Declaration on Fundamental Principles on the regulation of cryptocurrencies and the Blockchain (Digital Ledger Technologies) in Uganda and its Follow Up

Adopted by the participants at the 2nd Round Table on the Regulation of Cryptocurrency, held at the United Nations African Institute for the Prevention of Crime and the Treatment of Offenders (UNAFRI), Kampala, 6th July 2017

Preamble

Whereas the Roundtable recognises the importance of disruptive payments technology (Fintech) that includes cryptocurrency and its underlying technology- the Blockchain as a possible cost effective method of enabling micropayments in our developing economies;

Whereas the Roundtable recognises that Uganda's economy is agro based, has low levels of digital literacy, has economically disempowered populations particularly in rural communities, and requires a culturally appropriate socio-economic regulatory regime for cryptocurrency and related Blockchain technologies that ought to promote innovation while offering robust consumer protection;

Whereas the increase in the use of cryptocurrency and the Blockchain in the modern networked Africa constitutes a significant challenge to the regulatory capacity to respond to the socio-cultural, legal, economic and political effects of this emergent environment of disruptive payments technology;

Whereas the Central Bank of Uganda, policy makers, financial regulators and legislators should pay special attention to the protection of cryptocurrency users and consumers, while encouraging national efforts aimed at resolving the problems posed by disruptive payments technology including cryptocurrency and the Blockchain;

Whereas innovation of payments technologies is essential but not sufficient to ensure equity, social progress, and the financial inclusion of the unbanked and the economically disempowered; innovation confirms the need for the policy makers, financial regulators and legislators to promote effective and strong culturally appropriate policies, based on a rules-based but principled approach to regulation;

Whereas it is urgent, in a situation of growing disruptive payments technology, to reaffirm the immutable nature of the fundamental principles and rights embodied in the Constitutional, legislative and policy arrangements of African States and to promote their application within the technical rules based sphere;

The Second Round Table on Cryptocurrency regulation

1. Recalls that in being part of UNAFRI, of the African Union, and of other regional bodies like the African Development Bank, the Association of African Central Banks, and the

Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG), Uganda has endorsed the principles and rights that underpin these regional unions;

2. Recalls that Uganda has undertaken to work towards attaining these principles and enforcing these rights basing on the nation's resources and dependent on its specific circumstances;
3. Recalls that these principles and rights have been expressed and developed in the form of specific rights and obligations in Regional Conventions like the Constitutive Act of the African Union, the African Charter of Human and Peoples' Rights, the Abuja Treaty establishing the African Economic Community, and the African Union Convention on Cybersecurity and Data Protection; regional level policies like the East African Community regional intellectual property policy; national constitutions and legislations; as well as in national sector specific regulation like the Bank of Uganda Consumer Protection Guidelines 2011- all of which are recognised as fundamental in African states;
4. Recalls that Uganda has taken the lead in East Africa in passing legislation on the regulation of e-commerce like the Electronic Transactions Act 2011, the Electronic Signatures Act 2011, and related laws like the Computer Misuse Act 2011- all of which aim to protect important principles and rights in e-commerce;
5. Recalls Uganda's commitment to improve her competitiveness through Information Communication Technology (ICT) development in its Uganda Vision 2040; and the National Development Plan II (NDPII, 2015/16-2019/20).
6. Declares that Uganda, even if she has not ratified some relevant Regional Conventions like the African Union Convention on Cybersecurity and Data Protection (2014), has an obligation arising from the very fact of membership in the African Union, in the Association of African Central Banks, as well as membership in ESAAMLG, in UNAFRI and in related bodies; to respect, to promote and to realise in good faith and in accordance with the regional Conventions, the Constitution of Uganda, legislation like the Bank of Uganda Act 2000, the Uganda Communications Act 2013, and other instruments; the principles and the fundamental rights which are the subject of those legal and policy frameworks and which include:
   (a) Principles on the collection and processing of personal data and on the processing of sensitive data;
   (b) Protection of the data subject's rights;
   (c) Principles of technological neutrality;
   (d) Principles of social justice;
   (e) Rights and freedoms including the right to privacy, to property, to freedom of expression, and to economic, social and cultural development;
   (f) Principles of non-discrimination, of participation, of equity and of gender equality; and
   (g) Recognition of the individual's duty to family and to society.
7. Recalls the resolutions of the 1st Cryptocurrency Roundtable of 2016, held in Kampala at UNAFRI on 7th July 2016 in which it was agreed that principles were required to underpin:
   i. Technological considerations in the regulation of payments technologies;
   ii. Policy approaches to the regulation of crypto currencies and the Blockchain;
   iii. Legal approaches including questions of legality; rights and duties; and consumer protection;
   iv. Conceptual approaches to defining cryptocurrencies;
   v. Ethical considerations when engaging with payment technologies;

