



**KEVIN
MARTIN
OGWEMOH**

**L E G A L
NEWSLETTER**

**CRYPTOCURRENCY:
REGULATION OF DIGITAL ASSETS IN NIGERIA**



THE TRINITY CENTRE, Plot 14A Block 139A, Nike Art Gallery Road, Lekki Peninsula Scheme 1, Lagos, Nigeria



www.kmo.legal



info@kmo.legal



INTRODUCTION

Cryptocurrency is no longer a new concept in the global economy. In fact, cryptocurrency adoption and activities are on the rise all over the world. Cryptocurrency has been defined simply as a digital or virtual currency that is secured by cryptograph¹. It has been considered to be a digital medium of exchange, based on the principles of cryptography allowing performance of secure, decentralized and distributed economic transactions². It is essentially electronic cash.

Bitcoin was the first cryptocurrency to be created and launched in 2009 and so far, more cryptocurrencies have been introduced such as Litecoin, Peercoin, Namecoin, Ethereum, Cardona, EOS, Tron etc³.

According to the *Chainalysis 2020 Geography of Cryptocurrency Report*, which is the first ever attempt at a comprehensive country-level breakdown of global cryptocurrency activity, cryptocurrency is now a global phenomenon. In fact, the following countries, with Nigeria at the 8th position, were ranked top ten (10) out of 154 countries on the 2020 Global Crypto Adoption Index; they are Ukraine, Russia, Venezuela, China, Kenya, United States of America, South Africa, Nigeria, Colombia and Vietnam⁴.



According to this report, the index is a testament to the buzz around cryptocurrency as an investment and especially in the developing world as a means of value storage and medium of exchange. The index also showed that developing countries have high grassroots cryptocurrency activity.

Prior to now, there was no existing regulation on digital assets like cryptocurrency although regulatory authorities have shown interest in the developments in this sector for a while⁵. In 2019, the Securities and Exchange Commission (SEC) set up the Fintech Roadmap Committee of the Nigerian Capital Market⁶ to analyze the impact of fintech on investments and securities in Nigeria and to make recommendations on possible regulatory moves. One of the recommendations in the Final Report of the Committee is that the SEC should be responsible for the regulation of Virtual Financial Assets (VFAs) Exchanges in Nigeria and the regulatory framework. Consequently, SEC released a draft document to regulate digital assets but some industry players insisted that while it was a good move, it was too early to commence regulation of stakeholders in the sector, investors and dealers alike.



Rather, they canvassed the need for government to contribute to the development of blockchain technology before trying to regulate its use⁷.

In a laudable development, SEC released a statement on 14th September 2020 that it would begin to regulate digital assets offerings in Nigeria⁸. This is a much welcome development from SEC which as the apex regulator of the Nigerian capital market has the power to regulate securities and investments business in Nigeria⁹. According to SEC, digital assets offerings provide alternative investment opportunities for the investing public and it therefore becomes essential to ensure that they operate in a manner that is consistent with investor protection, the interest of the public, market integrity and transparency. To this end, SEC stated that it has adopted a three-pronged objective to regulate innovation, hinged on safety, market deepening and providing solution to problems. The main aim of the regulation is not to hinder technology or stifle innovation but to create standards that encourage ethical practices that will ultimately make a fair and efficient market.



WHAT CRYPTO ACTIVITIES WILL BE REGULATED?

The regulation will apply to all Digital Assets Token Offerings (DATO), Initial Coin Offerings (ICOs), Security Token ICOs, and other Blockchain-based offers within Nigeria by Nigerian issuers or foreign issuers targeting Nigerian investors¹⁰.

SEC has defined Crypto asset to mean a digital representation of value that can be digitally traded and functions as a medium of exchange and/or a unit of account and/or a store of value but does not have legal tender status in any jurisdiction. It is one that (a) is neither issued nor guaranteed by any jurisdiction, (b) fulfils the above-stated functions merely by agreement within its community of users, and (c) is distinguished from fiat currency and e-money¹¹.

WHAT IS REGISTRABLE?

The position of SEC is that virtual crypto assets are securities unless the contrary is proved¹². Therefore, the burden of proving that the crypto assets sought to be offered are not securities and are, therefore, not under the jurisdiction of the SEC or liable to be registered is placed on the issuer or sponsor. Issuers or sponsors are required to make an initial assessment filing to SEC to satisfy this burden. However, where it is shown that the virtual crypto assets are indeed securities, the digital assets must be registered.



Thus, SEC will regulate crypto-token or crypto-coin investments when the character of the investment

qualifies as securities transaction. Existing digital assets offerings prior to the implementation of the regulation will have three (3) months to either submit the initial assessment filing or documents for registration¹³.

WHO WILL BE REGULATED?

Persons who will be subject to regulation include any person (individual or corporate) whose activities involve any aspect of blockchain-related and virtual asset services, issuers or sponsors (start-ups or existing corporations) of virtual digital assets. Foreign issuers or sponsors will be recognized by SEC where a reciprocal agreement exists between Nigeria and the country of the foreign issuer or sponsor and where the country of the foreign issuer or sponsor is a member of the International Organization of Securities Commissions (IOSCO)¹⁴.



