THE REGULATORY FRAMEWORK FOR CRYPTOCURRENCIES AND DIGITAL ASSETS IN NIGERIA: A CRITICAL ANALYSIS.



Introduction

Nigeria, despite being one of Africa's largest economies, lacks a codified legal framework specifically regulating cryptocurrency. However, there is also no outright prohibition of its use. A critical analysis of Nigeria's regulatory framework for cryptocurrencies and digital assets requires an examination of both the legal and policy measures implemented by the government, along with the challenges and potential for future regulation.

This article aims to provide comprehensive evaluation of the regulatory efforts by the Nigerian government and its financial regulators concerning cryptocurrency and digital assets.

CONCEPT OF CURRENCY

Cryptocurrency is a digital currency that operates on a decentralized network, without relying on a central authority like a bank or government. It's also known as crypto or virtual currency.2

Cryptocurrencies are of different types such as Bitcoin, Ethereum, and others. They are decentralized digital assets that operate outside traditional financial institutions. In Nigeria, there has been significant cryptocurrency adoption due to the appeal of alternatives to traditional banking systems, especially in the context of economic instability, inflation, and the decline in the value of the Nigerian official currency [Naira].

In response to the growing popularity of digital currencies, the Nigerian government and regulatory bodies have been grappling with how to regulate this emerging sector.

This has resulted in a mix of actions ranging from supportive to restrictive policies; there have been several attempts to stop the usage of cryptocurrency in Nigeria, but all attempts have proved abortive due to the high rate of the success and usage of crypto currency globally.

ROLE OF THE CENTRAL BANK OF NIGERIA (CBN)

The Central Bank of Nigeria (CBN) has played a significant role in regulating cryptocurrencies in the country, largely adopting a negative stance. Through various circulars, the CBN has prohibited financial institutions from providing services to cryptocurrency exchanges and individuals engaging crypto transactions. The first directive, issued in 2017,3 barred banks and payment service providers from facilitating cryptocurrency transactions, warning that cryptocurrencies were not legal tender and instructing financial institutions to deal with them at their own risks while reporting suspicious transaction to the Nigerian Financial Intelligence Unit (NFIU).4

In 20215, the CBN reinforced its position by issuing another directive, mandating financial institutions to desist from facilitating cryptocurrency transactions and to close any account found to be engaging in such activities. Despite these restrictions, cryptocurrency trading in Nigeria has continued to thrive, with traders shifting to peer-to-peer platforms to conduct transactions. The CBN's firm stance on cryptocurrencies is primarily driven by concerns over money laundering, terrorism financing, and the lack of consumer protection in the crypto market.

THE NIGERIAN SECURITIES AND EXCHANGE COMMISSION (SEC)

Unlike the CBN, which has taken a restrictive stance on cryptocurrencies, the Nigerian Securities and Exchange Commission (SEC) has adopted a more open and regulatory-driven approach. Recognizing the potential of digital assets and blockchain technology, the SEC views cryptocurrencies as a legitimate asset class that can benefit the Nigerian economy.

In 2021, the SEC introduced the ACCELERATED REGULATORY INCUBATION PROGRAM (ARIP)6, a framework designed to regulate digital assets and cryptocurrency-related services. The ARIP framework aims to facilitate the onboarding of Virtual Assets Service Providers (VASPs) and other digital investment service providers into a structured regulatory environment. It provides guidance on compliance requirements before these entities become fully operations in the capital and allow the SEC to better under digital asset business models for effective regulation.

The SEC's regulatory framework seeks to ensure investor protection, transparency, and market integrity. It mandates that crypto exchanges, digital asset issuers, and investment platforms register with the SEC to operate legally. These efforts reflect the SEC's commitment to integrating cryptocurrencies into Nigeria's financial system rather that imposing outright restrictions.

Following the CBN's circular that prohibited financial institutions from engaging with cryptocurrency exchanges, the SEC issued its own circular reassuring cryptocurrency exchanges of its commitment to supporting the cryptocurrency sector. The SEC emphasized that it was working closely with the CBN to analyze and understand the risks identified in the CBN's directive and to develop appropriate safeguards should cryptocurrency-related securities be permitted in the future.

The SEC further clarified that:
"For the purpose of admittance into the SEC Regulatory Incubation Framework, the assessment of all persons (and products) affected by the CBN Circular of February 5, 2021, is hereby put on hold until such persons are able to operate bank accounts within the Nigerian banking system".8
This position underscores the SEC's commitment to striking a balance between fostering innovation in the cryptocurrency market and ensuring compliance with consumer protection, anti-money laundering (AML) and counter-financing of terrorism (CFT) regulations.

