

UK Treasury Outlines the UK Regulatory Approach to Cryptoassets and Stablecoins

25 February 2021

On 7 January 2021, the UK Treasury issued a [consultation](#) and call for evidence (the “Consultation”) on the UK regulatory approach to cryptoassets and stablecoins. The Consultation is the second of two measures outlined by the Treasury in March 2020 as part of the UK’s response to cryptoassets. The first measure was a [consultation](#) on bringing certain categories of cryptoassets into the scope of UK financial promotions regulation.¹ That consultation concluded on 26 October 2020, and details of the relevant legislative changes will be published in due course.

The Consultation sets out the UK government’s proposals for introducing a regulatory regime for stablecoins (referred to in the Consultation as “stable tokens”) that are used as a means of payment. The regulated category of stable tokens would refer to tokens which stabilise their value by referencing one or more assets, such as fiat currency or a commodity, and can for that reason more reliably be used as a means of exchange or store of value. The category would also include other forms of tokenized payment and settlement assets as well as tokenized forms of central bank money.

SCOPE OF THE PROPOSED REGULATORY REGIME

The regulatory regime would cover firms issuing stable tokens and firms providing services to consumers in relation to stable tokens. The government does not propose (at least in the short term) to extend the regulatory regime to other cryptoassets (such as “utility tokens” and “exchange tokens”) that are not already within the UK regulatory

¹ HM Treasury Cryptoasset promotions Consultation – July 2020. The Treasury proposes to expand the categories of controlled investments that are subject to UK financial promotion restrictions to include “qualifying cryptoassets”, defined as cryptographically secured digital representations of value of contractual rights that use a form of distributed ledger technology (“DLT”) and which are fungible, transferable or confer transferable rights; are not any other controlled investment; are not electronic money; and are not currency issued by a central bank or other public authority.

perimeter. Cryptoassets already within the UK regulatory perimeter include “security tokens” and “e-money tokens”.²

The government’s stated priority is to ensure that tokens which could reliably be used for retail or wholesale transactions are subject to appropriate regulation. This would include stable tokens backed by collateral in the form of an asset or a basket of assets, such as gold or a fiat currency. However, it would not include “algorithmic stablecoins”, which seek to maintain a stable value through the use of algorithms to control supply, without any backing by a reference asset. The government considers that such tokens more closely resemble unbacked exchange tokens and so may not be suitable for retail or wholesale transactions. They are therefore outside the scope of the government’s proposals for stable tokens.

The government’s view is that regulation would apply to firms undertaking the following functions or activities:

- Issuing, creating or destroying asset-linked tokens;
- Issuing, creating or destroying single fiat-linked tokens;
- Value stabilisation and reserve management;
- Validation of transactions;
- Providing services or support to facilitate access to the network or infrastructure;
- Transmission of funds;
- Providing custody and administration of a stable coin for a third party (including storage of private keys);
- Executing transactions in stable tokens;
- Exchanging tokens for fiat money and vice versa.

Where stable tokens also fall within the existing e-money regime, the government’s view is that the existing e-money requirements (the Electronic Money Regulations 2011, as amended) should continue to apply.

² The terms “utility tokens”, “exchange tokens”, “security tokens” and “e-money tokens” are defined in the UK Financial Conduct Authority’s July 2019 [Policy Statement](#) PS19/22: Guidance on Cryptoassets.

REGULATORY OVERSIGHT

Payment Systems Regulator

The government considers that it may be appropriate for stable token arrangements which play a similar function to existing payment systems (i.e., systems which enable people to make transfers of funds) to be subject to regulation by the Payment Systems Regulator (the “PSR”), the economic regulator that regulates payment systems designated by the Treasury to achieve objectives in relation to protecting interests of users, promoting competition and innovation. This may require amendments to the relevant payment systems legislation. Designation of a system for regulation by the PSR gives the PSR powers to place requirements or take action on the participants in that system (i.e., system operators, infrastructure providers or payment service providers).

Bank of England

Where stable token arrangements reach systemic scale (not specifically defined in the Consultation), the government judges that existing systemic payments regulation which applies to the system and service providers should also apply. This would mean that a stable token with significant potential to be systemic at launch would need to be captured at launch by relevant regulation by the Bank of England under the Banking Act 2009. Appropriate triggers for treatment in this manner would include likely user base, likely transaction volumes and likely avenues for acquisition of customers (e.g., through widely used platforms). To meet Bank of England expectations, a systemic stable token arrangement would need to provide holders with a robust legal claim, ensure stability of value and enable users to redeem tokens at par into fiat currency. For asset-linked tokens, this would imply significant capital and prudential requirements and other protections.

POTENTIAL UK LOCATION OR AUTHORISATION REQUIREMENTS

Due to the digital, decentralized and cross-border nature of stable tokens, the government and UK authorities are considering whether firms actively marketing stable tokens to UK consumers should be required to have a UK establishment and be authorised in the United Kingdom. The government and the UK authorities are also considering the case for location requirements for systemic stable token arrangements under the Banking Act 2009.

CALL FOR EVIDENCE

The Consultation also included a call for evidence on the use of tokens to facilitate securities transactions and the use of distributed ledger technology (“DLT”) on financial market infrastructures. Specific questions include whether there are any areas of existing regulation where clarification or amendments are needed to support the use of security tokens and what specifically are the potential benefits (or potential drawbacks) of the adoption of DLT by financial market infrastructures for trading, clearing and settlement.

The Consultation closes on 21 March 2021. The government will carefully consider the responses received and use these to inform a response, setting out more detail on how the proposed approach may be implemented in law (the Consultation does not include any draft legislation). The timing of any eventual legislation has not yet been determined.

* * *

Please do not hesitate to contact us with any questions.

NEW YORK

Byungkwon Lim
blim@debevoise.com



Gary E. Murphy
gemurphy@debevoise.com

MOSCOW

Anna V. Maximenko
avmaximenko@debevoise.com

LONDON

Philip Orange
porange@debevoise.com