatory and enforcement mechanisms that authorities are testing as well as sharing technical know-how. Short-term consultations with different authorities on areas of their expertise can also be another way to achieve effective collaboration. FSB may also recommend setting up of information exchange sharing networks of authorities especially consisting of intelligence units or enforcement authorities where they can share information on a continuous basis subject to legal requirements of secrecy and confidentiality. For instance, the Egmont Group is a network of Financial Intelligence Units that facilitates the exchange of information and expertise to combat money laundering and terrorist financing.<sup>13</sup>

## 9. Identifying the Parameters for a Risk-based Framework for Regulation

The CA Recommendations and GSC Recommendations emphasise a risk-based approach towards regulation. The FSB highlights the need for regulations to be proportionate to the risk, size, complexity, and systemic importance posed by the concerned entity. In this regard, it may be useful for the CA Recommendations and GSC Recommendations to suggest the designation of certain issuers and service providers as significantly important issuers/service providers based on identified parameters. This will be useful to identify issuers and service providers which may be subject to heightened regulations by authorities. The parameters for designation that may be considered are – volume and value of transactions processed; market share of such entity; the number of users / investors; and degree of interconnectedness with other participants of the financial system.

### **Submission to Specific Questions in the Consultation Document**

Please note that we have responded to select questions mentioned in the Consultation Document where we have some comments/observations. The remaining questions have not been answered as the same is outside the area of our expertise and accordingly we have no comments on the same.

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<sup>13</sup> Egmont Group <<https://egmontgroup.org/>> accessed 13 December 2022.

## General

1. Are the FSB's proposals sufficiently comprehensive and do they cover all crypto-asset activities that pose or potentially pose risks to financial stability?

*Vidhi Response:* Based on a review of the CA Recommendations, it appears that the FSB has comprehensively identified existing crypto-asset related activities which may be the basis for jurisdictions to define issuers and crypto-asset service providers. However, it may be useful for jurisdictions to have a general provision allowing authorities to notify such other services / activities that may be brought within the regulatory ambit. This is necessary to account for an ever-evolving market where new activities which may pose risks may emanate.

2. Do you agree that the requirements set out in the CA Recommendations should apply to any type of crypto-asset activities, including stablecoins, whereas certain activities, in particular those undertaken by GSC, need to be subject to additional requirements?

*Vidhi Response:* Regulatory treatment of crypto-assets and stablecoins (not GSCs) cannot be at par because there are certain issues that are specific to stablecoins. While we agree with the FSB's approach of designing a separate framework for GSCs, we also believe that the suggested framework for crypto-asset should include specific regulations for stablecoins. For instance, CA Recommendations should provide specific guidance on how stablecoins may be regulated by national authorities. This will include addressing issues relating to the following:

- Eligibility conditions of issuers - whether it should be open to existing regulated entities (such as banks and financial institutions) or should it be open to other non-regulated entities?
- Regulating the exposure of financial institutions to such stablecoins.
- Regulating the stabilisation mechanism - these will include guidance on the rights of parties to redeem, the obligation to redeem, the period of redemption and the determination of the redemption value.
- Power of the regulator to monitor the redemption process.
- Power of the regulator to monitor the activities of the stablecoin issuer to examine if such stablecoins have evolved into a GSC arrangement.

3. Is the distinction between GSC and other types of crypto-assets sufficiently clear or should the FSB adopt a more granular categorisation of crypto-assets (if so, please explain)?

