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ITU-T

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ITU-T Focus Group Digital Currency including Digital Fiat
Currency

**Reference Documentation: Governance Aspects
of Digital Fiat Currency**

Regulatory Requirements and Economic Impact
Working Group Deliverable

Focus Group Technical Report

ITU-T

FOREWORD

The International Telecommunication Union (ITU) is the United Nations specialized agency in the field of telecommunications, information and communication technologies (ICTs). The ITU Telecommunication Standardization Sector (ITU-T) is a permanent organ of ITU. ITU-T is responsible for studying technical, operating and tariff questions and issuing Recommendations on them with a view to standardizing telecommunications on a worldwide basis.

The procedures for establishment of focus groups are defined in Recommendation ITU-T A.7. TSAG set up the ITU-T Focus Group Digital Currency Including Digital Fiat Currency (FG DFC) at its meeting in May 2017. TSAG is the parent group of FG DFC.

Deliverables of focus groups can take the form of technical reports, specifications, etc., and aim to provide material for consideration by the parent group in its standardization activities. Deliverables of focus groups are not ITU-T Recommendations.

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Reference Documentation: Governance Aspects of Digital Fiat Currency

About this Report

This Technical report was written by Carolyn McMahon, Rapporteur of the Regulatory Requirements and Economic Impact Working Group of the ITU-T Focus Group Digital Currency including Digital Fiat Currency.

The author acknowledges the contributions and feedback received from members of the Regulatory Requirements and Economic Impact Working Group, and thanks in particular Mr. Nadeem, State Bank of Pakistan, for his analysis performed on the survey section 3 of the report.

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Introduction

The document responds to the Deliverable “Collect documentation that provides a reference foundation to the governance aspects of Digital Fiat Currency from the Central Bank and regulator perspective.”

To this end, FG DFC members have conducted a survey of legal framework for digital currency (ie for those countries participating in the FG DFC work) and also collected relevant work or research on the subject of Central Bank Digital Currency/Digital Currency from FG members (these are listed in Section 2 below). A summary of the analysis for the Survey of legal framework is provided in Section 4.

1 Documentation on Central Bank Digital Currency

The following contributions compose this repository of Reference Documentation. Annotations are authored by WG Vice Chairs & Rapporteur. The repository ([DFC-O-010](#)) can be downloaded from the FG DFC SharePoint.

- 1.1 **Bank of Canada, Bank of England, Monetary Authority of Singapore, *Cross-border interbank payments and settlements: Emerging opportunities for digital transformation, (2018)***
- 1.2 **Committee on Payment & Market Infrastructure (CPMI) *An Analytical Framework: Distributed ledger technology in payment, clearing and settlement, (February 2017)***
- 1.3 **Committee on Payment & Market Infrastructure (CPMI), *Report: Central bank digital currencies*, submitted by Working Groups chaired by Klaus Löber (European Central Bank) and Aerdt Houben (Netherlands Bank), (March 2018)**
- 1.4 **eCurrency, *Macroeconomic Policy Considerations (2017)***
- 1.5 **International Monetary Fund (IMF), *Casting Light on Central Bank Digital Currency, (November 2018)***
- 1.6 **OMFIF & IBM Blockchain World Wire, *Central Bank Digital Currencies, (September 2018)***
- 1.7 **World Economic Forum (WEF) *Whitepaper: Central Banks and Distributed Ledger Technology: How are Central Banks Exploring Blockchain Today? (March 2019)***
- 1.8 **World Economic Forum, Centre for the Fourth Industrial Revolution, *Document Compilation: Central Bank/Macroeconomics DLT Research List*, Compiled by Ashley Lannquist Available as a living document at:
<https://docs.google.com/document/d/1c8iGtoG7BkPr-iufnIPELEWvtZiNtouOvJp2IYjhAEY/edit>**

2 List of countries where Central Bank Digital Currencies (CBDC) are being explored

(Source: [DFC-I-038R3](#))

3 Survey of Legal Frameworks for DFC: A Survey of 16 jurisdictions (December 2018)

This analysis is based on a survey of Central Banks, conducted in a period of October 2017 - October 2018. The survey tool was created by a subcommittee of members of the FG DFC Working Group Regulatory Requirements and Economic Impacts. This subcommittee included: Barry Cooper, Jonathan Dharmapalan, Klaus Loeber, Carolyn McMahon, and Ashwini Santhur. The full survey template is Annexed herein.

Legal and economic survey is bifurcated into three parts consisting of 19 questions. 16 countries participated in the survey List of the countries participated in the survey is attached as Annex A.