ADVANTAGE OF CRYPTOCURRENCY

Advantages of cryptocurrency which have facilitated its adoption despite criticisms include easy transactions, more confidential transactions, adaptability, asset transfers, easier international trade, low transaction fee, strong security, individual ownership etc¹⁵.

CONCLUSION

Cryptocurrency is truly revolutionizing the global financial system. There is currently a rapid transition from physical currencies to the virtual currencies being engendered by fintech. *However, while cryptocurrencies have been lauded for their ease, efficiency, and decentralization attractions, they have no doubt also brought to fore certain ambiguities and uncertainties especially concerning the usage, operation, and regulation of such a peculiar new value tender.* Along with the emerging trends in the global financial sector, therefore, it is great to see Nigerian regulatory authorities take



initiative to develop a robust regulatory framework that will accommodate these evolving financial technologies. Thus, digital crypto assets offerings that qualify as securities under the Regulation will need to be registered with the SEC. It is our firm view that the regulation and others to follow will bring sanity and serenity to a space that is rapidly proliferating and also help the general public to identify legitimate and trustworthy cryptocurrency dealers for their investments.

REFERENCES

1. Jake Frankenfield, *Cryptocurrency* available at <https://www.investopedia.com/terms/c/cryptocurrency.asp#:~:text=A%20cryptocurrency%20is%20a%20digital,a%20disparate%20network%20of%20computers>. Accessed on 15/09/2020.
2. Martin Vejack, *Basic Aspects of Cryptocurrencies* available at https://www.researchgate.net/publication/298792075_Cryptocurrency/link/56ec12ad08aee4707a384f3a/download accessed on 15/09/2020.
3. Jake Frankenfield, *Cryptocurrency* available at <https://www.investopedia.com/terms/c/cryptocurrency.asp#:~:text=A%20cryptocurrency%20is%20a%20digital,a%20disparate%20network%20of%20computers>. Accessed on 15/09/2020.
4. Chainalysis, *The 2020 Global Crypto Adoption Index: Cryptocurrency is a Global Phenomenon* available at <https://blog.chainalysis.com/reports/2020-global-cryptocurrency-adoption-index-2020> accessed on 15/09/2020.
5. The Central Bank of Nigeria (CBN) and the Securities and Exchange Commission (SEC) have in the past warned Nigerians about the risks in cryptocurrency as a new investment terrain and the occasional scams perpetrated by some fraudulent entities. For example, in 2019, two Initial Coin Offerings (“ICOs”) operated by a company based in Vietnam allegedly swindled around 32,000 investors of the

sum of sixty-six million dollars (\$660,000,000). It was, therefore, becoming glaring that for all the ease, efficiency and decentralization attractions of cryptocurrencies, they have also have their own lapses which necessitates regulatory intervention.

6. Report of the Fintech Roadmap Committee of the Nigerian Capital Market available at <https://sec.gov.ng/report-of-the-fintech-roadmap-committee-of-the-nigerian-capital-market/> accessed on 16th September 2020
7. Emmanuel Paul, *Crypto-based platforms to register digital assets, ICOs, others with Nigerian regulator* available at <https://techpoint.africa/2020/09/14/sec-nigeria-regulations-cryptocurrency/> accessed on 15/09/2020.
8. SEC, *Statement on Digital Assets and their classification and Treatment* available at <https://sec.gov.ng/statement-on-digital-assets-and-their-classification-and-treatment/> accessed on 15/09/2020.



9. Section 13 of the Investment and Securities Act 2007.
10. SEC, *Statement on Digital Assets and their classification and Treatment* available at <https://sec.gov.ng/statement-on-digital-assets-and-their-classification-and-treatment/> accessed on 15/09/2020.
11. Ibid.
12. Ibid.
13. Ibid.
14. Ibid.
15. Finjan Team, *Advantages of Cryptocurrency* available at <https://blog.finjan.com/advantages-of-cryptocurrency/> accessed on 16/09/2020.

Kindly forward your comments to info@kmo.legal

**-Stay Safe-
-Take Responsibility-
-We Care-**



Established in 1988, KMO Legal, a result oriented Law Firm has over three decades of experience in providing quality and innovative services to clients who in turn have grown to rely on the Firm in achieving their set individual/organisational targets.

Some of the Firm's practice areas include:

Litigation, Alternative Dispute Resolution, Banking, Finance and Corporate Commercial Law Practice, Energy, Power, Oil & Gas, Telecommunications Law, Immigration Law, Real Estate and Property Law, Probate, Estate Administration and Trusts, Shipping, Admiralty and International Trade Law, Taxation, Entertainment, and Bespoke Advisory/Secretarial Services.

For further enquiries or assistance, please contact us at:

Address: **The Trinity Centre**
Plot 14A Block 139A
Nike Art Gallery Road, Lekki
Peninsula Scheme 1, Lagos
Nigeria.

Email: info@kmo.legal

Phone: **+234(0) 909 696 5716**
+234(0) 805 900 6522
+234(0) 806 565 1799
+234(0) 803 308 3445

Website: www.kmo.legal