EMAIL SUBMISSION TO: pstnt@treasury.go.ke & vasps@treasury.go.ke

To whom it may concern,

Re: Draft National Policy on Virtual Assets and Virtual Asset Service Providers; and Virtual Asset Service Providers Bill

About Global Digital Finance (GDF)

GDF is the leading global members association advocating and accelerating the adoption of best practices for crypto and digital assets. GDF's mission is to promote and facilitate greater adoption of market standards for digital assets through the development of best practices and governance standards by convening industry, policymakers, and regulators.

The input to this response has been curated through a series of member discussions, industry engagement, and roundtables, and GDF is grateful to its members who have taken part.

As always, GDF remains at your disposal for any further questions or clarifications you may have, and we would welcome a meeting with you to further discuss these matters in more detail with our members.

Yours faithfully,
Elise Soucie Watts – Executive Director – GDF

Response to the Draft Policy & Bill: Executive Summary

GDF convened its MEA Policy Working Group to analyse the Consultation Paper on **"The Draft National Policy on Virtual Assets" and "Virtual Asset Service Providers; and Virtual Asset Service Providers Bill"** published by the National Treasury & Economic Planning of the Republic of Kenya. Please note that as this response was developed in collaboration with GDF members, as well as community partners, that portions of our response may be similar or verbatim to individual member responses.

GDF is supportive of the aim of proposals, as well as Kenya's broader aims to build and develop comprehensive regime for virtual assets. It is a welcome step forward, and GDF and its members also appreciate the consideration of evolving global regulation, as well as the input from bodies such as the International Monetary Fund (IMF) in the development of these policies. GDF and its membership is global, so we appreciate the consideration which Kenya gave to evolving global regulations in order to frame their approach.

We also appreciate the industry engagement and thoughtfulness with which the National Treasury & Economic Planning has aimed to develop their approach to virtual assets. Our response to the proposals looks to provide feedback on both the draft policy and bill, raising areas for consideration which GDF members have observed in their engagements over the past years on other regulatory proposals around the global. Overall, our aim with this response is to support the National Treasury & Economic Planning in developing future-proof and forward-looking regulation.

In collaboration with our members, GDF has aimed to provide feedback and suggested key themes that would be beneficial for consideration as the Kenyan public sector builds out these proposals. We also aimed to take into consideration the requirements that industry must also comply with in other jurisdictions. Through this process GDF members identified key areas that we believe the National Treasury & Economic Planning should consider as they move forward to develop a regulatory regime. The key themes identified are:

1. Proportionality and a risk-based, technology neutral approach to building out the virtual assets regulatory framework;

2. Building in mechanisms to support an ongoing public/private sector engagement model on virtual assets regulation;

3. Consideration and harmonisation where possible to global standards and other emerging jurisdictional frameworks;

4. Continued support for responsible innovation and digitisation which can better support growth of the financial services industry in Kenya both for retail and wholesale markets; and

5. Support for greater clarity on the definition of virtual asset and virtual service token.

Expansion on Key Themes: GDF Letter in Response to the Draft National Policy on Virtual Assets and Virtual Asset Service Providers; and Virtual Asset Service Providers Bill

Please note that given our key themes set out in the executive summary we have combined our responses to both pieces of legislation. We aim to provide broad areas for consideration which may strengthen the framework moving forward, support it in being more future proof, as well as contribute to Kenya's growth and its engagement in virtual asset markets on the global level.

1. Proportionality and a risk-based, technology neutral approach to building out the virtual assets regulatory framework

Expanding on this key theme GDF would note the following key ways that the National Treasury & Economic Planning can support a proportionate and risk-based regulatory framework for virtual assets including:

- Kenyan regulators should complete the development of an overarching regulatory framework for virtual assets as quickly as possible; innovation and experimentation must be underpinned by legal and regulatory certainty.
- We encourage proportionality around licensing criteria. For example, exploring an expedited licensing process that allows companies to begin operations at a limited scale while progressively working toward full licensing compliance could support responsible innovation and scaling for firms looking to build in Kenya;
- We encourage proportionality around AML/CTF reporting;
- We encourage more clarity on tax provisions which are not currently included in the draft bill. It will be important to ensure that there is no blanket tax, given different unique crypto use-cases as well as financial structures;
- We encourage more clarity on appropriate marketing materials and consideration of providing supplementary guidance on appropriate marketing;
- We encourage a clear technical policy on the cybersecurity measures that would be appropriate for VASPs (e.g., for cloud storage and data privacy);
- It will be important for Kenyan authorities to make explicit commitments to tech neutrality within the framework and guidance for national regulators;
- We support legal clarification being made to law where necessary (e.g., for some aspects of property law with regards to virtual assets);
- We support a risk-based application of the regulatory requirements scaled appropriately depending on the size of market, types of growth, risks etc.;
- It is important for the regulation to have a clear scope for types of firms, activities, services and territoriality;
- We support Kenyan authorities in their aim of managing objectives such as financial stability and financial crime concerns; and
- As it is currently a focus area globally, we encourage Kenyan authorities to implement provisions to protect against auto-refusal of bank accounts for the virtual asset industry. We would also encourage the banking industry to develop an appeal and justification process for the "risk" identified.