vi. Investigatory, prosecutorial and judicial approaches to digital forensics and analytics, and capacity building; and
vii. Socio-cultural issues surrounding consumer behaviour especially among rural and illiterate African communities.

8. Recognises the obligation on UNAFRI to assist its Members, in response to their expressed needs, by making full use of its constitutional mandate and of its technical resources in accordance with Article II of the UNAFRI Statute by:
    a. Offering technical cooperation and advisory services to promote the ratification and implementation of the Regional Conventions and instruments;
    b. Assisting those member states that are not yet in a position to ratify some of these Conventions, in their efforts to promote and to realise the principles and fundamental rights which are the subject of these Conventions and instruments;
    c. Supporting member states in their efforts to create a supportive regulatory sandbox type environment for disruptive payment technologies (Fintech) and for digital ledger technologies in general, and for the specific use of cryptocurrencies and the Blockchain; and
    d. Working in collaboration with policy makers, legislators, financial regulators, private sector, civil society and academia to achieve the conducive regulatory environment.
9. Recognises the lack of clarity of policy objectives and the lack of rationalisation of policies among financial regulators which gap could undermine any efforts to engender conceptual clarity surrounding cryptocurrency and the Blockchain, and could weaken efforts to promote fair competition, ethical behaviour among Fintech, data security, data protection, social cultural relevance, and legality;
10. Recognises the gaps in the constitutional and legislative mandate of the Central Bank of Uganda and related financial regulators to clarify the place for cryptocurrency and the Blockchain in Uganda's emergent Fintech economy;
11. Recalls that the Warnings issued by the Central Bank (14th February 2017) on the need for the public to beware the risks of investment in Onecoin, underscores the risks to the public including to their data security and privacy;
12. Observes that the Central Bank Warnings could be strengthened to give clarity on the obligations of cryptocurrency businesses towards investors, consumers and the public;
13. Decides that, to in order to give full effect to this Declaration, a multi-sectoral follow-up ought to be implemented in accordance with the principles specified in the annex below, which principles shall be considered as an integral part of this Declaration;
14. Underscores the need for a principled approach to the regulation of digital ledger technologies, but stresses that the principles outlined in the Annex below, should not be used to stifle innovation or to replace technical rules, and states that nothing in this Declaration and its follow-up shall be invoked or otherwise used for such purposes.

ANNEX

FOLLOW-UP TO THE DECLARATION

Overall Purpose

1. The aim of this follow-up is to consolidate the efforts made by the participants to the first and to the second Round Tables to develop principled guidance that promotes the fundamental principles and rights enshrined in the international, regional and national laws and regulatory frameworks, and integrates the Resolutions of the First Round Table on cryptocurrency regulation (July 2016) that are reaffirmed in this Declaration.

2. In line with this objective and adopting the recommendation of the Central Bank of Uganda at this second Roundtable, this follow up will allow the establishment of a Working Group. The Working Group will identify areas in which collaboration on the development of policies and laws, and on the conduct of research studies may prove useful to the participating institutions and individuals in order to help them develop principled regulation of disruptive payment technologies based on these fundamental principles and rights. The Working Group comprising participants at both Round Tables, is not a substitute for the established legislative and regulatory mechanisms, but will merely offer expertise and guidance in a collaborative manner.