1. All sixteen countries affirmed that that they have specific legislation or regulation establish a national/sovereign currency (making currency “fiat” by its nature) and they have legislation/regulation that governs the issuance and distribution of Fiat currency. However, Mozambique does not have any specific legislation/regulation that governs distribution of Fiat currency.
2. The legislation that governs the issuance and distribution of Fiat currency (e.g. the constitution, central bank charter/act, coinage act, payments act or other) is attached as Annex B.
3. Central Banks in almost all countries responsible for issuance and distribution of Fiat Currency with slight variation. In Brazil, the National Monetary Council is responsible for issuance of paper currency whereas Central Bank of Brazil issues Banknotes and coins. In case of Pakistan, Central Bank issues Currency whereas federal Government is responsible for the issuance of coins.
4. Except Brazil, each participating jurisdiction has legislation/regulation that governs the withdrawal of the national currency in circulation and establishing legal tender status of the national/sovereign currency. In Brazil, there is no legislation/regulation that governs the withdrawal of the national currency in circulation and legal tender status is prescribed but not defined.
5. Each jurisdiction has slightly different interpretation for the legal tender status of national currency such as
 - a. In case of India: The Coins under Indian Coinage Act are limited legal tender, with the limits dependent upon on the monetary value of the transaction. The Bank Note is an unlimited legal tender for payment or on account for the amount therein. They are the liabilities of the Reserve Bank of India and are guaranteed by the Central Government. They can be used for all sorts of legal payments but the laws do not make an obligation to accept the same.

- b. In case of Mexico: The legal tender status entails that merchants are obliged to receive banknotes and coins as payment; Mexican states are also required to receive pesos as payment for taxes.
 - c. In Brazil: Contracts between resident parties made in foreign currency or gold are null and void.
 - d. In case of Egypt: legal tender status entails an obligation of merchants to accept payments in legal tender currency in terms of "goods & services "
 - e. In case of Pakistan, Legal tender status provides a guarantee of Govt. of Pakistan. Further, under section 35 of SBP Act 1956, banknotes can be exchanged with Coins and vice versa.
6. In most of the jurisdictions, there is no specific legislation/regulation prohibiting the creation of currency (or other monetary instrument) or issuance of any bill of exchange, promissory note or similar instrument for the payment of money to the bearer on demand, other than central issuing authority however, central banks have sole right to issue bank notes, in case of Kenya Central Bank in consultation with the Minister may, by regulations published in the Gazette prohibit the issue by any person other than the Bank of any bill of exchange, promissory note or similar instrument for the payment of money to the bearer on demand. Further, Norway and Namibia have no legal provision directly or indirectly that prohibits issuance of any bill of exchange, promissory note or similar instrument for the payment of money to the bearer on demand, other than central issuing authority whereas in Mozambique, there is no legislation/regulation prohibiting the creation of currency (or other monetary instrument) other than central issuing authority.
7. In all jurisdictions, there are legislation/regulation prohibiting the circulation of "counterfeit" instruments except Egypt who responded not applicable whereas Norway responded as Not sure.
8. In all jurisdictions, they have legislation or regulation relating to the provision of currency distribution/cash management and the provision of payments services except Mozambique, South Africa, Swaziland and Namibia, there are no legislation or regulation which directly provides for the management of currency. Whereas Lesotho responded that Central Bank may appoint, on such terms and conditions as may be agreed, one or more licensed institutions or other agents in Lesotho to act in an agency capacity for the issue, exchange and withdrawal of notes and coins.
9. In Mozambique and Mexico' the laws and regulations do not stipulate the nature or form of currency.
10. In all jurisdictions except Mozambique and Mexico' , the acts/rules stipulate the legal nature of entities involved, in Mexico the law only stipulates the requirements for participation in the system, but it does not mention the legal nature of such entities or interoperability issues. In Pakistan, the rules i.e. regulatory framework address access and interoperability issues.
11. In all jurisdictions except South Africa, Pakistan and Sweden, do not have any regulations governing the distribution of currency or the provision of payment services by Non-Bank entities, South Africa stated that National Payments System Act No. 78 of 1998, as well as SARB Position Paper on Electronic Money by the National Payment System Department which stipulates that only registered South African banks may be e-money issuers.

