

Regulating digital asset platforms

KPMG submission

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Executive summary

We are pleased to provide KPMG Australia's (KPMG) response to Treasury's proposed framework for regulating digital asset platforms.

KPMG supports the principle of leveraging existing financial services and regulatory regimes to regulate digital asset platforms as reflected in the proposed framework. We believe broader encompassing regulation in the first instance will provide for greater certainty, uniformity, and minimal regulatory duplication.

KPMG considers that a regulatory framework should aim to be as technology neutral as possible, to ensure it applies appropriately to the digital asset landscape now but also to future advancements in technology.

As with any regulation, it is important to ensure that any regime achieves an appropriate balance of minimising risks without stifling innovation or driving activity offshore or away from cooperative or well-intentioned stakeholders within the industry.

In our analysis, we explore key aspects of the framework, highlighting areas that may benefit from further consideration. Our aim is to contribute to well-informed and constructive discussion to assist the further development of an effective framework for regulating digital assets. KPMG has a long history of contributing to and advocating for reforms to the regulation of digital assets platforms that balance growth, innovation and protection, including:

- [KPMG's submission to Treasury's consultation on Crypto asset secondary service providers: Licencing and custody requirements](#)
- [KPMG's submission to Treasury on token mapping and developing appropriate crypto regulatory settings for the cryptocurrency sector](#)
- [KPMG's submission to the Board of Taxation in support of additional regulation for the taxation of digital transactions and assets in Australia](#)

KPMG's principal recommendations are:

RECOMMENDATION 1:

KPMG considers that an effective monitoring system must be introduced to support the operation of the safe harbour to ensure that individuals and businesses continue to satisfy the "non-financial purpose" requirement.

RECOMMENDATION 2:

KPMG considers that the exemption for low value facilities may be difficult to monitor given fluctuations in value. Consideration could be given as to whether the dollar amount thresholds should be assessed on an ongoing basis (i.e. at any given point in time), or over a reasonable time period to allow for fluctuations and also to enable providers to take action in response to reaching a threshold.

RECOMMENDATION 3:

KPMG considers that any difficulty encountered by professional financial advisors could be overcome in the near term through recognised qualifications and licensing, similar to other classes of regulated assets.

RECOMMENDATION 4:

KPMG supports the creation of an offence for failure to make reasonable efforts to identify, prevent and disrupt market misconduct.

RECOMMENDATION 5:

KPMG supports the creation of an offence for market misconduct in respect of digital assets.

KPMG looks forward to continuing to contribute to the development of a framework for regulating digital asset platforms. Should you wish to discuss this response further, please do not hesitate to reach out.

Yours sincerely,

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Background

About KPMG

KPMG is a global organisation of independent professional firms, providing a full range of services to organisations across a wide range of industries, governments and not-for-profit sectors. We operate in 146 countries and territories and have more than 227,000 people working in member firms around the world. In Australia, KPMG has a long tradition of professionalism and integrity combined with our dynamic approach to advising clients in a digital-driven world.

KPMG insights

KPMG insights

Safe harbour provisions

KPMG supports the introduction of a safe harbour from the regulatory remit of the financial services laws for networks and tokens that are used for a non-financial purpose by individuals and businesses. We believe in creating environments that promote innovation. A safe harbour would help mitigate regulatory risk, promoting both entrepreneurial and investor confidence. It means that developers are more inclined to pursue new projects and services projects onshore and makes it easier to attract and retain capital investment.

As with any safe harbour, there are inherent risks with this proposal that need to be navigated by considered and well-designed protections. Being exempt from the regulatory remit of the financial services laws means that investors ultimately face fewer protections, including a heightened risk of fraud and scams. In some circumstances, this may undermine the ability to attract and retain capital investment. Therefore, there must also be clear guidelines around information disclosures required by individuals and businesses to protect investors. Further, non-financial products can be easily “financialised” through tokenisation. This means that there must be effective oversight of individuals and businesses operating under the safe harbour to ensure they continue to satisfy the “non-financial purpose” requirement.

KPMG considers that an effective monitoring system must be introduced to support the operation of the safe harbour to ensure that individuals and businesses continue to satisfy the “non-financial purpose” requirement.

Australian financial services licence

Under the proposed framework a platform provider must hold an AFSL authorising them to issue and deal in digital asset facilities, with exemptions for low value facilities. While it may be desirable to have a license exemption to promote innovation, this could be timely and

costly from an administrative perspective. The proposed threshold of digital asset facilities holding less than \$1,500 per customer and less than \$5 million in total may be difficult to monitor in the context of digital assets with high volatility or where illiquid markets may make it difficult to price tokens.

KPMG considers that the exemption for low value facilities may be difficult to monitor given fluctuations in value. Consideration could be given as to whether the dollar amount thresholds should be assessed on an ongoing basis (i.e. at any given point in time), or over a reasonable time period to allow for fluctuations and also to enable providers to take action in response to reaching a threshold.

Expansion of financial advice framework

KPMG supports the expansion of the financial advice framework to digital assets where they are being used for financialized functions. It is our view that activities such as strategic planning, investment advice, targeted promotion, general promotion, and solicited or unsolicited recommendations be treated as advice and subject to the relevant regulatory requirements.

There may be some criticism regarding the difficulty this could impose on providers of financial advice. However, we are of the view that the above activities are not dissimilar in nature to the provision of other advice but for the unfamiliar nature and technical complexity, which is exacerbated by the current regulatory uncertainty of the space. This should be addressed, in part, by the proposed framework for regulating digital asset platforms. In any case, the advice should be regulated on the basis of the overarching objective of consumer protection.

KPMG considers that any difficulty encountered by professional financial advisors could be overcome in the near term through recognised qualifications and licensing, similar to other classes of regulated assets.

As noted, other non-financial goods, including watches and art, that can be used for speculative investment are not subject to financial advice regulation. KPMG considers that extending regulation to non-financial digital assets is therefore not necessary where they are used for a non-financial purpose, which would be consistent with the proposed safe harbour.

Minimum standards for facility contracts

The proposed minimum standards largely reflect the existing minimum standards for holding financial products. KPMG supports the principle of leveraging existing financial services and regulatory regimes to regulate digital asset platforms, though recognises that they will need to be tailored in certain circumstances. KPMG supports the proposal to tailor the minimum standards to permit 'bailment' arrangements. As the consultation paper notes, this tailoring means digital asset facilities would be able to safely hold any type of asset. Given that bailment is currently widely used in token-based systems, this is necessary.

The proposed additional standards on token holders are reasonable, particularly considering the risk and consequential impacts that may arise in the event of any loss of private keys.

Enforcement mechanism against market misconduct

KPMG considers that it is preferable for platform providers facilitating trading to be subject to external oversight from a regulator.

KPMG believes the proposed regime, which places the burden on all platform providers (rather than just those facilitating trading) to be the primary enforcement mechanism against market misconduct will go some way in preventing market misconduct. To ensure it does not represent a form of industry self-regulation, it must be supported by enforceability mechanisms.

KPMG supports the creation of an offence for failure to make reasonable efforts to identify, prevent and disrupt market misconduct.

KPMG supports the creation of an offence for market misconduct in respect of digital assets.

Minimum standards for financialised functions

KPMG is supportive of the proposed minimum standards for financialised functions – token trading, token staking, asset tokenisation and funding tokenisation. We note that they leverage existing regimes and align with and complement internationally recognised approaches where appropriate, including Singapore and the European Union. The proposed standards also sufficiently balance the risk of too broadly applying existing regimes that may be ill-suited to digital assets.



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