3. The regulation of disruptive payments technology (Fintech) - inclusive of cryptocurrency and the Blockchain, should be directed at trusted financial intermediaries who handle consumers' money via investment, who engage in money transmission services, who offer currency exchanges, and who offer mobile money and related services. A proportionate risk based technologically neutral approach that is both principled and rules based is recommended in order to encourage innovation and to offer consumer protection.

4. The principles set out below are based on existing practices of dealing with cryptocurrencies and the Blockchain; on the current policies, regulatory mechanisms, and the legal frameworks; and on the fundamental principles and rights that have informed the deliberations of the Round Tables of 2016 and 2017.

PRINCIPLES

1. **Automating regulatory compliance principles:** encourage the automation of regulatory compliance (reg-tech) underpinned by the principles of interoperability between traditional and Fintech payment systems, scalability, cybersecurity, accountability, transparency and trust. The starting point is a sector wide risk assessment similar to that carried out by the Financial Intelligence Authority. Regulators should also consider how encryption and other tech enabled protections could be drawn upon to offer effective consumer protection.
2. **Non-regulation of the Blockchain:** given the benefits of adapting the block chain technology to current payment systems like mobile money and traditional banking systems, such as widening financial inclusion through faster and transparent consumer focused micro-payments, the government should not regulate the Blockchain. However, further research on the benefits and risks of the Blockchain should be undertaken.
3. **Technological neutrality principle:** in the drafting of legislation, technologically neutral language should be used say in the definition of technologies. The courts of

law are encouraged to apply technological neutrality as a tool of interpretation- one that ensures that an Act or a Statute is interpreted or applied by the courts in such a manner that it does not favour or discriminate against any particular form of technology.

4. **Ethical principles** of 'do no harm', of fairness, of transparency, of trust, of non-deception (accurate description of the product) and of non-discrimination in the supply of products should underpin the obligations of consumer facing cryptocurrency and Blockchain businesses. Ethical principles may be achieved through sector specific liability laws like the Consumer Protection Bill 2014 and the Competition Bill 2014, with the aim to encourage socially desirable business behaviour and to protect consumers. An ethical approach by cryptocurrency users should underpin the regulation, and should strongly encourage cryptocurrency users to meet their tax obligations in order to stem the use of cryptocurrency as an off shore tax evasion scheme.
5. **Data security principles:** consumer protection should be underpinned by legal principles on the processing of personal data and the processing of sensitive data, as well as data acquisition using real time information.
6. **Data protection principles:** the data subject's rights inclusive of data privacy, the right to challenge decisions made on a purely algorithmic basis, the right to erasure, explicit consent and so forth, should be allocated by the draft Data Protection and Privacy Bill 2015. The use of Regulatory Sandboxes as a safe environment should be promoted in order to encourage innovation, but without jeopardising consumer protection.
7. **Legality principle**: the overarching legal principle is one of legality as enshrined in Uganda's constitution. The legality principle should be broadened in order to include the oral customary norms and sanctions.
    a. Legality also can be achieved through the application of existing laws like the Value Added Tax Act Cap 349 to transactions that use cryptocurrencies; through amendments to existing laws like the Bank of Uganda Act 2000 in order to delineate the relationship between fiat currency and cryptocurrencies; by harmonising legislation like the Financial Institutions Act 2004 and its associated Regulations, the Tier 4 Microfinance Institutions and Money Lenders Act 2016, and the Micro Deposit Taking Institutions Act 2003, in order to include cryptocurrency businesses in its scope; through the enactment of new laws like the Consumer Protection Bill 2014, the Competition Bill 2014, the Anti-Counterfeiting Goods Bill 2015, and the National Payments Systems Bill (drafted in 2016 by the Uganda Law Reform Commission)- which set out the obligations of providers, the rights and duties of all parties.
    b. Prospective legislation could build on existing guidance like the Bank of Uganda's Consumer Protection Guidelines 2011.
8. **Clarity:** the definition of payment technologies (Fintech) including cryptocurrencies should be based on the principle of clarity and certainty surrounding the qualifying and non-qualifying technology activities including the place for the Blockchain and related digital ledger technologies; when the change of business requires notification to authorities or requires pre-approval; and clarity surrounding the process of listing and the standards for listing for example on the Uganda Stock Exchange. Clarity and certainty is also required on the rules by which tokens like Initial Coin Offerings will be valued; on exemptions to licencing; on the interaction between cryptocurrency and fiat currency- for example as a medium of exchange or a store of value; on the agencies responsible for enforcement and oversight; on compliance requirements including

