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Cryptocurrency Regulation in Nigeria

Introduction

Cryptocurrency is designed as a medium of exchange. It uses advanced cryptography functions as a safeguard against forgery. Most cryptocurrencies rely on distributed databases called blockchains, which make them decentralized and free from traditional central banking systems.

Due to their nature, cryptocurrencies have many unique use cases, including near-instant and cheap cross-border transfers of wealth, the issuance of non-fungible tokens (NFTs) and more. The most well-known cryptocurrency is Bitcoin or BTC, but there are many other cryptocurrencies such as Ethereum (ETH), Litecoin (LTC) and XRP — all of which have varying functionalities and attributes.

Cryptocurrency in Nigeria

Nigeria is one of the leading peer-to-peer bitcoin marketplace which makes it one of the most important cryptocurrency markets in the world. In 2020, Paxful, one of the biggest peer-to-peer cryptocurrency exchange platforms, reported that from 2015 – 2020, Nigeria traded 60,215 bitcoins valued at more than \$566 Million. This makes Nigeria the second largest bitcoin trading country in the world, second only to the United States of America which has the largest volume worldwide (\$3.75 Billion traded during the same period).

In Nigeria, the Securities and Exchange Commission regulates investments and securities in Nigeria. The securities and Exchange Commission also known as SEC is empowered by section 13 of the Investment and Securities Act, 2007 to do this.

Regulation by the Nigerian Securities and Exchange Commission

On the 14th of September, 2020, the SEC (Commission) released a [document](#) focused on regulating cryptocurrency in Nigeria titled “Statement On Digital Assets And Their Classification And Treatment” (SEC Document). According to the Commission, it has adopted a three-pronged approach and objective to regulate innovation in the crypto currency sector and this is hinged on safety, market deepening, and providing solutions to problems. This objective will guide its strategy, regulations and interaction with innovators seeking legitimacy and relevance in this emerging industry. The Commission also stated that the general objective of regulation is not to hinder technology or stifle innovation, but to create standards that encourage ethical practices which will ultimately make for a fair and efficient market.

The fulcrum of the SEC Document is that the Commission will regulate Virtual Crypto Assets investments such as crypto-token or crypto-coin investments or offerings when the character of the investments qualifies as securities transactions.

What will be regulated?

According to the Commission the following shall be regulated:

1. Virtual crypto – assets (crypto – token or crypto-coin) investments; and
2. All Digital Assets Token Offering (DATOs), Initial Coin Offerings (ICOs), Security Token ICOs and other Blockchain-based offers of digital assets:

- within Nigeria; or
- by Nigerian issuers or sponsors; or
- by foreign issuers targeting Nigerian investors.

This is based on the following premise:

1. The position of the Commission is that virtual crypto assets are securities, unless proven otherwise. Thus, the burden of proving that the crypto assets proposed to be offered are not securities and therefore not under the jurisdiction of the SEC, is placed on the issuer or sponsor of the said assets.
2. Issuers or sponsors are expected to satisfy the burden of proving that the virtual assets do not constitute securities by making an initial assessment filing. However, where the finding of the Commission is that the virtual assets are indeed securities (not structured to be exclusively offered through crowdfunding portals or other exempt methods), then the issuer or sponsor must register the digital assets.

Registration and Existing offerings

The registration process for virtual assets will involve a two-prong approach:

- an initial assessment filing to satisfy the burden of proof; and
- a filing for registration either made directly by the issuer or sponsor or where the burden of proof is not satisfied.

Existing digital assets offerings prior to the implementation of the Regulatory Guidelines will have three (3) months to either submit the initial assessment filing or documents for registration proper, as the case may be.

Definition of Crypto Asset

The SEC defined Crypto Asset as a means of digital representation of value that can be digitally traded and functions as:

1. a medium of exchange; and/or
2. a unit of account; and/or
3. a store of value,

but does not have legal tender status in any jurisdiction.

It is important to note that a Crypto Asset is neither issued nor guaranteed by any jurisdiction and fulfils the above functions only by agreement within the community of users of the Crypto Asset. It is distinguished from Fiat Currency and E-money.

The following have been categorized by the SEC as virtual assets/ instruments: *Crypto Asset, Utility Token or Non-Security Tokens, Security Tokens, Derivatives and Collective Investment Funds of Crypto Assets, Security Tokens and Utility Tokens.*

Who will be regulated?

1. Any person, (individual or corporate) whose activities involve any aspect of blockchain-related and virtual digital asset services, must be registered by the Commission and as such, will be subject to the Regulatory Guidelines. Such services include, but are not limited to: reception, transmission and execution of orders on behalf of other persons, dealers on own account, portfolio management, investment advice, custodian or nominee services.
2. Issuers or sponsors (start-ups or existing corporations) of virtual digital assets must be guided by the Commission's regulation. The Commission may require foreign or non-residential issuers or sponsors to establish a branch office within Nigeria. However, foreign issuers or sponsors will be recognized by the Commission where a reciprocal agreement exists between Nigeria and the country of the foreign issuer or sponsor.
3. A recognition status will also be accorded, where the country of the foreign issuer or sponsor is a member of the International Organization of Securities Commissions (IOSCO).

Conclusion

It is safe to deduce that the SEC does not intend to enforce strict rules or stifle innovation in this sector of the economy but aims to protect investors by providing appropriate regulations for digital asset investments. The SEC Document should be seen as a welcome development to not only investors but to startup companies in Nigeria who are currently developing diverse solutions for this sector.

Are you working on developing a solution targeted at cryptocurrency in Nigeria or looking to invest in this sector, [Contact Us](#).