*Vidhi Response: We have no further comments on the distinction between GSC and other types of crypto-assets. Given the evolving nature of crypto-assets and their economic functions, it is often challenging to design an exhaustive categorisation/taxonomy of crypto-assets. However, in jurisdictions with multiple financial regulators for different sectors (such as banking, payments, securities, insurance and pension), such categorisation may be useful for regulators to determine the body of law and the supervisory powers that should apply to such crypto-asset. Accordingly, it may have been useful to discuss the different types of crypto-assets which can inform the regulatory approaches of authorities. For instance, based on a review of existing literature, the Vidhi Report notes that the following parameters are often used in categorising crypto-assets - nature of issuer, native and non-native tokens, functional use cases (payment tokens, security tokens and utility tokens), rights of the holder, relationship with fiat currency, and stabilisation mechanism. The Vidhi Report further notes that globally most regulators have preferred to adopt a categorisation based on the underlying financial service functionality of the crypto-asset - i.e. classification as payment tokens, security tokens and utility tokens. However, we remain conscious that strict categorisation is also challenging because in certain cases some tokens may exhibit features of more than one token discussed above and are often referred to as hybrid tokens.<sup>14</sup> Accordingly, any categorisation has to be fluid to account for the evolving nature of crypto-assets. Having said that, an indication or discussion of the different types of crypto-assets that have been relied on by regulators to assess which crypto-asset may require what type of regulatory intervention will be useful for authorities. Different regulatory approaches are possible based on a study of such categorisation. For instance, such a discussion will be useful to determine if certain crypto-assets resembling existing financial instruments may be brought within existing laws, determine the appropriate regulator responsible for regulating the crypto-assets in a particular jurisdiction (especially when there are multiple regulators), and decide if certain crypto-assets do not qualify as financial instruments as defined under existing laws and accordingly a separate framework needs to be designed.*

<sup>14</sup> Prof. Dr. Houben, R., Snyers, A., 'Crypto-assets – Key developments, Regulatory Concerns and Responses' (Study for the Committee on Economic and Monetary Affairs, Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, 2020) <[https://www.europarl.europa.eu/RegData/etudes/STUD/2020/648779/IPOL\\_STU\(2020\)648779\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2020/648779/IPOL_STU(2020)648779_EN.pdf)> accessed 13 December 2022.

*Please note that this comment should not be interpreted as the need for the FSB recommendations to design different types of regulatory interventions for different crypto-assets, but rather to inform the regulatory approach that may be adopted by various jurisdictions.*

4. Do the CA Recommendations and the GSC Recommendations each address the relevant regulatory gaps and challenges that warrant multinational responses?

*Vidhi Response: Both the CA Recommendations and GSC Recommendations are quite extensive in their ambit and breadth and provide comprehensive guidance on key regulatory issues that arise from crypto-assets and GSC arrangements. However, following are few challenges that require further consideration in each of the recommendations:*

**CA Recommendations**

- ***Identification of Issuer:** The CA Recommendations and GSC Recommendations seek to govern issuers under their ambit. For traditional financial markets based on centralised points of regulation, it is straightforward to identify the issuer of a financial instrument. Even in cases of various crypto-assets and stablecoins, the issuer can be ascertained. However, there could be certain crypto-assets, whether in circulation (for instance Bitcoin) or not, where it is difficult to identify a particular issuer. The CA Recommendations provide that in instances where crypto-assets activities are conducted in a way which impedes the identification of the accountable entity, the activities conducted should not undermine the accountability arrangements.<sup>15</sup> However, it may be useful to issue specific guidance on how legal claims and accountability measures will be assessed in cases where identification is not possible. These could include stipulations such as specifying that only those new crypto-assets will be recognised wherein there is an identifiable issuer or recommending that the regulatory frameworks for crypto-assets in each jurisdiction should specify against whom a legal claim will lie in case the issuer is not identifiable or that crypto-assets will only be issued through recognised or authorised exchanges who will require issuers to disclose their identity failing which such exchanges will be held liable. The GSC Recommendations also stipulate that GSC issuance needs to be necessarily governed and operated by an identifiable entity.<sup>16</sup>*

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<sup>15</sup> CA Recommendations, Recommendation 4.

<sup>16</sup> GSC Recommendations, FSB High-Level Recommendation 4.

- Liquidity and Capital Requirements:** *The GSC Recommendations specifically stipulate that GSC providers will be subject to prudential obligations of liquidity and capital requirements. However, the CA Recommendations do not specifically provide for such an obligation on crypto-assets service providers and instead states that authorities should consider applying prudential tools and must ensure that such service providers identify and effectively manage risks arising from capital or liquidity transformations.<sup>17</sup> In recent years, there has been an exponential growth of crypto-assets investment. Although at present, crypto-assets do not pose a systemic risk, however, given their rapid trajectory of growth, interconnectedness with existing financial system and increasing adoption combined with high volatility, crypto-assets may soon pose financial stability risks and expose financial intermediaries to credit, market, and operational risk. Further, given the largely unregulated nature of market, there are very loose prudential requirements that are applicable to such crypto-assets service provider and issuer which further puts investors at risk. Therefore, it may be useful to specifically provide for a recommendation to subject crypto-assets service providers and issuers to appropriate capital and liquidity requirements basis a risk-based framework. This will ensure that losses can be covered and there is liquidity.*
- Grievance Redressal:** *The CA Recommendations recommend that crypto-assets service providers and issuers should disclose information regarding their available grievance redressal mechanism. However, given how crucial a comprehensive grievance redressal mechanism is for establishing and facilitating accountability, legitimacy, and legal certainty for a crypto-assets arrangement, it may be useful to include specific recommendations relating to grievance mechanism structure. This may include recommendations such as mandating the establishment of a grievance redressal mechanism in the first place. Given the unique characteristics of crypto-assets it may be challenging for consumers to avail traditional dispute resolutions mechanisms such as courts. Thus, the FSB may consider recommending an internal dispute resolution mechanism that can be set up by service providers and issuers. The governance framework of the internal dispute resolution mechanism must disclose the kinds of disputes that can be adjudicated by such internal mechanism, composition of the adjudicatory body deciding such disputes, orders*