12. In all jurisdictions except South Africa, Namibia, Lesotho, China and Norway have a national financial inclusion strategy. In South Africa, Namibia and Lesotho do not have a national financial inclusion strategy but they have other frameworks/policy papers/strategy where financial is one of the pillars. However, China and Norway do not have any national financial inclusion strategy
13. In all jurisdictions, except Mexico have specific legislation or regulation regarding e-money. In Mexico, the Fintech Law was recently proposed and approved in the Senate and is pending Congress' approval, addresses means of payments in electronic form.
14. Mexico, China, Egypt, Lesotho, Mozambique, Namibia, Norway and Sri Lanka existing laws and regulations do not accommodate the possibility of Digital Fiat Currency. Kenya responded it is not precisely defined and Brazil responded that it depends on legal interpretation, whereas, South African Reserve Bank is open to issuing a national digital currency, which would likely be based on Blockchain or Distributed Ledger Technology (DLT). Other jurisdictions have not responded specifically on this question.
15. Except Mozambique other countries exiting laws/regulations may be extrapolated that the intent of the rules governing the issuance of currency was to bestow upon a central authority the sole power to issue currency whatever the form (physical or digital). However, a number of countries has mentioned their laws to be changed to accommodate DFC list is attached as Annex C.
16. Except Norway and Sweden there is no legal framework in place in other countries /for the issuance of privately issued digital currency.
17. China, Egypt, Mozambique and Pakistan banned/issued warning for privately issued digital currencies such as virtual currencies, whereas in Norway it is legal. In Brazil and Sweden it would be decided by Parliament and Government respectively. Swaziland, South Africa, Namibia and Lesotho take it as Payment mechanism/instrument.
18. Brazil, China, Mozambique, Pakistan, Sri Lanka do not feel an overarching need for the country to consider the issuance of currency in digital Fiat form, however, they do realize the importance of digital payment along with associated benefits such as reduced cost, efficiency and transactions traceability etc. and working for promotion of digital payments. Further, China is also experimenting with digital currencies. Egypt, South Africa, Swaziland, Sweden and Lesotho responded positively an overarching need for the country to consider the issuance of currency in digital Fiat form.

Annex A: Contributors to the Survey

1. Brazil
2. China
3. Egypt
4. Eswatini
5. India
6. Kenya
7. Lesotho
8. Mexico
9. MMA Southern Africa
10. Mozambique
11. Namibia
12. Norway
13. Pakistan
14. South Africa
15. Sri Lanka
16. Sweden

Annex B: Results of Survey of Legal Frameworks for DFC: A Survey of 16 jurisdictions

Jurisdiction	legislation reference
India	The Reserve Bank of India Act, 1934 The Coinage Act, 2011
Kenya	The Constitution of Kenya and the Central Bank of Kenya Act
Mexico	The Mexican Constitution (articles 28, 117); Mexico Central Bank Law (Ley del Banco de México); Central Bank charter (Reglamento Interior del Banco de México), and the Mexican Monetary Law (Ley Monetaria de los Estados Unidos Mexicanos).
Brazil	Federal Constitution, article 21 (VII) http://www.planalto.gov.br/ccivil_03/constituicao/constituicaocompilado.htm
China	People’s republic RMB Coinage Act
Egypt	The Central bank of Egypt and Banking Sector and Money’s Law & it's regulation
Lesotho	Central Bank of Lesotho Act of 2000 Section 23(1) –
Mozambique	Law n° 1/92 – Central Bank Act/Law; - Law n° 2/80 de 16 de Junho – Creation of Metical; - Central bank notices o Aviso n° 03/GGBM/2006, de 16 de Junho – Introduction of New Metical Family; o Aviso n° 03/GBM/2011, de 16 de Junho – Introduction of a New Series of Metical; o Aviso n° 15/GBM/2017, de 16 de Junho – Introduction of the 2017 Metical Series;
Namibia	Bank of Namibia Act Section 19(1) -
Norway	Norges Bank Act
Pakistan	Section 24 of SBP Act 1956, Section 5 of SBP BSC Ordinance 2001 and Pakistan Coinage Act 1906 (amended in 2013). i. http://www.sbp.org.pk/about/act/SBP-Act.pdf ii. http://www.sbp.org.pk/about/ordinance/ordinance.pdf iii. http://www.sbp.org.pk/about/act/PakistanCoinageAct-906.pdf iv. http://www.sbp.org.pk/about/act/PakistanCoinageAct-Amend.pdf
Philippines (missing)	
South Africa	South African Reserve Bank Act 90 of 1989 Section 14(1) –
Sri Lanka	Monetary Law Act No. 58 of 1949
Eswatini	The Central Bank of Swaziland Order of 1974 Section 22(1)- “The Bank shall have the sole right to issue in Swaziland notes and coins which are legal tender within Swaziland.”

Sweden	The relevant legislation is the Riksbank which is the central bank of the Realm and an authority under the Riksdag.
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Annex C: Countries where legislation or regulation is needed for digital fiat currency to be recognised.