CHALLENGES OF THE REGULATORY FRAMEWORK

The regulatory landscape for cryptocurrencies and digital assets in Nigeria is fraught with several challenges:

- Lack of Clarity and Consistency: The conflicting stance between the CBN and the SEC has created a regulatory grey area. The CBN's ban on financial institutions engaging with cryptocurrency exchanges is at odds with the SEC's attempts to integrate digital assets into the regulatory framework. This inconsistency causes confusion for investors and businesses navigating the cryptocurrency space.
- Limited Infrastructure for Regulation: Despite efforts by the SEC, the infrastructure for regulating cryptocurrencies in Nigeria remains underdeveloped. There is a lack of comprehensive guidelines for monitoring and enforcing anti-money laundering (AML) and counter-terrorism financing (CFT) measures within the cryptocurrency ecosystem.
- Cybersecurity and Fraud: The decentralized nature of cryptocurrencies makes transactions irreversible, exposing consumers to fraud and scams. Nigeria has witnessed numerous cases of fraudulent schemes and Ponzi scams related to cryptocurrency investments, highlighting the urgent need for stronger consumer protection mechanisms.

OPPORTUNITIES FOR GROWTH AND DEVELOPMENT

While the regulatory environment has been restrictive, there are also significant opportunities for growth and innovation in the Nigerian cryptocurrency market:

- Financial Inclusion: With an estimated 36% of Nigerians being unbanked, cryptocurrencies could provide a means for these individuals to access financial services. Mobile money, decentralized finance (DeFi), and blockchain technology have the potential to empower the underserved population.
- Blockchain Adoption: The underlying blockchain technology behind cryptocurrencies has applications beyond digital currency. Blockchain could revolutionize sectors such as agriculture, logistics, healthcare, and government service delivery by providing transparency, security, and efficiency.9
- Job Creation and Innovation: The cryptocurrency and blockchain industry could create jobs and drive innovation in Nigeria's tech ecosystem. Startups, developers, and entrepreneurs can contribute to the development of decentralized applications (Apps) and blockchain-based solutions for various sectors.
- Global Competitiveness: As countries like the United States, the European Union, and China develop clear regulatory frameworks for cryptocurrencies, Nigeria can become a leader in the African cryptocurrency market by adopting a balanced and forward-looking regulatory framework that encourages innovation while addressing concerns like consumer protection and AML/CFT compliance.

THE FUTURE OF CRYPTOCURRENCY REGULATION IN NIGERIA

- For Nigeria to develop a robust and effective regulatory framework for cryptocurrencies and digital assets, the following steps can be considered:
- Harmonizing Regulations: There is a need for greater collaboration between the CBN, SEC, and other relevant agencies to create a unified regulatory approach. This would help provide clarity to businesses and investors in the cryptocurrency space and ensure that regulations are consistent across all stakeholders.
- Developing Crypto-Friendly Policies: Instead of outright bans, the Nigerian government could focus on creating a regulatory framework that facilitates the responsible use of cryptocurrencies. This includes setting up clear guidelines for crypto exchanges, facilitating AML/CFT compliance, and promoting investor protection.
- Educating the Public: Public awareness campaigns on the risks and benefits of cryptocurrencies are essential to fostering a more informed citizenry. These campaigns can help reduce the risks of scams and fraud while enabling Nigerians to make informed decisions about participating in the crypto market.
- Enhancing Digital Infrastructure: The Nigerian government could invest in digital infrastructure, such as a national identity system linked to blockchain technology, to enhance the security and transparency of financial transactions.

CONCLUSION

Nigeria's approach to regulating cryptocurrencies and digital assets has been a combination of caution, restrictions, and emerging efforts to integrate innovative financial technologies. Despite the regulatory challenges and inconsistencies, the country has a tremendous opportunity to harness the potential of cryptocurrencies to enhance financial inclusion, drive economic growth, and promote technological advancement.

The government has consistently warned about the risks of investing in an unregulated and highly volatile cryptocurrency market. The Cybercrime (Prohibition & Prevention) Act 2015 mandates financial institutions including fintech companies to verify the identity of customers involved in electronic transactions, implement Know Your Customers (KYC) protocols, and securely store subscriber data for at least 2 years. Similarly, the CBN Consumer Protection Framework requires all financial institutions under its regulation to adhere to fintech laws, maintain consumer data, and implement measures to prevent unauthorized disclosure.10

However, the unique nature of cryptocurrencies presents challenges beyond consumer data protection, as transactions are decentralised and often untraceable. This has led the Nigerian government to issue clear warnings that individuals investing in cryptocurrencies do so at their own risk, with no recourse in the event of financial losses.

Moving forward, a clear, consistent, and collaborative regulatory framework will be essential to ensure that Nigeria can capitalize on the benefits of the cryptocurrency and blockchain technology while effectively mitigating risks such as fraud, money laundering, and investor losses.

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