<sup>17</sup> CA Recommendations, Recommendation 5.

*that such internal dispute resolution mechanism can resolve or pass and other relevant procedures governing the internal dispute resolution.*

- ***Insolvency Framework and Protection of Consumer Funds:*** *The CA Recommendations recommend that for custodial wallet providers there should be adequate safeguards to protect customer assets such as by segregation requirements.<sup>18</sup> However, given the increase in bankruptcy filings by crypto-assets service providers such as Three Arrows Capital, Celsius Network, and most significantly by FTX which also resulted in many of its affiliated entities filing for bankruptcy as well, it may be useful to have a specific guidance for dealing with insolvencies of crypto-assets service providers and issuers within the CA Recommendations. These recommendations could entail guidance on certain ex-ante requirements such as mandatory imposition of capital and liquidity requirements on issuers and service providers. It could also include recommendations on certain mandatory obligations that such service providers or issuers can undertake to safeguard the assets of their customers such as (i) mandatorily having funds and account segregation requirements (either through escrow accounts or separate accounts in financial institutions) imposed upon both crypto-assets service providers and issuers. For instance, EU MiCA stipulates that service providers need to place their client's fund in a separate account with a bank or credit institution and ensure that such funds are identifiable and separate from the service providers' own funds<sup>19</sup>, (b) imposing requirements on service providers to maintain liquid assets of an amount equal to a percentage of the amount collected and which remains outstanding against customers, (c) requirement of having liability insurance. Other than these ex-ante measures, the FSB can also consider recommending certain measures that will be applicable while service providers are undergoing insolvency. This is to ensure that the claims of the crypto-assets investors can be realised and to the extent possible, their losses can be recovered, even in cases where the ex-ante measures might not have been complied with by such service providers. These would include providing guidance on how to determine the "ownership" of crypto-assets to understand whether it forms part of the insolvent's estate or the customers and whether crypto-assets constitute "property" to be evoked under insolvency law. The FSB should also require authorities to assess and provide guidance on how their domestic insolvency framework will accommodate insolvencies of crypto-asset service providers. The FSB can also recommend*

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<sup>18</sup> CA Recommendations, Recommendation 5.

<sup>19</sup> EU MiCA, Article 63.



*where in the liquidation waterfall structure should the investors stand. It can also recommend establishing international cooperation to facilitate cross-border insolvencies and the framework under the same, given the cross-border reach of crypto-assets.*

- **Local Presence Requirement:** *The issuers and service-providers of crypto-assets can be spread across jurisdictions and can be pseudo-anonymous. This makes it very challenging for authorities to exercise oversight and facilitate enforcement actions over such crypto-assets. Therefore, it may be useful to mandate a local presence requirement for such issuers and service providers in jurisdictions where they are seeking to offer crypto-assets and its related services. Please refer to General Submission 6 for the detailed submission in this regard.*