Jurisdiction	Acts, legislation, or regulation would have to be modified to extend the form of currency to include a digital fiat currency?
India	Indian Coinage Act, 2011 and The Reserve Bank of India Act, 1934.
Kenya	Primary Act to be changed is the Central Bank of Kenya Act. However, there are other subsidiary legislations that requires alignment.
Mexico	The Monetary Law (articles 1 to 10) would need to be modified in order to adapt the Mexican legal framework to include a Digital Fiat Currency. Likewise, the Central Bank Law would need to be modified (primarily, articles 4 to 6) regarding emission and circulation issues.
Brazil	-
China	Regulation of the People's Republic of China on the Administration of Renminbi
Egypt	PRC Central Bank Law
Lesotho	Not applicable.
MMA Southern Africa	N/A
Mozambique	N/A
Namibia	N/A
Norway (missing)	The Savings Banks Act (Sparebankloven), the Commercial Banks Act (Forretningsbankloven), the Financial Institutions Act (Finansieringsvirksomhetsloven) and the Guarantee Schemes Act (Banksikringsloven), as well as parts of the Insurance Activity Act (Forsikringsvirksomhetsloven).
South Africa	n/a
Sri Lanka	MLA and PSSA
Swaziland	Not applicable.
Sweden	There would be a requirement of creation of new currency policy by the decision of the government.

Annex D: Survey Tool

ITU FG DFC Working Group 1: Regulatory Requirements & Economic Impact

Survey: Legal Framework Survey

Please fill out the below questions in view of the relevant statutes, laws and regulations in your jurisdiction (for the purposes of this questionnaire, Digital Fiat Currency is to be understood as a digital version of the sovereign currency, which may have legal tender status).

When providing answers, please identify and provide a short description of the relevant legal acts or instruments, where possible.

Please also provide us with copies of these acts or instruments in electronic form, if available.

PART I

1. Does the country's constitution, legislation or regulation establish a national/sovereign currency (making currency "fiat" by its nature)?
2. Does the country have legislation/regulation that governs the issuance and distribution of Fiat currency?
3. What is the relevant legislation that governs the issuance and distribution of Fiat currency (e.g. the constitution, central bank charter/act, coinage act, payments act or other)?
4. Which entity is entrusted with these functions (for example, the Finance ministry/treasury or the Central Bank)? Please attach entity's institutional mandate or description of role if possible.
5. Does the country have legislation/regulation that governs the withdrawal of the national currency in circulation?
6. Does the country have legislation/regulation establishing legal tender status of the national/sovereign currency?
7. What does the legal tender status entail (e.g. the ability to pay taxes, an obligation of merchants to accept payments in legal tender currency, ...)?
8. Does the country have legislation/regulation prohibiting the creation of currency (or other monetary instrument) by any institution other than the central issuing authority?
9. Does the country have legislation/regulation that prohibits the issue by any person other than the central issuing authority of any bill of exchange, promissory note or similar instrument for the payment of money to the bearer on demand?

10. Does the country have legislation/regulation prohibiting the circulation of “counterfeit” instruments and if so, what are the defining features?

PART II

11. Does the country have legislation or regulation relating to the provision of currency distribution/cash management and the provision of payments services? If so, do these rules stipulate the nature or form of currency concerned? Do these rules address access and interoperability issues or do they stipulate the legal nature of entities involved?
12. Does the country have any regulations governing the distribution of currency or the provision of payment services by Non-Bank entities?
13. Does the country have a national financial inclusion strategy - which may or may not explicitly mention DFS access, utility, or interoperability. Yes/No. If yes, what does the strategy entail?

PART III

14. Does the country have specific legislation or regulation addressing means of payments in electronic form (such as e-money laws)? Do the existing laws and regulations accommodate the possibility of Digital Fiat Currency?
 15. Since a Digital Fiat Currency could not have been anticipated when most currency laws were authored and passed, is it possible to extrapolate that the intent of the rules governing the issuance of currency was to bestow upon a central authority the sole power to issue currency whatever the form (physical or digital)?
 16. If not, which of the above acts, legislation, or regulation would have to be modified to extend the form of currency to include a digital fiat currency?
 17. Is there a legal framework in place in the country for the issuance of privately issued digital currency?
 18. In case of existence of any instances of unregulated digital currency (such as cryptocurrencies), what are the measures and functions that could be undertaken by the country legislation enabling the implementation and regulation of such digital currency within that country?
 19. Is there an overarching need for the country to consider the issuance of currency in digital Fiat form (e.g. reduction of cash in circulation, costs of cash handling, counterfeiting, others)?
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