capitalisation and proof of solvency; on the tests and sanctions for non-compliance; and on the safeguards that are in place for investor protection and consumer protection. Clarity is also required on the public interests to be protected in regulation.

9. **Proportionality principle:** compliance requirements should pass the proportionality test by which the purpose for regulation of cryptocurrency is legitimate, the means by which the regulators objectives are pursued are laid down in the law, the regulatory intervention (measure) is correctly directed to its technological target, and the regulatory measure does not exceed what is necessary to attain the legitimate objective. Regulatory measure would include any proposed security bond. Equally, the sanction should be proportionate to the purported infringement. In this regard, the Know Your Customer and Anti Money Laundering requirements like suspicious activity reporting should not be so onerous as to stifle the innovation of start-ups.
10. **Policies** that aim to regulate cryptocurrencies and related payments technology should be underpinned by the following:
    a. **Principles of social justice** that aim to ensure a balanced economic development that supports innovation, interaction, and collaboration. This principle is encapsulated in Uganda Vision 2040. Such development could be achieved through a 'leap frog' approach to harnessing the benefits of payment technologies, and through incentive-based policies that encourage compliance with regulation for example through tax breaks or government subsidies.
    b. **Principle of sustainability and functional equivalence in policy goals**. Policy goals should aim for consistency and rationality with existing policies like the Monetary Policy; Fiscal Policy, Taxation policy, Consumer Protection and Competition Policy, National Trade Policy, ICT Policy and the Communications Policy, as well as with East Africa and the African regional monetary policy integration initiatives.
        i. Policy goals ought to take into account the difficulty of defining what is functionally the same aspect to be regulated and the need to draw on customary African frameworks for sustainability and for the inclusion and the protection of the economically disempowered.
        ii. The harmonisation of policies and laws (existing and prospective) should follow sub regional collaborative initiatives like the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG), and continent wide developments like the work of the Association of African Central Banks on the harmonisation of monetary policy.
    c. **Principles of co- regulation** between the public and private sector (fintech), that avoids regulatory arbitrage, and over regulation.
    d. **Principles of a risk based approach** that clearly communicates the identification, selection, and prioritisation of risks as well as the rationale for that choice. The policy should be responsive to the principles of proportionality outlined above.
    e. **A Rights based approach** that recognises the right to economic, social and cultural development, to freedom of expression (to protect the production and distribution of software), and the right to property including intellectual property rights. Other rights include equal participation, equity, and gender equality.
    f. **Principles of social cultural legitimacy** that recognise legitimate cultural differences among the different ethnic groups, like the individual's duty to family

and to the society, the recognition of relational principles of ownership and transfer of property in emergency situations, participatory approaches to dispute resolution in close knit kinship communities, and the diverse range of ethnic languages spoken in a given district or region.

11. **Principles of extra territorial jurisdiction:** the legal and regulatory frameworks should be underpinned by principles of jurisdictional non-territoriality, reciprocity and mutual co-operation.
12. **Cross cutting capacity building** in investigation, adjudication, prosecution, cybersecurity and related areas should be based on principles of national, regional and international cooperation; on knowledge exchange of expertise; on ownership by the key stakeholders; on sustainability of the training programmes; and on work based learning.

Dated 6th July 2017, Kampala, UNAFRI

Comments or queries on matters raised in this Roundtable discussion report and the accompanying Declaration, may be directed to Dr Maureen Mapp at M.O.Mapp@bham.ac.uk.