### GSC Recommendations

- **Insolvency Framework:** *The GSC Recommendations, specifically recommend that authorities should require GSC arrangements to have in place mechanisms to support the orderly winding down and resolution of GSC arrangements under the applicable legal and insolvency frameworks.<sup>20</sup> It also recommends that there could be international arrangements to seek cooperation in implementing recovery and resolution plans.<sup>21</sup> While these recommendations are comprehensive and require GSC arrangements to mandatorily have provisions for insolvency, however, it may be useful to also include within these recommendations the requirements as discussed above in this General Question 4 under CA Recommendations on the point on “Insolvency Framework and Protection of Consumer Funds”.*
- **Local Presence Requirement:** *GSC arrangements are spread across jurisdictions and can have wide-reaching impact on the financial ecosystems of such jurisdictions. For national authorities to exercise effective jurisdiction over GSC arrangements, it may be useful to mandate a local presence requirement for GSC issuers and service providers in such jurisdictions. Please refer to General Submission 6 for detailed submissions in this regard.*
- **Cross-Border Cooperation:** *The GSC Recommendation specifically recommend international cooperation and information exchange. Annex 1 of the*

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<sup>20</sup> GSC Recommendations, FSB High-Level Recommendation 7.

<sup>21</sup> GSC Recommendations, FSB High-Level Recommendation 3.

*GSC Recommendations also lays down the key design considerations for co-operation and information sharing arrangements. Given the cross-border nature of GSC arrangements, effecting international cooperations will be key in achieving the regulatory objectives. Although the existing recommendations are comprehensive, submissions made under General Submission 8 may be considered to further include additional areas of collaboration.*

### Crypto-assets and markets (CA Recommendations)

5. Have the regulatory, supervisory and oversight issues and challenges as relate to financial stability been identified accurately? Are there other issues that warrant consideration at the international level?

*Vidhi Response:* We will not be commenting on the issues and challenges of financial stability since it is outside our scope of expertise. With regard to other issues, please refer to responses provided above to General Question 4 specifically for CA Recommendations for a detailed discussion on the possible issues that require further consideration.

6. Do you agree with the differentiated requirements on crypto-asset issuers and service providers in the proposed recommendations on risk management, data management and disclosure?

*Vidhi Response:* Based on a review of the recommendations, it appears that primarily both issuers and service providers are subject to similar requirements (barring a few cases). However, we primarily agree with the requirements suggested in these recommendations. A few points which require further consideration specifically for service providers are already set out in the responses to General Question 4. It may also be useful to provide guidance on how authorities and regulations should respond to crypto-assets where issuers may not be traceable (eg. Bitcoin). Further, the FSB may consider highlighting some points which issuers must outline in the prospectus. For instance, this may include detailed information about the issuer, organisational structure, financial details, management, group companies, debts and liabilities, risks, etc.

7. Should there be a more granular differentiation within the recommendations between different types of intermediaries or service providers in light of the risks they pose? If so, please explain.

*Vidhi Response:* We note that in some recommendations, FSB has outlined specific requirements for a particular type of intermediary. We do not have further

comments on this. However, it may be useful for FSB to highlight the need for authorities to generally assess the different types of risks that may emanate from the activities of different types of service providers and accordingly design specific requirements for different types of service providers.

### Global Stablecoins (GSC Recommendations)

8. Are there other changes or additions to the recommendations that should be considered?

*Vidhi Response:* Please refer to the responses provided above to General Question 4 specifically for GSC Recommendations for a detailed discussion on the possible issues that require further consideration.

9. Do you have comments on the key design considerations for cross-border cooperation and information sharing arrangements presented in Annex 2? Should Annex 2 be specific to GSCs, or could it be also applicable to crypto-asset activities other than GSCs?

*Vidhi Response:* Please refer to the discussion under General Submission 8 for a detailed discussion on the specific issues under international cooperation that may require further consideration. We agree that the framework for cross-border cooperation and information as in GSC Recommendations should also be extended to crypto-assets activities. The cross-border remit of crypto-assets limits the effectiveness of national approaches. Many service providers and issuers operate across borders, making the task of supervision and enforcement challenging. Therefore, it is important to establish cross-border cooperation with effective frameworks for information exchange for crypto-assets activities as well.

10. Do you have comments on the elements that could be used to determine whether a stablecoin qualifies as a GSC presented in Annex 4?

*Vidhi Response:* Basis a review of the elements, we believe that the elements as identified in the GSC Recommendations are comprehensive and adequate to determine whether a stablecoin qualifies as a GSC.

For any clarifications or queries regarding the aforesaid submission, you may contact:

**Shehnaz Ahmed**  
Lead (Fintech)  
Email: shehnaz.ahmed@vidhilegal-policy.in

**Swarna Sengupta**  
Research Fellow (Fintech)  
Email: Swarna.sengupta@vidhilegal-policy.in