For virtual asset firms, the presence of regulation that aligns with the above suggestions for proportionality provides clarity and certainty. This will enable firms to be aware of their obligations and responsibilities, while providing a framework that outlines the rules and regulations for the industry comply with. This allows for effective planning, robust compliance measures, adequate governance, contingency planning and provisions for consumer protection.

2. Building in mechanisms to support an ongoing public/private sector engagement model on virtual assets regulation

In order to support and encourage public/private dialogue and engagement GDF suggests:

- The implementation of specific mechanisms to enable wider public sector engagement and a co-regulatory model. For example, the proposals set out the potential for Sandboxes we would also support regular roundtables and outreach in a systematic way moving forward;
- Kenya should also be a willing issuer in the digitisation process and could also focus on building strong issuance connectivity with key private sector partners; and
- We support industry and policymakers prioritising common standards, interoperability and scaling for Kenya's digital market to flourish.

3. Consideration and harmonisation where possible to global standards and other emerging jurisdictional frameworks

Given the rapid development of many global frameworks and guidance, approaches being taken in other jurisdictions, and the cross-border nature of digital finance and virtual assets, GDF encourages Kenya authorities to continue to consider how to harmonise and align to global best practice. This could be done by:

- Working towards consistency with other regimes and global standards such as FATF, IOSCO, and the FSB while also leveraging other jurisdictional benchmarks like MiCA (EU) and ADGM (Abu Dhabi) would enhance compatibility with existing international frameworks;
- We recommend a mention of the Travel Rule specifically as an important component of as an important component of AML/CFT for VASPS globally;
- Considering the importance of data privacy and protections for virtual asset transactions, and in particular different data privacy requirements that are mandated around the world;
- Continuing to lead as an innovation hub for virtual assets by fostering cross-border collaboration; and
- As set out above it is important for the regulation to have a clear scope for types of firms, activities, services and territoriality.

In many jurisdictions, policies are currently focused on categorising virtual assets based on traditional financial services terminology and rules, (e.g., securities and payments, rather than consideration of the wider virtual assets ecosystem). There is huge potential for cross-sector industrial impact. Building policies based on the above will also benefit local Kenyan companies seeking to scale internationally as they will have a more seamless compliance pathway as they scale, aligned to global best practice.

Finally, alignment and harmonisation to global standards and best practice will also be critical in mitigating regulatory arbitrage.

4. Continued support for responsible innovation and digitisation which can better support growth of the financial services industry in Kenya both for retail and wholesale markets

As set out above, given global developments, the jurisdiction that gets the balance right could benefit from a huge influx of investment, job creation, and skill transfers that will stimulate growth in the digital economy. Furthermore, from a consumer perspective, the presence of regulation leads to increased trust and reliance on firms and service providers. It encourages greater adoption and participation, with the likelihood of financial protection and legal recourse to funds in case of insolvency or other types of firm failure. It provides a high degree of assurance, with the knowledge that firms are regulated and supervised by authorities and subject to governance and oversight.

GDF supports Kenya in strengthening its markets as well as broadening the offering to retail consumers in these ways and proposes the following steps it can take to further support responsible innovation to develop jobs, skills and talent that remain in the country:

- Kenya can leverage the use of interoperable technologies like smart contracts which can be used to better enable the operational and back-end efficiencies which will drive this holistic transformation;
- Kenya can work to unlock new technology frontiers like NFT, Play to Earn and Web 3.0.;
- Education, supported by a cooperative public and private sector, should be a priority in order for Kenya's citizens to benefit from the new jobs created, while also mitigating the risk of jobs which may be disintermediated by new technologies;
- The public sector and regulators should be equipped with new products in order for a complete and holistic digitisation of the financial services ecosystem to take place. Industry should support them in implementing these technologies; and
- Both retail consumers and the Kenyan private sector should be enabled to choose the new products which best support their business models and needs - innovation should not be constrained by overly stringent requirements for new technologies.

5. Support for greater clarity on the definition of virtual asset and virtual service token

In the Virtual Asset Service Providers Bill GDF and its members would encourage in particular greater clarity on the definition of 'virtual asset' and 'virtual service token'. For example, as currently worded we are concerned that definition of 'virtual asset' and 'virtual service token' may exhibit overlap or confusion in some cases. In order to mitigate the risk of confusion we would recommend:

- The provision of an indicative list of what constitutes a 'virtual service token' to prevent misuse or unintentional inclusion of wider products; and
- Alignment where possible to global standards and definitions of 'virtual asset' that also include both public and private forms of digital money and is also broad enough to encompass the diverse activities that may be associated with virtual assets and virtual service tokens.